Department of Justice
An Roinn Dlí agus Cirt
Männystrie O tha Laa

Consent to serious harm for sexual gratification: not a defence.
A public consultation

Department of Justice
November 2020

Ministerial Foreword

In its June 2019 inspection report *"No Excuse: Public Protection Inspection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland"*, Criminal Justice Inspection Northern Ireland (CJINI) recommended that the Department of Justice should review how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed.

In light of this report I commissioned a full review to identify and address any inadequacies in the current legislation. Work on the review is underway and I intend to issue a public consultation on its findings early in 2021.

I decided to widen the review to include *consent to serious harm for sexual gratification not being a defence,* following an amendment to the Domestic Abuse Bill in Westminster, and I gave this discrete aspect of the review priority.

While the law on this defence is progressing in England and Wales, Northern Ireland can continue to rely on the case law on such consent and victims should not be significantly disadvantaged. However, a similar level of certainty in the law is desirable.

This consultation focuses on the need for legislation in the area of consent to serious harm for sexual gratification. The aim is to give readers some insight into the issue and to seek views on the way forward. It does not question the rationale behind individual prosecution or sentencing decisions, nor does it otherwise undermine the independence of the Public Prosecution Service or the judiciary.

In developing the consultation the Review Team has engaged with key stakeholders and researched practices in other jurisdictions. The consultation questions are designed to elicit your comments and views.

I encourage those with an interest to respond to this consultation and I look forward to considering those responses in making decisions on the way forward.

Naomi Long, MLA

Justice Minister

Contents and Page Numbers

The Consultation Process

In reviewing the issue of consent to serious harm the Review team has worked with key stakeholders who have provided valuable assistance and guidance. It has also conducted desk research, considering information from many jurisdictions around the world.

Further engagement will take place if requested during the consultation period. This will give you the opportunity to engage with the Review team and discuss any issues raised by the consultation paper, if you so wish.

Responding to this Consultation

We look forward to hearing from you if you wish to share your views.

If you require a hard copy of this consultation document or have any other enquiries please email your request to consentconsultation@justice-ni.x.gsi.gov.uk

or you can write to us at:

Consent Review Team,

Department of Justice,

Massey House,

Stormont Estate,

Belfast, BT4 3SX.

Duration and Closing Date

The consultation will be open for 8 weeks. The closing date is Monday 04 January.

Alternative Formats

Copies in alternative formats can be made available on request.

If it would assist you to access the document in an alternative format or language other than English please let us know and we will do our best to assist you.

Privacy, Confidentiality and Access to Consultation Responses

We may publish the responses we receive to this consultation, but will ensure no individual respondent's personal details are revealed unless specific authority is given. For more information about what we do with personal data please see our consultation privacy notice at **Annex A**.

Responses to this consultation may be disclosed in response to a request received under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR); however any disclosure will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.

If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why, so that this may be considered should the Department receive a request under the FOIA or EIR.

Equality Screening and Rural Needs proofing

The Department of Justice has conducted rural needs and equality screening exercises on the decision to consult and proposed options. No potential adverse impact on any of the identified groups has been identified. Further screening exercises will be undertaken if required in relation to proposals following consideration of responses to the consultation.

Introduction

Consent to serious harm for sexual gratification, sometimes known as 'the rough sex defence' or 'the 50 Shades of Grey defence' has been raised in trials as a defence to serious harm, murder or manslaughter for many years.

In the 1994 case of *R v Brown* the legal precedent was set that victims' consent to serious harm for sexual gratification is not a defence and, by extension, nor would such consent serve as a defence where such sexual activity resulted in the victim's death.

In *R v Brown*, five men were convicted on various counts including ABH and wounding under the Offences Against the Person Act, 1861. The injuries occurred during consensual homosexual sadomasochistic activities. At trial the judge determined that consent was no defence for the injuries inflicted. Appeals to the Court of Appeal, and subsequently to the House of Lords were unsuccessful.

