

# **ABUSE OF POSITION OF TRUST OFFENCES: EXTENSION OF THE LAW**

**SUMMARY OF CALL FOR EVIDENCE RESPONSES**

**AND**

**WAY FORWARD**

**4 November 2024**

## Foreword

I am pleased to publish a summary of the responses to a call for evidence exercise which I launched in October 2022 and which I have now considered on my return as Justice Minister. I am grateful to those who have expressed a particular interest in this important area and especially to those who took the time to respond. I found the responses to be both thoughtful and considered.

As the call for evidence document had explained, this exercise arose from a commitment I made at the end of the last Assembly mandate to review the scope of the abuse of position of trust provisions contained in the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (“the SOTV Act”). While this would, ordinarily, be considered an extremely early juncture at which to review freshly enacted legislation, I considered it essential to addressing particular issues raised by some members of the Committee for Justice during the passage of the provisions regarding whether the extension of the abuse of position of trust offences to sport and religious settings went far enough in protecting young people.

I am, of course, conscious that predatory behaviour can occur in any environment where an adult has significant influence or power over a young person in their care. It is crucial that our criminal justice partners continue to be provided with the correct powers to enable them to deal effectively with those who are intent on breaking the law.

However, while it is important to ensure that there are no gaps in our legislation, we must also ensure that legal intervention is sufficiently evidenced, particularly where this impacts on a person's human rights. The legal age to engage in consensual sex in Northern Ireland is 16 years old. We must, therefore, ensure that any changes aimed at protecting our young people also recognise and respect their fundamental right to engage in lawful consensual relations from the age of 16.

In undertaking this review, I pledged my commitment to exploring whether there was evidence available to support a further change to the law, both in the areas identified by the Justice Committee (tutoring and youth activity) and more widely.

This document summarises the responses received by my Department and sets out my planned way forward.

The SOTV Act includes a statutory requirement to review this area on an annual basis, which will help ensure a continued focus can be applied going forward.

A further review will, therefore, be launched towards the end of this year. I again welcome anyone who has evidence of concerns in any of the areas outside of the existing legislative framework, or views on how best to ensure our young people are protected in a way that respects their rights, to respond to this review. Having noted the comments provided in the initial review, I also intend to take this opportunity to take a fresh look at our approach to legislating in this important area.

**NAOMI LONG MLA**

**Minister of Justice**

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## Introduction

1. The 'Abuse of Position of Trust Offences: Extension of the Law Call for Evidence' paper set out the background to the policy and legislative position, which is rehearsed again, in part, for context. It explained that the abuse of position of trust offences were first introduced, at [Articles 23 to 26](#) of the Sexual Offences (Northern Ireland) Order 2008 ("the Order"), to prevent the manipulation of young persons to consent to sexual activity by those who hold a position of trust with them.
2. Those provisions make it an offence for persons aged 18 or over to intentionally behave in certain sexual ways in relation to a child under 18, where they are in a position of trust in respect of the child. The provisions define a person in a position of trust, and set out the related activities and responsibilities of a person in a position of trust. They provide that a person is in a 'position of trust' if they are 'regularly involved in caring for, training, supervising or being in sole charge of such persons,' within a number of prescribed statutory settings.
3. The offences were not originally intended to cover all situations where an adult might have contact with, or a supervisory role over, under 18s. Instead, they were intended to capture those relationships where there is an imbalance in the power held by the child and adult, and, therefore, scope for that position of trust to be abused. Prior to amendment made by the SOTV Act, the offences focused on statutory settings where government has a duty to protect young people in its care, for example: residential care homes; educational institutions; detention facilities, etc.
4. [Section 5](#) of the SOTV Act introduced new Article 29A 'Positions of trust: further categories' to the 2008 Order. This new Article sets out the further categories of adults in a position of trust who are captured by the position of trust offences at Articles 23 to 26. It defines them as those who "*coach, teach, train, supervise or instruct' a person under 18, on a regular basis, in a sport or a religion*" and requires that they know they 'coach, teach, train, supervise or instruct' a person under 18 on a regular basis in that sport or religion.
5. In order to allow for flexibility going forward, the provision also includes a delegated power to make regulations to add or remove an activity in which a person may be coached, taught, trained, supervised or instructed. Additionally, the legislation

contains a provision which requires the Department to annually review Article 29A(1) and (2) so as to inform the Department whether the delegated power referred to above should be exercised.

