Committee for Justice

Report on the Justice (Sexual Offences and Trafficking Victims) Bill

Ordered by the Committee for Justice to be published 27 January 2022.

Report: NIA 165/17-22 Committee for Justice

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Powers and Membership

Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Justice.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Mr Mervyn Storey MLA (Chairperson)[1]
- Ms Sinéad Ennis MLA (Deputy Chairperson)[2]
- Mr Doug Beattie MLA
- Ms Sinéad Bradley MLA[3]
- Ms Jemma Dolan MLA[4]
- Mr Robin Newton MLA[5]
- Ms Emma Rogan MLA[6],[7]
- Mr Peter Weir MLA[8]
- Ms Rachel Woods MLA

[1] With effect from 14 June 2021, Mr Mervyn Storey replaced Mr Paul Givan as Chairperson

[2] With effect from 2 August 2021, Ms Sinéad Ennis replaced Ms Linda Dillon as Deputy Chairperson

[3] With effect from 26 May 2020, Ms Sinéad Bradley replaced Mr Patsy McGlone

[4] With effect from 16 March 2020, Ms Jemma Dolan replaced Mr Pat Sheehan

[5] With effect from 21 June 2021, Mr Robin Newton was appointed as a Member of the Committee

[6] With effect from 17 February 2020, Ms Martina Anderson replaced Mr Raymond McCartney

[7] With effect from 9 March 2020, Ms Emma Rogan replaced Ms Martina Anderson

[8] With effect from 21 June 2021, Mr Peter Weir replaced Mr Paul Frew

List of Abbreviations and Acronyms used in this Report

BME	Black and Minority Ethnic
CARE NI	Christian Action, Research and Education
CJINI	Criminal Justice Inspection Northern Ireland
CLC	Children's Law Centre
CSE	Child Sexual Exploitation
ECHR	European Convention on Human Rights
EEA	European Economic Area
EFM	Explanatory and Financial Memorandum
HERe NI	Community organisation and registered charity
GRETA	Group of Experts on Action against Trafficking in Human Beings
HSCB	Health and Social Care Board
HSB	Harmful Sexual behaviours
ICTU	Irish Congress of Trade Unions
LCCC	Lisburn and Castlereagh City Council
LGBT+	Lesbian, Gay, Bisexual, Transgender
MLA	Member of the Legislative Assembly
MSHT	Modern slavery, human trafficking
NASUWT	National Association of School Masters and Union of Women Teachers
NI	Northern Ireland
NIA	Northern Ireland Assembly
NICCOSA	Northern Ireland Catholic Council for Social Affairs
NICCY	Northern Ireland Commissioner for Children and Young People
NICRE	Northern Ireland Council for Racial Equality

NIHRC	Northern Ireland Human Rights Commission
NIWEP	Northern Ireland Women's European Platform
NGOs	Non-Governmental Organisations
NOTA NI	National Organisation for the Treatment of Abuse Northern Ireland
NRM	National Referral Mechanism
OSCE	Organisation for Security and Co-operation in Europe
NSPCC	National Society for the Prevention of Cruelty Against Children
OCAG	Online Child Activist Groups
PBNI	Probation Board for Northern Ireland
PCSC	Police, Crime, Sentencing and Courts Bill
PPANI	Public Protection Arrangements Northern Ireland
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
RaISe	Northern Ireland Assembly's Research and Information Service
RSE	Relationship and Sexuality Education
SBNI	Safeguarding Board Northern Ireland
SE	South Eastern
SE DSVP	South Eastern Domestic and Sexual Violence Partnership
SHSCT	Southern Health and Social Care Trust
SOLA	Sexual Offences Legal Advisor
SOPO(s)	Sexual Offences Prevention Order(s)
SPO(s)	Stalking Protection Order(s)
STRO(s)	Slavery and Trafficking Risk Order(s)
UN	United Nations
UNITE	Unite The Union

UK	United Kingdom
VOPO(s)	Violent Offences Prevention Order(s)
WPG	Women's Policy Group

Executive Summary

1. This report sets out the Committee for Justice's consideration of the Justice (Sexual Offences and Trafficking Victims) Bill.

2. The Justice (Sexual Offences and Trafficking Victims) Bill consists of 22 Clauses and three Schedules in four parts and its purpose is to enhance public safety by implementing certain elements of the report of the Gillen review covering serious sexual offence cases and a review of the law on child sexual exploitation and sexual offences against children, and to improve services for victims of trafficking and exploitation.

3. The Bill creates two new voyeurism offences capturing behaviours known as 'upskirting' and 'down-blousing' and four new offences to deal with an adult masquerading as a child and making a communication with a view to sexually grooming a child under 16. The Bill also amends the Sexual Offences (Northern Ireland) Order 2008 to remove and replace existing references to "child prostitution" and "child pornography", widen the scope of the definition of images relevant to specific offences to include live streaming and bring the offence of sexual communication with a child into the scope of extraterritorial jurisdiction.

4. The Bill also implements four recommendations from Sir John Gillen's report into the law and procedures in serious sexual offences in Northern Ireland in relation to anonymity for victims, anonymity for suspects and exclusion of the public from hearings of serious sexual offence cases.

5. The provisions to improve services for victims of trafficking and slavery extend statutory assistance and support to potential adult victims of slavery, servitude and forced or compulsory labour where there is no element of trafficking. They also amend the requirement to publish a modern slavery and human trafficking strategy from at least once every year to at least once every three years.

6. The Committee requested evidence from interested organisations and individuals as well as the Department of Justice as part of its deliberations on the Bill.

7. The Committee received 42 written submissions and held 12 oral evidence sessions with a range of key stakeholders and organisations including the NSPCC, Barnardo's, NICCY, the Migration Justice Project, CARE NI, the Women's Policy Group, Victim Support NI, Women's Aid, the NIHRC, the PSNI and the PPS.

8. In addition to the oral evidence sessions, Members met privately with an individual to discuss their personal experience of matters relevant to the provisions of the Bill.

9. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Delegated Powers Memorandum and was satisfied with the rule making powers provided for in the Bill.

10. The Committee considered the provisions of the Bill at 18 meetings.

Key issues relating to the clauses of the Bill

11. At its meeting on 20 January 2022, the Committee undertook its formal Clause by Clause consideration and agreed the Clauses in the Bill as drafted, or with proposed Committee amendments to make changes to Clause 1, Clause 3 and Clause 16.

12. The Committee agreed to bring forward amendments to insert new Clauses in the Bill to provide for a new offence of cyberstalking, guidance for Part 1 of the Bill including training and data collection and to place a duty on the Department of Justice to bring forward protective measures for victims of slavery and trafficking.

13. The Committee's consideration of the Clauses and other issues is outlined below.

Part 1 – SEXUAL OFFENCES

Clause 1 - Voyeurism: additional offences

14. Clause 1 of the Bill creates new offences to capture the intrusive behaviours that are commonly known as 'upskirting' and 'down-blousing.' Upskirting offences occur when equipment is operated beneath a person's clothing to take a picture or record an image of their genitals, buttocks or underwear without consent. The down-blousing offence occurs when equipment is operated beneath or above a person's clothing in order to take a picture or record an image of their breasts or underwear without consent. The Clause provides that the maximum sentence for either offence is six months' imprisonment on summary conviction or a fine not exceeding the statutory maximum or both, or two years' imprisonment on indictment.

15. There was strong support for the new offences across a range of organisations. Many of those who responded considered that upskirting and down-blousing have, to date, been dismissed as 'just a bit of fun' and not taken seriously as sexual offences. The new offences will therefore address a gap in the law which currently does not criminalise such invasive behaviours.

16. It was also noted that the down-blousing offence will be the first of its kind in the UK.

17. A number of issues and questions were raised in relation to the new offence. These included whether the offence was too narrowly framed in requiring the perpetrator to have acted for the purpose of sexual gratification or to humiliate, alarm or distress the victim and instead should be based solely on consent; whether the maximum penalty for the offence should be increased from 6 months to 12 months' imprisonment for conviction on indictment in line with England and Wales; and whether threats to disclose or publish an image would be covered by the provisions.

18. The Committee explored the issues raised during oral evidence sessions with organisations and in writing and during oral evidence sessions with Department of Justice officials.

19. The Committee noted that the maximum term of 12 months' imprisonment on summary conviction in England and Wales has not been commenced and that the Department considers a maximum penalty of 6 months' to be in line with similar offences within the sentencing framework.

20. The Committee acknowledged that to remove the motivations and base the offences solely on consent may broaden the offence to the extent it becomes unworkable but was of the view that a reasonable compromise to address the issues raised was to retain the motivations in the Clause but amend it to ensure a 'banter' defence is removed. The Committee therefore agreed to bring forward an amendment to include a reasonable person test in the motivation requirements.

21. Ms Sinéad Ennis, Ms Jemma Dolan and Ms Emma Rogan indicated that they had some reservations regarding the wording of the amendment to Clause 1 in light of the views expressed by the Minister on the potential consequences of widening the scope of the offences.

New Clause 1A - Cyberflashing

22. The increasing incidents of the sending of unsolicited pictures of genitals was raised as an issue by Professor Clare McGlynn, who advocated for the creation of a new offence to criminalise this behaviour in her written submission. The Committee explored this further in an oral evidence session with Professor McGlynn and found her testimony compelling.

23. Although not referenced in other written evidence, the Committee sought the views of a number of other organisations when they attended to give oral evidence, all of whom indicated they would be supportive of such a provision being included in the Bill.

24. The Committee commissioned a research paper on cyberflashing and deepfake pornography to assist its consideration of this issue. The Committee also noted that legislation to deal with cyberflashing has been in place in Scotland since 2010 and that the UK Government has committed to legislate for this in England and Wales. The Committee considered that this would be an opportune time to provide for a similar offence in Northern Ireland and ensure that this jurisdiction

is not left behind and agreed to bring forward an amendment to insert a new Clause into the Bill to provide for a new offence of cyberflashing, which covers the anonymous sending of images to another who happens to be nearby (and who are unknown to the person) and the sending of an intimate image to someone the person knows (e.g. via a dating site).

25. While content to create a new offence of cyberflashing, Ms Sinéad Ennis, Ms Jemma Dolan and Ms Emma Rogan indicated that they had some reservations regarding the wording of part of the text of the amendment in light of the views expressed by the Minister on potential consequences of a widely constructed offence.

Clause 2 – Sexual grooming: pretending to be a child

26. Clause 2 creates four new offences which seek to deal with an adult masquerading as a child and making a communication with a view to sexually grooming a child under 16:

- Communicating with a person with a view to grooming a particular child
- Communicating with a particular group with a view to grooming a particular child
- Communicating with a person with a view to grooming any child
- Communicating with a group with a view to grooming any child

27. These offences were widely welcomed by a range of organisations. References were made to the increase in digital technology which provides more opportunities for perpetrators to target children and that the provisions should be effective in responding to new and emerging concerns.

28. Questions were raised, however, that the requirement to prove a perpetrator is communicating with a child with the intention of subsequently committing an offence could be challenging and it was suggested that the offence should simply relate to an adult masquerading as a child to communicate with a child. Other issues included whether the provisions addressed “peer on peer” abuse and whether the penalty should be increased to 12 months’ imprisonment on

summary conviction while a number of organisations expressed disappointment that the opportunity has not been taken to reverse the burden of proof or limit the defence of reasonable belief in this Bill.

29. The Committee explored the issues with the PPS and the Department of Justice and noted the concerns that the removal of the intention element may make it difficult for those with malign intent to be separated from those with an innocent intent in communicating with a child. The Committee also noted that the Department of Justice intends to continue to work with key stakeholders in the justice system on the reversal of the burden of proof in relation to reasonable belief.

30. Having considered the issues raised in the evidence, the Department of Justice's response and the further information and clarification it had provided, the Committee agreed that it is content with Clause 2 as drafted.

Clause 3 – Miscellaneous offences as to sexual offences

31. Clause 3 will amend the 2008 Order to remove and replace references to 'child prostitution' and 'child porn', which could be interpreted to imply that children are responsible or willing participants in their abuse. The 2008 Order is also amended to widen the scope of the definition of 'images' relevant to specific images within the 2008 Order to include 'live streaming'. As it stands the legislation around indecent images of a child only relates to 'recorded' images. The Clause also makes minor amendments regarding the offences of engaging in sexual communication with a child to bring relevant offences into the scope of extraterritorial arrangements in order to provide further protection to children travelling outside this jurisdiction.

32. Finally, the Clause makes a clarifying amendment relating to the offence of paying of sexual services of a person which officials advised is to clarify the elements that constitute an offence to avoid any ambiguity in its interpretation.

33. There was strong support for the provisions to amend references to child prostitution and child porn. It was felt that these terms are outdated and mask the reality of child sexual abuse and exploitation and it is essential that the

language used in legislation is clear that children and young people are not responsible for the trauma they have suffered. The widening of the definition of images to include live streaming was also welcomed.

34. The key issue in respect of Clause 3 related to the definition of payment, which was raised by the children's organisations who felt that it did not reflect the reality of the inducements that are evident in child sexual exploitation cases.

35. The Committee noted the Department's position that the definition as it stands provides a sufficiently broad basis through which a wide range of financial and non-financial rewards would be captured. However, the Committee was of the view that the wording of the Clause does not make this clear and agreed to bring forward an amendment to make it clear that payments can be other than financial.

Clauses 4, 5, 6 and 7 - Extended anonymity of victims; Disapplication of anonymity of victim after death; Increase in penalty for breach of anonymity; and Special rules for providers of information society services

36. These clauses extend the current lifelong anonymity of the victim of a sexual offence to provide for their anonymity for 25 years after death. The provisions allow for applications to be made to the court to discharge or modify reporting restrictions, including to reduce or increase the period of 25 years.

37. A wide range of organisations supported the extended provision of anonymity for the victim in serious sexual offence cases. It was thought that the assurance of not having their identity, personal details or personal history being made public, particularly in as small a jurisdiction as Northern Ireland, may encourage more victims to report serious sexual assaults to the police.

38. The increase in penalty for a breach of anonymity to a maximum of six months' imprisonment on summary conviction was also welcomed by a number of those who commented on these provisions as it was felt that it would reassure victims of serious offences that measures are in place to protect their right to privacy. The PSNI, however, felt that the sentence does not adequately reflect the

impact that this could have on victims and their wider family and it should be aligned with the maximum period of 24 months that are possible within the magistrates' court.

39. It was also proposed that anonymity should be provided to victims where there is a domestic abuse offence.

40. The Committee noted that the provision seeks to address a specific Gillen recommendation in relation to serious sexual offence cases and that, in a case where domestic abuse involved a sexual offence, the provisions would apply. The Committee also noted the Department's position that the increase in penalty is proportionate within the Northern Ireland sentencing framework.

41. Having considered the comments made in the evidence and the Department of Justice's response to the issues raised, the Committee agreed that it is content with Clauses 4 to 7 and Schedule 3 as drafted**.**

Clauses 8, 9, 10, 11, 12, 13 and 14 – Restrictions on reports as to suspects of sexual offences; Meaning of sexual offence in section 8; Power to disapply reporting restrictions; Magistrates' courts rules; Offence relating to reporting; Interpretation of sections 8 to 12; Consequential amendment

42. A number of organisations were also supportive of the introduction of anonymity for the suspect up to the point of charge and it was highlighted that, once an accused is named in the press or social media, the result is an automatic societal punishment in advance of a conviction, and a footprint is created that lasts forever.

43. The removal of anonymity under the conditions set out in Clause 8(3) was welcomed as it was felt that the disclosure of a suspect's name and the charge against them can encourage other victims of the suspect to come forward to report their own experience. This could help to establish a pattern of serial offending and escalating behaviour and assist with the conviction of a dangerous offender.

44. The Information Commissioner's Office raised a concern that it was not clear that the list of matters to which reporting restrictions apply at 8(5) was not exhaustive and recommended it be reworded. The Committee raised this with the Department who agreed with the Committee's suggestion to amend the wording of the relevant section of the EFM to make it clear that the list at 8(5) is not exhaustive.

45. As with penalty for breach of anonymity of a victim, the PSNI noted that the potential penalty for a breach of a suspect's anonymity is limited, given the impact that it may have on the suspect's mental health and wellbeing as well as their public safety and wellbeing, and the impact on their wider families. The Committee noted the Department's position that the increase in penalty is proportionate within the Northern Ireland sentencing framework.

46. Having considered the comments made in the evidence, the Department of Justice's response to the issues raised and its commitment to include clarification in the EFM that the list of matters at Clause 8(5) to which a reporting restriction imposed by Clause 8(2) apply is not exhaustive, the Committee agreed that it is content with Clauses 8 to 14 as drafted.

Clause 15 – Serious sexual offences: exclusion of public from court

47. There was support for the exclusion of the public from court in serious sexual offence cases with exemptions for nominated support or nominated press across a range of organisations. Views were expressed that this will be less intimidating and daunting for the victim and balances the need for transparent justice. It will encourage more victims to engage with the justice system and not withdraw from the process as they will be more assured that their anonymity will be protected. Again it was noted that this can be of particular importance in a small jurisdiction such as Northern Ireland.

48. The NIHRC took a different view advising that, while it is permissible for criminal proceedings to be carried out in the absence of the public, this is considered a special measure which should only be used where such a protective need is identified on a case by case basis.

49. Suggestions were made that the provisions should be extended to all sexual offence cases involving a child, to all sexual offence cases and not just those considered serious or to circumstances where there is a domestic abuse offence. Questions were also raised about the categories of persons who will be exempt from the exclusion direction and whether only accredited members of the press should be present during trials of this nature.

50. The Department advised of its intention to make an amendment to the Bill to include the exclusion of the public from appeal hearings against conviction or sentence in serious sexual offences cases in the Court of Appeal. The Committee also noted the range of protections that are available to child victims already within the legislative framework and clarification from the Department in respect of those who may be exempt from exclusion from proceedings of this nature.

51. The Committee considered the comments made in the written and oral evidence and the Department of Justice's response to the issues raised and agreed that it is content with Clause 15 as drafted.

52. While the Committee is content to support the principle of the Department's amendment to Clause 15 to include the Court of Appeal as a setting where the public can be excluded from appeal hearings against conviction or sentence in serious sexual offence cases, there has not been time to consider the text in detail, seek the views of key stakeholders and carry out adequate scrutiny before the end of the Committee Stage of the Bill. The Committee has therefore agreed to note the amendment and to provide the text to the PSNI, the PPS, the Law Society and the Bar for views/comments.

New Clause 15A – Guidance

53. References were made to the need for guidance, training and data collection in relation to a number of the Clauses in Part 1 of the Bill to ensure the effective implementation of the provisions of the Bill, and also in relation to the amendments to this part that the Minister proposes to bring forward. This included more specific operational guidance for the justice agencies as well as,

more generally, the roll out of comprehensive guidance more widely to ensure the new offences are fully understood.

54. It was considered that training is vital for those involved in the criminal justice system. The PSNI advised that the legislation will be correctly implemented through training and effective operationalisation and advised of the intention to follow a similar approach to that taken in respect of the new offences that were introduced by the Domestic Abuse and Civil Proceedings Act.

55. The need for disaggregated data on the offences was also raised by a number of organisations. While offences of this nature are generally believed to be underreported, it was considered that there may be gross underestimations of the levels of serious sexual offences against particular communities. Disaggregated data would help to highlight issues and target resources to better support victims.

56. The Committee believes that guidance, training and data collection are fundamental to the effective implementation of this legislation, and in particular the new offences being created, one of which is unique to this jurisdiction. The Committee noted the Minister's commitment to the provision of guidance, training and data collection but concluded that there would be no detriment to placing the requirement on the face of the Bill. The Committee therefore agreed to bring forward an amendment to insert a new clause in the Bill to place a duty on the Department to provide and review in due course guidance, training and data collection on Part 1 of the Bill.

Part 2 – TRAFFICKING AND EXPLOITATION

Clause 16 – Support for victims of trafficking etc.

57. Clause 16 has the effect of extending the statutory assistance and support provided under Section 18 of the 2015 Act to adult potential victims of slavery, servitude or forced or compulsory labour where there is no element of trafficking. This support to such victims has been in place in Northern Ireland since March 2016 but it is not a statutory requirement.

58. While no issues were raised in relation to this Clause, several organisations wanted to see the statutory support and assistance provided to victims of trafficking and exploitation extended beyond what is currently available and made a number of proposals on how this could be done. Suggestions included the provision of support for victims with a positive Conclusive Grounds decision for a period of 12 months with views expressed that it makes no sense to support people who may be victims of modern slavery during the NRM process, as provided for in Section 18 of the 2015 Act, but not continue that support when the NRM confirms they are a victim. While support can continue to be provided under the 2015 Act, it is discretionary. If a confirmed victim is left without support to help them recover from the trauma of being trafficked, they will be extremely vulnerable to being re-trafficked. The issue of whether support could be extended to those victims who were appealing a negative NRM decision until the outcome of the appeal was also discussed.

59. The Committee is concerned that the number of victims of modern slavery and trafficking is increasing but the number of convictions remains low. It supports placing on a statutory footing the assistance and support provided to adult potential victims of slavery, servitude and forced or compulsory labour where there is no element of trafficking as provided for by Clause 16.

60. The Committee also believes that there are strong arguments for ensuring support is provided to victims who need it rather than providing it on a discretionary basis, not only pending the determination of their status through the NRM process but from the point at which they are confirmed to be a victim following a positive Conclusive Grounds decision to enhance protection from re-trafficking and assist in their recovery and engagement with the criminal justice agencies to help secure increased convictions. Ensuring support is particularly important given the potential future pressures on the Department's budget which will result in difficult funding decisions having to be taken and discretionary areas of spend potentially being reduced or ceased.

61. The Committee agreed to bring forward amendments to the Bill to provide statutory support beyond 45 days to cover from presentation stage to NRM decision based on need and to provide support after a positive NRM for 12 months or less if no longer required. It also considered legislating for support

following receipt of a negative NRM decision for those appealing the decision until the outcome of the appeal in the Bill but, noting that there is no formal appeal process for a negative NRM decision but rather it is through the courts by way of judicial review, the Committee agreed to ask the Department to include consideration of provision of such support in its Modern Slavery Strategy and Action Plan.

Clause 17 – Reports on slavery and trafficking offences

62. Clause 17 removes the requirement to publish an annual strategy on offences under Section 1 and 2 of the 2015 Act and replaces it with a requirement to publish such a strategy at least once every three years.

63. There was widespread support for the move from an annual strategy to the publication of a strategy at least once every three years. The need for the Department of Justice to publish annual progress reports was, however, raised.

64. The Department confirmed that annual progress reports on any future Modern Slavery and Human Trafficking Strategy would be published and stated that this will maintain transparency around progress and help to raise the issues and increase communication with the public about modern slavery and human trafficking.

65. The Committee noted the commitment provided to publish annual progress reports and agreed that it is content with Clause 17 as drafted.

OTHER ISSUES RAISED IN RELATION TO TRAFFICKING AND EXPLOITATION

Slavery and Trafficking Risk Orders

66. Slavery and Trafficking Risk Orders (STROs) can be made on application to the court where the person's behaviour indicates that there is a risk they will commit a human trafficking/modern slavery offence and that an order is necessary to protect the public. Both CJINI in its report on Human Trafficking and Slavery in October 2020 and the Independent Anti-Slavery Commissioner in her 2019/20

Annual Report recommended that the Department of Justice should look at the use of STROs in Northern Ireland to prevent modern slavery and human trafficking-related crime and support victims.

67. The Committee noted the examples of their beneficial use in England and Wales when a defendant is convicted of a crime other than human trafficking but there is a suspicion that trafficking may be involved or there is a connection between human trafficking and the offending behaviour and where people who have not (or not yet) been convicted, including situations where there is a need to protect future potential victims while modern slavery/human trafficking crimes are being investigated, particularly when these are very long and are drawn out and the widespread support for their introduction in Northern Ireland from those organisations involved in Modern Slavery and Human Trafficking. The Committee was of the view that STROs would be a useful additional tool in Northern Ireland to tackle and disrupt human trafficking and modern slavery and to assist in preventing re-offending.

68. The Committee agreed to bring forward an amendment to place a duty on the Department to provide protection and safeguards such as STROs within 24 months of this Bill receiving Royal Assent with the details to be set out in Regulations.

Extension of the Statutory Defence on Exploitation

69. Section 22 of the 2015 Act provides a statutory defence for victims and survivors of human trafficking in relation to certain offences. It gives effect to the principle of the non-punishment of trafficking victims and is aimed at ensuring that a victim of trafficking is not punished for unlawful acts committed as a consequence of trafficking.

70. Questions were raised regarding whether the existing statutory defence provides adequate protection for victims of emerging forms of criminal exploitation such as trafficking for heroin distribution.

71. The Committee noted that the legislative intent of the statutory defence in the 2015 Act was to ensure its availability for victims recovered from criminal exploitation relating to drug use. At that time there were a number of cases of

human trafficking for cannabis cultivation in NI however trafficking for heroin distribution had not materialised as a form of exploitation.

72. To provide adequate protection for victims of this emerging form of exploitation the Committee agreed to bring forward an amendment to extend the statutory defence on exploitation to include Class A drugs.

Other Issues

73. A range of other issues that, if addressed, would enhance the protection and support provided to victims of human trafficking and modern slavery were brought to the attention of the Committee in the evidence received on the Bill. These included:

- The provision of jury directions in modern slavery and human trafficking offence cases to enable juries to approach court evidence in a more informed manner
- The barriers that result in many trafficking victims not being eligible for compensation under the criminal injuries compensation scheme
- Access to free healthcare for victims who are challenging a negative NRM decision
- An amendment of the statutory defence to provide retrospective effect to enable prior convictions relating to a victim's exploitation to be expunged
- The need for safe and legal routes for family reunion for victims of trafficking

74. The Committee noted that work is ongoing in these areas, some of which are the responsibility of other NI Departments such as the Department of Health or are not a devolved matter, and will continue to monitor progress as part of its scrutiny of the Modern Slavery Strategy and action plans.

Part 3 – PREVENTION ORDERS

Clause 18 – Qualifying offences for Sexual Offences Prevention Orders

75. Clause 18 amends provisions in the Sexual Offences Act 2003 to include the offence of abduction of children in care (as provided for in Article 68 of the Children (Northern Ireland) Order 1995) within the list of specified offences of Schedule 5 to that Act. This is intended to improve the effectiveness of the SOPO by slightly widening the scope of offences to which the SOPO provisions apply.

76. The inclusion of the offence of abduction of children in care to SOPO arrangements was welcomed. Disappointment was however expressed by NICCY that the Bill did not address wider concerns regarding the need to ensure that all children up to the age of 18 are afforded safeguards under abduction and recovery arrangements, regardless of age, care or other status. The Department advised wider work was being taken forward in this area.

77. The Committee noted the additional work that the Department intends to undertake in relation to any identified gaps in the law regarding child abduction offences and agreed that it is content with Clause 18 as drafted.

Clause 19 – Time Limit for making Violent Offences Prevention Orders

78. Clause 19 amends provision contained within Section 57 of the Justice Act (Northern Ireland) 2015 (VOPOs made on application by the Chief Constable) to dis-apply statutory time limits for complaints provided for under Article 78 of the Magistrates Court (NI) Order 1981 (time within which civil complaint must be made to give jurisdiction).

79. There was support for this change in the evidence received on the Bill and no issues were raised.

80. The Committee agreed that it is content with Clause 19 as drafted.

Part 4 – FINAL PROVISIONS

Clauses 20, 21 and 22 – Ancillary regulations, Commencement and Short title

81. Clause 20 enables the Department to bring forward regulations to make any supplementary, incidental, consequential, transitional, transitory or saving provision considered necessary for the purposes of giving the full intended effect of the provisions of the Bill; and specifies the Assembly control of any such regulations

82. To assist consideration of the delegated powers in the Bill, the Committee sought the advice of the Assembly Examiner of Statutory Rules. In particular, the Committee requested views on whether it was appropriate for each of the powers outlined in the Memorandum to be left to subordinate legislation rather than included in the Bill itself and whether the choice of Assembly control provided for each power (i.e. confirmatory, affirmative, negative or none) was the most appropriate.

83. The Committee noted the Examiner's Report in which she indicated that she was satisfied with the rule making powers within the Bill and that they were subject to an appropriate level of scrutiny by the Assembly.

84. Clause 21 sets out the commencement arrangements for the provisions of the Bill, specifying those provisions that are to come into operation the day after Royal Assent and those that are to come into operation on days to be appointed by order made by the Department of Justice.