R v Brown set the precedent that the defence of consent can only be raised where the activity in question constitutes good reason, is legal and the degree of harm inflicted does not involve actual bodily harm or more serious harm. Exceptions have been set subsequently, including sport, surgery and tattooing.

However, the defence continues to be raised, and has attracted significant attention following a number of high profile cases both in the UK and elsewhere. Notable cases include those of Natalie Connolly in England, Grace Millane in New Zealand, and most recently, Patrycja Wyrebek in the summer of 2020 here in Northern Ireland.

A campaign to outlaw the defence in England and Wales has been continuing, with support from MPs, including Harriet Harmon MP, Mark Garnier MP and the pressure group 'We Can't Consent to This', established in 2018.

As a result of this lobbying, and with cross party support, the UK Government amended the Westminster Domestic Abuse Bill in July 2020 to make the law clear on the matter. The amendment states in statute what already existed in common law: that a person cannot consent to the infliction of serious harm (or worse) for the purposes of obtaining sexual gratification.

This change to the law will only apply to England and Wales.

Campaign for legislation

The campaign group 'We Can't Consent to This' lobbied the Government on what they report as the increasingly successful use of claims of 'rough sex gone wrong' by defendants when serious harm or death has occurred.

The group highlight the cases of 60 UK women who were killed when 'sex games went wrong' and many more who were injured in non-fatal assaults which the accused claimed were consensual.

'We Can't Consent to This' also points to research carried out by Savanta ComRes involving over 2,200 women. In this study, researchers asked if the women, aged between 18 and 39 had ever experienced slapping, choking, gagging or spitting during consensual sex, and if it was ever unwanted. The research showed that 38% of women had experienced these acts and that they were unwanted at least some of the time.

The amendment to the Domestic Abuse Bill

The amendment to the Domestic Abuse Bill, covering England and Wales, sets out, in law the circumstances where consent cannot be used as a defence to 'serious harm'. The amendment defines serious harm as constituting grievous bodily harm, wounding or actual bodily harm, as described in the Offences Against the Person Act 1861[1].

In the first instance a 'relevant' offence needs to have occurred. In this case that means an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861. These are the more serious assault offences of: wounding with intent to do grievous bodily harm (GBH); inflicting bodily injury (grievous bodily harm) with or without a weapon; and assault occasioning actual bodily harm. A description of what constitutes each of these offences can be found at **Annex B**.

The amendment makes clear that it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for either of the parties to the act(s) or for some other person.

An exception is provided for cases where the serious harm is caused by way of a sexually transmitted infection. In such cases the defence may still be used, if consent was given to sexual activity with prior knowledge of the sexually transmitted infection, subject to the circumstances of the case.

The full text of the amendment is set out at **Annex C.**

Current position in Northern Ireland

There is no legislation on consent to serious harm for sexual gratification in Northern Ireland.

The death of Patrycja Wyrebek, in August 2020 in Newry, has brought attention to the 'Rough Sex' defence in Northern Ireland.

Patrycja Wyrebek died in the house she shared with her partner, Dawid Lukasz Mietus who has been charged with her murder. His account of the death, as reported in the media, was that both he and Patrycja Wyrebek had been drinking wine and vodka, and that she died during a consensual sex act.

[1] https://www.legislation.gov.uk/ukpga/Vict/24-25/100/contents

The absence of explicit legislation on the matter does not mean that the rough sex defence will be accepted in this case. The courts in Northern Ireland, as in other common law jurisdictions, are bound by the precedents set by the Court of Appeal, and as such must consider the ruling in *R v Brown*.

Position in other jurisdictions

Scotland

In Scottish law consent, or a reasonable belief in consent, can be used as a defence to various sexual offences under the Sexual Offences (Scotland) Act 2009[2] including sexual assault, sexual coercion and voyeurism.

However, it is not possible in law to defend against a charge of assault by arguing that the victim consented to being attacked.