85. Clause 22 sets out the short title for the Bill.

86. The Committee agreed that it is content with Clauses 20, 21 and 22 as drafted.

Department of Justice Amendments

87. The Department provided the Committee with the text of five amendments the Minister of Justice is bringing forward in relation to the Bill. These cover:

- An amendment to provide for a new Clause covering Consent to Serious Harm for Sexual Gratification is No Defence – this will set in legislation the existing common (case) law position that a person cannot lawfully consent to their serious harm for the purpose of sexual gratification

- An amendment to make 'Threats to disclose private sexual photographs and films with intent to cause distress' an offence – this will make threats to disclose private sexual photographs and films with intent to cause distress an offence, alongside existing offence provisions relating to the disclosure of such material

- An amendment to 'exclude the public from appeal hearings against conviction or sentence in serious sexual offence cases in the Court of Appeal' – this will ensure the same public exclusions apply if a case goes to appeal

- An amendment to create a new offence of non-fatal strangulation or asphyxiation – the new offence will be triable either in the magistrates' courts or in the Crown Court with a maximum penalty of 2 years' imprisonment or 14 years' imprisonment and the offence will be added to the list of specified serious and violent offences which may attract an extended custodial sentence under the Criminal Justice (NI) Order 2008.

88. While the Committee is content to support the principles of the four amendments outlined above, it has not had time to consider the text in detail, seek the views of key stakeholders and carry out adequate scrutiny before the end of the Committee Stage of the Bill. The Committee has therefore agreed to note the amendments and to provide the text to the PSNI, the PPS, the Law Society and the Bar for views/comments.

89. The fifth amendment relates to widening the scope of current law on abuse of trust. In Northern Ireland the Sexual Offences (NI) Order 2008 provides for the

offences of sexual activity with a child through abuse of positions of trust relating to children under 18. The offences currently only apply where the position of trust is in the context of a statutory responsibility such as education, state care and criminal justice.

90. A range of organisations submitted views on the intention to legislate in this area and the key themes running through the evidence were that the extension should not be restricted to religious and sporting organisations and it should cover as broad a range of extra-curricular activities as possible given, if the scope is too narrow, perpetrators may still have a wide range of organisations that they can target to avail of those remaining loopholes.

91. In November 2021 the Department of Justice provided the text of the Minister's amendment to extend the scope of the abuse of trust legislation to include certain activities carried out in sports and faith settings. The Department recognised that there would be other areas where such legal intervention may be needed in future and a delegated power was included to enable additional settings to be included, by way of secondary legislation, where this is considered necessary.

92. At the request of the Committee the Children's Commissioner, NSPCC and Barnardo's provided views on the Minister's amendment. NICCY advised that they were deeply concerned that provisions to address current legislative gaps in safeguarding children and young people from abuse and exploitation by those in positions of trust should not be limited only to certain settings, such as sporting and religious settings.

93. Barnardo's was also of the view that the proposed amendment was too narrow in scope as currently drafted and would not protect all children who are at risk of abuse by an adult in a position of trust. It stated that it is crucial that abuse of trust protection is extended to include anyone with any caring responsibilities for children and is not limited to sporting or religious settings.

94. The NSPCC also believed that the proposed amendment should be widened to give 16 and 17 year olds protections from all adults working in a position of trust to them, regardless of the setting, and it provided two options to do this that it recommended the Committee should consider.

95. The Committee welcomes the intention of the Minister to extend the abuse of trust provisions and it noted the rationale set out by the Department in detail regarding the approach taken. It also noted the Department's assertion that it has been working closely with NSPCC in the development of its policy proposals. The Department does not however appear to have taken on board the views of the NSPCC, the Children's Commissioner and a range of other children's organisations who very clearly in the evidence they provided to the Committee do not agree or support the approach being taken by the Department and who do not believe the amendment is expansive or inclusive enough to protect children from adults in a position of trust to them in non-statutory settings, outside of religion and sport.

96. The Committee wants to provide all children with the legislative protection they need and noted the strong views expressed by the Children's Commissioner on the position adopted by the Department in relation to not extending the scope further and Barnardo's comments that "Children deserve protection in the law now, no matter what the setting, and should not have to wait until an incident of abuse in an additional setting is exposed to receive that protection." It also noted the views of the NSPCC that the amendment as currently drafted conflicts with the views expressed in the consultation and in the joint stakeholder workshop where respondents overwhelmingly supported an inclusive approach to legislative change which should include all adults working in a position of trust to a child be considered.

97. The Committee decided to consider amending the Minister's abuse of trust amendment to extend the scope further to include those in a position of trust with young people and who would not be included in the extension to cover certain activities carried out in sports and faith settings.

98. The Committee advised the Minister of the intent of its proposed amendment and she responded, indicating that she considers her approach to be both proportionate and in keeping with the policy intention of the offences. In her view, widening of the provision further would have significant consequences which she wanted to avoid. She had specific concerns that widening of the offences' scope could well attract legal challenge based on the rights of an individual under Article 8 ECHR (right to private and family life). She was also

concerned that, without going through due process in developing any proposed widening of the offences' scope, there is a clear risk of inappropriately increasing the age of sexual consent by stealth and that framing the positions of trust too widely also runs the risk of over criminalising young people who could be considered to be breaking the law if, for example, a person aged 18 has a sexual relation with a person aged 16 or 17. Given her concerns, the Minister indicated that she would not support the Committee's proposed amendment to her amendment.

99. The Committee considered the views expressed by the Minister and the draft text of the amendment at the meeting on 20 January 2022. Three Members indicated that they were not content with the text of the Committee amendment on abuse of trust as drafted in light of the issues raised by the Minister of Justice. Having discussed the matter further, the Committee decided not to bring forward an amendment to the Minister's amendment to widen the scope of the current law on abuse of trust at this stage but it may wish to consider the position further following debate on this issue at Consideration Stage of the Bill.

100. Ms Rachel Woods indicated that she did not support the Committee's agreed position.

Other issues considered by the Committee

101. The Committee considered two other issues in detail that were raised in the evidence received on the Bill. The first related to a legislative change and the second related to resourcing requirements.

Removal of the defence of reasonable chastisement

102. A number of organisations expressed the view that there is an opportunity through this Bill to remove the defence of reasonable chastisement and highlighted that legislative steps have been taken in Scotland, Wales and the Republic of Ireland to ensure children have equal protection from assault as adults.

103. The organisations referred to research that showed that there is strong, consistent evidence that physical punishment is ineffective in improving children's behaviour and stated that the current position is incompatible with international human rights obligations. Many of the organisations also wanted an awareness-raising campaign with the law change, targeted at parents to make them aware of the change and where help and advice is available if they need or want parenting support.

104. The Committee raised the question of whether the Bill could be used to change this law with Department of Justice officials who advised that, while the Minister of Justice was supportive of such a change, the narrow scope of the Bill in their view had the effect of ruling such an amendment out of scope. The officials also advised that the issue was cross-cutting in nature and therefore one that the Executive would have to decide on.

105. The potential for a Committee amendment was discussed and advice was provided on the constraints relating to the purposes of this Bill which has a narrow focus on sexual offences and trafficking. Some Members wished to consider an amendment to the Bill and others preferred to indicate in the Committee Report that there was a need to have a detailed discussion on this and the potential need for legislation and that this could take place in the next mandate. The Committee agreed by a majority of 5 to 3 that an amendment to remove the defence of reasonable chastisement should be prepared for consideration. Sinéad Ennis, Doug Beattie, Sinéad Bradley, Jemma Dolan and Rachel Woods supported the proposal; and Mervyn Storey, Robin Newton and Peter Weir voted against the proposal.

106. The Committee advised the Minister of the intent of its potential amendment and in a response dated 19 January 2022 the Department confirmed that the Minister is supportive of proposals to remove the defence of reasonable chastisement, but had indicated that it would be preferable to change the law alongside a cross-departmental initiative to promote better and more positive parenting. Should any such amendment be selected, the Minister considered it imperative that the Committee urgently engages with the Ministers of Health and Education to enhance parental support and assist with the development of parenting strategies to support implementation of this change.

107. The formal question was put on the amendment during the Clause by Clause Consideration of the Bill at the meeting on 20 January 2022 and three Members voted for the amendment and three Members voted against the amendment. Decisions by the Committee require a majority therefore the amendment was not supported. Sinéad Bradley, Jemma Dolan and Rachel Woods voted for the amendment; and Mervyn Storey, Robin Newton and Peter Weir voted against the amendment.

PSNI Resourcing

108. In its written submission, the PSNI asked that consideration be given to the resource burdens and demands that the new voyeurism offences will place on the PSNI and the other agencies in PPANI and that the lines of enquiry in respect of CSE will place on the PSNI Public Protection Branch, the Economic Crime Branch and Cyber Crime Centre resources.

109. The Committee is aware that the resource demands of this legislation on the PSNI and other justice bodies will be compounded by the cumulative effect of the roll-out of the Domestic Abuse and Civil Proceedings Act and the Protection from Stalking Bill and sought information on what assessment has been carried out to identify the resource requirements, including those of the PSNI, in relation to this Bill and the other Bills. The Committee also asked for details of specific funding bids/allocations that have been made in the context of the 2022-25 Budget for new additional funding to meet capacity requirements, particularly in view of the already substantial increase in online offences, and ensure effective implementation of the legislation.

110. The Committee agrees that it is important to ensure from the outset that the experience of victims is not compromised due to over-stretched resources, which could hamper the effective implementation of the legislation.

111. Whilst appreciating the difficulty in estimating the potential resourcing requirements for the implementation of legislation where there is no reliable data on the new offences it creates, the Committee believes it would be helpful to have some information on the likely financial implications in the EFM to assist consideration of the legislation. The Committee is concerned with the

assumption that any additional resourcing requirements can be met within existing budgets in the absence of such information. The Draft 2022-25 Budget has been issued for consultation and the Committee is currently scrutinising the Department's draft budget allocation. This will provide an opportunity to consider the resource pressures across the justice system and to establish what resources will be allocated to the implementation of legislation brought forward by the Department.

112. At its meeting on 27 January 2022, the Committee agreed its report on the Justice (Sexual Offences and Trafficking Victims) Bill and ordered that it should be published.

Introduction

1. The Justice (Sexual Offences and Trafficking Victims) Bill was introduced to the Northern Ireland Assembly on 5 July 2021 and was referred to the Committee for Justice for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 13 September 2021.

2. At introduction the Minister of Justice made the following statement under section 9 of the Northern Ireland Act 1998:

   "In my view the Justice (Sexual Offences and Trafficking Victims) Bill would be within the legislative competence of the Northern Ireland Assembly."

3. The purpose of the Bill is to enhance public safety by implementing certain elements of the report of the Gillen review covering serious sexual offence cases and a review of the law on child sexual exploitation and sexual offences against children, and to improve services for victims of trafficking and exploitation.

4. The Bill creates two new voyeurism offences capturing behaviours known as 'upskirting' and 'down-blousing' and four new offences to deal with an adult masquerading as a child and making a communication with a view to sexually grooming a child under 16. The Bill also amends the Sexual Offences (Northern Ireland) Order 2008 to remove and replace existing references to "child prostitution" and "child pornography", widen the scope of the definition of images relevant to specific offences to include live streaming and bring the offence of sexual communication with a child into the scope of extraterritorial jurisdiction.

5. The Bill also implements four recommendations from Sir John Gillen's report into the law and procedures in serious sexual offences in Northern Ireland[9] in relation to anonymity for victims, anonymity for suspects and exclusion of the public from hearings of serious sexual offence cases.

[9] https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf

6. The provisions to improve services for victims of trafficking and slavery extend statutory assistance and support to potential adult victims of slavery, servitude and forced or compulsory labour where there is no element of trafficking. They also amend the requirement to publish a modern slavery and human trafficking strategy from at least once every year to at least once every three years.

7. The Bill has 22 Clauses and 3 Schedules and is in four parts:

    - Part 1 – Sexual Offences
    - Part 2 – Trafficking and Exploitation
    - Part 3 – Prevention Orders
    - Part 4 – Final Provisions

8. The Minister also outlined her intention to bring forward a number of amendments to the Bill to cover the following:

    - Abuse of position of trust: relevant positions
    - Consent to serious harm for sexual gratification is no defence
    - Exclusion of the public from appeal hearings against conviction or sentence in serious sexual offence cases in the Court of Appeal
    - Private sexual images: threatening to disclose
    - Offence of non-fatal strangulation or asphyxiation

Committee Approach

9. The Committee took oral evidence from Department of Justice officials on the principles of the Bill on 9 September 2021, following its introduction to the Assembly on 5 July 2021.

10. Given the limited time available for the Bill to complete its passage through the Assembly in the current mandate, the Committee took the exceptional step of issuing the call for evidence on the Bill before the commencement of the Committee Stage. In addition to publishing a media signposting notice in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill, the Committee wrote to a wide range of key stakeholders inviting views. In response to its call for evidence, the Committee received 42 written submissions along with a number of submissions from individuals. Copies of the written submissions are included at Appendix 3.

11. During the period covered by this report the Committee considered the Bill and related issues at 18 meetings. The Minutes of Proceedings are included at Appendix 1.

12. The Committee had before it the Justice (Sexual Offences and Trafficking Victims) Bill (NIA Bill 29/17-22) and the Explanatory and Financial Memorandum that accompanied the Bill.

13. At its meeting on 7 October 2022, the Committee agreed a motion to extend the Committee Stage of the Bill to 28 January 2022. The length of the extension was necessary to provide the Committee with adequate time to undertake detailed scrutiny and consideration of the Bill while providing flexibility to complete the Committee Stages of the Damages (Return on Investment) Bill and the Protection from Stalking Bill which were already with the Committee. It also provided adequate time for the Bill to subsequently complete its passage through the Assembly before the end of the mandate. The motion to extend was supported by the Assembly on 19 October 2021.

14. The Committee held 12 oral evidence sessions with a range of key stakeholders and organisations including the NSPCC, Barnardo’s, NICCY, the Migration

Justice Project, CARE NI, the Women's Policy Group, Victim Support NI, Women's Aid, the NIHRC, the PSNI and the PPS. Links to the Minutes of Evidence are included at Appendix 2.

15. In addition to the oral evidence sessions, Members met privately with an individual to discuss their personal experience of matters relevant to the provisions of the Bill.

16. The Committee would like to place on record its thanks to all the organisations who responded in writing and provided oral evidence and, in particular, the individual who shared details of their experience and the impact it had.

17. The written and oral evidence highlighted widespread support for the implementation of the four Gillen recommendations and for the introduction of new voyeurism offences, although issues were raised about whether the offences are too narrowly framed with the requirement to prove the motive of the perpetrator. The offences relating to masquerading as a child and communicating with the intent to groom were also welcomed but questions were raised about how the offence could be proven. There was general support for the trafficking provisions although some thought the Bill should go further to ensure and improve support and protection for victims of trafficking and exploitation and they put forward detailed proposals to do this.

18. The Committee explored the issues with the Department both in writing and in oral evidence sessions. Memoranda and papers from the Department of Justice on the provisions of the Bill and proposed amendments are at Appendix 4.

19. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Delegated Powers Memorandum and was satisfied with the rule making powers provided for in the Bill.

20. To assist consideration of specific issues highlighted in the evidence the Committee commissioned a research paper from the NI Assembly Research and Information Service on Cyberflasing and Deepfake Pornography including the practice in other jurisdictions to address these issues.

21. The Committee carried out informal deliberations on the Clauses of the Bill at its meetings on 11, 13, 17 and 20 January 2022 and undertook its formal Clause by Clause scrutiny of the Bill on 20 January 2022.

22. At its meeting on 27 January 2022 the Committee agreed its report on the Justice (Sexual Offences and Trafficking Victims) Bill and ordered that it should be published.

Consideration of the Provisions of the Bill

PART 1 – SEXUAL OFFENCES

Chapter 1 – Criminal Conduct

Clause 1 – Voyeurism: additional offences

23. Clause 1 of the Bill creates new offences to capture the intrusive behaviours that are commonly known as 'upskirting' and 'down-blousing.' Upskirting offences occur when equipment is operated beneath a person's clothing to take a picture or record an image of their genitals, buttocks or underwear without consent. The down-blousing offence occurs when equipment is operated beneath or above a person's clothing in order to take a picture or record an image of their breasts or underwear without consent. The Clause provides that the maximum sentence for either offence is six months' imprisonment on summary conviction or a fine not exceeding the statutory maximum or both or two years' imprisonment on indictment.

24. There was strong support for the new offences across a range of organisations including NIWEP, NICCY, the WPG, HereNI/Cara Friend, Women's Aid, Unite, the South East Domestic and Sexual Violence and Abuse Partnership, Victim Support NI, the NIHRC and the Southern Health and Social Care Trust. Views were expressed that, despite violating a person's privacy and causing them distress, upskirting and down-blousing behaviours have, to date, often been seen as a bit of fun and dismissed or not recognised as seriously as other sexual crimes. As a consequence, it was suggested that such behaviours are under reported although may be on the increase due to the increasing number of smart phones. The new offences will therefore address a gap in the law which currently does not criminalise such invasive behaviours.

25. It was also noted that the down-blousing offence will be the first of its kind in the UK.

26. The PSNI warmly welcomed the provisions and noted that the creation of additional offences and the strengthening of current provisions will help prevent crimes of this nature and provide the opportunity to safeguard vulnerable people and for improved criminal justice outcomes.

27. The PPS also welcomed the clearly articulated offence that does not require the observation or recording to be of a private act and does not need to rely on older legislation that was drafted at a time when it was not envisaged that behaviour such as that described in the Bill could occur.

28. Professor Clare McGlynn from Durham University stated that she would endorse the introduction of a new criminal law covering images taken without consent of breasts or underwear 'in circumstances where the breasts or underwear would not otherwise be visible'. She advised that this would ensure criminalisation of a clearly wrongful act, unlike the English Law Commission proposals that would cover any image taken 'down' a woman's top.

29. Although the new offences were widely welcomed, concerns were raised by a number of organisations that the scope of the offence was framed too narrowly with the requirement to prove that the perpetrator acted with the intention of either looking at the image for the purpose of sexual gratification or to humiliate, alarm or distress the victim. It was felt that it was unnecessary to prove motivation if consent was not given and that the difficulty of proving the nature of an offender's intentions beyond reasonable doubt may render the offence ineffective.

30. The NASUWT advised that, while this approach would be straightforward to implement and would ensure consistency across the jurisdictions of the UK, it would still be the case that upskirting without consent would not be a crime in itself but dependent on proving that the individual carrying out the act was acting for the purposes of obtaining sexual gratification or humiliating, alarming or distressing the individual. Its proposal, that conviction should rest on intent to record/distribute and whether consent was given for the image/video to be taken, was supported by the ICTU.

31. Barnardo's suggested that the scope should be widened to capture instances where an individual claims the act was 'just a bit of fun'. When providing oral

evidence the representative questioned how it could be proved that a person intended to get sexual gratification or to humiliate or harm a person. In their view, the impact of the offence on the victim is not dictated by the intentions of the perpetrator.

32. The NSPCC pointed out that the taking or sharing of intimate images without consent can also be motivated by desire to exert power or to make a gain and also questioned whether the additional offences covered a 'threat' to share the non-consensual image. The NSPCC, in oral evidence, made reference to a consultation carried out by the Law Commission in England and Wales which considered whether such an offence should focus on a lack of consent and other potential motivations.

33. The WPG, HEReNI/Cara Friend and Women's Aid also raised concerns regarding the requirement of proving the perpetrator's intent and stated that similar legislation elsewhere has proven problematic in the practical implementation of the law. They pointed out that, in the Enniskillen case, the only person asked about the motive was the perpetrator and that, at one point, the PPS wrote to the victims to say there was insufficient evidence to establish a sexual motive. They believe the Bill is flawed as the offences are still dependent on proving the perpetrator's motive and advised that the motivations should be replaced with a form of words that requires a conviction to rest on the intent to record or distribute and on whether consent was given for the image or video to be taken. The focus should be on the intention and not the motivation.

34. Victim Support NI similarly believed that the requirement for the motivation of the perpetrator to be proven beyond reasonable doubt may make the offence difficult to prove and effectively administer. They advised that they "*are satisfied that it should be sufficient to demonstrate that the images were taken covertly, without the consent of the victim, and in a way in which the images captured parts of the body that the victim had not intended to be exposed, violating their bodily privacy, dignity and autonomy.*" They also asked that the concept of humiliation be defined in guidance to include humiliation of a person where they are not aware of the humiliation and affront to their dignity that has taken place. Victim Support advised that, without such definition, there may be a risk that a defendant may escape criminal liability if they argued that their intention was to

"have a laugh" by showing up-skirted or down-bloused images to others, even if the images were taken without consent and the feeling of violation of a victim's dignity and bodily autonomy existed even without an express intent for that victim to find out about the images and feel humiliation and distress.

35. Professor McGlynn stated that the motive thresholds will make prosecutions more difficult and may inhibit victims from coming forward. In her view, the Bill does not adequately cover financial motives (e.g. selling of images), pranks, humour etc. In her oral evidence on 18 November 2021, Professor McGlynn advised that she agreed with the contention from others that it was highly unlikely that the Enniskillen case that gave rise to the proposed new offence would be covered as, in that case, "the police effectively took [the perpetrator] at his word." She also advised that if the defence of 'just for a laugh' was not covered then the law would be ineffective. In her view, the solution is not to list more motivations but to focus on consent. Professor McGlynn suggested that the Bill would be strengthened if the core offence was 'the non-consensual taking of an intimate image' which would cover all forms of upskirting as well as other forms of voyeurism. In her written response of 1 December 2021 providing further information following the oral evidence session, Professor McGlynn suggested that an alternative to the consent-based approach may be to include recklessness as to whether the victim is caused distress, alarm or humiliation, drawing on Scots or Irish law.

36. Professor McGlynn also suggested that there is an inconsistency between the offence and the sharing of images. An offence is committed when the image is taken for the purposes of sexual gratification but if shared for that reason there is no criminal offence relating to distribution. She advised that there is an urgent need to reform the law to include threats to share intimate images in order to provide a clear and straightforward offence to recognise the harms experienced by victims and to enable swift prosecutions. She also recommended that the law should be reformed to include the distribution of deep fakes/fake porn without consent.

37. During the oral evidence session on 25 November 2021 the PPS advised that a consequence of the removal of motives may be that there would be only one class of offence and that everything, from the prank or the ill-judged action right

up to the predatory, malicious and deeply damaging actions, would be covered under the same offence. This could prove problematic for sentencing although it could possibly be dealt with through guidelines, guideline cases or identifying aggravating or mitigating factors without the need for other legislation.

38. The PPS also advised that if there was a case where the individual's only motivation was around the exertion of control, then it would not be covered by the motivations as currently outlined in the Bill.

39. In its oral evidence on 25 November the NIHRC endorsed the view that the Bill should be amended to cover all forms of upskirting rather than requiring sexual gratification. In their view, whether it was for sexual gratification or a prank, it should not happen if a person has not consented to it.

40. The Committee questioned the PSNI on whether a change to instead base the offence on the grounds of consent only would make the ability to gather evidence or investigate the offence easier or, instead, make it more challenging when they attended the meeting on 25 November. In response, the PSNI stated

"From a practical point of view, consent is something that we seek to have to prove in a number of pieces of legislation, so we are not unfamiliar with that. That is part of the evidence-gathering piece that police officers and staff will do in gathering the information that aligns to consent. I know from other submissions that there have been conversations and considerations around whether there is an alternative to that. Do you look at expanding the definition of behaviour that causes humiliation, alarm and distress to include other things? I know that behaviour taking the form of a prank has specifically been part of those conversations.

From a policing point of view, the consent and the intent perspectives are what we see as our job. Many offences cover both those perspectives — for example, possession of drugs with intent to supply and possession of firearms with intent to carry out a criminal act. Those are things that we have dealt with, so we see that following that same train is familiar territory for us and, I would argue, other criminal justice partners. Any defence, if you wish, around a lack of consent and defences around pranks are, from a policing perspective, things that we will deal with around the evidence gathering, be that in interview

or through what someone may have stored on their devices, where you can very easily prove that it was not a prank because the person sent it and typed nasty comments and so on. Broadly, our position was that we were content with the Bill as written, but we totally understood why those questions were being asked."

41. In its response to these issues, the Department of Justice advised that provisions for these offences are based on the proposal to legislate for an offence of up-skirting put forward in the consultation on a Review of the Law on Child Sexual Exploitation where there was overwhelming support for the proposal and no concerns were raised at that time about the inclusion of the requirement to prove motivations.

42. The Department noted that, when giving evidence to the Justice Committee on the Bill, the PSNI and the PPS made it very clear that proving intent is an integral part of any criminal offence.

43. On the issue of an offence based solely on lack of consent, the Department advised of its concern that the removal from the offences of the requirement to prove intent could unnecessarily criminalise children and young or vulnerable people and lead to over-criminalisation. It pointed out that there were some young people who may act on impulse without considering the consequences of their actions or act because of peer pressure.

44. A further concern noted by the Department was that the removal of the requirement to prove the intent of the offender dilutes the offence, thereby reducing it to the lowest bar. Something done on the spur of the moment without thinking of the consequences and the action of a sexual predator would fall under the one offence. There would be no means to identify and differentiate between a low-level offender and the sexual predator. This would impact on the justice system's capacity to monitor the risk that a person presents to the public or to protect the community from further offending.

45. The Department advised that, under current proposed provisions, where the intent of sexual gratification is proved, the offender can be made subject to notification requirements ('the sex offender register') and as a sexual offender, could be made subject to prevention orders, such as the Sexual Offences

Prevention Order. Identification of sexual offending is critical to help manage the risk such offenders present in the community and to ensure public protection from this type of offending behaviour. Without the need to prove motivation, those who pose a threat to the public cannot be determined by the court.

46. Victim Support had requested clarification of whether the term 'operates equipment' would capture incidents when a mirror or reflective material is used to facilitate upskirting or down-blousing and the Department confirmed that the provisions are worded to make it clear that equipment includes equipment not capable of activation and that this will be explained in accompanying guidance for the offence.

47. In its written submission, NICRE stated that, if perpetrators of voyeurism offences are parents or legal guardians, then consent is not established and proposed an amendment/clause to deal with parents and/or legal guardians. In response, the Department advised that the offences would apply where committed by parents or legal guardians and in its view this would be considered as an aggravating factor by the courts when determining the appropriate sentence.

48. NICCY suggested that consideration should be given to how children under 18 years who display harmful sexual behaviour may fall within the scope of the offence and that arrangements effectively address harmful or abusive behaviour while also seeking to divert children from the criminal justice system and ensuring that they have access to therapeutic support.

49. The NSPCC also advised that the provisions must be implemented in a child-centred manner that minimises the risk of unintended consequences or perverse outcomes, such as over-criminalisation of children,

50. The South Eastern Area Domestic and Sexual Abuse Partnership recommended that the offence should apply to anyone over the age of 18 years and to anyone 16 years or over if it was a second offence to avoid criminalising young people. In their view, Children's Services under the auspices of Trust Safeguarding Child & Family teams, PBNI and/or the Youth Justice Agency should seek to engage with the young person in the first instance to assess and engage with him/her to prevent repeat offending.

51. In its response to these issues, the Department advised that one of its primary concerns has been to ensure that children and young people are not unnecessarily criminalised and it is aware that there will be some young people who may act on impulse without considering the consequences of their actions or act because of peer pressure – for example, someone who is the weaker person in a group of friends and is 'egged on' to act out of character.

52. The Department advised it tries to divert children, particularly younger children, from the formal justice system to provide them and their families with the support they need to prevent offending behaviour from escalating. It outlined that the Youth Justice Agency currently delivers a wide range of diversionary measures to children who are displaying harmful sexual behaviours (HSB), working in partnership with HSB providers commissioned by the Health and Social Care Trusts. The Department also referred to the Gillen Review which made recommendations regarding the provision of information on healthy relationships, relationship & sexuality education (RSE) and increased awareness of the myths surrounding serious sexual offences.

53. Questions were also raised by a number of stakeholders including NIWEP, WPG, HereNI/Cara Friend, Women's Aid Federation, Unite, the South Eastern Area Domestic and Sexual Abuse Partnership and the NIHRC about the maximum sentence of six months' imprisonment on summary conviction or a fine not exceeding the statutory maximum or both or two years' imprisonment on indictment. The Bill was viewed as providing lesser protections for victims of voyeurism offences in Northern Ireland when compared with the maximum sentence of up to 12 months' imprisonment on summary conviction which it was suggested was available in England and Wales.

54. In its written response, the Department advised that the sentence of up to six months' on summary conviction proposed in the Bill sits appropriately within the current sentencing framework and is in line with the sentencing jurisdiction of the magistrates' court.