The 2001 case and 2004 appeal of *McDonald v HMA*[3] sets the current precedent. Niall McDonald was charged with murdering his wife in what he claimed was consensual 'unusual sex'. The judge instructed the jury:

> '*That conduct, while done in a sexual context clearly was carried out with the intent to hurt, the intent to inflict harm… [and would be assault]'.*

Niall McDonald was found guilty of culpable homicide. He was sentenced to 4 years imprisonment for that offence and 3 years imprisonment for attempting to defeat the ends of justice, to run consecutively. The conviction was upheld on appeal.

New Zealand

While there is no statutory defence of consent in New Zealand, there is an ongoing debate over the validity of the 'Rough Sex' defence.

A defendant can use consent as a defence under common law and, if the judge allows it, then it will be up to the jury to determine whether the defendant intended to cause grievous bodily harm or was acting in reckless disregard for the victim.[4]

[2] https://www.legislation.gov.uk/asp/2009/9/contents

[3] https://www.scotcourts.gov.uk/search-judgments/judgment?id=28ab87a6-8980-69d2-b500-ff0000d74aa7

[4] https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R138.pdf

The horrific 2018 killing of British backpacker Grace Millane brought the 'Rough Sex' defence to the fore in New Zealand and across the globe. Grace Millane's killer claimed she had initiated rough sex, consented to it, and her subsequent death by strangulation was a tragic, unexpected and unforeseen accident

Grace Millane's killer was found guilty in November 2019 and was subsequently sentenced to life in prison with a minimum non parole period of 17 years. In March 2020 the defendant confirmed his intention to appeal against his conviction and sentence.

Following the trial the lead detective on the case spoke out saying the effect of the defence is to repetitively re-victimise the victim and the victim's family. He said:

> *"I don't believe that rough sex should be a defence."*[5]

He added, however, that it wasn't up to him to determine whether the defence should be outlawed. That was a debate for politicians and people within the justice department.

Canada

Canadian law states that no one can consent to bodily harm caused during a fight, with the Supreme Court describing it as having 'precious little utility'[6].

In *R v Zhao* the Ontario Court of Appeal found that consent to bodily harm during sex will be negated if the defendant intended to cause and caused bodily harm.[7] Jian Zhao had been found guilty of sexual assault causing bodily harm but on appeal this conviction was quashed as the prosecution had not proved beyond a reasonable doubt that the defendant had in fact intended to and did cause bodily harm. Therefore the defence of consent should have been considered in this case and a retrial was ordered.

Other provinces have not ruled on the issue leaving some ambiguity in Canadian law.

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[5] https://www.stuff.co.nz/national/crime/119706042/top-detective-in-grace-millane-case-says-rough-sex-should-not-be-a-defence

[6] https://www.canlii.org/en/ca/scc/doc/1991/1991canlii77/1991canlii77.html?autocompleteStr=Jobidon&autocompletePos=1

[7] https://www.canlii.org/en/on/onca/doc/2013/2013onca293/2013onca293.html?autocompleteStr=R%20v%20Zhao&autocompletePos=1

Discussion

The earliest noted use of this defence was in the case of Carole Califano in 1972. Her killer, who claimed she had consented to taking drugs in order to lessen the pain of sexual activity, was found guilty of manslaughter and sentenced to 12 years imprisonment.

Since 1972 the defence has been used approximately 67 times[8], 60 of which have involved women as the victim. According to the campaign group 'We Can't Consent to This' there were 2 cases per year in 1996 increasing to 20 in 2016.

The increased prevalence of the defence has been attributed to a number of factors as outlined by the BBC,[9] including the widespread availability and use of extreme pornography and the liberalisation of attitudes to sadomasochistic activities as seen in the Fifty Shades of Grey films.

R v Brown and the precedent it set should remove consent as a defence to serious harm for sexual gratification in the United Kingdom and the need to legislate on the issue. However, with the use of the defence on the rise, campaigners would argue that the current approach is not working: stating that in 45% of UK killings a claim that the injuries were sustained in sex 'gone wrong' results in a lesser charge of manslaughter, a lighter sentence or a death not being investigated as a crime.[10]

The amendment to the Domestic Abuse Bill has been crafted to apply where a "relevant offence" has been committed. The relevant offences are those of wounding with intent to cause GBH, inflicting GBH (either with or without a weapon), or causing actual bodily harm.

In discussion with stakeholders concern was raised that the defence should not necessarily be outlawed in cases where harm of a low level of seriousness occurred. It was suggested that consultees should specifically address the question of which offences any new legislation in Northern Ireland should apply to. Restricting its application to the more serious cases would be more likely to capture those intentional and misogynistic offences which are perhaps the most prevalent, and at the same time filter out cases where minor injuries are sustained in a consensual context. It is clearly a question of striking the right balance.

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8 https://static1.squarespace.com/static/5c49b798e749409bfb9b6ef2/t/5e4da72920c08f54b94d91e4/1582147383202/WCCTT+briefing+sheet+2020+February.pdf

9 https://www.bbc.co.uk/news/uk-50546184

10 https://static1.squarespace.com/static/5c49b798e749409bfb9b6ef2/t/5e4da72920c08f54b94d91e4/1582147383202/WCCTT+briefing+sheet+2020+February.pdf

In light of the inclusion of the amendment to the Domestic Abuse Bill in England and Wales, and the increased prevalence of the use of the 'Rough Sex' defence, the time is right to have a discussion about the law as it stands in Northern Ireland.

However, it is widely recognised that a change in legislation alone rarely addresses problems surrounding offending: a reduction in offending behaviour is a better outcome than always finding new ways of dealing with its fallout. Dealing with the issue of guilt and its consequences comes too late for victims. A wider approach is more likely to bring about positive change.

Having the ability in legislation to deal effectively with offenders who may be playing out misogynistic or extreme sadomasochistic fantasies in the most serious cases is essential. Preventing or reducing such offending through a parallel programme of public education may reduce avoidable or naïve offending. Awareness raising within the criminal justice system may also improve recognition of this type of offending, ensuring offenders can be dealt with appropriately and providing reassurance to victims that their complaints will be treated seriously.

We seek your views on whether a change to the law is required and, if so: what the change should be; and whether you think there is a need for a parallel programme of education to address this type of offending at the outset.

Consultation options

(i) Retain the status quo

This option would involve no change to the current law in Northern Ireland. We would continue to rely on the case law precedent of *R v Brown* to aid judges and juries determining the outcome of cases brought before them.

Consultation questions

1. *Do you think the law in Northern Ireland is sufficient as it stands?*

   Please give reasons for your response.

(ii) Change the law so that 'consent to serious harm for sexual gratification' is not a defence.

This option would involve following a model similar to the England and Wales legislation by moving case law into statute and outlawing consent as a defence to serious harm for sexual gratification.

Consultation questions

2. *(a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?*

   (b) If yes, do you think the offences to which the amendment applies are appropriate?

   Please give reasons for your response(s).

(iii) A parallel programme of education

Consultation questions

3. *Do you consider that a programme of education is needed to:*

   - *raise awareness of the dangers of rough sex, and the meaning of consent; and*
   - *raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?*

   Please give reasons for your response.

(iv) An alternative or additional options

The Department invites contributors to the consultation to provide an alternative or additional options to those highlighted above.

Consultation questions

4. *Do you consider something different is required for Northern Ireland?*

   If yes, please give reasons for your response.

A questions and response form is available at **Annex D**.

Next Steps

The consultation will run for eight weeks and will close on Monday 4 January 2021. A report on responses and way forward will be published after consideration of any comments and suggestions received.

The Department will take steps to implement any recommendations which are accepted. If it is concluded that new legislation is required, its timing will be dependent upon fitting it into the Northern Ireland Assembly's legislative timetable.

Annex A

Freedom of Information and Privacy Notice

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

The Department intends to publish a summary of responses following completion of the consultation process.

Your response, and all other responses to the consultation, may also be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this public consultation.

Subject to certain limited provisos, the Freedom of Information Act gives members of the public a right of access to any information held by a public authority, in this case, the Department. This right of access to information includes information provided in response to a consultation.