55. While welcoming the new offences, the PSNI asked that consideration was given to the additional resource burdens they may bring and the potential adverse impact on the experience of victims if the ability to deliver an effective

and victim-centred service is compromised by resource pressures. It also advised it was essential to note the potential demand on those agencies with responsibility for Public Protection Arrangements for Northern Ireland (PPANI).

Committee Consideration of Clause 1

56. The Committee took the opportunity to explore a number of the issues arising from the written evidence in more detail during the oral evidence sessions with NICCY, Barnardo's, the Migration Justice Project, CARE NI, the WPG, Professor McGlynn, the South Eastern Area Domestic and Sexual Violence and Abuse Partnership, Victim Support, the NI Human Rights Commission, the PPS and the PSNI.

57. The Committee also met informally with a victim of voyeurism offences to discuss their experience. Members heard of the devastating impact it had on the person at the time and the lasting impact on the victim's life and on the lives of their family. The handling of the case by the criminal justice agencies and the fact that it wasn't treated as a sexual offence added to the trauma suffered and clearly illustrated the need for the offences in this Bill.

58. Having considered the written and oral evidence received and the Department's written responses the Committee sought further information and clarification on some aspects of Clause 1 when officials attended the meetings on 16 December 2021 and 11 January 2022.

Penalty for the offences

59. The Committee sought clarification on whether a higher penalty of up to 12 months' imprisonment on summary conviction was in place for voyeurism offences in England and Wales. Departmental officials advised that although a term of up to 12 months' had been included in legislation it had not been commenced and the maximum term available therefore remained at 6 months on summary conviction.

60. The officials also advised that consideration had been given to the maximum sentences for equivalent-type offences in Northern Ireland when setting the penalty to ensure that anomalous situations do not arise whereby sentences for

one type of offence are different from those for similar offences. In their view, a maximum sentence of 12 months would be out of alignment with equivalent offences.

Threats to disclose

61. The Committee also questioned officials on whether threats to publish an image would be covered by the provisions. The officials advised that it would be conceivable that a threat to disclose would generate distress and alarm for an individual which would make it a criminal offence and would be covered. They also pointed out that the voyeurism offences are more opportunistic and individuals may not know that a picture of them had been taken. Threats to disclose are more likely to relate to partner relationships where there may be coercive control and will be covered by the threat to disclose amendment which the Department is bringing forward as, while a person may have consented to an image being taken, they have not consented to its disclosure.

Narrow scope of the offences

62. During the evidence session on 16 December 2021 Committee Members questioned officials in some detail on the issues that had been raised regarding the requirement to prove the motivations of the perpetrator and whether the offence should be based on consent with no requirement to prove intent. The officials advised that it was the Department's view, and the view of the legal advice received, the PPS and the PSNI that the Clause is sufficient to capture the offences that Members were concerned about.

63. Officials also cautioned that the removal of motivations would dilute the offence and reiterated its written evidence that it would not provide the ability to identify those who act in a thoughtless or reckless manner without thinking through the consequences of their actions. The Department wants to differentiate between people who technically commit the offence but do so without real malice or the intent to cause harm or distress or to obtain sexual gratification and others who are more dangerous or are of greater concern.

64. In response to a question on the use of an image to coerce or control a victim, the officials advised that they would be "astonished" if it did not cause

distress, anguish and humiliation to the person being controlled. They pointed out that it is similar to the Domestic Abuse and Civil Proceedings Act: coercion is not seen as a benign activity; it is seen as a malign activity, even if the person does not recognise that it is causing them damage. While it would be for a court to determine, they suggested it was hard to see how this intent would not be covered. In a subsequent written response, the Department advised that the intention to humiliate, alarm or distress covers a wide spectrum of behaviour and a court would consider all the circumstances in the individual case.

65. The Committee discussed the issues raised and the Department's response during its informal deliberations on the Bill on 11 January 2022. Members acknowledged the Department's concerns that to remove motivations and base the offences solely on consent may broaden the offence to the extent that it may become unworkable. They also noted that the Gillen review had recommended work on the issue of consent which is a large-scale exercise.

66. Concerns remained, however, that the requirement to prove motivations is an additional element required to prove the offence and this could prevent victims from reporting the offences if they believe it might lessen the chances of a conviction being secured against the perpetrator. It was also felt that the Clause as drafted may not address a scenario where upskirting or down-blousing occurred, or it is claimed it occurred, for reasons of 'banter' or 'group bonding'.

67. The Committee agreed that the most appropriate way to address its concerns may be to retain the motivations in the Clause rather than base the offences solely on consent but to amend it to ensure the banter defence is removed and agreed that a draft amendment should be prepared to include a reasonable person test in the motivation requirements.

68. The Committee advised the Department that it was considering making an amendment to Clause 1 to cover the banter defence. In response the Department outlined the concerns of the Minister around an amendment to the motivations along the lines of including a reasonable person test and also indicated that the Department was of the clear view that, contrary to the concerns raised in evidence to the Committee, the Enniskillen case would have been caught by the new offence. The Department also stated that the

reasonable person test would significantly widen the scope of the offences and would have potentially serious unintended consequences. One of the Minister's concerns is that the offences should not lead to over-criminalisation. In her view with such an addition there is a serious risk that children and young or vulnerable people who act on the spur of the moment without proper consideration of the consequences of their actions would be unnecessarily and inappropriately criminalised.

69. **Having considered the Minister's response, and noting that in light of the concerns expressed by officials it had decided not to amend the Clause to base the offences solely on consent, the Committee remained of the view that a reasonable compromise to address the issues raised was to bring forward an amendment to Clause 1 that unequivocally removes the 'banter' defence as follows:**

Clause 1, Page 2, Line 18, leave out 'B.' and insert –

'B,

or that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.'

Clause 1, Page 3, Line 11, leave out 'B.' and insert –

'B,

or that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.'

70. Ms Sinéad Ennis, Ms Jemma Dolan and Ms Emma Rogan indicated that they had some reservations regarding the wording of the amendment to Clause 1 in light of the views expressed by the Minister.

New Clause 1A – Cyberflashing

71. In her written submission, Professor McGlynn advocated for the creation of a new offence of cyberflashing to clearly criminalise the sending of unsolicited pictures of genitals. She argued that the offence must be based on non-consent and cover all forms of cyberflashing, regardless of the perpetrator's motives, and noted that the current proposals by the Law Commission only criminalise sending penis images if it can be proven that the intention is to cause alarm, distress or humiliation, for sexual gratification or that it is reckless as to causing distress, which would exclude many cases of cyberflashing.

72. Professor McGlynn's written submission provides detailed information on the evidence base and research on which her recommendation is based, including details of the prevalence of incidents of cyberflashing. The Professor outlined that a YouGov survey in 2018 found that 41% of women had been sent an unsolicited penis picture, rising to 47% for younger women aged 18-24 (47%) while a recent Ofsted review found that nearly 90% of girls said being sent explicit pictures or videos of things they did not want to see happens a lot or sometimes to them or their peers, including 'dick pics'. Professor McGlynn advised of a number of benefits to adopting a bespoke criminal law addressing cyberflashing, including that it would make it clear cyberflashing is wrong and potentially harmful; let victim-survivors know their experiences are understood and recognised; facilitate successful prosecutions by removing requirements to "shoe-horn" cyberflashing into other laws; and provide a positive foundation for education and prevention initiatives. She also advised it must be framed as a sexual offence, to recognise the nature and harms, to grant victims anonymity and protections in court, and to permit suitable sentencing options.

73. Professor McGlynn also referred to the distribution of deepfakes and fake porn without consent in her written submission which she described as a growing and harmful problem. She advised that her research with colleagues interviewing victim-survivors of intimate image abuse found that 34% of images created without consent had been digitally altered and recommended an amendment to criminalise the distribution of altered images.

74. The NIHRC did not specifically refer to cyberflashing in written evidence but recognises that new forms of gender-based violence against women are emerging, including forms of online violence against women such as “doxing” and “trolling”, as well as the non-consensual distribution of intimate content. The Commission highlighted that technology has evolved which means different forms of gender-based violence have transformed into offences perpetrated across distance, without physical contact and beyond borders, with anonymous profiles to amplify the harm to the victim. In response to a specific question during the oral evidence session on 25 November, the Commission advised that it would support the inclusion of provisions relating to deepfakes, fake porn and cyberflashing in the Bill.

75. The Committee sought the views of other witnesses on whether there was a requirement for a specific cyberflashing offence during oral evidence sessions. The South Eastern Area Domestic and Sexual Violence and Abuse Partnership stated that there is a need to put in place legislation with clear messaging on cyberflashing and highlighted the need to educate young people of such dangers. The WPG supported Professor McGlynn’s proposals on cyberflashing advising that men who do it are emboldened by the fact that nothing is done about it, and it is then seen as being normalised. They also stated that useful legislation would lie in targeting the fact that perpetrators are using the internet to send intimate images against other people's will.

76. The Committee also asked the PPS whether deepfakes and cyberflashing could be prosecuted under existing legislation. In response, they advised

> *“The legislation that deals with indecent images of young people includes pseudo-images. I do not know whether that definition could be extended to include what are known as deepfakes. Obviously, indecent images apply only to children and young people who are under 18. I cannot say with certainty whether that could already be captured in pseudo-images or that class of victim, but my sense is that it may be.*
>
> *On cyberflashing, I mentioned communication offences earlier. Grossly offensive communication through electronic means is an offence and can be prosecuted. I cannot say with certainty whether a grossly offensive*

communication requires it to be purely words, or whether an image would constitute a grossly offensive communication, but it may well be captured in the Communications Act offences."

77. The Committee questioned officials on whether the Department had undertaken any work with regard to a cyberflashing offence. In response, the officials advised that they were aware there would be a UK dimension to cybercrime and that Northern Ireland could not act in isolation. Members pointed out that cyberflashing has been an offence in Scotland since 2010 and asked if a similar offence could be considered for inclusion in the Bill and the Department agreed to review the Scottish legislation and respond to the Committee in writing.

78. The subsequent written response from the Department dated 9 January 2022 noted that Scotland is the only UK jurisdiction that has legislated in this area with the offence of "coercing a person into looking at a sexual image." Officials advised that the offence is committed if a person intentionally (and for the purposes of obtaining sexual gratification or for the purpose of humiliating, distressing or alarming the victim) causes the victim to look at a sexual image. The offence is committed if the victim did not consent to looking at the image and the accused had no reasonable belief of consent. A sexual image is defined as an image of a person, whether real or imaginary, engaging in a sexual activity or an image of the genitals of a person, whether real or imaginary. The penalty for the offence is up to 12 months' imprisonment on summary conviction or up to 10 years on conviction on indictment.

79. The Department advised that the UK Government has committed to making cyberflashing an offence in England and Wales. In this regard, the UK Government is considering the Law Commission's recommendation that it should be an offence for a person to send an image or video recording of genitals (whether the sender's or not) to another: either intending to cause that person alarm, distress or humiliation; or, where the image was sent for a sexual purpose, reckless as to whether it would cause alarm, distress or humiliation. The recommended penalty for the offence is up to 6 months' imprisonment on summary conviction or up to 2 years on conviction on indictment.

80. The Department also provided details of the offence in Ireland of distributing, publishing or sending threatening or grossly offensive communications. They stated that, under the provisions, a person who, by any means, distributes or publishes any threatening or grossly offensive communication about another person or sends any threatening or grossly offensive communication to another person, with intent to cause harm, is guilty of an offence. The maximum penalty is 12 months' imprisonment on summary conviction and up to three years' imprisonment on conviction on indictment.

81. The Department outlined its intention to review existing and proposed legislation in the UK and Ireland and research any relevant approaches in other jurisdictions and consider their applicability to the Northern Ireland legislative framework. This will assist in the development of robust policy proposals for public consultation, with the aim of legislating for the offence of cyberflashing in Northern Ireland in the next Assembly mandate.

82. To assist its consideration of the issues the Committee commissioned a research paper on cyberflashing and deepfake pornography. The paper provided an analysis of internet law as a reserved matter in the context of the Online Safety Bill currently progressing through Westminster and an overview of legislative arrangements and practices in other jurisdictions.

83. During its informal deliberations on the Bill at the meeting on 11 January 2022, the Committee discussed legislating for a specific cyberflashing offence. Given the legislation in place in Scotland and the UK Government's commitment to legislate for this in England and Wales, the Committee considered that this would be an opportune time to provide for a similar offence in Northern Ireland and ensure that this jurisdiction is not left behind. The Committee therefore agreed to consider a potential amendment to introduce a new offence of cyberflashing that would cover the anonymous sending of images to another who happens to be nearby (and who are unknown to the person) and the sending of an intimate image to someone the person knows (e.g. via a dating site).

84. The Committee advised the Minister of Justice of the intent of its potential amendment and in its response dated 19 January 2022, the Department

advised that the Minister had no objection, in principle, to the introduction of an amendment to provide for the offence of cyberflashing and would be supportive if it was based on the recommendation for the offence made in the Law Commission's Harmful Communications Report or the Scottish Legislation. In her view, either approach would be proportionate, effective and would sit appropriately within the sentencing framework.

85. Without sight of the draft text of the amendment at that stage, the Department noted that reference was made to an intended 'reasonable person' approach in other proposed Committee amendments and advised that the Minister would be seriously concerned were the Committee to adopt a similar approach to the cyberflashing offence. The Department advised it was the Minister's view that the inclusion of such a test would risk unnecessarily criminalising young people who have not thought through the consequences of their actions and noted that the Law Commission had expressed similar concerns. The Department stated that the Minister would not support the inclusion of a reasonable person test.

86. **While the Committee considered the Minister's position at the meeting on 20 January it was content to bring forward the following amendment to insert a new clause into the Bill to provide for a new offence of cyberflashing which covers the anonymous sending of images to another who happens to be nearby (and who are unknown to the person) and the sending of an intimate image to someone the person knows (e.g. via a dating site):**

Page 3, Line 23, insert new clause –

'1A Coercing a person into looking at a sexual image

(1) A person (A) commits an offence if—
(a) A intentionally and for a purpose mentioned in subsection (2) or a condition in subsection (3) causes another person (B)
(i) without B consenting, and

(ii) without any reasonable belief that B consents,

to look at a sexual image.

(2) The purposes are—

(a)obtaining sexual gratification,

(b)humiliating, distressing or alarming B,

or that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.

(3) A condition is that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.

(4) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of—

(a)A engaging in a sexual activity or of a third person or imaginary person so engaging,

(b)A's genitals or the genitals of a third person or imaginary person

(5) A person found guilty of an offence under this Article is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.'

87. While content to create a new offence of cyberflashing, Ms Sinéad Ennis, Ms Jemma Dolan and Ms Emma Rogan indicated that they had some reservations regarding the wording of part of the text of the amendment in light of the views expressed by the Minister.

Clause 2 – Sexual grooming: pretending to be a child

88. Clause 2 creates four new offences which seek to deal with an adult masquerading as a child and making a communication with a view to sexually grooming a child under 16:

- Communicating with a person with a view to grooming a particular child
- Communicating with a particular group with a view to grooming a particular child
- Communicating with a person with a view to grooming any child
- Communicating with a group with a view to grooming any child

89. The EFM advises that these intend to cover all possible angles of approach and aim to address behaviour at an earlier stage where offenders pretend to be children as a precursor to grooming or carrying out other offences and where this would constitute an indicator that they present a risk to children. It is also noted that the offending behaviour is not limited to online activity.

90. The penalty for each of the new offences is a sentence of up to six months' imprisonment or a fine of up to £5,000 or both on summary conviction and a sentence of imprisonment of up to two years for conviction on indictment.

91. The provisions of Clause 2 were widely welcomed. In its written submission, the PSNI stated "*the requirement of closing this potential legislative gap has been supported by Barnardo's, Children in NI, the Education Authority for NI, PBNI, NOTA NI and some sporting organisations. All, including previous police responses, had highlighted that there need to be further child protective measures and where necessary defences could be considered – for example where there is a law enforcement requirement, or a parent engaging as a young person in an attempt to safeguard their child where they feel they are at risk of harm from another*."

92. The PSNI also advised that it has given consideration as to when there would need to be provision for lawful excuse in respect of this matter and, in doing so,

engaged with covert policing colleagues. No potential concerns in respect of the introduction of the new offences were identified.

93. In its written submission, the PPS advised that it supports the overall policy intent of Clause 2, which will allow for the police to investigate cases where, for example, a child communicated with becomes suspicious of a suspect's status or intent at a point before the suspect sexually communicates or arranges travel to meet with a child.

94. Women's Aid also welcomed legislation specifically to help protect young people in an increasingly digitalised world. In its view, there are now more opportunities than ever for children and young people to be vulnerable to perpetrators who attempt to groom them online. Unite also advised that it supports any legislation that seeks to help protect young people vulnerable to perpetrators who attempt to groom them online.

95. Victim Support stated that it is essential that Northern Ireland has a strong legislative framework to protect children from grooming and in its view the proposed amendments will address existing gaps to that framework.

96. SBNI believes the legislation is effective in responding to new and emerging concerns and it supports the inclusion of a live streaming offence which widens the scope of the definition of 'images' from earlier legislation, recognising the catastrophic impact that live streaming images may have on children's social and emotional well-being.

97. In its written submission, PBNI welcomed the fact that the Bill gives effect to a number of the outcomes from the Review of Child Sexual Exploitation legislation. The creation of the new offence of adults masquerading as children will enhance public protection as 'masquerading as a child' often is a precursor to the grooming and sexual abuse of children. PBNI also welcomed the removal of terms such as 'child prostitution' and 'child pornography' which it states minimise the seriousness of offences linked to child abuse images.

98. NICCY welcomed the intent to ensure that grooming offences capture masquerading as a child and communicating with a child or group of children with the intent to groom and that this is not confined to online abuse, though

advised that protection from the offence should apply fully to all children under 18 and not just those under 16.

99. The NSPCC stated in oral evidence that they were "hugely supportive" of the four new offences and "*welcome the intention to better protect children and to address and disrupt grooming and other behaviour where a risk to children is indicated much earlier*." However, they suggested that a major challenge will be proving that someone is communicating with a child with the intention of subsequently committing an offence, concerns that were shared by the WPG and HEReNI/Cara Friend . The NSPCC questioned how it can be proven that someone is communicating with a child with the intention of subsequently committing an offence. They urged that the law be kept under review to enable implementation to inform any changes that might be required.

100. Barnardo's raised a similar concern that the proposed framing of the provision means a person only commits an offence if they masquerade as a child with a view to grooming a child. In oral evidence, they agreed that the intention may be hard to prove and suggested that:

> *"the offence will be used when someone escalates their behaviour and it becomes sexual grooming. They have then graduated onto a more serious offence. You could look at it retrospectively and say, "Six months ago, they were talking to them, but there was no sexual grooming, so we will add that offence of communicating with a view to grooming, because they went on to do it."*

101. Barnardo's also questioned what reason an adult may have to masquerade as a child. They outlined their view that, in any scenario, including when an adult has no intention of committing an offence, an adult who is masquerading as a child, in order to interact with children, is breaching the principle of informed consent and stated that a child cannot consent to interacting with an adult, if that adult is pretending to be a child.

102. The NIHRC pointed out that a person would have misdescribed themselves online and that it was not aware of any right that would be protected or even engaged in relation to an adult's right to masquerade as a child.

103. When questioned by Members on the potential effect of removing the purpose of grooming and if there would be any unintended consequences if an adult was criminalised for pretending to be a child, the NSPCC told the Committee it had discussed its concerns with the Department who had been advised by the PSNI that the operational elements could be resolved. However, they went on to advise that

> *"One of the issues that came out of the conversation that we had with the Department was the possibility that a parent could be online pretending to be an adult in order to protect their child. I am not sure if that will ever arise or if there would be a child protection consideration. However, it is not as straightforward as it might appear, and that is why we are a bit reticent about saying that it should be entirely removed. It is certainly a matter that merits a much broader discussion, because I am not sure how it will be operationalised."*

104. Barnardo's stated that allowing a parent to masquerade as a child online to check on their own child could leave a loophole for perpetrators to exploit. They pointed out that the PPS may not take a case forward where there is clear evidence that a parent was just checking on their own child. They added

> "*However, if a parent is going on and talking to other children who are not in contact with their child, we have to ask questions about why they are doing that. We need to strengthen this offence, and I would really welcome PSNI and PPS comments on that."*

105. In its written response, the Department advised that it is important to recognise that there may be innocent reasons why some adults might pretend to be a child for the purposes of non-sexual intention. It believes, therefore, that the law should not seek to criminalise individuals where they have no intention of committing a relevant offence and where they pose no risk to children. The Department suggested that, for example, there may be occasions when an adult or a vulnerable adult, particularly with an immature childish hobby, or a person with a learning disability, pretends to be under 18 when engaging in an online discussion about that interest to prevent embarrassment, or to participate in online gaming. There may also be a scenario where an adult has logged on

to a computer accidentally using their child's profile which would be considered a demonstration of intentionally presenting as an under 18.

106. NICCY noted the importance of ensuring that the law takes account of the complex dynamics of abuse, including where this is facilitated by technology, and that it provides an effective basis for early intervention to protect children and disrupt offenders. They also pointed out that the Department has not extended the offence to include 'enticing', which had been raised during the Independent Inquiry into Child Sexual Exploitation (CSE).

107. In response to a request for a view on whether the provisions on grooming fully capture enticement, the PPS advised that they considered that to be exactly what they are aiming to do and they could see how they would be able to deal with those who start innocently communicating with a child before moving on to more malign communications.

108. In its written response, the Department advised that the provision has been specifically designed to capture as many perpetrator behaviours as possible across a range of possible scenarios to help ensure the most robust protection possible. It will close a legislative gap as the act of pretending to be a child is not met by existing offences. The Department also pointed out that the communication does not have to be sexual or carried out online.

109. The PSNI indicated in its written submission that, while welcoming the strengthening of the legislation in the area of CSE, they consider that a potential legislative gap remains in respect of grooming offences given the requirement for the perpetrator to be 18. The changes therefore do not appear to address the increased incidents of "peer on peer" abuse. In oral evidence to the Committee, the PSNI stated that operational experience has shown there are occasions when people under 18 have been preying on children under 16 and advised of a case where the offences began when the individual was a child themselves and carried on into adulthood.

110. The PSNI's written submission pointed to the previous Justice Committee's Report on Justice in the 21st Century report[10] which it said highlighted some provisions which could be introduced to ensure there was a balance between recognition of where there has been abuse and exploitation against where there has been no malicious intent.

111. As with Clause 1, concerns were raised by a range of organisations including the NIHRC, WPG, Women's Aid and Unite and witnesses who felt that the maximum penalty on summary conviction should be 12 months rather than 6 months. In their view this would afford victims in NI equal protection to those in England and Wales. The Department reiterated that, in its view, the sentence of up to six months on summary conviction provided for in the Clause sits appropriately within the current sentencing framework and is in line with the sentencing jurisdiction of the magistrates' court.

112. A further issue raised in respect of Clause 2 was that the burden of proof has not been reversed. NIHRC pointed out that the UN Committee on the Rights of the Child has raised the need to shift the burden of proof from the prosecution to the defence in legislation governing specific sexual offences and expressed its disappointment that the opportunity to do so was not taken in this Bill. In oral evidence the NIHRC suggested that, if it is not possible for this matter to be addressed within the scope of this Bill, the Committee may wish to raise it with the Department with a view to it being addressed in a subsequent piece of legislation in the new mandate.

113. NICCY also questioned why the Department had not proceeded with reversing the burden of proof regarding the defence of reasonable belief as had been outlined as an intention in the 2019 consultation and drew attention to concerns regarding the current defence that have been raised by the UN Committee on the Rights of the Child, the 2014 Independent Inquiry into CSE in Northern Ireland and, more recently, the 2020 Criminal Justice Inspection Northern Ireland Report into CSE. NICCY advised that they are supportive of reversing the burden of proof for the defence and limiting the circumstances in which

[10] http://www.niassembly.gov.uk/globalassets/documents/justice-2011-2016/copy-of-the-justice-in-the-21st-century-report-with-appendices.pdf

defendants could access the defence. In response to a question in oral evidence, NICCY suggested that examples of where access to the defence of reasonable believe could be limited included cases where an individual has previously been convicted of a sexual offence against a child or is subject to a Risk of Sexual Harm Order.

114. In its written response, the Department advised that it had consulted on the issue of reversing the burden of proof in relation to reasonable belief in its consultation on the law on CSE and other sexual offences in 2019 and indicated that it remains supportive of this proposal. However, in the response to the consultation, colleagues from across the legal field including the Bar of Northern Ireland, the PPS and the Law Society highlighted concerns about the potential implications of such a change which the Department advised it would be wrong to ignore given the wealth of knowledge and experience held by these organisations.

115. The Department stated that it is committed to exploring the matter further and intends to carry out engagement with key stakeholders to ensure that any recommendations for a future legislative change are workable and appropriate within the current legal system.

Committee Consideration of Clause 2

116. The Committee questioned the PPS on whether there would be unintended consequences of removing the purpose of grooming and, instead, relating the offence simply to an adult masquerading as a child. The PPS official outlined that there may be circumstances where a very immature young adult masquerades as a child to communicate with another child for entirely innocent purposes and advised that he had experience of cases where adults are very immature and childlike in their behaviour. Removing the need to prove malign intent would capture such a case where somebody is doing something relatively innocent, albeit with a level of deception involved. The PPS view was that setting the bar at that level would capture a range of offending that you may wish to distinguish between.

117. The Committee noted that the Department had stated that the inclusion of the intention element in this provision is critical to ensuring that only those with malign intent to exploit children are captured and it is imperative that those with malign intent are separated from those with an innocent intent in communicating with a child.

118. The Department pointed out that, in their evidence to the Committee, the PSNI and PPS had confirmed that proving intent is not a new concept and is an integral part of any criminal offence, comprising common practice to those applying the law. Proof of intent will be dependent on the evidence that is obtained and, in particular, the nature of the communication.

119. The Committee questioned departmental officials at the meeting on 11 January 2022 on the potential legislative gap identified by the PSNI. They advised that the PSNI had not raised the matter with the Department and stated that the Clause focuses on a gap that enables adults to prey on children and resulted from a consultation on CSE following publication of the Marshall report. The Department advised they had consulted significantly on the Clause and its provisions were driven by the police who were specific *"that they are more concerned about an adult preying on a young person or child than peer-on-peer abuse."* The officials also advised that there is a range of legislation that can be used for interventions for young people.

120. **The Committee considered the written and oral evidence and the Department's response to the issues raised and agreed that it is content with Clause 2 as drafted.**

121. **The Committee considers the reversal of the burden of proof and defence of reasonable belief for sexual offences to be important issues. It notes the Department's intention to work with key stakeholders to resolve any issues and wants to see progress in this area early in the next Assembly mandate.**

Clause 3 – Miscellaneous offences as to sexual offences

122. Clause 3 will amend the 2008 Order to remove and replace references to 'child prostitution' and 'child porn', which could be interpreted to imply that children are responsible or willing participants in their abuse. The EFM notes that this reflects a recommendation in the Marshall Report and also changes made in England and Wales. It is hoped the changes will help raise awareness of the status of children as victims of exploitation rather than willing participants or being complicit in the abuse perpetrated by others.

123. The 2008 Order is also amended to widen the scope of the definition of 'images' relevant to specific images within the 2008 Order to include 'live streaming'. As it stands the legislation around indecent images of a child only relates to 'recorded' images.

124. The Clause also makes minor amendments regarding the offences of engaging in sexual communication with a child. During the briefing on the principles of the Bill the departmental official explained this brings the offences into the scope of extraterritorial arrangements in order to provide further protection to children travelling outside this jurisdiction, correcting an omission in current law.

125. Finally, the Clause makes a clarifying amendment relating to the offence of paying of sexual services of a person which officials advised is to clarify the elements that constitute an offence to avoid any ambiguity in its interpretation.

126. There was widespread support for the provisions to amend references to child prostitution and child porn. It was pointed out by Victim Support that the terms are outdated and fail to recognise the reality of the offences - they are in fact child sexual abuse, rape and modern slavery.

127. The NSPCC advised that it supported removal of legislative references to 'child prostitution/child prostitute' which misrepresents and masks the abuse that occurs to children. Similar points were made by the HSCB, which stated that it also masked the devastating impact of such trauma upon childhood and child development and for those children who experience sexual abuse.

128. Unite, Women's Aid and the WPG welcomed the removal of victim-blaming terminology in legislation designed to protect children and young people from sexual exploitation which, in their view, will put the responsibility on the perpetrators of child sexual exploitation. They emphasised that it must be clear in the language used in legislation that children and young people bear no share of responsibility for the traumatic exploitation they have suffered.

129. Barnardo's also welcomed the provisions to amend references to 'child prostitution' and 'child pornography' stating those terms suggest consent, whereas the use of children for prostitution is child sexual abuse and exploitation. Barnardo's advised that such terminology can act as a barrier to removing stigma and to ensuring children and young people who have been abused can access support.

130. Barnardo's also considers it crucially important that these language changes are applied consistently in all departmental communications and documentation e.g. procedure guides, policy documents, and consultations. They believe a cultural shift is needed in the way we talk about, and address, child sexual exploitation in our society, and a wholescale change in language is the first step.

131. NICCY welcomed the intent to amend the language of 'child prostitution' and 'child pornography' and suggested that the Committee may wish to explore whether there is merit in amending references to 'sexual services' and 'indecent images' to wording which references 'child sexual abuse' and 'child abuse images' which, in their view, more clearly capture harm, abuse and exploitation of children. In its written response to this suggestion, the Department advised that the wording has been carefully considered and designed to reflect consultation responses and important legal advice regarding its scope.

132. NICCY also welcomed the intention to ensure provisions relating to sexual communication with a child are brought into arrangements regarding extraterritorial jurisdictions and to ensure that online and other remote forms of abuse are within scope of provisions.

133. The widening of the definition of 'images' to include live streaming was also welcomed by a number of organisations including Barnardo's, NICCY, SHSCT,

WPG, LCCC, HSCB and the NSPCC. The SBNI advised of its support for the provisions, recognising the catastrophic impact that live streaming images may have on children's social and emotional well-being.

134. In its written response, the PSNI stated that there will be a need for operational guidance in respect of live streaming and how this would be captured and explained by the child involved to provide the required evidence. They advised that live streaming services can be used by offenders to incite victims to commit or watch sexual acts via webcam and there will be occasions when offenders will stream/watch live contact of sexual abuse or indecent images of children with other offenders. In some instances, they will pay to stream live contact abuse with the offender then directing what sexual acts are performed by or against the victim.

135. The PSNI stated that it is therefore key in offences of this nature that not only lines of enquiry in respect of indecent material are explored but also financial enquiries which may identify evidence of the offence and other offenders involved. They highlighted that this means there will be an increased demand on resources within Public Protection Branch, Economic Crime Branch and Cyber Crime Centre. This matter is considered further elsewhere in this report.

136. The key issue in respect of Clause 3 related to the definition of payment, which was raised by the children's organisations. The NSPCC advised that, while the 'exchange' element in cases of CSE may involve a tangible inducement like payment or provision of material goods (money, alcohol, drugs, shelter etc.), cases often involve complex dynamics between a victim/perpetrator and so may also involve intangible forms of exchange, reward or inducement such as affection or protection for the victim. They recommended that consideration should be given to the inclusion of other inducements to ensure the definition is broad enough to capture the wide range of cases and make sure there is enough clarity and certainty in its application.

137. Barnardo's also consider that the definition of payment is too narrow and focuses on transactional payment. In their view, it does not reflect the reality that children and young people face when they are exploited, groomed or abused. Often abuse or exploitation occurs where there is an emotional,

protection or attachment need in the victim, which is exploited and met by the perpetrator as a form of payment. In oral evidence Barnardo's advised the Committee that "*the proposed definition focuses purely on transactional payment rather than the intangible exchange of meeting emotional, protection or attachment needs in the victim, which, in our experience, is much more prevalent here*." They also encouraged widening of the definition to reflect the real-life experience of children and young people.

138. Similar concerns were raised by NICCY, who advised of the need to ensure that references to payment take full account of understandings of sexual exploitation which recognise that such abuse may take tangible (such as exchange for accommodation or debt payment) and intangible (such as exchange to secure protection of self or others) forms. NICCY advised the Committee during oral evidence of their support for the call for the definition of payment to extend beyond tangible forms to non-tangible forms.

139. The question of whether a change was needed to ensure that intangible forms of exchange, such as reward or inducement were covered, was raised during the oral evidence session with the PPS including whether this would become too broad for prosecution. In response, the PPS advised

> *"In any legislation, we look for clarity and capability for the concepts to be proven in a way that is clear, if we are making submissions to a jury or judge. We see a lot of cases in which young people are exploited but it is not simply a matter of money, drink or drugs being handed over and it is much more complex. The challenge is how you capture that in a way in which we can easily put it in front of a jury and say, 'You can be sure that this is the reward. It is intangible, but it is the reward'. That is a drafting challenge. It certainly exists in many of the cases that we see."*

140. The PPS official went on to say

> *"Sometimes, we see it alongside the tangible rewards, and we are able to seek to show that the exchange of money or those sorts of things is what has influenced someone. Very often, it is complex to put over the*

attachment that victims feel to those who are exploiting them, as it is not necessarily material."

Committee Consideration of Clause 3

141. Committee Members discussed whether 'payment' was too narrowly defined during the oral evidence session with departmental officials on 11 January and if it should be extended to include other inducements. Officials advised that payment is not necessarily defined as financial but could include, for example, accommodation, food or drugs. Until now no particular issues had been raised in respect of non-tangible rewards and, from discussions with the police and PPS, they did not believe this is a significant gap that needs to be addressed.

142. The officials stated that it could be difficult to find a form of words to adequately cover intangible inducements without becoming overly prescriptive which could make it difficult to satisfy a court that an element is covered. They advised that, while the Department would probably not object to the inclusion of other inducements, it would be a question of getting the right language.

143. In a subsequent written response dated 19 January 2022, the Department advised that, in its view, the definition provides a sufficiently broad basis through which a wide range of financial and non-financial rewards would be captured. It considered it important to allow the prosecution and courts the ability to interpret the law as they have been doing since 2009 without a need to change the definition and with no gap having been identified.

144. The Department stated that it would have concerns that there could be unintentional consequences to amending the legal definition, particularly where prescribing an element in law has potential to leave out an element. This could give rise to legal challenge.

145. The Committee acknowledges that the children's organisations raised important issues regarding the reality of CSE and the type of inducements used to entice children. It also accepts the difficulty in trying to cover intangible inducements in legislation. Noting that the departmental officials had confirmed that payment is not necessarily defined as financial but could include goods and services such as accommodation, food or drugs the Committee is of the view that the wording

of the Clause does not make this clear and agreed to bring forward an amendment to address this.

146. The Committee advised the Minister of Justice of the intent of its potential amendment to make it clear that payments may be something other than financial and in a response dated 19 January 2022, the Minister indicated that she would not support such an amendment. The Minister considered that the definition as it stands provides a sufficiently broad basis through which a wide range of financial and non-financial rewards would be captured and that it is important to allow the prosecution and the courts the ability to interpret the law as they have been doing. The Minister also advised that there could be unintentional consequences to amending the legal definition as proposed by the Committee where prescribing an element in law has potential to leave out an element, which could give rise to legal challenge.

147. The Committee considered the Minister's views at its meeting on 20 January 2022 but remained of the view that its proposed amendment provided clarity that payments are not just financial. **The Committee agreed to bring forward the following amendment to Clause 3 to make it clear that payments can be other than financial**

Clause 3, Page 6, Line 12, after 'paying' insert –

'(which is not limited solely to the exchange of monies for this purpose)'

Chapter 2 – Anonymity and Privacy

148. Chapter 2 of Part 1 of the Bill will implement four of the Gillen recommendations. These are detailed in the Explanatory and Financial Memorandum as follows:

    a. To extend the current lifelong anonymity of the victim of a sexual offence to provide for their anonymity for 25 years after death. The provisions allow for applications to be made to the court to discharge or modify reporting restrictions, including to reduce or increase the period of 25 years;

    b. To provide for the anonymity of the suspect in a sexual offence case up to the point of charge. Where a suspect is not subsequently charged, then the anonymity will be protected during their lifetime and for 25 years after their death. The provision allows for applications to be made to the court to dis-apply or modify reporting restrictions, including to reduce or increase the period of 25 years;

    c. To increase the penalty for breach of anonymity. Currently a penalty of up to a level 5 fine on summary conviction is available for breach of anonymity. The provisions increase the penalty to a maximum of six months' imprisonment, or a fine, or both; and

    d. To exclude the public from hearings of serious sexual offence cases. Only the complainant, the accused, persons directly involved in the proceedings, a witness while giving evidence, any person required to assist a witness, jury members and bona fide members of the press will be allowed to remain in the court during the hearing of a serious sexual offence. The court also has discretion to permit any other person to remain in the court where it considers it is in the interests of justice to do so.

Anonymity of victims

149. The provision of anonymity for the victim in serious sexual offence cases was welcomed by a wide range of organisations including the SBNI, NIWEP, the

NSPCC, LCCC, HEReNI/Cara Friend, NICCY, SE Area Domestic & Sexual Violence and Abuse Partnership, Unite, Victim Support, Women's Aid, the WPG and the Law Society. Many considered that the assurance of not having their identity, personal details or personal history being made public, particularly in as small a jurisdiction as Northern Ireland, may encourage more victims to report serious sexual assaults to the police. It was also suggested that it will ensure the right to a fair trial as jurors may find it difficult to avoid media and social media reporting and commentary on cases.

150. It was suggested by Women's Aid and the Women's Policy Group that anonymity should be extended in circumstances where there is a domestic abuse offence. In its response, the Department stated that the provision seeks to address a specific Gillen recommendation in relation to serious sexual offence cases. The Department advised that it was conscious of the intrinsic link in domestic and sexual offending and where domestic abuse involved a sexual offence and was being tried on indictment, then the exclusion provisions would apply. In addition, other protections are available for victims of domestic abuse cases including the ability to apply for special measures.

151. It was also considered that 25 years was a reasonable period for anonymity to continue after death, which the Law Society pointed out would be in line with Article 10 of the ECHR. In the PSNI's view, this will protect children and young people related to the victim from the impact that disclosure may have on them. Others noted that this will protect the rights and dignity of a victim even after death.

152. NIWEP recommended that clear guidance should be provided to courts and the judiciary on principles under which variations to the anonymity clause should be made and on the full extent of responsibilities of information society providers. As well as respecting the principles of the ECHR, this would ensure that malicious or spurious requests to disapply extended anonymity are dealt with effectively and assessed equitably for all individuals.

153. The Information Commissioner's Office drew attention to its Code of Practice on Anonymisation and Data Protection Risk which gives guidance on how to protect the identity of individuals, though considered that the decision to modify

the period of 25 years on application would rightly lie with the judiciary. In response to this point, the Department advised that it intends to include its Data Protection Officer in the membership of the Task and Finish Group to be set up to steer implementation of the Bill's provisions, which will help provide an additional focus on the importance of data protection compliance in the delivery of the Bill's provision requirements.

154. The increase in penalty for a breach of anonymity to a maximum of six months' imprisonment on summary conviction was also welcomed by a number of those who commented on these provisions. It was felt that it would reassure victims of serious offences that measures are in place to protect their right to privacy. Victim Support also pointed out that social media has made sharing of information about someone's identity both easier to do and easier to deny direct culpability if sharing or retweeting another person's post. In their view, stronger sentencing will disabuse people of the notion that they are not complicit in breaking the law.

155. By contrast, the PSNI believed that the sentence does not adequately reflect the impact that this could have on victims, and their wider family. The impact of exposure removes the control of the victim, which will mean that people will be aware of their victim status from a criminal justice perspective and this may present significant mental and physical health implications. The PSNI therefore recommended aligning the sentencing provisions towards the maximum period of 24 months that are possible within the magistrates' court.

156. In its response to this issue, the Department acknowledged the impact that a breach of anonymity may have on a victim. However, as the penalty applies to a summary offence, it considers that the increase proposed is proportionate within the Northern Ireland sentencing framework. The Department also pointed out that the proposed penalty increase - from a fine to a maximum of six months' imprisonment - will be unique to this jurisdiction and that the remainder of the UK will continue to apply the fine penalty for a breach.

157. **Having considered the comments made in the evidence and the Department of Justice's response to the issues raised, the Committee agreed that it is content with Clauses 4 to 7 and Schedule 3 as drafted.**

Anonymity of suspects

158. A number of organisations were supportive of the introduction of anonymity for the suspect up to the point of charge including SBNI, NIHRC, the SE Area Domestic & Sexual Violence and Abuse Partnership, the SHSCT, the Law Society, Victim Support, WPG and NIWEP. The Law Society outlined that, once an accused is named in the press or social media, the result is an automatic societal punishment in advance of a conviction, and a footprint is created that lasts forever.

159. The PPS pointed out that it is current practice that individuals are not mentioned until charged, though statutory regulation would ensure a clear and uniform approach in this regard.

160. While agreeing with the provisions of Clause 8 in principle, NIWEP advised that they would welcome clarification of the proposed procedure in cases where a suspect is later charged with a similar offence and the previous behaviour appears relevant to the later case. NIWEP outlined that recent cases involving serial offenders have shown that new evidence may come to light which changes the evidence base on which an original decision not to charge a suspect was made.

161. In its response to this concern the Department stated that the operation of the provision will be carried out by criminal justice partners who will apply the law depending on the particulars of a case and the individual circumstances that arise. It noted that Sir John Gillen had concluded that to identify the suspect before there was sufficient evidence needed to establish a charge, was to effectively engage in a fishing expedition. The Department also advised that the provisions are not absolute and that the police can apply to the court to have anonymity dis-applied, for example, where the suspect is at large and poses a threat to the public.

162. The removal of anonymity under the conditions set out in Clause 8(3) was welcomed by Unite, Women's Aid, WPG, NIWEP, Victim Support and HEReNI/Cara Friend. It was felt that the disclosure of a suspect's name and the charge against them can encourage other victims of the suspect to come

forward to report their own experience. This may also help to establish a pattern of serial offending and escalating behaviour and assist with the conviction of a dangerous offender. Victim Support referenced the case of Harvey Weinstein and suggested that his multiple victims might never have stepped forward to tell their stories if his identity had been protected even after the charges had been brought. In their view, the provision of anonymity up to the point of charge strikes the right balance.

163. In its written submission, the Information Commissioner's Office noted that, while 8(5) provided a list of some matters to which reporting restrictions apply, its Code of Practice on Anonymisation and Data Protection Risk included other information that could lead to a person's identification. It therefore recommended that 8(5) is reworded slightly to more clearly indicate that the list is not exhaustive and that care should be taken not to identify the suspect through other means, something particularly easily done in rural areas.

164. The Committee discussed this issue with departmental officials on 11 January and they outlined their understanding that the use of 'include in particular' means that the list is not exhaustive. They did however undertake to consult with Legislative Counsel and to also consider the Committee's suggestion that this could be clarified in the EFM. The Department subsequently wrote on 19 January 2022 confirming its view and the view of Legislative Counsel that the current wording leaves no doubt as to the nature of the list and that the terms of the Clause are perfectly clear as the provision stands. The Department further advised that 8(5) must be read in its proper context whereby the list is merely embellishing the definitive statement in 8(2) as to the matters which may not be published. It would however make an addition to the wording of the relevant section of the EFM to make it clear that the list at 8(5) is not exhaustive as suggested by the Committee.

165. With regard to the provisions at Clause 10 to disapply reporting restrictions, both Unite and Women's Aid recognised that there may be circumstances in which the listed relevant persons in this Bill may wish to apply to a magistrates' court to apply or modify reporting restrictions, advising that they were conscious of the need for a fine balance in dealing with suspects in such circumstances.

166. As with the penalty for breach of anonymity of a victim, the PSNI noted that the potential penalty for a breach of a suspect's anonymity is limited, given the impact that it may have on the suspect's mental health and wellbeing as well as their public safety and wellbeing, and the impact on their wider families. The PSNI did acknowledge, however, that the provisions may go some way to reducing the inherent risk of becoming a victim of public information share by Online Child Activist Groups (OCAG) where information is shared widely on social media platforms.

167. The Law Society stated that an increase in the penalty for breach of anonymity should act as a deterrent going forward while Unite advised that it was content with these provisions.

168. **Having considered the comments made in the evidence, the Department of Justice's response to the issues raised and its commitment to include clarification in the EFM that the list of matters at Clause 8(5) to which a reporting restriction imposed by Clause 8(2) apply is not exhaustive, the Committee agreed that it is content with Clauses 8 to 14 as drafted.**

Exclusion from proceedings

169. There was support for the exclusion of the public from court in serious sexual offence cases with exemptions for nominated support or nominated press across a range of organisations including NIWEP, Barnardo's NI, the NSPCC, Victim Support, Women's Aid, the WPG, the Law Society, the SHSCT and the PSNI. Views were expressed that this will be less intimidating and daunting for the victim and balances the need for transparent justice. It will encourage more victims to engage with the justice system and not withdraw from the process as they will be more assured that their anonymity will be protected. Again, it was noted that this can be of particular importance in a small jurisdiction such as Northern Ireland.

170. The Law Society believed that the overriding objective should be for all parties to be able to give their best evidence in a safe environment.

171. By contrast, the NIHRC advised that, while it is permissible for criminal proceedings to be carried out in the absence of the public, this is considered a

special measure, which should only be used where such a protective need is identified. In the NIHRC's view, this would suggest that the consideration of such a measure should be taken on a case-by-case basis, taking account of the individual circumstances of the case. The NIHRC advised that consideration should be given to the adoption of an individualised approach within a structured framework, which could include a judicial decision at the commencement of the trial. This should be accompanied by training for the judiciary on trauma-informed approaches and secondary victimisation. The NIHRC would welcome proper and effective training for judges and everyone concerned in the criminal justice system so that individual decisions in individual cases are considered properly.

172. In response to the NIHRC position, the Department stated that the approach adopted was made following a significant period of engagement and consultation with a wide range of stakeholders and the public as part of the Gillen Review. The recommendations of the review have been accepted by operational bodies and the Department. The officials advised that the Department did not propose to depart from the Gillen recommendation and considered that the legislative provision presents the best way forward in addressing the concerns raised and in providing protection in this important area.

173. Both Barnardo's and the NSPCC suggested that the exclusion provisions should be extended to all sexual offence cases involving a child whether they are tried in the magistrates' court or the Crown Court. They noted that cases of a sexual nature in the magistrates' court can be observed which is difficult for the young people involved. In addition, NSPCC pointed out that there can be some variances in the PPS and PSNI's interpretation of what constitutes a 'serious sexual offence' so, in the interests of clarity, recommended it includes all cases of a sexual nature where a child is involved.

174. Similarly, Victim Support suggested that consideration could be given to extending the exclusion clause to all sexual offences. They noted that impact on victims can be significant even for what may be considered on paper to be more 'minor' offences, and the intimate detail of more minor offences can nonetheless be a cause of discomfort and embarrassment for victims. In its view, if the aim is

to lower attrition rates and protect victim anonymity, a blanket exclusion may be more effective in achieving these aims.

175. The PPS also asked whether it would be appropriate to also apply the exclusion to hearings in the magistrates' court.

176. Committee members discussed these issues with departmental officials at the meeting on 11 January 2022 and more detailed information was subsequently provided in a written response. The Department pointed to the Gillen Review which recommended that the public should be excluded in all serious sexual offence hearings in the Crown Court. The provision will, therefore, extend to all indictable serious sexual offence cases heard in the Crown Court irrespective of the age of the victim.

177. The Department advised the Committee of its intention to make an amendment to the Bill to include the exclusion of the public from appeal hearings against conviction or sentence in serious sexual offences cases in the Court of Appeal. It plans to choreograph the implementation of this provision and the amendment relating to appeal hearings in line with the provisions in the Committal Reform Bill which is currently awaiting Royal Assent and which will abolish oral evidence at committal hearings in the magistrates' court. The text of the amendment can be found in the Department's letter dated 9 January 2022.

178. In the Department's view, this recommendation reflects the variation in court proceedings considered by the Gillen Review and its findings, following a significant period of engagement and consultation across a wide range of stakeholders and the public. The Department does not have any current plans to extend this provision further to the magistrates' court or to other types of offending behaviour.

179. The Department also outlined the range of protections available to child victims already provided within the legislative framework which includes:

- the Criminal Justice (Children) (NI) Order 1998 (Art 27(4) of Part V) which limits those who may attend a sitting of the Youth Court. This would apply to cases where the child is the defendant in a sexual offence case, but would also assist where the complainant is a child.

- Article 21 of the Criminal Justice (Children) (Northern Ireland) Order 1998, which allows for the court to be cleared when a child is giving evidence. This provision would take precedence over the Clause 15 provision. Any power of the court to hear evidence in private, or to exclude a person from the court also takes precedence.

- Special measures provided for in the Criminal Evidence (Northern Ireland) Order 1999 where children (under 18s) automatically fall within the category of vulnerable and are eligible for special measures unless they choose to opt out of them. Special measures are designed to assist a witness to give their best evidence and includes the ability to give evidence in private.

180. Women's Aid and WPG suggested that the exclusion from court provisions should be extended to circumstances where there is a domestic abuse offence. The Department echoed its response to the same suggestion for anonymity for victims in that this provision also seeks to address a specific recommendation in relation to the law in serious sexual offence cases. Where the domestic abuse involved a sexual offence and was being tried on indictment, then the exclusion provisions would apply. The Department reiterated that there are other protections available for victims of domestic abuse, including the ability to apply for special measures.

181. With regard to those who are exempt from exclusion, Victim Support suggested that it should be explicitly stated that support workers such as Victim Support's Witness Service, Sexual Offences Legal Advisers (SOLAs), and NSPCC Young Witness volunteers, and other relevant support staff and victim advocates should be included as exempted persons. While these roles may arguably fall under officers of the court, it would remove ambiguity if they were explicitly recognised, for instance in the EFM.

182. In response to this, the Department noted that, under the current SOLA pilot, the role of the adviser does not include a requirement for them to form part of court proceedings. It advised however that, if at the end of the pilot it is decided that the advisers would be part of the court proceedings to provide advice to the complainant, they will be excepted from the exclusion direction under 'persons

directly involved in the proceedings' under new Article 27A(2)(b). This is further defined in new Article 27A(7) – 'legal representatives acting in the proceedings'.

183. The Department also clarified that members of the Witness Services would be excepted from exclusion under 'members and officers of the court' listed under new Article 27A(2)(b).

184. The Law Society suggested that there is an argument for only accredited members of the press to be present during trials of this nature as this would assist in the observance of anonymity and would prevent details being made public through other means such as social media. In its response, the Department advised that the provision has been created in line with recognised practice in identifying suitability of admission for the press, which is currently applied by the courts in the case of special measures. The Department pointed out that, presently, there is no agreed method of journalist accreditation in Northern Ireland. It advised that it will work with the Northern Ireland Courts and Tribunals Service, as a key operational partner in the delivery of this provision, to ensure that guidance ensures understanding on those members of the press that can be admitted under the terms of the provision.

185. **The Committee considered the comments made in the written and oral evidence and the Department of Justice's response to the issues raised and agreed that it is content with Clause 15 as drafted.**

186. **While the Committee is content to support the principle of the Department's amendment to Clause 15 to include the Court of Appeal as a setting where the public can be excluded from appeal hearings against conviction or sentence in serious sexual offence cases, there has not been time to consider the text in detail, seek the views of key stakeholders and carry out adequate scrutiny before the end of the Committee Stage of the Bill. The Committee has therefore agreed to note the amendment and to provide the text to the PSNI, the PPS, the Law Society and the Bar for views/comments.**

New Clause 15A – Guidance

187. References have been made to the need for guidance, training and data collection in relation to a number of the Clauses in Part 1 of the Bill to ensure the effective implementation of the provisions of the Bill, and also in relation to the amendments to this part that the Minister proposes to bring forward (the proposed Ministerial amendments are considered later in this report).

188. Some of the guidance suggested related to specific matters. As noted earlier in this report, for example, the PSNI advised of the need for operational guidance in respect of live streaming and how this would be captured and explained by the child involved to provide the required evidence while NIWEP urged that clear guidance is provided to the courts and the judiciary on the principles under which variations to the anonymity clause may be made, and on the full extent of responsibilities of information society providers.

189. More generally, ICTU suggested that the Bill be accompanied by the rollout of comprehensive guidance and public education, to include educational settings as well as workplaces, to ensure that the new offences are fully understood. They suggested that guidance for employers and workplaces should be co-designed with employers and trade unions while guidance in educational settings should include formats which are accessible and should be co-designed with young people.

190. The NSPCC noted the need for clear guidance in education settings to ensure consistent procedures and informed decision making in identifying and reporting risks and advised that robust and consistent education on healthy sexual development and the laws relating to sexual behaviour should be a priority.

191. In its written response to the issues raised in evidence, the Department advised of its intent to establish a Task and Finish Group on which all operational partners, including the PSNI, will be represented and which will address issues of practitioner guidance and awareness raising of the new offences with all those on whom the new provisions will impact. The Department stated that the Group will be responsible for steering implementation of all provisions in the Bill.

192. In terms of training, NIWEP advised that it would welcome “capacity building” for all stakeholders, including the police as well as judiciary, on the roots of gender based sexual violence in patriarchal social norms and systems, in order to effectively prevent and address future offending.

193. WPG stated that police officers and PPS staff should receive training to ensure cultural competency and best practice for supporting victims from different backgrounds and to address less recognised forms of domestic abuse and suggested that LGBT+/Disability/Migrant Domestic Violence Liaison Police Officers and specialist Independent Domestic Violence Advocates should be in place.

194. Victim Support advised that appropriate training is essential for those who are involved in the victim’s criminal justice journey including the PSNI and the PPS. They drew the Committee’s attention to the Gillen recommendations around mandatory training for legal practitioners. They advised that they appreciated that primary legislation is not necessarily the best vehicle for bringing in mandatory training; however, in the absence of cooperation of the relevant bodies, it may be important to consider as an alternative route in the future.

195. The PSNI advised that, through training and effective operationalisation, they will ensure that the new legislation will be correctly implemented. During the oral evidence session, the PSNI’s approach to training officers on new offences was explored using the new offences introduced by the Domestic Abuse and Civil Proceedings Act 2020 as an example. The Committee was advised that the training had been devised in partnership with Women’s Aid and the Men’s Advisory Project as it was considered important to include those who deal with victims on a day-to-day basis. It is an interactive training programme with four modules that requires certain questions to be answered or tasks completed before an officer can move on to the next part. Although front-line roles have been prioritised, the PSNI advised that the course is applicable to any officer or member of staff. The PSNI informed the Committee that they would propose to follow a similar approach with this Bill.

196. With regard to data collection, the Northern Ireland Council for Racial Equality (NICRE) noted in its written submission its concern that there is no requirement

for the PSNI in relation to ethnic monitoring in all domestic and sexual offences against BME Women and Children, including Muslim women and children.

197. The WPG stated that more robust reporting and monitoring of all section 75 groups is needed within the PSNI and broader Criminal Justice System as it is important to have a greater understanding of the identities of victims. In their oral evidence they outlined that there is no disaggregated data or equality monitoring for victims of sexual violence, domestic violence or any other forms of gender based violence. They consider that there is a gross underestimation of the levels of serious sexual offences against migrant and ethnic minority victims because of under-reporting and also that the LGBTQ+ community is a hidden population in domestic abuse and sexual violence. Disaggregated data would allow a clearer scope of the issues and to see where outreach is needed and with which communities.

198. The NIHRC also spoke of the need for disaggregated data in their oral evidence to the Committee and advised there must be a concerted effort to gather reliable data. They advised that "*the law needs to be tailored to meet the needs of victims, strategies need to be developed to tackle the myriad issues in a very practical way and, therefore, resources need to be allocated appropriately. In our view, that data should be published widely so that it can be used and drawn on by experts, not just in the legal field or in the protection field.*"

199. The NIHRC went on to say that the evidence, statistics and data collection should feed into training. In addition, they stated that data collection cannot be left to Women's Aid or academic researchers alone who do not have access to information held by the PPS, the PSNI and the NICTS. In response to a Member's question, the NIHRC advised that they would see no issue with collecting and publishing disaggregated data based on section 75 of the Northern Ireland Act 1998.

200. The Committee believes that guidance, training and data collection are fundamental to the effective implementation of this legislation, and in particular the new offences being created, one of which is unique to this jurisdiction. It therefore agreed to bring forward an amendment to place a duty on the

Department to provide and review in due course guidance covering training and data collection on Part 1 of the Bill.

201. The Committee advised the Minister of Justice of the intent of its potential amendment. In the response dated 19 January 2022, the Department advised that the Minister is committed to ensuring the provision of guidance, training and data collection which remains a key component in effective implementation carried out by the Department and the relevant justice agencies. However, the Minister is conscious of the proposed budget and constraints and the negative impact placing a requirement on the Department on the face of the Bill would have, particularly in terms of a focus on administration rather than delivery and, consequently, does not support the amendment.