The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties "in confidence" if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature;
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

Further information about confidentiality of responses is available by contacting the Information Commissioner's Office (or at www.informationcommissioner.gov.uk).

Privacy Notice

Data Controller Name: Department of Justice
Address: Department of Justice, Consent Review Team, Massey House, Stormont Estate, Belfast BT4 3SG
Email: consentconsultation@justice-ni.x.gsi.gov.uk

Data Protection Officer Name: DoJ Data Protection Officer

Telephone: (028) 90378617
Email: DataProtectionOfficer@justice-ni.x.gsi.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the Data Protection Act (DPA) and the EU General Data Protection Regulation (GDPR). The Department of Justice (DoJ) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1)(e) of the GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2)(g) of the GDPR, in the exercise of the function of the department, and to monitor equality.

How will your information be used and shared

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

How long will we keep your information?

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule DoJ Retention & Disposal Schedule.

Why are you processing my personal information?

DOJ is seeking comments from interested parties as part of its public consultation on the consent to serious harm for sexual gratification not a defence.

- DoJ is not seeking personal data as part of the consultation but is likely to receive names and addresses/e-mail addresses as part of a consultee's response.
- Consultation is a requisite part of the development of public policy and strategy.

What categories of personal data are you processing?

- Responses to the consultation may include names and addresses and/or e-mail addresses.

Where do you get my personal data from?

- The personal data will originate from the person responding to the consultation.

Do you share my personal data with anyone else?

- We will not share your personal data with other organisations.

Do you transfer my personal data to other countries?

- No.

How long do you keep my personal data?

- We will retain your data in line with 5.7 of Schedule 5 of the DOJ Retention and Disposal Schedule (https://www.justice-ni.gov.uk/publications/doj-retention-and-disposal-schedule).

(If you use automated decision making or profiling) How do you use my personal data to make decisions about me?

- DOJ will not use automated processing for responses to this consultation.

What rights do I have?

- You have the right to obtain confirmation that your data is being processed, and access to your personal data
- You are entitled to have personal data rectified if it is inaccurate or incomplete
- You have a right to have personal data erased and to prevent processing, in specific circumstances
- You have the right to 'block' or suppress processing of personal data, in specific circumstances
- You have the right to data portability, in specific circumstances
- **You have the right to** object to the processing**,** in specific circumstances
- **You have rights in relation to** automated decision making and profiling.

How to complain if you are not happy with how we process your personal information

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above, or complaints may be submitted to:

Freedom of Information Unit
Department of Justice
Castle Buildings
Stormont Estate
Belfast BT4 3SG

Telephone: 02890 378617
Email: FOI@justice.x.gsi.gov.uk

If you are unhappy with any aspect of this privacy notice, or how your personal information is being processed, please contact the *Departmental Data Protection Officer at:* DataProtectionOfficer@justice-ni.x.gsi.gov.uk

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel: 0303 123 1113
Email: casework@ico.org.uk
https://ico.org.uk/global/contact-us/

Annex B

“Relevant offences” guidance

The “relevant offences” specified in the amendment to the Domestic Abuse Bill are:

- Wounding with intent to cause GBH;
- Inflicting GBH either with or without a weapon; and
- Assault occasioning actual bodily harm.

These offences are all found in the Offences Against the Person Act 1861. There are obvious similarities between them and on occasions it can be difficult to know which offence has been committed. The Crown Prosecution Service (for England and Wales) has issued guidance to assist its prosecutors when deciding which offence should be charged[11]. Similar guidance exists for the Public Prosecution Service in Northern Ireland, but there are subtle differences in the application of s.47 of the Act here and in England and Wales. As the Domestic Abuse Bill will apply only in England and Wales, the CPS guidance is the appropriate version to consider in the context of the amendment. The following are paraphrased extracts from that guidance.

s.18 wounding with intent to cause GBH and s.20 inflicting GBH with or without a weapon

The words "grievous bodily harm" bear their ordinary meaning of "really serious" harm. Harm does not have to be either permanent or dangerous - ultimately, the assessment of harm done is a matter for the jury, applying contemporary social standards.