202. The Committee considered the Minister's position at the meeting on 20 January 2022 and concluded that, given the Minister's commitment to the provision of guidance, training and data collection, there would be no detriment to placing the requirement on the face of the Bill. **The Committee agreed to bring forward the following amendment to insert a new clause in the Bill to place a duty on the Department to provide and review in due course guidance, training and data collection on Part one of the Bill:**

Page 19, Line 21, insert new clause –

'*Guidance about Part 1*

15A. (1) The Department of Justice must issue guidance about–

(a) the effect of this Part, and

(b) such other matters as the Department considers appropriate as to criminal law and procedure relating to Part 1 in Northern Ireland.

(2) The guidance must include–

(a) information for use in training on the effect of this Part as it considers appropriate for its personnel, and

(b) the sort of information which it seeks to obtain from personnel for the purpose of the assessment by it of the operation of this Part.

(3) Personnel in subsection (2) being any public body that has functions within the criminal justice system in Northern Ireland which the Department of Justice considers appropriate.

(4) A person exercising public functions to whom guidance issued under this Part relates must have regard to it in the exercise of those functions.

(5) The Department of Justice must—

(a) keep any guidance issued under this Part under review, and

(b) revise any guidance issued under this Part if the Department considers revision to be necessary in light of review.

(6) The Department of Justice must publish any guidance issued or revised under this section.

(7) Nothing in this Part permits the Department of Justice to issue guidance to a court or tribunal.'

PART 2 – TRAFFICKING AND EXPLOITATION

203. This part of the Bill amends the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 (the 2015 Act) to extend support to victims of slavery, servitude and forced or compulsory labour where there is no element of trafficking and changes the statutory requirement to produce an annual modern slavery strategy.

204. There was widespread support for Part 2 of the Bill in the evidence received by the Committee including from the Minister of Health and the Minister for Infrastructure.

205. Both CARE NI and the Migrant Justice Project, which submitted evidence on behalf of the Law Centre NI in conjunction with Belfast and Lisburn Women's Aid, Flourish NI and Migrant Help believed the Bill should go further to ensure and improve support and protection for victims of trafficking and exploitation. Both suggested a range of areas that could be taken forward by amendments to the Bill and/or by seeking Ministerial assurances.

Clause 16 – Support for victims of trafficking etc.

206. Clause 16 has the effect of extending the statutory assistance and support provided under Section 18 of the 2015 Act to adult potential victims of slavery, servitude or forced or compulsory labour where there is no element of trafficking.

207. Departmental officials outlined, when they attended the Committee meeting on 9 September 2021 to discuss the principles of the Bill, that this Clause extends statutory assistance and support to adult potential victims of slavery, servitude and forced or compulsory labour where there is no element of trafficking. This support to such victims has been in place in Northern Ireland since March 2016 but it is not a statutory requirement. In the Department's view placing the arrangements on a statutory footing provides reassurance for those victims that it is committed to providing such support and assistance.

208. No issues were raised in relation to this Clause, however both CARE NI and the Migration Justice Project wanted to see the statutory support and assistance

provided to victims of trafficking and exploitation extended beyond what is currently available.

209. CARE NI welcomed Clause 16 which it considers is a positive step to ensuring support is provided to all victims of modern slavery while they are in the National Referral Mechanism (NRM) process which determines whether a person is a genuine victim of trafficking or slavery. However, it also recommended that support should be available after the NRM for those who have a positive conclusive decision for a period of 12 months. According to CARE NI most confirmed victims of modern slavery are unable to access support with any degree of security from the point at which they are confirmed to be a victim. While Section 18(9) of the 2015 Act provides for support to be continued on a discretionary basis following a positive conclusive grounds decision, under this power support is currently only being provided to a limited number of victims and only as a short-term transition to mainstream services or repatriation.

210. CARE NI stated that victims of trafficking have normally experienced significant trauma and can face major challenges and barriers to moving on with their lives such as poverty, mental health issues, alcohol or substance misuse, homelessness etc. In its view it makes no sense to support people who may be victims of modern slavery during the NRM process, as provided for in Section 18 of the 2015 Act for a minimum period of 45 days, but not continue that support when the NRM confirms they are a victim. While support can continue to be provided under the 2015 Act, it is discretionary. CARE NI stated that if a confirmed victim is left without support to help them recover from the trauma of being trafficked, they will be extremely vulnerable to being re-trafficked. They will usually feel very vulnerable and in no place to decide whether they are ready to help the police and give evidence in court whereas if they receive support for 12 months it will provide a sense of stability and security and will also mean the police are likely to know where the victim is and be able to approach them to appear as a witness in any criminal case against the traffickers. Long-term support is therefore not just necessary to facilitate recovery but is also central to bringing traffickers to justice. CARE NI also highlighted that, in October 2020, the NI Assembly had unanimously supported

a motion calling for '*consideration of further support for victims of trafficking beyond the end of the support provided under the NRM'.*

211. According to CARE NI longer term support has been available in England and Wales since September 2019 to confirmed victims under the Recovery Needs Assessment[11] although this is neither a statutory scheme nor guaranteed for any amount of time. More recently, as CARE NI outlined in its letter dated 13 December 2021, during the Report Stage of the Nationality and Borders Bill at Westminster the Minister provided an assurance that *"all those who receive a positive conclusive grounds decision and are in need of tailored support will receive appropriate individualised support for a minimum of twelve months and we will set out further details in relevant guidance."* As support is a devolved matter this commitment only applies to England and Wales.

212. CARE NI is of the view that leaving victim support to guidance does not go far enough to provide the security and stability confirmed victims of modern slavery deserve and which is vital to both a victim's recovery and engagement with police and the current channels for supporting victims of modern slavery after the NRM in Northern Ireland are inadequate. It therefore continued to recommend that the current discretionary support should be extended to 12 months' statutory support for those with a positive conclusive grounds decision by way of an amendment and stated that if the Bill passed without some recognition of the longer-term needs of victims, Northern Ireland would be significantly behind England and Wales. It believes this change would offer value for money and would help the limited number of confirmed victims of modern slavery in Northern Ireland who have leave to remain to access the kind of sustained support required to enable them to recover, guarding against re-trafficking and building resilience to empower them to engage in the court process and thereby help secure an increased conviction rate. Such an amendment, if supported by the Assembly, in CARE NI's view would also bring

[11] L V P Case Summary https://www.duncanlewis.co.uk/news/Home_Office_concedes_that_their_45_day_policy_for_providing_support_for_victims_of_trafficking_is_unsatisfactory__(28_June_2019).html

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/953307/recovery-needs-assessment-v3.0-gov-uk.pdf

pressure on the UK Government to change the policy on immigration leave for such victims.

213. During the oral evidence session with CARE NI on 11 November 2021 the Committee explored the proposal for the provision of support for victims with a positive conclusive grounds decision further and sought information on the likely resource commitment this would require. CARE NI stressed that, while there would be financial costs, this would have a real impact in the lives of vulnerable individuals, and would help the limited number of confirmed victims in NI who have leave to remain to access the kind of sustained support they need to help them rebuild their lives. CARE NI indicated that the number of victims was likely to be small and only British citizens or people who have leave to remain as asylum seekers or based on humanitarian protection or the current discretionary leave to remain for victims of trafficking would be able to access the support and noted that immigration status is a matter determined by the Home Office. It also highlighted that Nottingham University did a cost-benefit analysis in 2019 of providing support and leave to remain for 12 months to victims in England and Wales which found that there would be a direct and indirect financial benefit to the Government in providing victims with that support.

214. CARE NI responded to questions regarding how to avoid the support becoming an inducement to stay in Northern Ireland for the full 12 month period for those victims who wished to return to their home country by indicating that there would need to be a tailored, individual support plan that looks at what is best for the individual and their specific needs, and that aims to set them on a stable pathway to recovery, whatever that may look like. When asked for its views on whether support should continue to be provided for a person appealing a negative conclusive grounds decision, it advised that, while it had not considered the matter in depth, it was of the view that if it cannot be said that they are not a victim then support should be provided.

215. The Migration Justice Project also highlighted that a positive NRM conclusive decision does not in itself give rise to a benefit entitlement resulting in the perverse situation in which some recognised survivors of human trafficking are homeless, destitute and completely reliant on charitable support. It invited the

Committee to consider either amending the relevant social security legislation to specify that a positive conclusive grounds decision provides a right to reside for benefit purposes or alternatively, seek an amendment to Section 18(9) of the 2015 Act to create a new power for the Department of Justice to award ex gratia payments to all persons with a positive conclusive grounds decision. It noted that discretionary support may provide the means by which this could be delivered.

216. In oral evidence to the Committee on 11 November 2021 representatives of the Migration Justice Project stated that the main category of affected persons was European nationals who had been granted pre-settled status and the numbers were small – approximately 49. The situation arises due to the complex interaction between social security, immigration and trafficking policy. It also indicated that it would support the provision of continuing support while a person was appealing a negative decision. The Committee sought further information regarding the potential cost of providing support to all persons with a positive conclusive grounds decision and this was provided in writing following the evidence session. In its letter dated 8 December 2021 the Migration Justice Project estimated the cost to be approximately £0.35 million per annum to provide financial support to persons with a positive NRM outcome who are either an EEA victim with pre-settled status or a non EEA victim waiting for a decision on a concurrent asylum claim or other immigration application. It noted that other categories of victims including an EEA victim with settled status and a non EEA victim who has been granted a residence permit are eligible for social security and therefore do not need additional post NRM support from the Department of Justice.

217. The Migration Justice Project also advised that since the oral evidence session it had discussed the matter with Department for Communities officials and, while the discussions were ongoing, it accepted that amending the relevant social security legislation would be a complex and time-consuming piece of work and may only be able to provide a partial remedy. It was therefore of the view that the simplest solution was for the Department of Justice to provide post NRM financial support for a period of 12 months, including the full range of support services listed at Section 18(7) of the 2015 Act, to all persons with a

positive NRM outcome who do not otherwise have an entitlement to social security and believed this could be done without legislative change. The support could end sooner if it is no longer required e.g. if the person successfully obtains a right to reside for social security purposes or obtains work. It also proposed that the Department consults with key stakeholders – specifically Flourish, Migrant Help and Women's Aid – on how to provide the post NRM support. The Project again outlined its proposal for the provision of post NRM support for victims with a positive conclusive determination in further correspondence dated 13 January and reiterated that the estimated cost of approximately £0.35m per annum was modest but would significantly reduce the risk of further exploitation/re-trafficking.

218. The Department of Justice, in written and oral evidence, confirmed that Section 18 of the 2015 Act places a statutory duty on it to provide assistance and support to adults who are potential victims of human trafficking during a 45-day recovery and reflection period pending the determination of their status as victims through the NRM process and also provides for support to be continued on a discretionary basis following a positive conclusive grounds decision based on assessed need. There is no minimum or maximum period prescribed and in reality many will receive support for a period of up to a year. The Department outlined that, in 95% of all current cases, support is provided for in excess of 45 days and for cases going through the NRM process support is typically provided for 150 days and, in some cases, in excess of 500 days. This is based on the length of time being taken for the Home Office Competent Authority to make reasonable grounds and conclusive grounds decisions on individual cases. It stated that routinely extending support for an additional 12 months would have significant resource implications. 2020 figures show that 128 individuals entered the NRM and in 2021 for the period to the end of the third quarter 266 individuals had entered the NRM. On average across the UK, 90% of cases referred receive a positive conclusive grounds decision.

219. The Department highlighted that the Minister of Justice has made a clear commitment to progress the work to increase support for trafficked victims, but time is necessary to develop an appropriate and well thought-out framework supporting enhanced statutory support. It stated that scoping the demand for

longer-term support post conclusive grounds decision is a key element of that and the intention is to take forward an exercise as a matter of urgency and to engage with stakeholders over the coming weeks to establish an evidence base for the longer-term support needs of victims. This work is also a key element of the development of a longer-term strategy for human trafficking and modern slavery. The Department referred to a project it is funding to prevent the re-exploitation of modern slavery survivors and empower them to move on and lead lives that are not defined by their past circumstances which will inform a potential model for extending support.

220. When questioned by the Committee on whether the work to scope extending support arrangements had commenced in April 2021 as previously indicated by the Minister in response to an Assembly question, officials advised that the work had been delayed by other pressures but it is a key issue that they were beginning to explore and would focus on in the early part of 2022. They were of the view there is a clear need to develop a focused and well-targeted approach and it is important to scope out the range and type of support that needs to be addressed. They also emphasised that the Department has used the discretion provided by Section 18(9) of the 2015 Act in a flexible way and is open to supporting victims beyond the stipulated period. The issue of whether support could be extended to those victims who were appealing a negative NRM decision under the current discretion provided to the Department was raised and officials advised that the parameters within which the Department provides support are if an individual is in the NRM or is about to be referred into the NRM or has a positive conclusive grounds decision. In their view support could not currently be extended to those who are appealing a negative decision - such a scenario would most likely require a legislative change - but the implications and potential benefits of the provision of such support could be considered going forward when looking at extended support more generally under the ‘increasing and enhancing support’ key action in the Modern Slavery Strategy.

221. The Department subsequently clarified in written correspondence dated 9 January 2022 that under Section 18 of the 2015 Act assistance and support is to be provided to a person until such times as a negative reasonable grounds determination, a negative conclusive grounds determination or a positive

conclusive determination (that has been made after the 45-day period) is received. Section 18(9) provides for discretionary support from the Department. However, having taken legal advice, the Department advised that this refers to those who have received a reasonable or conclusive grounds decision that they have been a victim of human trafficking and there is no discretion to provide continuing support to someone who has received a negative conclusive grounds determination. To change this would require an amendment to the legislation.

Committee Consideration

222. The Committee acknowledges that victims of modern slavery and trafficking are victims of the most horrendous crimes and is concerned that the number of victims is increasing but the number of convictions remains low. It supports placing on a statutory footing the assistance and support provided to adult potential victims of slavery, servitude and forced or compulsory labour where there is no element of trafficking as provided for by Clause 16.

223. The Committee also believes that there are strong arguments for ensuring support is provided to victims who need it rather than providing it on a discretionary basis, not only pending the determination of their status through the NRM process but from the point at which they are confirmed to be a victim following a positive conclusive grounds decision, to enhance protection from re-trafficking and assist in their recovery and engagement with the criminal justice agencies to help secure increased convictions. Ensuring support is particularly important given the potential future pressures on the Department's budget which will result in difficult funding decisions having to be taken and discretionary areas of spend potentially being reduced or ceased.

224. The Committee agreed to consider potential amendments to the Bill to provide statutory support beyond 45 days to cover from presentation stage to NRM decision based on need and to provide support after a positive NRM for 12 months or less if no longer required. It also considered legislating for support following receipt of a negative NRM decision for those appealing the decision until the outcome of the appeal in the Bill but, noting that there is no formal appeal process for a negative NRM decision but rather it is through the courts

by way of judicial review, the Committee agreed to ask the Department to include consideration of provision of such support in its Modern Slavery Strategy and Action Plan.

225. The Committee advised the Minister of Justice of the intent of its potential amendments and, in a response dated 19 January 2022, the Minister indicated that she did not believe that the amendments were necessary as the Department, at present, already provides such support. In particular, in her view, there was a risk that the provision of support for 12 months post a positive NRM decision could create a false perception that the support would be available for 12 months in all circumstances and discourage some victims from moving out of support.

226. The Committee considered the Minister's views at its meeting on 20 January 2022 however remained of the opinion that the provision of such support should be a statutory requirement and noted that the potential amendment provided for the support following a positive NRM decision to be provided for 12 months or less if no longer required. **The Committee agreed to bring forward the following amendments to Clause 16 to provide for support from presentation stage to NRM decision based on need and to provide support after a positive NRM for 12 months or less:**

Clause 16, Page 20, Line 6, at end insert –

'(aa) in subsection (4) after 'days' insert '(or more based on need)''

Clause 16, Page 20, Line 6, at end insert –

'(ab) in subsection (9) leave out 'such further period as the Department thinks necessary' and insert 'for 12 months (or less if not required)''

Clause 17 – Reports on slavery and trafficking offences

227. Clause 17 removes the requirement to publish an annual strategy on offences under Section 1 and 2 of the 2015 Act and replaces it with a requirement to publish such strategy at least once every three years.

228. The purpose of the annual strategy, as set out in the 2015 Act, is to raise awareness of modern slavery offences and contribute to a reduction in the number of these offences.

229. A number of organisations indicated support for the move from an annual strategy to the publication of a strategy at least once every three years including Barnardo's, the Law Society, Lisburn and Castlereagh City Council, the NSPCC, the NI Commissioner for Children and Young People, the Public Prosecution Service, the Safeguarding Board for Northern Ireland, the South Eastern Area Domestic and Sexual Violence and Abuse Partnership, the Southern Health and Social Care Trust – Children and Young People's Services, Unite, Women's Aid and Victim Support NI.

230. Views expressed included that a three-year strategy will allow a multi-agency response to safeguarding and protecting children and young people from slavery, trafficking and exploitation, it will be less of a burden administratively and it will enable a more longitudinal assessment to be made of the functioning of the law while still requiring regular monitoring.

231. While welcoming the provision, the NIHRC suggested that robust monitoring and measurement arrangements are needed, the Migration Justice Project wanted to see annual progress reports and CARE NI recommended that the Department of Justice should be required to publish annual progress reports in line with the recommendation in the Criminal Justice Inspection Northern Ireland (CJINI) Report on Modern Slavery and Human Trafficking. NIWEP also emphasised that ongoing intelligence and data collection and monitoring remains important to ensure timely action both on individual cases of trafficking and trends that may be identified through intelligence gathering.

232. Departmental officials confirmed in writing and when giving oral evidence on the Bill that annual progress reports on any future Modern Slavery and Human

Trafficking Strategy will be published in line with the CJINI Report recommendation and highlighted that the Minister had provided a commitment during the Second Stage Debate on the Bill that the Department *"will continue to produce annual progress report updates."* This will maintain transparency around progress and help to raise the issue and increase communication with the public about modern slavery and human trafficking. The annual threat assessment published by the Organised Crime Task Force also includes modern slavery and human trafficking.

233. The officials also advised that monitoring and measurement arrangements will form a key element of the new strategy that is being developed and outlined that changing the timeframe for publication of the strategy to at least once every three years will enable longer-term objectives with actions or implementation plans recording milestones for each financial year to be included. This will facilitate better focus on implementation of the actions underpinning the strategic goals and monitoring progress, particularly as some objectives span more than one year.

234. **The Committee noted the commitments provided by the Minister and the officials to publish annual progress reports and agreed that it is content with Clause 17 as drafted.**

OTHER ISSUES RAISED IN RELATION TO TRAFFICKING AND EXPLOITATION

Slavery and Trafficking Risk Orders

235. CARE NI highlighted that the 2015 Act does not currently contain Slavery and Trafficking Risk Orders (STROs). These Orders are applicable in England and Wales and can be made on application to the court where the person's behaviour indicates that there is a risk they will commit a human trafficking/modern slavery offence and that an order is necessary to protect the public.[12] In CARE NI's view STROs would be useful in Northern Ireland in two circumstances:

- When a defendant is convicted for a crime other than human trafficking, but where there are suspicions that trafficking may have been involved or there is a connection between trafficking and that offending behaviour – most obviously where people are convicted of controlling prostitution for gain or brothel keeping. It is widely accepted that human trafficking/modern slavery crimes are complex and difficult to investigate and that it is difficult to gather all the necessary evidence in relation to such cases. In these situations when convictions are secured STROs can be applied.

- Where people have not (or not yet) been convicted. This includes situations where there is a need to protect future potential victims while modern slavery/human trafficking crimes are being investigated, especially where such investigations are very long and drawn out.

236. CARE NI referred to the comments of the Independent Anti-Slavery Commissioner in her 2019/20 Annual Report that *"the risk orders can be particularly helpful when investigations are lengthy and make it possible to protect victims prior to prosecution…In Northern Ireland the legislation did not include risk orders but I urged the minister for justice when I met her in February 2020 to reconsider their value as evidence of effective use in England and*

[12] https://www.legislation.gov.uk/ukpga/2015/30/part/2/crossheading/slavery-and-trafficking-risk-orders

Wales and Scotland emerges."[13] The Commissioner also reiterated this recommendation when she spoke recently at an event hosted by the All-Party Group on Modern Slavery in Stormont, highlighting STROs as a means of protecting victims of modern slavery.

237. CARE NI also drew attention to the CJINI report in October 2020 which included some evidence of examples from England and Wales of the beneficial use of STROs in cases where there are protracted investigations (i.e. applying for an STRO before a prosecution might be brought) and indicated that "*these civil orders were seen as an important tool to prevent slavery-related harm before it occurred and to prevent re-offending*".[14] CJINI recommended that *"The Department of Justice, in consultation with the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland, and after consideration of the experience in England and Wales, should re-examine the need for Slavery and Trafficking Risk Orders in Northern Ireland to prevent modern slavery and human trafficking-related crime and support victims within one year of the publication of this report."*[15]

238. While noting that the Department of Justice Annual Strategy 2021/22 published in May 2021 included a commitment to "engage with key stakeholders to consider the potential benefits and implications of introducing Slavery and Trafficking Risk Orders (STROs) in Northern Ireland based on evidence and experience from other jurisdictions"[16] CARE NI stated that no public consultation had yet been announced to engage with stakeholders on this matter and recommended that a new Clause should be included in the Bill to provide for STROs in Northern Ireland.

239. During the oral evidence session on 11 November 2021 the Committee discussed STROs with CARE NI and requested further information on their use and effectiveness in England and Wales. In correspondence dated 2 December

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13 Independent Anti-Slavery Commissioner Annual Report 2019/20 para 2.3.3. See also the Independent Anti-Slavery Commissioner's 2020/21 Annual Report para 2.3.8

14 Ibid. paragraphs 2.46-2.48

15 Ibid. Operational Recommendation no. 1

16 https://www.justice-ni.gov.uk/sites/default/files/publications/justice/modern-slavery-strategy-27-05-v2_0.pdf

2021 CARE NI outlined that, in England and Wales, 29 STROs were granted by the magistrates' court in 2020/21 and 26 were granted in 2019/20. In 2017 the Home Office commissioned a review of the effectiveness of STROs which found consensus amongst those in law enforcement sampled for the review that they were a useful and effective tool in preventing further modern slavery offending. The review also noted that there were considerable advantages to the use of such orders compared to bail conditions, noting that it gave them additional tools to place restrictions on perpetrators.[17] The same report highlighted the significant impact that STROs can have when criminal proceedings are not possible and provided a number of case studies to illustrate this. In May 2019, the Independent Review of the Modern Slavery Act 2015 noted *"Police officers told us that Risk Orders could be a useful tool to disrupt offending networks and prevent further exploitation or trafficking."*[18]

240. In CARE NI's view the evidence illustrates that the adoption and application of STROs in Northern Ireland could provide both a means of protecting victims of modern slavery and a means of monitoring and deterring potential offenders and the Bill provides the opportunity to do this.

241. The Migration Justice Project, when asked for views on the potential introduction of STROs in NI, advised that its organisations were broadly supportive of STROs and viewed them as additional tools available for law enforcement to disrupt human trafficking and exploitation. They did think it would be beneficial to examine their effectiveness and their feasibility in NI through a consultation process and looked forward to the Department fulfilling its commitment to engage with stakeholders on the issue in accordance with the 2020/21 the Modern Slavery strategy[19] when there should be an opportunity for organisations working in GB to provide their experiences of STROs so that they can be amended to improve their effectiveness, if needed, before being implemented here.

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[17] https://www.nwgnetwork.org/wp-content/uploads/2019/06/STPO-and-STRO-review-2.pdf - see paragraph 30.

[18] Independent Review of the Modern Slavery Act 2015, May 2019, para 3.2.1, page 66

[19] modern-slavery-strategy-27-05-v2_0.pdf (justice-ni.gov.uk) page 20.

242. The Department of Justice officials, during the oral evidence session on 9 December 2021, advised that they were currently finalising preparations for a public consultation in early 2022 on the introduction of STROs in Northern Ireland and the Minister believes that STROs make good sense and are important. The aim is to consult and then find an appropriate legislative vehicle as soon as possible in the next Assembly mandate depending on the outcome of the consultation. They clarified that STROs had originally been consulted upon sometime around 2014/15 and some of the respondents at that time raised concerns about human rights implications and the fact that the orders might apply to individuals who had not been convicted of any offence. A decision was made at that time not to include STROs in the 2015 Act. Since then STROs were introduced in England and Wales in 2015 and Scotland have the equivalent called a trafficking exploitation risk order.

243. The Committee raised the fact that Stalking Protection Orders (SPOs), which do not require criminal convictions, are being brought forward in the Protection from Stalking Bill and questioned whether the human rights issues raised back in 2014 in relation to STROs were of the same nature as those considered and addressed in the context of SPOs. The Department acknowledged that the position in relation to STROs has developed but its preferred approach would be to consult on them again.

244. The Committee subsequently sought clarification of when the previous consultation had been undertaken on STROs and the Department advised in its letter dated 9 January 2022 that a 12-week consultation titled 'Human Trafficking and Slavery: Strengthening Northern Ireland's Response' had taken place between 21 January and 15 April 2014 and covered the proposed introduction of STROs. It outlined the points raised at that time including strong concerns about their impact on human rights and civil liberties, including that if STROs were to be introduced, further safeguards would need to be put in place to ensure that such orders did not constitute an interference with Article 8(1) rights and some concerns that, although these were civil orders, they could potentially stigmatise the recipient to the same degree as an actual conviction. The Department also acknowledged that since that consultation there has been more experience of dealing with the issues of modern slavery human trafficking

(MSHT) and that the Independent Anti-Slavery Commissioner and CJINI have recommended that the Department should consider the introduction of STROs. There is also widespread support for their introduction by a range of Non-Governmental Organisations (NGOs) and bodies involved in MSHT issues. As previously advised the Department therefore intended to take forward another consultation on STROs in the near future.

Committee Consideration

245. The Committee believes that STROs would be a useful additional tool in Northern Ireland to tackle and disrupt human trafficking and modern slavery and to assist in preventing re-offending. The Committee noted the examples of their beneficial use in England and Wales, the positive findings of the Home Office Review of their effectiveness in 2017 and the findings of the May 2019 Independent Review of the Modern Slavery Act 2015 as outlined in the evidence provided by CARE NI. The Committee also noted that, according to the Department, there is widespread support for their introduction in Northern Ireland from those organisations involved in MSHT issues.

246. The Committee is disappointed with the lack of progress with regard to the introduction of STROs, particularly given the CJINI Report recommendation that the Department should re-examine the need for them within one year of the report being published in October 2020. The Committee notes that the consultation that the Department intends to undertake in relation to STROs is unlikely to be published before February 2022 at the earliest and therefore any decision on introducing STROs will be subject to the views of the Minister of Justice in post in the next mandate and a legislative vehicle will also have to be identified in which the necessary provision can be included.

247. The Committee agreed that it wanted to see the work expedited to provide for STROs in Northern Ireland when a defendant is convicted of a crime other than human trafficking but there is a suspicion that trafficking may be involved or there is a connection between human trafficking and the offending behaviour, and where people who have not (or not yet) been convicted, including situations where there is a need to protect future potential victims while modern slavery/human trafficking crimes are being investigated, particularly when these

are very long and are drawn out, similar to that in place in England and Wales and in Scotland. While it appreciated the work CARE NI had undertaken in providing a very detailed amendment for STROs the Committee decided to consider an amendment to place a duty on the Department of Justice to bring forward STROs by 2024. This approach would provide the Department with the flexibility to take account of the findings of the consultation when shaping the provisions relating to STROs but also ensure they would be in place within a set timescale and avoid any further long delays.

248. The Committee advised the Minister of Justice of the intent of its potential amendment. In the response dated 19 January 2022, officials advised that, while the Minister does not believe that there should be a provision specifying STROs in the Bill given the plans for a consultation, she would be content with an amendment to bring forward an enabling provision to allow the Department to introduce measures to provide protection and safeguards, which may include STROs, by regulation, subject to approval by the Assembly.

249. The Committee considered the Minister's position at the meeting on 20 January 2022 and welcomed her support for an enabling provision. **The Committee agreed to bring forward the following amendment to place a duty on the Department to provide protection and safeguards such as STROs within 24 months of this Bill receiving Royal Assent:**

After Clause 17

Page 20, Line 17, insert new clause –

'Protective measures for victims of slavery or trafficking

17A. (1) The Department of Justice may by regulations, within 24 months of Royal Assent, make provision—

(a) enabling or requiring steps to be taken or measures to be imposed for protecting a person from slavery or trafficking,

(b) for the purpose of or in connection with such steps or measures for protecting a person from slavery or trafficking.

(2) Steps or measures which may be provided for in regulations under this section are not limited to notices or orders.

(3) The regulations may not be made unless a draft has been laid before and approved by a resolution of the Assembly.'

Rather than being prescriptive the Committee amendment provides for the details of such protection and safeguards to be set out in Regulations thus enabling the Department to consult on STROs and take account of the views received when progressing this work.

Extension of the Statutory Defence on Exploitation

250. Section 22 of the 2015 Act provides a statutory defence for victims and survivors of human trafficking in relation to certain offences. It gives effect to the principle of the non-punishment of trafficking victims that is affirmed in international law and guidelines[20] and is aimed at ensuring that a victim of trafficking is not punished for unlawful acts committed as a consequence of trafficking. In Northern Ireland the defence does not apply to an offence which, in the case of a person over the age of 21, is punishable on indictment with imprisonment for life or a term of a least 5 years, other than a defined list of offences including drug related offences in respect of Class B or C drugs and offences relating to false immigration documents. The Department has a power to amend the list of relevant offences which the statutory defence applies.[21]

251. The Migrant Justice Project questioned whether the existing statutory defence provides adequate protection for victims of emerging forms of criminal exploitation. It highlighted that, in recent years, there has been an increase in the number of victims of trafficking who have been trafficked for criminal exploitation, namely to distribute heroin. These victims tend to present with

[20] *See:* Council of Europe Convention on Action Against Trafficking in Human Beings (into force in 2008); EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims; ILO Protocol to Convention 29 (The Forced Labour Convention 1930); UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/ Add.1 (2002), etc.
[21] Section 22(10)

alcohol/drug dependency including addictions to Class A drugs and it is clear that their drug addiction is very much linked to their exploitation and the coercive means of their traffickers. It stated that, as currently drafted, the statutory defence in NI does not afford protection from prosecution for offences related to Class A drugs and it also may not provide protection against all the criminal activity associated with 'county lines', which is another emerging form of criminal exploitation in Great Britain.

252. The Migrant Justice Project also highlighted that the statutory defence does not appear to meet the Organisation for Security and Co-operation in Europe (OSCE)/UN Special Rapporteur's advice on the non-punishment principle given the finite number of offences to which it applies. The UN Special Rapporteur on trafficking in persons recently issued the following advice:

> *"The non-punishment principle applies to criminal, civil, administrative and immigration offences, regardless of the gravity or seriousness of the offence committed. Its effectiveness is undermined when application is limited to minor offences only. GRETA has repeatedly recommended that the non punishment principle be applied to all offences that victims of trafficking were compelled to commit and has recommended the removal of exceptions."*

and according to the OSCE recommendations, "*the duty of non-punishment applies to any offence so long as the necessary link with trafficking is established*". Any list of offences relevant to the non-punishment principle in domestic legislation or guidelines therefore must be clearly stated as being non-exhaustive.[22]

253. According to the Migrant Justice Project the legislative intent of the statutory defence in the 2015 Act was to ensure its availability for victims recovered from criminal exploitation relating to drug use. At that time there were a number of cases of human trafficking for cannabis cultivation in NI (cannabis is a Class B drug as per the Misuse of Drugs Act 1971) however heroin distribution had not materialised as a form of exploitation. While recognising that such offences

[22] A/HRC/47/34, 'UN Special Rapporteur on trafficking in persons especially women and girls: implementation of the non-punishment principle' 17 May 2021 at para 37.

would not necessarily result in prosecution according to PPS guidance that states:

"*Every case must be considered on its own merits, having regard to the seriousness of the offence committed. Should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this should be considered as a strong public interest factor mitigating against prosecution*."[23]

254. The Migration Justice Project recommended that the Committee request an update from the Department of Justice regarding its review of the statutory defence which was referenced in the 2021/22 Modern Slavery Strategy and consider revising the defence to more fully reflect the 'non punishment principle' and ensure that it adequately covers emerging forms of criminal exploitation. Women's Aid Federation NI and the Women's Policy Group NI supported these proposals.

255. The Department advised the Committee that a review of the statutory defence had commenced, which would look at all aspects of it including whether it should be amended, adapted or changed in any way. It was gathering evidence and reviewing relevant judgements and research including a report by the Anti-Slavery Commissioner on what was a very complex area. While it is there to protect victims or modern slavery there is a need to be careful that it is not open to any form of abuse.

Committee Consideration

256. The Committee considered this issue and decided to look at bringing forward an amendment to extend the statutory defence on exploitation to include Class A drugs to provide adequate protection for victims of this emerging form of exploitation. The views of the Department were sought on any implications if this change was made including whether the additional maximum sentence of seven years for Class A drugs as opposed to the maximum sentence of five

[23] PPS, 'Draft policy for prosecuting cases of modern slavery and human trafficking: draft for consultation' (PPS, January 2021) at para 4.1.5.

years for Class B drugs made any material difference to any exoneration or defence.

257. The Department advised the Committee in correspondence dated 19 January 2022 that, if the statutory defence was extended to Class A drugs offences attracting a sentence of at least five years' imprisonment on indictment, it would cover Class A drugs offences with the maximum sentence of seven years. In this instance, the upper threshold of a seven-year sentence would be irrelevant to the operation of the statutory defence. This is because the statutory defence either applies or does not apply to an offence. There is no sliding scale set out in the legislation as to how the statutory defence should be applied or interpreted according to the specific level of sentence.

258. The Department also indicated that the Minister understands the rationale of the Committee in proposing to include Class A drugs in the statutory defence provisions of the 2015 Act and is not opposed to the proposal.

259. **At its meeting on 20 January the Committee agreed to bring forward the following amendment to extend the statutory defence on exploitation to include Class A drugs:**

Clause 16, Page 20, Line 12, at end insert –

'(4) In section 22 (Defence for slavery and trafficking victims in relation to certain offences)–

in subsection (9)(a)(i) after 'of a' insert 'Class A,',

In subsection (9)(a)(ii) after 'of a' insert 'Class A or,''

Jury Directions in Human Trafficking/Modern Slavery Cases

260. CARE NI highlighted that, in its 2020 Report on Modern Slavery and Human Trafficking, CJINI had recommended a consultation on legislation to contain a requirement for jury directions to be given in modern slavery and human

trafficking offence cases to enable juries to approach court evidence in a more informed manner."[24]

261. CARE NI noted that the recommendation followed an earlier recommendation by CJINI in a different report regarding directions for juries in trials for sexual offences, neither of which appear to have been implemented.[25] The Department of Justice 2021/22 Modern Slavery Strategy did include an action point to take work forward in this area and the Minister of Justice in answer to a written Assembly Question in November 2020 said, "*My Department is looking at a number of recommendations relating to jurors' responsibilities emanating from the CJINI report on modern slavery and human trafficking and the Gillen Review, which includes a similar recommendation about giving directions to rape trial jurors (an issue which was also previously noted by CJINI). I intend to roll these together into a policy review in 2021, which will include a public consultation on a range of juror issues later in the year. Any proposals for legislation which emerge will be considered for inclusion in the legislative programme for the next mandate*."[26]

262. CARE NI proposed that there should be a new clause in relation to directions to juries in cases of modern slavery given the complex nature of such cases to enable them to approach court evidence in an informed manner, based on the precedent of how the Scottish Abusive Behaviour and Sexual Harm (Scotland) Act 2016 applies directions in cases involving sexual abuse, and provided the text of a potential amendment.

263. The Department advised that the issue of jury directions requires further consideration and will be taken forward more fully with relevant stakeholders in the context of the 3-year Modern Slavery Strategy.

264. **The Committee was content with this approach.**

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[24] CJINI Modern Slavery Report October 2020 Op.Cit. Strategic recommendation 3 page 87

[25] Ibid. para 3.191

[26] http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=313928

Access to Criminal Injuries Compensation by Trafficking Victims

265. CARE NI outlined that significant barriers have been identified that mean that many trafficking victims are not eligible for compensation under the criminal injuries compensation scheme. The problems appear to arise due to difficulties with the definitions of eligibility in the legislation underpinning the scheme and include:

- modern slavery and human trafficking are not specifically considered a crime of violence
- victims who do not suffer debilitating physical injury or diagnosable psychiatric injury are not eligible
- the need for medical evidence of injuries, both physical and psychological, which is not always possible for victims who have not accessed medical treatment or due to delays in accessing psychological services.

266. A further barrier for victims of trafficking is that applications can be rejected if the victim has failed to co-operate with the police or other authority in attempting to bring the assailant to justice.

267. CARE NI highlighted that Article 15(4) of the European Convention against Trafficking requires States to "*adopt such legislative or other measures as may be necessary to guarantee compensation for victims*."[27] The last GRETA report for the United Kingdom, published in 2016 recommended UK authorities should "*ensure that all victims of human trafficking are eligible for compensation from the Criminal Injuries Compensation Authority, regardless of the nature of the means used, and that the amount of compensation from the Northern Ireland Criminal Injuries Compensation Authority is not made dependent on the victim's co-operation with the authorities or prior convictions*."[28] Very few victims of trafficking have been awarded compensation under the criminal injuries

[27] https://ec.europa.eu/anti-trafficking/sites/default/files/cets_197.docx.pdf

[28] Group of Experts on Action against Trafficking in Human Beings (GRETA) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom Second Evaluation Round 7 October 2016, paragraph 245 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abcdc

compensation scheme operating in Northern Ireland: "*there have been no successful applications from victims of human trafficking under the Criminal Injury Compensation Scheme. There have been a total of 10 applications [in the last five years], eight of which have been denied and two are currently being processed by Compensation Service*s."[29]

268. Recognising that compensation for victims is important in helping their recovery and protecting them from re-trafficking, CARE NI proposed an amendment to the Bill to require the Department of Justice to make changes to the Criminal Injuries Compensation (Northern Ireland) Order 2002 to provide easier access to compensation for victims of modern slavery to ensure that victims receive the compensation to which they are entitled.

269. The Department, in its written response dated 19 January 2022, acknowledged that the Criminal Injuries Compensation Scheme in its current form makes it challenging for victims of modern slavery and human trafficking to access such compensation. Officials in MSHT Branch continue to liaise with the Compensation Service to identify whether there is scope to bring about the necessary changes to the Scheme. In addition they are providing additional training for Compensation Service staff to make them aware of the issues in modern slavery and human trafficking and to look for ways in which, even under the current structure and system, a better outcome could be provided to victims.

270. **The Committee noted the on-going work in this area.**

Quashing Historical Convictions Relating to Exploitation

271. The Migrant Justice Project, Women's Aid and the Women's Policy Group NI drew attention to the fact that the statutory defence does not provide a remedy for recognised victims who have prior convictions relating to their exploitation and Women's Aid provided details of a number of cases where prior convictions related to prostitution are making it extremely difficult for trafficked women to exit prostitution and move into mainstream employment. Despite the fact that

[29] http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=291584

these women have been conclusively recognised as victims of trafficking, they cannot avail of the protections afforded by the statutory defence and the criminal justice system fails to recognise them as victims of abuse.

272. The UN Special Rapporteur has advised that to fully implement the non-punishment principle, States must make provision for expungement of criminal records for trafficked persons:[30]

"Ensuring the full and effective implementation of the non-punishment principle requires ***provision for the expungement or sealing of all related criminal records and relief of any sanctions imposed****, including fines or other administrative sanctions. Such relief should be provided in legislative and other necessary measures and be supported through the provision of legal aid, to avoid an undue burden being placed on a trafficked person and to enable full recovery."*

273. The Migration Justice Project, Women's Aid and the Women's Policy Group were therefore of the view that legislative change is necessary to ensure that female victims of sexual exploitation are fully recognised as victims rather than perpetrators of crime and the statutory defence should be amended to provide retrospective effect or other provisions developed to provide relief from past convictions.

274. The organisations highlighted that the Irish Justice Minister had announced, in Spring 2021, an initiative to expunge previous convictions related to prostitution for victims of human trafficking[31] describing it as a "significant step in recognising and responding to the needs of victims of sex trafficking." An Garda Síochána had identified 607 convictions to be expunged as a result of this initiative and officials would be drafting the necessary legislative amendments to provide for the expungement. The initiative followed a recommendation issued by academics Dr Monica O'Connor and Ruth Breslin from the Sexual Exploitation Research Programme in 2020.[32] The organisations noted that the

[30] A/HRC/47/34, 'UN Special Rapporteur on trafficking in persons especially women and girls: implementation of the non-punishment principle' 17 May 2021 at para 50.

[31] Irish Government News Service Merrion Street: Minister McEntee announces initiative to expunge previous convictions for 'sale of sex' 26 April 2021.

[32] Dr Monica O'Connor and Ruth Breslin, 'Shifting the Burden' Sexual Exploitation Research Programme 2020 [34] AQW 21752/17-22. Answered 21/07/2021.

Minister of Justice, responding to an Assembly Question in July 2021, indicated that she was aware of this initiative, officials were liaising with their counterparts in the Department of Justice Ireland and she would be kept informed of developments.

275. While welcoming the liaison that is taking place the Migrant Justice Project, Women's Aid and the Women's Policy Group NI believe this issue needs urgent action. While the process by which a person can apply for a disregard and pardon of convictions for decriminalised sexual offences offers a model of how this could be done, the organisations would prefer that convictions are expunged automatically rather than placing the onus on the trafficked persons to apply to a scheme. They therefore recommended that consideration be given to providing retrospective effect to the statutory defence in the Department's upcoming review stating that it would be a missed opportunity if the review only looks at applicable offences. Given the on-going and profoundly negative effect of criminal records on female victims of sexual exploitation, as an essential immediate step the Migrant Justice Project suggested that the Committee should seek a Ministerial commitment for a timeframe for expunging prostitution-related offences within this current Assembly mandate.

276. Following discussion of this issue during the oral evidence session on 11 November 2021 when the organisations indicated that the number affected is likely to be small and probably no more than 50 given that prostitution has not been an offence since 2015, the Migrant Justice Project wrote on 8 December 2021 noting that amending the criminal law to provide retrospective effect to expunge previous convictions related to prostitution for victims of human trafficking could be a complex and lengthy process and preparing a draft amendment was beyond their expertise. It suggested that a practical 'work around' could be identified that could provide prompt relief for victims e.g. the Access NI disclosure process could be amended so that prostitution-related offences for recognised victims of trafficking are not disclosable and/or are not accessible to prospective employers. This would provide an interim remedy while the process of legislative change is underway. The Migrant Justice Project recommended that a taskforce be set up to quickly identify a short-term

and long-term solution to deliver the expungement of prostitution-related convictions and this should be included in the next Modern Slavery strategy.

277. The Department of Justice advised that Section 22 of the 2015 Act does provide the opportunity of a defence for victims who were forced to commit crimes, albeit with limitations on the nature of crimes committed that can be used as a defence. A review of Section 22 has commenced to look at whether there is scope to broaden this to encompass crimes of a more serious nature. It also confirmed that officials have been liaising with counterparts in Ireland with a view to learning lessons regarding the best approach.

278. During the oral evidence sessions with departmental officials on 9 December 2021 and 11 January 2022, they confirmed that the numbers involved were likely to be small and many of the offences are historical. They stated that some initial scoping of data had taken place but more work is required and the Department would look at it. They also advised that the Minister sees expunging such convictions as a reasonable approach and the aim is to carry out a more detailed review, take account of what is happening in other jurisdictions and bring forward proposals that may well mean a legislative change.

279. **The Committee welcomed the liaison taking place between officials on the approach to expunge previous convictions related to prostitution for victims of human trafficking announced by the Irish Justice Minister and the officials' commitment to take forward work on this issue.**

Healthcare Entitlement for Victims with a Negative NRM

280. The Migration Justice Project stated that individuals who are trafficked are likely to experience multiple physical and mental health risks and many suffer acute and long-term health problems. Access to free healthcare is therefore critical and this should extend to those who are challenging a negative NRM decision. This need has been underscored by Covid-19 where being able to access healthcare at a GP setting is vitally important for a range of reasons.

281. The Migration Justice Project outlined that healthcare is generally accessible for everyone in NI. However, it is only free for persons who are *ordinarily resident.* If a person is not ordinarily resident, then s/he is considered to be a visitor and must pay for the health treatment unless s/he : falls into a specified exemption category;[33] requires a specified services or treatment; [34] [35] or is from a particular country that has a reciprocal agreement with the UK. In general, survivors of human trafficking who are within the NRM process cannot be considered ordinarily resident and therefore would normally be liable to be charged. However, there is an explicit exemption contained in the NI healthcare legislation that means that *most* survivors of trafficking are not charged for their healthcare. Unfortunately, a very small number of survivors fall outside this exemption. NI healthcare legislation restricts access to free healthcare to survivors of human trafficking who are currently waiting for a NRM decision to be determined or who have received a positive conclusive grounds decision. No provision is made for persons who have received a negative conclusive grounds who may be challenging this decision. Operational guidance confirms that refused survivors of human trafficking are no longer exempt from health charges. Prior to 2015, refused asylum seekers were also liable to be charged for healthcare and deregistered from their GP. However, the Department of Health accepted a recommendation from the Health Committee to change the legislation to ensure that all asylum seekers retain an entitlement to healthcare while they remain in the jurisdiction.[36] New legislation came into effect in 2015

[33] The exemption categories are set out in the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015

[34] Services and treatments that are always free includes A&E, treatment for communicable diseases (including Covid-19) etc.

[35] A person who has been resident in NI for 2+ years and who can demonstrate poor health/disability may be awarded Personal Independence Payment. In theory, a person with Pre Settled status may be eligible to receive contribution-based benefits, however, in practice it is extremely likely that an exploited worker had a National Insurance Number.

[36] Committee for Health, Social Services and Public Safety, Hansard, 17 September 2014.

and makes it clear that all refused asylum seekers are eligible for healthcare.[37] This is confirmed in departmental guidance. [38] [39]

282. The Migration Justice Project highlighted that the relevant trafficking legislation in Scotland creates a discretionary power whereby Scottish Ministers can authorise medical treatment for victims of trafficking wo have received a negative conclusive grounds decision.[40] This provides a model which could be adopted in Northern Ireland.

283. The Migrant Justice Project organisations, supported by Women's Aid and the Women's Policy Group NI, asked the Committee to seek an assurance from the Minister that she will use the discretion that is available to her in the 2015 Act to ensure that persons with a negative NRM outcome may access healthcare and that justice and health officials work together to develop a process for such victims to be registered with a GP. Subsequently, in correspondence dated 8 December 2021, it advised that the Department of Health had confirmed that there is no scope within existing healthcare legislation for a person with a negative NRM outcome to access free healthcare.

284. The Migrant Justice Project therefore considered that a legislative amendment to the 2015 Act is necessary to provide a full entitlement to healthcare and proposed that this be brought forward in the Justice (Sexual Offences and Trafficking Victims) Bill. The organisations also want the wording of the provision in the 2015 Act relating to healthcare to be amended to replicate the provision of the Human Trafficking and Exploitation (Scotland) Act 2015 which, in its view, provides a more substantive healthcare entitlement. The Migrant

[37] The 2015 regulations revoke and replace the Provision of Health Services to Persons Not Ordinarily Resident Regulations (NI) 2005.

[38] 3.15 Regulation 9(b): asylum seekers and others seeking refuge—anyone who has made a formal application to the Home Office to be granted temporary protection, asylum or humanitarian protection is exempt from charges.

[39] [39] .16 Under this regulation anyone who has made an application for asylum even when it is failed is still exempt from charge Department of Health, PNOR Regulations Operational Guidance' (undated) at para 3.16.

[40] Human Trafficking & Exploitation (Scotland) Act 2015. See regulation 9

Justice Project stated that, in contrast, the existing NI provision could be interpreted quite narrowly in the future.

285. The Department of Justice advised the Committee that access to healthcare and extending healthcare entitlement falls to the Department of Health and officials from the two Departments had been discussing the issues raised by the NGOs. The Department highlighted that there had been instances where, under the discretion in Section 18 of the 2015 Act, it had supported specific healthcare measures for people. However, anything beyond what is currently provided as a discretionary matter would fall into the remit of the Department of Health. Changes to Department of Health legislation would have to be taken forward as a cross-cutting measure and considered by the Executive.

286. **The Committee noted that changes needed to legislation to address the issue raised fell within the remit of the Department of Health and it would not be possible to address it in this Bill.**

Family reunion rights for victims of trafficking

287. The Migration Justice Project followed up its oral evidence on 11 November 2021 regarding family reunion rights for victims of trafficking in a letter dated 8 December 2021. It stated that a vital legal route closed on 31 January 2020 with devastating consequences for victims and survivors of human trafficking and it is now extremely difficult for victims of trafficking to be reunited with their family members. Since the end of the Brexit transition period, the Dublin III Regulation can no longer be relied upon by persons separated from their loved ones. The family reunification provisions of Dublin III Regulation permitted EU member states to request that the Home Office “take charge” of asylum claims if eligible family members were present in the UK. This provided a mechanism whereby family members – often unaccompanied children – could be reunited with their parents, legal guardians or older siblings who had claimed asylum in the UK. The family reunification provisions under the Dublin III Regulation were more workable, and significantly faster, than the family reunion provision contained in the UK’s Immigration Rules. The Immigration Rules route is much more

restrictive in scope e.g. applies only to pre-flight spouses and minor children. Crucially, this route is only available to persons who have completed the asylum process and who have obtained refugee status, and the process can take several years.

288. The Migration Justice Project advised that a victim of trafficking cannot (re)integrate successfully into NI society while close family members remain stranded in dangerous circumstances and family reunification is an essential aspect of a victim's recovery. Family reunion is an immigration matter and thus sits with Westminster and, unfortunately, refugee family reunion rights are due to be further restricted through the Nationality and Borders Bill.

289. The Migration Justice Project suggested that the Committee may wish to ask the Executive to make representations to the UK Government about the urgent need for safe and legal routes for family reunion for victims of trafficking and asylum seekers in NI and made a practical suggestion that the Executive agrees a process with the Home Office whereby it can request that asylum claims are expedited. Once refugee status is granted, a family reunion application can then be submitted. This would at least minimise the period of separation between the victim of trafficking in NI and her/his family members. The suggestion does not ask the Home Office to examine the asylum claims differently; rather the Executive would identify potential family reunion cases that should be determined without undue delay.

290. **The Committee is aware of a range of immigration issues that need to be addressed but that fall outside the remit of the devolved institutions.**

PART 3 – PREVENTION ORDERS

291. This part of the Bill seeks to strengthen the effectiveness of the Sexual Offences Prevention Order (SOPO) and the Violent Offences Prevention Order (VOPO) in certain areas identified by key operational partners. The provisions applicable to both are relatively minor in nature and comprise adjustments to Schedule 5 to the Sexual Offences Act 2003 for SOPO and Section 57 of the Justice Act (Northern Ireland) 2015 for VOPO.

Clause 18 – Qualifying offences for Sexual Offences Prevention Orders

292. This Clause amends provisions in the Sexual Offences Act 2003 to include the offence of abduction of children in care (as provided for in Article 68 of the Children (Northern Ireland) Order 1995) within the list of specified offences of Schedule 5 to that Act. This is intended to improve the effectiveness of the SOPO by slightly widening the scope of offences to which the SOPO provisions apply.

293. The inclusion of the offence of abduction of children in care to SOPO arrangements was welcomed by a range of organisations including the PPS, the Law Society, Unite, Victim Support, Women's Aid and the WPG.

294. NICCY expressed disappointment that the Bill does not address wider concerns regarding the need to ensure that all children up to the age of 18 are afforded safeguards under abduction and recovery arrangements, regardless of age, care or other status and highlighted that the legislative framework for safeguarding in Northern Ireland should reflect the standards and obligations of, for example, the UNCRC, the UN Optional Protocol on the sale of children, child prostitution and child pornography, and the Council of Europe Lanzarote Convention.

295. The Department indicated that this Clause makes a minor amendment to improve the effectiveness of the SOPO provision by including the offence of abduction of a child in care, under Article 68 of the Children (Northern Ireland) Order 1995, within Schedule 5 of the Sexual Offences Act 2003.

296. The issue raised by the Children's Commissioner concerns a variation in age thresholds relevant to the Child Abduction (Northern Ireland) Order 1985 (which relates to under 16s) and the Children's (Northern Ireland) Order 1995 (which relates to under 18s) and would impinge upon wider work being taken forward by the Department following a particular recommendation of the Marshall report and which formed part of the review and consultation of the law on child sexual exploitation and other sexual offences, carried out in 2019.

297. The Department advised that, in the public consultation, it had explored whether there were any identified gaps in the law regarding child abduction offences as highlighted by Marshall. Following a variation in views expressed by consultees, the Department considers that further engagement with key stakeholders and interested parties is necessary in order to reach a determination on the best way forward. In determining the need for any further protection the Department also believes that it is important that the correct balance is achieved in protecting the rights of young people to enter safe consensual relationships, while protecting them from potential risk of harm.

298. The Committee also requested further information from the Department on a range of issues relating to SOPOs including:

- the difference between SOPOs and how they operate in Northern Ireland and those that are in place in other parts of the UK
- whether consideration is or will be given to updating the legal framework in NI given the changes in England and Wales and in Scotland, and whether an assessment of the lessons learned from the experience of SOPOs in England and Wales has been undertaken
- The Department's views of the measures included in the Police, Crime, Sentencing and Courts (PCSC) Bill which aim to strengthen and streamline the framework for managing sex offenders and whether there will be gaps in Northern Ireland when this legislation is implemented.

299. The Department provided the information in its letter dated 9 January 2022. It outlined that the impetus for change in England and Wales arose from a review commissioned by the Association of Chief Police Officers amidst particular concerns from practitioners in England and Wales that the civil orders available

to police for sex offender risk management purposes at that time were not adequate. The review recommended a new order specifically designed to protect children. The Department consulted with key criminal justice agency partners, PSNI and PBNI, to obtain views on the use of civil orders in this jurisdiction when the replacement orders in England and Wales were being considered and they were of the view that the current framework was working well in Northern Ireland in terms of applying for orders through the courts and general order management. This could be due to our smaller geographical size and because of our close partnership working across singular criminal justice organisations, which benefits consistency in practice. The police, in particular, were conscious of difficulties expressed by English colleagues in obtaining orders through the court system, where there was specific mention of the courts applying the criminal burden of proof to applications, as opposed to the intended civil burden of proof. No such issue exists in Northern Ireland.

300. The Department advised that from those discussions and following Ministerial consultation, it was agreed that there was no immediate need to undertake a formal review of the existing frameworks in the local context. Instead it would continue to monitor progress of the effectiveness of the new orders, with a view to the potential for a formal review at a future stage. The Department also set out the position in relation to the measures included in the PCSC Bill and indicated that it is not aware of any particular issues with the current NI Order framework but this can be explored as part of any review.

301. **The Committee noted the additional work that the Department intends to undertake in relation to any identified gaps in the law regarding child abduction offences and agreed that it is content with Clause 18 as drafted.**

Clause 19 – Time limit for making Violent Offences Prevention Orders

302. Clause 19 amends provisions contained within Section 57 of the Justice Act (Northern Ireland) 2015 (VOPOs made on application by the Chief Constable) to dis-apply statutory time limits for complaints provided for under Article 78 of the Magistrates Court (NI) Order 1981 (time within which civil complaint must be made to give jurisdiction).

303. There was support for this change in the evidence received on the Bill and no issues were raised.

304. **The Committee agreed that it is content with Clause 19 as drafted.**

PART 4 – FINAL PROVISIONS

Clause 20 – Ancillary regulations

305. Clause 20 enables the Department to bring forward regulations to make any supplementary, incidental, consequential, transitional, transitory or saving provision considered necessary for the purposes of giving the full intended effect of the provisions of the Bill; and specifies the Assembly control of any such regulations (i.e. whether the instrument is subject to negative resolution or whether a draft instrument must be laid before and approved by a resolution of the Assembly.)

306. To assist consideration of the delegated powers in the Bill the Committee sought the advice of the Assembly Examiner of Statutory Rules. In particular, the Committee requested views on whether it was appropriate for each of the powers outlined in the Delegated Powers Memorandum to be left to subordinate legislation rather than included in the Bill itself and whether the choice of Assembly control provided for each power (i.e. confirmatory, affirmative, negative or none) was the most appropriate.

307. The Committee noted the Examiner's Report in which she indicated that she was satisfied with the rule making powers within the Bill and that they were subject to an appropriate level of scrutiny by the Assembly.