Life-changing injuries should be charged as GBH. Just as the need for medical treatment may indicate ABH injuries, significant or sustained medical treatment (for instance, intensive care or a blood transfusion) may indicate GBH injuries, even if a full or relatively full recovery follows.

A "wound" means a break in the continuity of the whole skin. The definition of wounding may encompass injuries that are relatively minor in nature, for example a small cut or laceration. The “wounding” form of these offences should be reserved for those wounds considered to be really serious. However, it is appropriate to charge these offences when a wound is caused by a knife or other weapon, to reflect the seriousness.

[11] https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard

The distinction between s18 and s20 the two offences is one of intention:

- The prosecution must prove under section 20 that either the defendant intended, or actually foresaw, that the act might cause some harm. It is not necessary to prove that the defendant either intended or foresaw that the unlawful act might cause physical harm of the gravity described in section 20. It is enough that the defendant foresaw some physical harm to some person, albeit of a minor character might result.
- The prosecution must prove under section 18 that the defendant intended to wound and/or cause grievous bodily harm, and nothing less than an intention to produce that result, which in fact materialised, will suffice. A person 'intends' to cause a result if he/she consciously acts in order to bring it about. Factors that may indicate specific intent include a repeated or planned attack, deliberate selection of a weapon or adaptation of an article to cause injury, such as breaking a glass before an attack, making prior threats or using an offensive weapon against, or kicking, the victim's head. The gravity of the injury may be the same for section 20 or 18 although the gravity may indicate the intention of the defendant.

s.47 assault occasioning actual bodily harm

The offence is committed when a person intentionally or recklessly assaults another, thereby causing Actual Bodily Harm. It must be proved that the assault (which includes "battery") "occasioned" or caused the bodily harm.

Bodily harm has its ordinary meaning and includes any hurt calculated to interfere with the health or comfort of the victim: such hurt need not be permanent, but must be more than transient and trifling.

Annex C
Domestic Abuse Bill Amendment

Consent to serious harm for sexual gratification not defence

(1) This section applies for the purposes of determining whether a person ("D") who inflicts serious harm on another person ("V") is guilty of a relevant offence.

(2) It is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification (but see subsection (4)).

(3) In this section— "relevant offence" means an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861 ("the 1861 Act"); "serious harm" means— (a) grievous bodily harm, within the meaning of section 18 of the 1861 Act, (b) wounding, within the meaning of that section, or (c) actual bodily harm, within the meaning of section 47 of the 1861 Act.

(4) Subsection (2) does not apply in the case of an offence under section 20 or 47 of the 1861 Act where— (a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity, and (b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.

(5) For the purposes of this section it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.

(6) Nothing in this section affects any enactment or rule of law relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

Annex D

Consultation Questions and Response Sheet

Contact name: _____

Name and address of organisation: _____

E-mail address: _____

Question 1. *Do you think the law in Northern Ireland is sufficient as it stands?* ***Yes****:____ or* ***No:****_____*
Please give reasons for your response:
_____ _____ _____ _____ _____
Question 2 (a) *Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?* ***Yes*****:_____** *or* ***No:****_____*
Q 2 (a) Please give reasons for your response:
_____ _____ _____ _____ _____ _____
Question 2 ***(b)*** *If yes, do you think the offences to which the amendment applies are appropriate?*
Q2 (b) Please give reasons for your response(s): _____ _____ _____ _____ _____ _____

Question 3. *Do you consider that a programme of education is needed to:*

- *raise awareness of the dangers of rough sex, and the meaning of consent; and*
- *raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?*

Yes:_____ or No:_____

Please give reasons for your response:

_____
_____
_____
_____
_____

Question 4. *Do you consider something different is required for Northern Ireland?*
Yes:_____ or No:_____

*If the answer to question 4 is 'yes', please give reasons for your response***:**

_____
_____
_____
_____

Question 5. Please provide any other/additional comments

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