308. **The Committee agreed that it is content with Clause 20 as drafted.**

Clause 21 – Commencement

309. This Clause sets out the commencement arrangements for the provisions of the Bill, specifying those provisions that are to come into operation the day after Royal Assent and those that are to come into operation on days to be appointed by order made by the Department of Justice.

310. **The Committee agreed that it is content with Clause 21 as drafted.**

Clause 22 – Short title

311. This Clause sets out the short title for the Bill.

312. **The Committee agreed that it is content with Clause 22 as drafted.**

Department of Justice Amendments

313. On 7 July 2021 the Department of Justice advised the Committee of four planned amendments to the Bill that the Minister was currently developing. The proposed amendments covered the following:

- A legislative fix to re-instate four offences incorrectly removed into Schedule 2 of the Magistrates' Courts Order 1981 to allow for the summary prosecution of these indictable offences under Article 45 of that Order
- An amendment to set in legislation the existing common (case) law position that a person cannot lawfully consent to their serious harm for the purpose of sexual gratification
- An extension to existing revenge porn provisions to include a threat of publication
- Provisions to widen the scope and strength of the current law on abuse of trust

314. The Committee drew attention to these as part of its call for evidence on the Bill.

315. The Department sent the Committee the text of the amendments to provide for a new clause covering consent to serious harm for sexual gratification is no defence and to extend the current scope of abuse of position of trust of a child offences to include certain activities carried out in sports and faith settings on 26 November 2021.

316. It subsequently provided the text of the amendment to make 'threats to disclose private sexual photographs and films with intent to cause distress' an offence and the text of additional amendments to 'exclude the public from hearings of serious sexual offence cases', to include the Court of Appeal and to create a new offence of non-fatal strangulation or asphyxiation on 9 January 2022.

An Amendment to Provide for a New Clause covering Consent to Serious Harm for Sexual Gratification is No Defence

317. A number of organisations commented on the Department's proposal to bring forward an amendment to set in legislation the existing common (case) law position that a person cannot lawfully consent to their serious harm for the purpose of sexual gratification although the text of the amendment was not available when the comments were submitted.

318. The PSNI highlighted that it is essential that the gravity and high risk indicators that are attached to occurrences of strangulation is recognised. In itself a positive affirmation to previous incidents of "choking or strangulation" would be a high risk factor linked with potential for domestic homicide, recognising that incidents of this nature will and have occurred where there has been no previous violence and abuse, or a long standing relationship between parties. This has previously been used as a defence in non-fatal strangulation assaults, even where victims have openly stated that they did not consent to the assaults and the level of force used during the same.

319. The NIHRC highlighted the need to ensure this is implemented in a way which is compliant with human rights law.

320. The WPG stated that formalising what has already been case law since R v Brown will not prevent cases arising. It specifically advocated the enactment of a sexual homicide offence, as an addition to the provisions of the Sexual Offences (NI) Order, that encompasses the existing law on manslaughter in the forms of unlawful and dangerous acts, gross negligence, and reckless manslaughter with the additional element of sexual activity. According to the WPG the importance of categorising this as a sexual offence is as follows:

    - It accords with the principle of "fair labelling" and would allow for the development of fair and proportionate sentencing guidelines for this category of homicide.

- Categorisation as a sexual offence has the procedural advantage that evidence of the victim's past sexual history could be restricted by an extension of the Youth Justice and Criminal Evidence Act 1999 ss. 41 and 42 provisions. This would address widespread criticism that the current procedural approach in homicide cases contains no bar to the inclusion of the victim's past sexual history.
- Framing the offence in terms of a sexual nature is preferable to the contextualisation as domestic abuse that has occurred in England and Wales. This approach would recognise that sexual relations also occur outside "domestic" relationships and that joint consensual engagement in a dangerous activity does not necessarily amount to "domestic abuse" – to suggest that this is the case would be a denial of the autonomy of both parties and R v Wilson has shown a reluctance within the legal system to intrude on the domestic relationship from a paternalistic standpoint.

321. Victim Support was also of the view that the approach to codify R v. Brown alone may not resolve the problem of a claim of 'rough sex gone wrong' being raised in murder cases. It is already not legally possible for someone to consent to their own death; however the question of consent to 'rough sex' may still be raised by the defence as evidence of lack of intent. As intent is a required element of a murder charge, the current proposals will not change the possibility that a 'rough sex defence' might still be raised during a murder trial, potentially resulting in the downgrading of murder charges to a form of manslaughter. Victim Support highlighted that shortcomings of the English approach on which the Northern Ireland consultation was based are now emerging.

322. Women's Aid agreed that the law is currently not fit for purpose in dealing with violent crimes where the term "rough sex" is used as a defence and it strongly recommends an amendment to the Bill to abolish the terms as a defence in criminal proceedings. It stated that the R v Brown judgement outlined that consent is not a defence to more than transient or trifling injury however this decision is rarely cited in decisions where the rough sex defence is used and has been undermined by other decisions such as Slingsby (1995). R v Brown also does not address the violence that is not consented to.

323. Women's Aid would argue for the need for legislation to outlaw this defence ensuring that victims have effective recourse to justice and that "rough sex" cannot be used as an excuse to perpetrate acts of violence against women. In its view this amendment needs to be carefully worded to not criminalise non-conventional, consensual sex to avoid it being considered an issue of morality. According to Women's Aid strong, specific legislation is needed to tackle the serious nature of non-fatal strangulation to which the defence of consent should not be available.

324. Women's Aid stated that a programme of education around rough sex and consent is also necessary to ensure that wider society is aware of this as a wider issue and tolerance for these types of crimes is eradicated.

325. Unite believes that the law dealing with violent crimes where the term "rough sex" is used as a defence by the accused is not fit for purpose and strongly recommended an amendment to the Bill to abolish the increasingly used term as a defence in criminal proceedings and in regard to serious violent crimes such as homicide and non-fatal violence against women. It stated that it is important to have legislation and policies in place that offer recourse to justice for those who are victims of non-fatal harm and for those victims who are murdered as a result. Any proposed legislation must take into consideration offences relating to strangulation but at the same time needs to be carefully worded not to criminalise non-conventional, consensual sex.

326. Unite requested in particular that any proposal on consent to sexual gratification specifically excludes consent to non-fatal strangulation assaults. If non-fatal strangulation is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification. Unite also supports the implementation of the findings of the Gillen Review and the recommendation for the roll out of a programme of education around rough sex and consent to ensure that society is aware of this as a wider issue and to clarify a no-tolerance approach to these crimes. Statutory healthy relationships programmes should be delivered in schools to promote respect, equality, values and consent within all relationships.

327. The SE Area Domestic and Sexual Abuse Partnership recommended that the Bill seeks to abolish the use of “rough sex” as a defence in criminal proceedings. It advised that research shows that non-fatal strangulation is an important risk factor in the death of women and this evidences that non-fatal strangulation is a gendered crime which should be reflected in awareness raising and in policies and procedures and guidance to support the new legislation.

328. HERe/Cara-Friend supported calls for a new offence that sexual activity was reckless or negligent to such a degree that a reasonable person must know that serious injury or death would be the likely outcome. It also suggested an awareness campaign as well as amendments to the relationships and sexuality education provision in schools but indicated that these must be very careful not to condemn certain sexual practices that are fully consensual but instead put the focus on consent, with an emphasis on safety and accurate information.

329. The Department advised the Committee, in correspondence dated 26 November 2021, that consent to serious harm for sexual gratification (‘the rough sex defence’) has been raised in trials as a defence to serious harm, murder or manslaughter for many years. Following the conclusion of a consultation exercise to seek views on proposals to set in legislation the existing common (case) law position that a person cannot lawfully consent to their serious harm for the purpose of sexual gratification, the amendment, the text of which was provided with the letter, would give effect to the Minister’s desire to address perceived issues of clarity and consistency regarding the application of the existing case law position going forward.

330. When the officials attended the meeting on 16 December 2022 they confirmed that normally the common law does not treat rough sex as a defence, however the amendment will put clarity and certainty into the law in the interests of victims. The Department subsequently provided further information on the points raised in the written evidence submitted by Women’s Aid in its letter dated 9 January 2022.

331. The Department confirmed that the statutory abolition of the defence will ensure that, where serious harm within the defined text of the amendment occurs, the

perpetrator will not be able to raise the claim that the victim consented to the harm being inflicted. The wording of the amendment will make clear that there are no limits as to the nature of the relationship between the parties, making its application across the board absolutely clear.

332. In developing the amendment, the Department considered views expressed through the 'Consent to serious harm: not a defence' multi-disciplinary reference group, and responses received to the public consultation, a number of which sought to ensure that the individual's right to engage in non-conventional practices was protected. The selection of injury consistent with that resulting from the offence of assault occasioning actual bodily harm as the point where the defence would not be accepted in legislation represents what is considered an appropriate balance, recognising and safeguarding the individual's freedom to choose to act in a non-conventional way, while also providing a suitable level of protection where serious harm occurs.

333. The Department acknowledged the close link between 'rough sex' and non-fatal strangulation and advised it now intended to bring a further amendment to the Bill to introduce a new offence of non-fatal strangulation, following the public consultation which closed in September 2021. The intention is that the defence of consent will not be available for the new offence where serious harm occurs. Serious harm will be defined to have the same meaning in relation to non-fatal strangulation as in relation to the circumstances where consent may not be used as a defence for sexual gratification, thus aligning strangulation with other non-conventional practices and providing consistent protection to the individual's rights and victims of serious harm. A person cannot consent to their own murder, so in cases where death occurs existing murder and manslaughter legislation remains valid. The choice of charge will be a matter for the prosecution based on available evidence. Decisions on conviction and sentencing will properly remain matters for the Courts. The Department outlined that it is not possible to preclude defendants from raising an assertion in evidence that the injured party consented to the behaviour leading to the charge brought against them. This is an ECHR matter of fair trial which should not be interfered with. In such cases it is and must remain a matter for the Court

to determine whether consent was in fact present, and if so, whether any mitigation in sentence is merited.

334. The Department advised that while the new legislation must be capable of application regardless of the gender of perpetrators and victims, any guidance and training will take the highly gendered nature of non-fatal strangulation and other 'rough sex' practices into account as appropriate. There is also a programme of work being taken forward following the Gillen Review which aims to address a range of public awareness needs relating to sexual offending.

335. **While the Committee is content to support the principle of this amendment there has not been time to consider the text in detail, seek the views of key stakeholders and carry out adequate scrutiny before the end of the Committee Stage of the Bill. The Committee has therefore agreed to note the amendment and to provide the text to the PSNI, the PPS, the Law Society and the Bar for views/comments.**

An Amendment to Widen the Scope of Current Law on Abuse of Trust

336. In Northern Ireland the Sexual Offences (NI) Order 2008 provides for the offences of sexual activity with a child through abuse of positions of trust relating to children under 18. The offences currently only apply where the position of trust is in the context of a statutory responsibility such as education, state care and criminal justice.

337. In April 2021 the Committee considered a briefing paper provided by NSPCC on its 'Close the Loophole' Campaign to extend the abuse of trust legislation. Aware of the intention of the Minister of Justice to bring forward proposals on this the Committee invited NSPCC to provide further information on the position and recent developments in England and Wales and other relevant jurisdictions to assist its consideration of the issues.

338. The NSPCC provided further details on the current statutory provision across the UK and how they have been extended, in varying degrees and by different

approaches, in some neighbouring jurisdictions including the Republic of Ireland and Jersey and further afield. The NSPCC also advised that its focus was to ensure that the legislative amendment for NI is as robust and inclusive as possible. In its view it should afford protections to children and young people across as broad a range of environments and extra-curricular activities as possible, to include but not be limited to, sport and religious settings.

339. A range of organisations including the NSPCC, NICCY, WPG, HEReNI/Cara-Friend, SE DSVP, Barnardo's, Professor McGlynn, the Children's Law Centre, Women's Aid, the Southern Health and Social Care Trust Children and Young Peoples Directorate/Adult Safeguarding, the Christian Institute, Unite, the NIHRC and the PSNI submitted views on the intention to legislate in this area in the written evidence received on the Bill.

340. The key issues covered included:

- Wanting to see as broad a range of extra-curricular activities as possible covered to ensure 16 and 17 year olds are protected from potential grooming
- It must be wider than religious and sporting organisations
- Further clarity needed on what activities and roles come within sport
- If the scope is too narrow perpetrators may still have a wide range of organisations that they can target to avail of those remaining loopholes
- Gaps could be addressed by inserting 'hobby' or 'extra-curricular'
- More inclusive approach adopted in RoI and Jersey
- The Lanzarote Committee specified that the concept of relationships of trust should be afforded a 'broad interpretation'
- The definition should be extended to include other relationships of trust i.e. it should not just apply to children in state care in accordance with Article 18 of the Lanzarote Convention
- A statutory review mechanism should be included to strengthen and future-proof the provision
- Focus should be on trust and relationship between adult and child rather than the title the adult holds

- Essential that there is clear and consistent messaging in respect of the legal requirements for all organisations
- Recognition that there are particular nuances concerning peer relationships, however the legislation and regulations must address these nuances rather than regarding them as an insurmountable barrier. It is crucial that peer relationships, where one person has a position of power over another, are managed and monitored by other adults
- Do not want to criminalise young people who are in normal healthy relationships however we cannot not take actions to protect children from abuse
- Any exploitative and harmful relationship, including coaching, should be covered
- Canadian law may provide a suitable model to follow
- Abuse of Trust offences must reflect contemporary configurations of how services to children are delivered on behalf of, or are funded by, statutory and government agencies (through for example voluntary, community, sporting and faith based organisations)
- There is clear evidence of the vulnerability of older children to exploitation and abuse in such settings
- Tutors and youth leaders should be included
- Need to recognise that the power an adult holds over a young person can extend beyond the end of their formal position of trust – it should extend to cover any sexual relationship formed within two years of the end of the formal position of trust to protect 16 and 17 year olds from abuse by former coaches
- Technological advancements mean there is an even more pressing need to extend the abuse of trust provisions
- Provisions should also include abuse of trust of adults at risk of harm and in need of protection

341. The Committee also sought the views of the NSPCC, Barnardo's and the Children's Commissioner on the issue when they attended to give oral evidence on the Bill and they all made it clear that, if the Department's amendment

focused only on extending the scope to cover activities in sports and religious settings, then that would not go far enough to protect children.

342. In correspondence dated 26 November 2021 the Department of Justice provided the text of the Minister's amendment to extend the scope of the abuse of trust legislation. The Department advised that, as part of its accelerated development of the legislative amendment, which it had originally intended to bring forward in the next mandate, officials had worked closely with the NSPCC, including holding a joint virtual workshop at the end of May, to gauge wider views, including those of key stakeholders, regarding the scope of the amendment.

343. As a result of that engagement, and having examined the experience of other jurisdictions, the Minister's amendment will extend the current scope of abuse of position of trust of a child offences to include certain activities carried out in sports and faith settings. The Department recognises that there will be other areas where such legal intervention may be needed in future and a delegated power is proposed to enable additional settings to be included, by way of secondary legislation, where this is considered necessary.

344. The Committee agreed to send the text of the amendment to the NSPCC, the NI Commissioner for Children and Young People and Barnardo's for their views and comments.

345. The NSPCC noted that, as expected, the Minister's amendment mirrored the proposed amendment in England and Wales as provided in the Police, Crime, Sentencing and Courts Bill.[41] It reiterated its view that the proposed amendment does not go far enough, nor is it expansive or inclusive enough to protect children from adults in a position of trust to them in non-statutory settings, outside of religion and sport. It is the NSPCC's firm position that protections to keep children safe should not depend on the setting or activity the child is taking part in, but the risk of harm to children. The new legislation should provide vital protections to children and young people across as broad a range of

[41] Police, Crime, Sentencing and Courts Bill as introduced on 6th July 2021. See Police, Crime, Sentencing and Courts Bill (HL Bill 40) (parliament.uk)

environments and extracurricular activities as possible, to include but not be limited to sport and religious settings.

346. The NSPCC stated that if the proposed amendment is brought forward as currently drafted in Northern Ireland, adults working in non-statutory settings in a position of trust to 16 and 17 year olds in areas other than religion and sport will remain outside of the law. This conflicts with views expressed in the Department's public consultation on CSE law in February 2019 and in the joint stakeholder workshop NSPCC facilitated with the Department in May 2021, where respondents overwhelming supported an inclusive approach to legislative change which should include all adults working in a position of trust to a child. As already highlighted in its written evidence to the Committee, the proposed amendment has the potential to cause significant confusion. It remains unclear what specific activities will be included within the definition and could lead to a range of bizarre scenarios where for example a 16 or 17 year old may be protected while engaging in dance or drama only if the class is connected to or possibly carried out on premises linked to a sporting or religious organisation. This is a considerable gap in protection for young people and creates unnecessary legal uncertainty. In addition, it is unclear if organisations with a religious ethos would be included within the amendment, for example, uniformed bodies such as Scouts, Guides, Cadets etc.

347. While the NSPCC welcomed the provision at 29A(4) that allows for the expansion of protection, through the proposed power to add or remove fields of activity by way of regulations, it remained of the view that to further strengthen and future proof the provision, consideration should also be given to the inclusion of a statutory review mechanism. The NSPCC also believed that the proposed amendment should be widened to give 16 and 17 year olds protections from all adults working in a position of trust to them, regardless of the setting, and it provided two options to do this that it recommended the Committee should consider. The first option was to include 'hobby' or 'extracurricular activity' in addition to sport and religious settings with a list of activities detailed in guidance. This would ensure that the provision is broad enough to capture a wider range of settings where adults have influence and power over children, and ensure that there is enough clarity and certainty in its

application. The alternative was to consider the legislative amendment in England and Wales as provided in the Police, Crime, Sentencing and Courts Bill.[42]

348. NICCY advised that they were deeply concerned that provisions to address current legislative gaps in safeguarding children and young people from abuse and exploitation by those in positions of trust should not be limited only to certain settings, such as sporting and religious settings. This position had also been outlined to the Department in detail in their written advice to the 2019 consultation on review of the law43 and in more recent discussion regarding the Bill. The Children's Commissioner noted that abuse of trust protections in law should take account of the power dynamics of sexual abuse and exploitation and reflect that children and young people can be subject to abuse by those in positions of trust across a wide range of relationships and activities rather than instead focusing on a limited number of settings.

349. As the Commissioner had previously highlighted, the UK ratified the Council of Europe Convention on the Protection of Children against Sexual Abuse and Sexual Exploitation (the Lanzarote Convention) in 2018 and Article 18(1b) of the Convention sets out that necessary legislation must be in place to ensure that abuse of a recognised position of trust, authority or influence over a child is criminalised.44 The Lanzarote Committee who monitor implementation of the Convention provide detailed direction on this and define 'the circle of trust' as including a relationship of trust which has been established with the child in the context of a professional activity or where unequal physical, economic, religious or social power is exploited and abused. The Convention's Explanatory Report sets out that such relationships of trust include caring for children, educating or providing emotional, pastoral, therapeutic or medical care, employing or having financial control over or otherwise being in a position to exercise control over a child and notes that relationships and activities outside the statutory sector and across public, private, voluntary and youth organisation settings, are in remit of

[42] Police, Crime, Sentencing and Courts Bill as introduced on 6th July 2021. See Police, Crime, Sentencing and Courts Bill (HL Bill 40) (parliament.uk)

[43] NICCY (2019) Advice on the Review of the law on Child Sexual Exploitation: Review of the law on Child Sexual Exploitation (niccy.org)

[44] https://www.coe.int/en/web/children/lanzarote-convention

the Convention.45 The Lanzarote Committee also note that the primary focus should remain on the broader position of trust due to concerns that seeking to create a closed list of settings within scope of protections may then lead to the inadvertent exclusion of certain activities or relationships of trust.46

350. The Children's Commissioner stated that she had significant concerns about the position of the Department that there must be further evidence provided that children have been sexually abused by adults in positions of trust outside of sporting and religious settings before further amendments can be considered. She welcomed the discussions both in relation to this Bill and the Westminster Police, Crime, Sentencing and Courts Bill and urged the Committee to continue to explore how broader abuse of trust protections can be effectively secured within the Bill.

351. Barnardo's stated that, while the proposed amendment is a welcome first step, it is too narrow in scope as currently drafted and will not protect all children who are at risk of abuse by an adult in a position of trust. It is crucial that abuse of trust protection is extended to include anyone with any caring responsibilities for children and is not limited to sporting or religious settings. In its view this legislative change should reflect the importance of relationships for children, particularly vulnerable children, and the lasting impact that abuse of trust within an adult-child relationship can have on that child. The focus of abuse of trust cases should be on the trust and relationship between the adult and child, rather than the title the adult holds. In cases captured under abuse of trust offences, the adult is abusing both their position of trust, and the trust placed in them by the child.

352. While Barnardo's welcomes the flexibility provided in the amendment to widen the scope in future, it believes this legislation should be as strong as possible from the outset. Children deserve protection in the law now, no matter what the setting, and should not have to wait until an incident of abuse in an additional

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45 Council of Europe (2007) Explanatory report to the Council of Europe Convention on the Protection of Children against sexual exploitation and Sexual Abuse, para 123 and 124.

46 Lanzarote Committee (2015) First implementation report

https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f

setting is exposed to receive that protection. Barnardo's knows that perpetrators of child abuse and exploitation deliberately seek out loopholes in the law, and settings where they will go undetected. As the age of consent to sexual activity is 16 years old, children who are 16 and 17 years old do not have as much protection in the law as children under the age of 16. The argument of consent can be used as a defence by perpetrators in non-statutory settings. If the scope of this amendment is too narrow, perpetrators may still have a wide range of organisations they can target to avail of those remaining loopholes.

353. The Committee discussed the Department's position in relation to extending the scope of abuse of trust legislation in detail with officials on a number of occasions. In response to a request from the Committee the Department also set out the rationale for the approach it has adopted in bringing forward the amendment.

354. The Department outlined that the main aim of the amendment is to prevent the manipulation of young people to consent to sexual activity by those who hold a position of trust with them in certain environments outside of those contained within the current abuse of position of trust legislation. Whilst the provisions apply to under 18s, by virtue of the Northern Ireland statutory age of consent, the provisions mainly relate to persons aged 16 or 17. The amendment seeks to strengthen the existing legislative framework by extending the category of offender who would fall within scope of the offences.

355. The Department advised that the abuse of position of trust provision was originally created to protect young people in particular situations where there was some element of dependency on an adult, which is often combined with an element of vulnerability on the part of the young person. The offences were not intended to cover all situations where an adult might have contact with, or supervisory role over, under 18s. Instead, they were intended to capture those relationships where there is an imbalance in power held by the child and adult, and therefore scope for that position of trust to be abused. Framing the positions of trust too widely runs the risk of prohibiting any person aged 18 from having sexual relations with anyone aged 16/17, which could be considered a raising of the age of consent.

356. The Department stated that it is conscious that predatory behaviour can occur in any environment where an adult has significant influence or power over a young person in their care, and is conscious that there is particular interest in extending the law further than proposed in the Bill. It is, however, keen to ensure that the original policy intention is maintained as far as possible – where in strengthening the law, a proportionate balance is achieved in order to further protect young people from sexual exploitation, whilst at the same time safeguarding their right and ability to engage in legal consensual activity.

357. According to the Department the amendment is based on the evidence presented to date and the particular concerns and risks identified by stakeholders. The inclusion of a delegated power will allow further settings to be included in the definition by way of secondary legislation, should a further gap in protections be identified at a future stage. This will mean that there will be no need to await a primary legislative vehicle for any potential change to be made. The Department advised the Committee that the decision on the scope of the amendment was taken as a result of the Department's review, consultation and engagement on the issues involved, and following an examination of the experience of other jurisdictions. This has included liaison with the wider UK jurisdictions and Ireland, as well as Jersey.

358. The Department initially consulted in this area as part of its review of the law on child sexual exploitation and other sexual offences in 2019, concluding that further exploratory work with relevant stakeholders was needed in order to progress this policy area further. It had been intended that work would be taken forward to enable introduction in the next mandate but, noting the specific concerns, the Minister decided to strengthen the law in this current mandate to ensure more protection for young people, where there is an identified power dynamic by adults who have responsibility for them.

359. The Department outlined that it has been working closely with the NSPCC in the development of its policy proposals since early 2021. This included the holding of a joint stakeholder workshop in May 2021 to explore the areas where legislative intervention was needed. It stated that the workshop and its other contacts with stakeholders did not provide evidence to suggest that legal intervention was required beyond the sport and faith settings at this point. The

Department noted that NSPCC, together with key representatives of the faith and sports sector, have lobbied strongly for Government to regulate these areas with a change in the law; the need for which they believe is evidenced primarily by the significant number of high profile cases, locally and across the wider UK (and beyond), where members of the church and sports coaches have been convicted of sexual offences against children. Supporting evidence gathered by NSPCC in England and Wales was also relied upon by NSPCC and the sport and faith sector, to demonstrate a level of prevalence. The Department stated that no similar evidence has emerged to identify wider areas of concern where further legislative intervention is needed or appropriate at this point.

360. In the view of the Department the current legislative framework used to tackle sexual offending across a range of behaviours is robust and this proposed provision seeks to bolster existing offences further. Where an offender in a case is in a position of trust, this will always be treated as a significant aggravating factor by the courts when sentencing.

Committee Consideration

361. The Committee welcomes the intention of the Minister to extend the abuse of trust provisions and it noted the rationale set out by the Department in relation to the approach taken. It also noted the Department's assertion that it has been working closely with NSPCC in the development of its policy proposals. However, the Department does not appear to have taken on board the views of the NSPCC and indeed the Children's Commissioner and a range of other children's organisations who very clearly in the evidence they provided to the Committee do not agree or support the approach being taken by the Department and who do not believe the amendment is expansive or inclusive enough to protect children from adults in a position of trust to them in non-statutory settings, outside of religion and sport.

362. The Committee wants to provide all children with the legislative protection they need and noted the strong views expressed by the Children's Commissioner on the position adopted by the Department in relation to not extending the scope further and Barnardo's comments that "*Children deserve protection in the law now, no matter what the setting, and should not have to wait until an incident of*

abuse in an additional setting is exposed to receive that protection." It also noted the views of the NSPCC that the amendment as currently drafted conflicts with the views expressed in the consultation and in the joint stakeholder workshop where respondents overwhelmingly supported an inclusive approach to legislative change which should include all adults working in a position of trust to a child.

363. **The Committee decided to consider amending the Minister's abuse of trust amendment to extend the scope further to include those in a position of trust with young people and who would not be included in the extension to cover certain activities carried out in sports and faith settings.**

364. The Committee advised the Minister of the intent of its proposed amendment and the Department replied on 19 January advising that the Minister considers that her proposed amendment is both proportionate and in keeping with the policy intention of the offences. While conscious that predatory behaviour can occur in any environment where an adult has significant influence or power over a young person in their care, in her view it is crucial that a careful balance is maintained.

365. The Minister reiterated that the draft provisions are based on the evidence presented to date and the particular concerns and risks identified by stakeholders and follows the Department's review, consultation and engagement on the issues involved and an examination of the experience of other jurisdictions. She restated that this work has been developed in close partnership with NSPCC.

366. According to the Minister, widening of the provision further would have significant consequences which she wanted to avoid. She had specific concerns that widening of the offences' scope could well attract legal challenge based on the rights of an individual under Article 8 ECHR (right to private and family life). She also was concerned that, without going through due process in developing any proposed widening of the offences' scope, there is a clear risk of inappropriately increasing the age of sexual consent by stealth. Such an approach would be open to successful legal challenge. The Minister considers

that care should be taken to avoid this and to ensure that any undue interference in a young person's ability to freely express their autonomy should be limited. The Minister also stated that framing the positions of trust too widely runs the risk of over criminalising young people who could be considered breaking the law if, for example, a person aged 18 has a sexual relation with a person aged 16 or 17. The Minister is concerned that those with innocent intention, who are enjoying a healthy relationship, should not be criminalised unnecessarily.

367. Given her concerns the Minister indicated that she would not support the Committee's proposed amendment to her amendment. She also highlighted that her amendment includes the provision of a delegated power to allow further settings to be included in the definition by way of secondary legislation, should a further gap in protections be identified at a further stage.

368. **The Committee considered the views expressed by the Minister and the draft text of the amendment at the meeting on 20 November. Three Members indicated that they were not content with the text of the Committee amendment on abuse of trust as drafted in light of the issues raised by the Minister of Justice.**

369. **Having discussed the matter further the Committee agreed not to bring forward an amendment to the Minister's amendment to widen the scope of the current law on abuse of trust at this stage but it may wish to consider the position further following the debate on this issue at Consideration Stage of the Bill.**

370. **Ms Rachel Woods indicated that she did not support the Committee's agreed position.**

An Amendment to make 'threats to disclose private sexual photographs and films with intent to cause distress' an offence

371. The comments received in relation to this amendment, which the Department outlined would make threats to disclose private sexual photographs and films with intent to cause distress an offence alongside existing offence provisions relating to the disclosure of such material, were received before the text of the amendment was available.

372. While welcoming this proposed amendment which addresses a clear need, a number of organisations including the WPG, Women's Aid, HERe/Cara-Friend, Victim Support, SE DSVP, Unite and ICTU stated that the use of the term "revenge porn" is misleading and perpetuates victim-blaming myths around sexual crime and assault. They recommended that instead terms such as "image based sexual assault or abuse" should be used to refer to these types of offences.

373. In response the Department confirmed that its proposed amendment does not use the term "revenge porn" which it agrees is inappropriate and misrepresents the nature of the offending behaviour. The amendment provides for threats to disclose private sexual photographs and films.

374. Unite stated that any sentence relating to the new offence should be made in line with that in England and Wales to send a strong message to perpetrators of this act that it is completely unacceptable and Women's Aid suggested the maximum term for conviction on indictment should be 2 years' and on summary conviction 12 months.

375. The Department advised that the proposed penalty for threats to disclose is in line with the penalty available for the disclosure offence, which is up to six months' imprisonment on summary conviction and up to two years' on conviction on indictment. These penalties sit appropriately within the current sentencing framework.

376. Victim Support noted that the recently introduced legislation in the Republic of Ireland on sharing of explicit photographs does include threats and attempts

and it also does not require victim and perpetrator to be in a relationship for the law to apply.

377. The Department outlined that Sections 51 to 53 of the Justice Act (Northern Ireland) 2016 (the 2016 Act) provide for the offence of 'disclosure of private photographs or films with intent to cause distress'. The proposed amendment seeks to widen the scope of the existing disclosure offence in the 2016 Act to make 'threats to disclose' an offence. The Department is not altering the fundamental elements of the main disclosure offence. The Minister had initially committed to a review of the disclosure provisions but, in recognition of the need to provide additional protections now, decided to provide for threats to disclose by amending the existing offence, as was done in England and Wales last year when the UK Government brought threats to disclose within scope of its disclosure offence in the Criminal Justice and Courts Act 2015. To amend any critical element of the existing offence would require review, evidence of the need for change, and further consultation with the criminal justice agencies.

378. The NIHRC stated that the proposed legislation should ensure consideration of human rights obligations including the disproportionate impact on women and girls, and recognise image based sexual abuse as a new form of gender-based violence.

379. The Department indicated that it recognises that the victims of image based abuse are predominantly female, however, the proposed amendment is gender neutral to ensure equality of protection under the law.

380. The PSNI highlighted the increase in demand that this new offence will reflect across a number of departments within policing including Public Protection Branch and Cyber Crime. The police stated that it is highly likely that the threats will be made in some part through online means therefore this may mean that investigations will be lengthy to reach a conclusion and require significant specialist skills to develop the required evidential standards.

381. The Department advised that it was in discussion with key criminal justice partners on the costs associated with the Bill provisions however these are expected to be minimal and should be able to be absorbed within respective budgets. The Department is however conscious of the overall impact on

resources of the delivery of the current legislative programme, which includes implementation of the new domestic abuse offence planned for February 2022. It will continue to work with the PSNI and other operational partners to ensure that relevant issues are worked through and that opportunities to streamline processes as effectively as possible are maximised.

382. **While the Committee is content to support the principle of this amendment there has not been time to consider the text in detail, seek the views of key stakeholders and carry out adequate scrutiny before the end of the Committee Stage of the Bill. The Committee has therefore agreed to note the amendment and to provide the text to the PSNI, the PPS, the Law Society and the Bar for views/comments.**

An amendment to include the exclusion of the public from appeal hearings against conviction or sentence in serious sexual offence cases in the Court of Appeal

383. The Committee position on the amendment to *'*exclude the public from hearings of serious sexual offence cases' to include the Court of Appeal is set out earlier in the report in the section covering Clause 15.

An amendment to create a new offence of non-fatal strangulation or asphyxiation

384. Department of Justice officials attended a meeting of the Committee on 2 December 2021 to outline the responses received to the consultation on non-fatal strangulation legislation.

385. The officials advised the Committee that 25 responses had been received and the overwhelming majority of respondents considered the current law is not sufficient and that a new stand-alone offence should be introduced. There was

strong support for a 'hybrid' offence, triable in either the magistrates' courts or the Crown Court, and for lengthy maximum sentences in both.

386. The Minister had therefore agreed that:

- A new free standing offence of non-fatal strangulation be introduced
- The offence will be triable either in the magistrates' courts or in the Crown Court
- The maximum penalty in the magistrates' courts will be 2 years' imprisonment
- The maximum penalty in the Crown Court will be 14 years' imprisonment
- The offence will be added to the list of specified serious and violent offences which may attract an extended custodial sentence under the Criminal Justice (NI) Order 2008
- Working with the Gillen Education and Awareness Team, the Department will continue to address the public education and agency specific training needs to allow victims to be treated, and offenders to be dealt with appropriately
- The Department will continue to develop appropriate measures to deal with the issue of strangulation with key stakeholders

387. Officials indicated that work would commence in preparation for drafting legislative instructions with a view to including the necessary provisions in the proposed Miscellaneous Provisions Bill, identified for introduction early in the next Assembly mandate.

388. On 9 January 2022 the Department provided the text of an amendment for inclusion in this Bill to create a new offence of non-fatal strangulation or asphyxiation. When asked by the Committee during the oral evidence session on 11 January 2022 why it was bringing the amendment at this stage given its earlier stated position, the officials advised that the process had been accelerated to bring it forward as, in their view, there are benefits to doing so and it will provide greater completeness than leaving it to the next mandate given an amendment to provide for a new Clause covering consent to serious harm for sexual gratification is no defence is already being brought forward in this Bill.

389. **While the Committee is content to support the principle of the amendment there has not been time to consider the text in detail, seek the views of key stakeholders and carry out adequate scrutiny before the end of the Committee Stage of the Bill. The Committee has therefore agreed to note the amendment and to provide the text to the PSNI, the PPS, the Law Society and the Bar for views/comments.**

Other issues considered by the Committee

Removal of the defence of reasonable chastisement

390. A number of organisations expressed the view that there is an opportunity through this Bill to remove the defence of reasonable chastisement.

391. The NI Commissioner for Children and Young People stated that there is a well-established evidence base which demonstrates that physical punishment is not effective in managing challenging behaviour, that it results in poor outcomes for children, and, of particular concern, that it can escalate into injurious abuse and maltreatment. The Commissioner therefore urged the Committee to give full consideration to ensuring that equal protection under the law for children from all forms of assault, including physical punishment, is addressed in the Bill and she drew attention to the repeated recommendation of the UN Committee on the Rights of the Child that this be addressed as a priority. In her view the Bill represents an important opportunity to ensure this significant gap in legal protection for children is addressed.

392. Barnardo's also recommended that the Committee considers an amendment to the Bill to amend the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 to remove the defence of 'reasonable punishment' for parents and carers who are accused of assault against a child and highlighted that legislative steps have been taken in Scotland, Wales and the Republic of Ireland to ensure children have equal protection from assault as adults.

393. Barnardo's referred to research[47] that has shown that there is strong, consistent evidence that physical punishment is ineffective in improving children's behaviour, and in fact has an adverse impact on children's wellbeing. The Equally Protected report highlighted a cyclical effect whereby physical punishment increases problematic behaviour, damages family relationships and found links between physical punishment and child maltreatment. It

[47] https://learning.nspcc.org.uk/research-resources/2015/equally-protected

recommended that such a change in the law is accompanied by an awareness-raising campaign targeted to parents to make them aware of the change and where help and advice is available if they need or want parenting support and highlighted the approach adopted in Wales.

394. The Children's Law Centre contends that the provisions of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 are incompatible with international human rights obligations. In its view this is a key public protection issue and it is in the best interests of children that the removal of the reasonable punishment defence be brought forward as an amendment to this Bill. CLC points out that Northern Ireland is lagging behind Scotland, Wales, the Republic of Ireland and over 60 other countries around the world in relation to legislation for the equal protection of children against assault.

395. The NSPCC notes that the removal of the defence of reasonable punishment to afford children equal protection from assault as adults is an area in need of urgent reform in Northern Ireland and would like to see this addressed in the Bill. The NSPCC states that international research is unequivocal that physical punishment increases aggression, antisocial behaviour, depression and anxiety and provided details of specific case studies and legal cases in its written submission. It also stated that widespread criminalisation of parents has not occurred in any of the 62 countries that have passed similar laws. To go with the legal reform, the NSPCC advocates for a widespread public education campaign on positive parenting.

396. The Women's Policy Group supports the call to abolish the reasonable punishment defence as stated in the NSPCC response, and also supports the NSPCC call for a 'positive parenting' campaign to accompany legal reform.

397. Women's Aid is of the view that children are left behind when it comes to equal protection in the law relating to physical punishment and holds the position that the law in Northern Ireland is outdated, ineffective and not in the best interest of child welfare as there is clear evidence that use of physical punishment is ineffective in improving a child's behaviour. In its written submission it points to specific studies and reports and recommends that the reasonable punishment defence be abolished in Northern Ireland.

398. The Northern Ireland Catholic Council for Social Affairs (NICCOSA) also believes that the Bill presents an opportunity for the inclusion of an amendment to provide for the abolition of the defence of reasonable punishment in Northern Ireland, and cites four reasons to do so:

- Research evidence shows that physical punishment damages children's wellbeing and is linked to poorer outcomes in childhood and adulthood;
- Physical punishment is linked to aggression, anti-social behaviour, delinquency, anxiety and depression;
- It is not effective in achieving parental goals;
- There is a danger of escalation from physical punishment to physical abuse.

399. This issue was also discussed during the oral evidence sessions with the Children's Commissioner, Barnardo's and the NSPCC.

400. Barnardo's subsequently provided the transcript of the evidence by the Crown Prosecution Service in Wales to the Welsh Assembly Children, Young People and Education Committee on the proposed change to the law in that jurisdiction.

401. The Children's Commissioner also wrote providing further information on the findings of NICCY's commissioned research on adult attitudes to physical punishment and highlighted the views of the United Nations Committee on the Rights of the Child that the *"… distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence."*[48] The Commissioner again urged the Committee to consider ensuring law reform in relation to the physical punishment of children is addressed within the Bill.

402. The Committee raised the question of whether the Bill could be used to change the law in this area with departmental officials when they attended on 16 December 2021. The officials outlined that the Minister had been minded to introduce an amendment to the original intended Miscellaneous Provisions Bill

[48] UN Committee on the Rights of the Child (2006) General Comment 8: The rights of the child to protection from corporal punishment and other cruel or degrading forms of punishment, para 21.

but given that was narrowed down to the current Bill, in their view that had the effect of ruling such an amendment out of scope. They also advised that the Minister could not introduce an amendment of that nature without the approval of the Executive.

403. The issue was discussed again with officials on 11 January 2022 and they confirmed that it was more than just a justice issue and it would have to involve other Departments which makes it cross-cutting and one that the Executive would have to decide on. They also highlighted that the remainder of the intended Miscellaneous Provisions Bill would probably form the basis for a new Miscellaneous Provisions Bill in the next mandate which may provide an opportunity to legislate in this area, but clearly Executive agreement would be required.

404. The potential for a Committee amendment was discussed at the meeting on 13 January 2022 and advice was provided on the constraints relating to the purposes of this Bill which has a narrow focus on sexual offences and trafficking.

405. Some Members wished to consider an amendment to the Bill and others preferred to indicate in the Committee Report that there was a need to have a detailed discussion on this and the potential need for legislation and this could take place in the next mandate.

406. The Committee agreed by a majority of 5 to 3 that an amendment to remove the defence of reasonable chastisement should be prepared for consideration. Sinéad Ennis, Doug Beattie, Sinéad Bradley, Jemma Dolan and Rachel Woods supported the proposal and Mervyn Storey, Robin Newton and Peter Weir voted against the proposal.

407. The Committee advised the Minister of the intent of its potential amendment and, in a response dated 19 January 2022, the Department confirmed that the Minister is supportive of proposals to remove the defence of reasonable chastisement, but indicated that it would be preferable to change the law alongside a cross-departmental initiative to promote better and more positive parenting. Should any such amendment be selected the Minister considered it imperative that the Committee urgently engages with the Ministers of Health

and Education to enhance parental support and assist with the development of parenting strategies to support implementation of this change.

408. The Committee considered the Minister's views at its meeting on 20 January 2022 and some Members agreed that they were content with the final text of the proposed amendment while others reiterated their opposition to the proposed amendment.

409. The question was put on the amendment during the Formal Clause by Clause Consideration of the Bill later in the meeting and three Members voted for the amendment and three Members voted against the amendment. Decisions by the Committee require a majority, therefore the amendment was not supported.

410. Sinéad Bradley, Jemma Dolan and Rachel Woods supported the amendment and Mervyn Storey, Robin Newton and Peter Weir voted against the amendment.

PSNI Resourcing

411. As with previous justice Bills, the financial effects of this Bill are not quantified in the EFM, which advises that they will primarily be delivered within existing resources. The EFM also states that

> "*Some provisions will be the subject of individual costs and benefits analysis and subsequent proportionate business case requiring appropriate approvals, which will be requested from the Department of Finance as required by individual policy and business areas as and where appropriate*."

No information is provided on the provisions that will be subject to the costs and benefits analysis.

412. As noted earlier in this report, in its written submission, the PSNI asked that consideration be given to the resource burdens that the new voyeurism offences will being and also the demands they will place on other agencies in PPANI. The PSNI also advised that the lines of enquiry in respect of CSE may also include financial enquiries and there will therefore be an increased demand

on resources within the Public Protection Branch, the Economic Crime Branch and Cyber Crime Centre resources. This is in the context of the likely impact on resources arising from the Domestic Abuse and Civil Proceedings Act and the Protection from Stalking Bill that is currently moving through the Assembly legislative process.

413. Members discussed resourcing issues with the PSNI during the oral evidence session on 25 November 2021. The PSNI advised that they work collectively with partners across the justice system to understand the additional demands the legislation may bring. The PSNI aims to ensure that it is appropriately resourced and financed and stated that they continually raise the issue of how to do that with the Department.

414. The PSNI acknowledged that it is difficult to quantify demand for new offences but advised that they consider comparators in other jurisdictions although that is more difficult where there is no comparable legislation. In the first instance, the PSNI will ensure that officers are trained and equipped to deal with the offence and get it right first time. It may then be necessary, when those offences have been in place for a period of time, to assess what additional demand has been created and then reassess and reprioritise resources.

415. The Committee is aware the resource demands of this legislation on the PSNI and other justice bodies will be compounded by the cumulative effect of the roll-out of the Domestic Abuse and Civil Proceedings Act and the Protection from Stalking Bill and wrote to the Minister to request information on what assessment has been carried out to identify the resource requirements, including those of the PSNI, in relation to this Bill and the other Bills. The Committee also asked for details of specific funding bids/allocations that have been made in the context of the 2022-25 Budget for new additional funding to meet capacity requirements, particularly in view of the already substantial increase in online offences, and ensure effective implementation of the legislation.

416. In response, the Minister indicated that decisions on prioritisation of resources allocated to the PSNI are an operational matter for the Chief Constable and where pressures arise these can be considered through the normal budgetary

processes. The Minister advised that, to date, the PSNI has not made a bid for additional resources in respect of any of the Bills but the Department is open to the police developing proportionate business cases to request additional funding where new legislative provisions create wholly new and unavoidable additional resource requirements that cannot be met through the normal budgetary processes.

417. **The Committee agrees with the PSNI's assertion that it is important to ensure from the outset that the experience of victims is not compromised due to over-stretched resources, which could hamper the effective implementation of the legislation with the resultant impact of dissuading victims of crime of this nature from coming forward.**

418. **While it appreciates the difficulty in estimating the potential resourcing requirements for the implementation of legislation where there is no reliable data on the new offences it creates, the Committee believes it would be helpful to have some information on the likely financial implications in the EFM to assist consideration of the legislation. The Committee is concerned with the assumption that any additional resourcing requirements can be met within existing budgets in the absence of such information, particularly in light of the cumulative impact that the roll out of the Domestic Abuse and Civil Proceedings Act, the Protection from Stalking Bill and this Bill will have on resource budgets, not just for the PSNI, but across the justice system.**

419. **The Draft Budget for the period 2022-25 has been issued for consultation and the Committee is currently scrutinising the Department's draft budget allocation. This will provide an opportunity to consider the resource pressures across the justice system and to establish what resources will be allocated to the implementation of legislation brought forward by the Department.**

Clause by Clause Consideration of the Bill

420. Having considered the written and oral evidence received on the Bill, the Committee deliberated on the clauses of the Bill at its meetings on 11, 13, 17 and 20 January 2022 and undertook its formal Clause by Clause scrutiny of the Bill on 20 January 2022 – see Minutes of Proceedings at Appendix 1 and Minutes of Evidence at Appendix 2.

421. The Committee agreed to bring forward a number of amendments at Consideration Stage. They cover: the removal of the banter defence in respect of the voyeurism offences; a new cyberflashing offence; clarification of the definition of payment in Clause 3; guidance for Part 1 of the Bill including training and data collection; extending support for victims of trafficking; extending the statutory defence on exploitation; and placing a duty on the Department of Justice to bring forward protective measures for victims of slavery and trafficking.

422. Ms Sinéad Ennis, Ms Jemma Dolan and Ms Emma Rogan indicated that they had some reservations regarding the text of the Committee amendment to the voyeurism offences at Clause 1. While content with the creation of a new offence of cyberflashing, they indicated that they had some reservations regarding part of the text of the Committee amendment.

423. The Committee divided and did not support bringing forward an amendment to remove the defence of reasonable chastisement. Ms Sinéad Bradley, Ms Jemma Dolan and Ms Rachel Woods supported bringing forward the amendment and Mr Mervyn Storey, Mr Robin Newton and Mr Peter Weir opposed the amendment.

424. The Committee had considered bringing an amendment to the Minister of Justice's amendment to extend further the scope of the current law on abuse of trust but decided not to bring it at this stage. The Committee may consider its position further following the debate on this issue at Consideration Stage.

425. Ms Rachel Woods indicated that she did not support the Committee's agreed position.

426. Given that it had not had sufficient time to consider the text of the following Minister of Justice amendments, seek the views of key stakeholders and carry out adequate scrutiny, the Committee agreed to note them:

- A New Clause covering Consent to Serious Harm for Sexual Gratification is No Defence
- An Amendment to make 'threats to disclose private sexual photographs and films with intent to cause distress' an offence
- An amendment to provide for the exclusion of the public from appeal hearings against conviction or sentence in serious sexual offence cases in the Court of Appeal
- An amendment to create a new offence of non-fatal strangulation or asphyxiation

427. Information on the Committee's deliberations on the individual Clauses in the Bill and additional provisions can be found in the previous sections of this report.

Clause 1 – Voyeurism: additional offences

428. Agreed: The Committee is content with Clause 1, subject to its proposed amendments to remove the 'banter' defence.

Clause 1, Page 2, Line 18, leave out 'B.' and insert –

'B,

or that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.'

Clause 1, Page 3, Line 11, leave out 'B.' and insert –

'B,
or that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.'

New Clause 1A – Cyberflashing

429. The Committee agreed to insert a new Clause to provide for an offence of cyberflashing.

Page 3, Line 23, insert new clause –

'1A Coercing a person into looking at a sexual image

(8) A person (A) commits an offence if—
(b) A intentionally and for a purpose mentioned in subsection (2) or a condition in subsection (3) causes another person (B)
(i) without B consenting, and
(ii) without any reasonable belief that B consents,
to look at a sexual image.
(2) The purposes are—
(a)obtaining sexual gratification,
(b)humiliating, distressing or alarming B,

or that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.

(3) A condition is that a reasonable person would consider the action to be likely to cause B to suffer humiliation, alarm or distress.

(4) For the purposes of subsection (1), a sexual image is an image (produced by whatever means and whether or not a moving image) of—

(a)A engaging in a sexual activity or of a third person or imaginary person so engaging,

(b)A's genitals or the genitals of a third person or imaginary person

(5) A person found guilty of an offence under this Article is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.'

Clause 2 – Sexual grooming: pretending to be a child

430. Agreed: The Committee is content with Clause 2 as drafted

New Clause 2A – Abuse of position of trust: relevant positions

431. The Minister of Justice proposes to insert a new Clause 2A to extend the scope of the abuse of trust of a child offences to include certain activities carried out in sports and faith settings.

After clause 2 insert—

'Abuse of position of trust: relevant positions

2A.—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.

(9) In Article 2 (interpretation), after paragraph (4) insert—
"(4A) "The Department" means the Department of Justice.".

(3) In Article 28 (positions of trust), in paragraph (1)(b), for "an order made by the Secretary of State" substitute "regulations made by the Department".

(4) After Article 29 insert—

"Positions of trust: further categories

***29A**.—(1) For the purposes of Articles 23 to 26, a person (A) is in a position of trust in relation to another person (B) if—*

(a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion, and

(b) A knows that A coaches, teaches, trains, supervises or instructs B, on a regular basis, in that sport or religion.

(2) In paragraph (1)—

"sport" includes—

(a) any game in which physical skill is the predominant factor,

(b) any form of physical recreation which is also engaged in for purposes of competition or display,

"religion" includes—

(a) a religion which involves belief in more than one god,

(b) a religion which does not involve belief in a god.

(3) Paragraph (1) does not apply where A is in a position of trust in relation to B by virtue of circumstances within Article 28.

(4) The Department may by regulations amend paragraphs (1) and (2) so as to add or remove an activity in which a person may be coached, taught, trained, supervised or instructed.".

(5) In Article 80—

(a) the heading becomes "Orders and regulations",

(b) after paragraph (3) insert—

"(4) Regulations under Article 28(1)(b) or 29A(4) may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

(5) Regulations under this Order may include any incidental, supplementary, consequential, transitory, transitional or saving provision which the Department considers necessary or expedient.".'

432. Agreed: The Committee is content with the new Clause 2A.

Clause 3 – Miscellaneous amendments as to sexual offences

433. Agreed: The Committee is content with Clause 3, subject to its proposed amendment to make it clear that payments may be something other than financial.

Clause 3, Page 6, Line 12, after 'paying' insert –

'(which is not limited solely to the exchange of monies for this purpose)'

New Clause 3A – Abolition of defence of reasonable chastisement

434. Agreed: The Committee is not content to insert a new Clause 3A in the Bill to remove the defence of reasonable chastisement.

Clause 4 – Extended anonymity of victims

435. Agreed: The Committee is content with Clause 4 as drafted

Clause 5 – Disapplication of anonymity of victim after death

436. Agreed: The Committee is content with Clause 5 as drafted.

Clause 6 – Increase in penalty for breach of anonymity

437. Agreed: The Committee is content with Clause 6 as drafted.

Clause 7 – Special rules for providers of information society services

438. Agreed: The Committee is content with Clause 7 as drafted.

Clause 8 – Restriction on reports as to suspects of sexual offences

439. Agreed: The Committee is content with Clause 8 as drafted.

Clause 9 – Meaning of sexual offence in section 8

440. Agreed: The Committee is content with Clause 9 as drafted.

Clause 10 – Power to disapply reporting restriction

441. Agreed: The Committee is content with Clause 10 as drafted.

Clause 11 – Magistrates' courts rules

442. Agreed: The Committee is content with Clause 11 as drafted.

Clause 12 – Offence relating to reporting

443. Agreed: The Committee is content with Clause 12 as drafted.

Clause 13 – Interpretation of sections 8 to 12

444. Agreed: The Committee is content with Clause 13 as drafted.

Clause 14 – Consequential amendment

445. Agreed: The Committee is content with Clause 14 as drafted.

Clause 15 – Serious sexual offences: exclusion of public from court

446. Agreed: The Committee is content with Clause 15 as drafted.

New Clause 15A – Guidance

447. The Committee agreed to introduce a new Clause 15A to place a duty on the Department of Justice to provide guidance on Part 1 of the Bill including training and data collection.

Page 19, Line 21, insert new clause –

'Guidance about Part 1

15A. *(1) The Department of Justice must issue guidance about–*

(c) the effect of this Part, and

(d) such other matters as the Department considers appropriate as to criminal law and procedure relating to Part 1 in Northern Ireland.

(2) The guidance must include–

(c) information for use in training on the effect of this Part as it considers appropriate for its personnel, and

(d) the sort of information which it seeks to obtain from personnel for the purpose of the assessment by it of the operation of this Part.

(3) Personnel in subsection (2) being any public body that has functions within the criminal justice system in Northern Ireland which the Department of Justice considers appropriate.

(4) A person exercising public functions to whom guidance issued under this Part relates must have regard to it in the exercise of those functions.

(5) The Department of Justice must—

(a) keep any guidance issued under this Part under review, and

(b) revise any guidance issued under this Part if the Department considers revision to be necessary in light of review.

(6) The Department of Justice must publish any guidance issued or revised under this section.

(7) Nothing in this Part permits the Department of Justice to issue guidance to a court or tribunal.'

Clause 16 – Support for victims of trafficking etc

448. Agreed: The Committee is content with Clause 16, subject to its proposed amendments to extend support for victims of trafficking and to extend the statutory defence on exploitation to include Class A drugs.

Clause 16, Page 20, Line 6, at end insert –

'(aa) in subsection (4) after 'days' insert '(or more based on need)"

Clause 16, Page 20, Line 6, at end insert –

'(ab) in subsection (9) leave out 'such further period as the Department thinks necessary' and insert 'for 12 months (or less if not required)"

Clause 16, Page 20, Line 12, at end insert –

'(4) In section 22 (Defence for slavery and trafficking victims in relation to certain offences)–

(a) in subsection (9)(a)(i) after 'of a' insert 'Class A,',

(b) In subsection (9)(a)(ii) after 'of a' insert 'Class A or,"

Clause 17 – Reports on slavery and trafficking offences

449. Agreed: The Committee is content with Clause 17 as drafted.

Clause 17A – Protective measures for victims of slavery or trafficking

450. The Committee agreed to insert a new Clause 17A to place a duty on the Department of Justice to bring forward protective measures for victims of slavery and trafficking.

Page 20, Line 17, insert new clause –

'Protective measures for victims of slavery or trafficking

17A. (1) The Department of Justice may by regulations, within 24 months of Royal Assent, make provision—

(a) enabling or requiring steps to be taken or measures to be imposed for protecting a person from slavery or trafficking,

(b) for the purpose of or in connection with such steps or measures for protecting a person from slavery or trafficking.

(2) Steps or measures which may be provided for in regulations under this section are not limited to notices or orders.

(3) The regulations may not be made unless a draft has been laid before and approved by a resolution of the Assembly.'

Clause 18 – Qualifying offences for sexual offences prevention orders

451. Agreed: The Committee is content with Clause 18 as drafted.

Clause 19 – Time limit for making violent offences prevention orders

452. Agreed: The Committee is content with Clause 19 as drafted.

Clause 20 – Ancillary regulations

453. Agreed: The Committee is content with Clause 20 as drafted.

Clause 21 – Commencement

454. Agreed: The Committee is content with Clause 21 as drafted.

Clause 22 – Short title

455. Agreed: The Committee is content with Clause 22 as drafted.

Schedule 1 – Consequential amendments: voyeurism (additional offences)

456. Agreed: The Committee is content with Schedule 1 as drafted.

Schedule 2 – Miscellaneous amendments as to sexual offences

457. Agreed: The Committee is content with Schedule 2 as drafted.

Schedule 3 – Offence of breach of anonymity: providers of information society services

458. Agreed: The Committee is content with Schedule 3 as drafted.

Long Title

459. Agreed: The Committee is content with the Long Title of the Bill.

Links to Appendices

Appendix 1: Minutes of Proceedings

View Minutes of Proceedings of Committee meetings related to the report

Appendix 2: Minutes of Evidence

View Minutes of Evidence from evidence sessions related to the report

Appendix 3: Written Submissions

View written submissions received in relation to the report

Appendix 4: Memoranda and Papers from the Department of Justice

View Memoranda and Papers supplied to the Committee by the Department

Appendix 5: Other Papers and Correspondence received on the Bill

View the other papers and correspondence received on the Bill

Appendix 6: Notes of Informal Meetings

View notes of informal meetings

Appendix 7: Research Paper

View Research Papers produced by the Assembly's Research and Information Service (RaISe) in relation to the report

This Report can be made available in a range of formats including large print, Braille etc. For more information please contact:

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