6. While supporting information was invited on any problem that exists in areas not covered in the current legislation, particular information was sought from those with a particular interest in, and those with experience of working with, young people within the youth activity sector and in tuition – which were areas specifically identified by the Justice Committee. We also welcomed views from young people themselves, given that they would be directly affected by any further legislative change. The request for information was framed across three particular areas in order to explore whether there was evidence on any:

- additional environments/ settings that should be provided for within the abuse of position of trust provision;
- particular complaint made or concerns raised within these settings; and
- further information that was considered relevant in support of extending the scope of the abuse of position of trust provisions through the call for evidence.

The paper also set out the issues to be considered as part of the consideration of responses.

A total of thirteen responses were received. A list of those who responded is included at Appendix A.

## SUMMARY OF RESPONSES

**Question 1:** Do you consider that there are any additional environments/ settings that should be provided for within the abuse of position of trust provision? If so, please detail what these are and why they should be included

7. The majority of the responses received were of the view that the provisions should be extended, in some form, and there was support for extension to a variety of settings. This included: all forms of coaching and tuition; a wider interpretation of “sport” in the current definition to include dance and gyms; taxis used by the education authorities; drama; scouts; youth sector / workers; all uniformed organisations (e.g. Brownies, St. John’s Ambulance); driving instructors; army cadets; and marching bands. Additionally, one response suggested inclusion of all adults who work for charities and non-statutory services that provide advice and support, or services and activities, to young people.
8. Further suggestions included youth activity provided or managed by the Education Authority, but not considered to be an “educational institution”, and educational teaching arrangements at home, which may fall outside of the current legislation. In a similar vein, one response suggested consideration of volunteer spaces and apprenticeships.
9. Whilst a number of the responses suggested particular settings, some also considered that the provision should not be limited by highlighting specific settings, and that rather this should extend broadly to ‘*all adults in a position of trust and power over children*’. Some respondents were of the view that the legislation should focus on the relationship between an adult and young person, and the level of trust / authority within that relationship, rather than highlighting particular industries, settings or job titles. One response also suggested the inclusion of anyone with ‘*any caring or mentoring*’ responsibilities for children in any capacity.

### Response

10. The areas proposed for further extension in response to this question were referenced in broad terms with no evidence provided that could determine that a

current problem exists, or where there is a particular risk that had been specifically identified. In some responses, areas were highlighted where there was a potential for a problem to occur, or views were supported by cases in which the existing law had already captured the relevant behaviour. Without evidence of a specific problem or an identified risk, at this stage we do not consider it would be appropriate to amend the legislation to add additional categories.

11. The Department engaged directly with the Education Authority as part of its analysis of responses received, to explore any potential gap in the provision and the management of youth activity outside of its statutory remit. While those discussions concluded that there was no evidence to support a particular risk or existing problem at this stage, Authority officials have helpfully committed to working closely with the Department in monitoring this area.
12. It is important that the law is defined in such a way that there is no ambiguity in the level of protection it seeks to capture, and that it is clear and precise on the areas it should specifically target. Proportionality is also an important consideration in this area particularly given these provisions engage Article 8 of the European Convention on Human Rights (right to private and family life). Where the application of the law is cast too widely and is without a robust definition and framework it could be deemed to be outside of the legislative competence of the Northern Ireland Assembly. Equally, there may be potential for loopholes where those intent on breaking the law could manipulate the legislative framework.

**Question 2: Do you know of any particular complaint made or concerns raised within these settings? Please provide detail**

13. A number of the responses to the call for evidence broadly referenced other settings or organisations which they considered should be covered by the legislation. Some provided examples of wrongdoing, where many of the behaviours described did not sit within the remit of the abuse of position of trust offences. Some examples provided related to child sexual abuse (those under 16 years) in certain organisations / schools / private tuition, and others related to grooming offences, sexual harassment and historical institutional abuse.



14. All such behaviours as referenced are considered abhorrent and should not be tolerated. However, it is noted that for some of the examples, other offences already exist within the sexual offences legislative framework. In some examples of cases referenced, the perpetrators had been prosecuted and convicted.
15. For some examples provided, it was suggested that the behaviours involved could present opportunities for adults to abuse a position of trust, where young people could come under the influence of an older person with whom they interact.
16. A particular example highlighted the case of a young person who had been sexually exploited by a visiting gospel singer, who was high profile and had a significant online following. The response highlighted that while there had been no prior in-person contact between both parties, the young person had interacted with the singer online. The singer sexually assaulted the young person when they met in person and had repeated this behaviour in other parts of the UK (before being convicted in Scotland). This example was provided to indicate that the “regular basis” requirement should not be included, and that “relationships” with less tangible contact should be included.
17. One response highlighted a particular case involving a music tutor at a school in England in the 1980s, but who also gave private music tuition at his home. He was involved in the abuse of students in both those locations. This case was included in an IICSA report<sup>1</sup>: “Residential schools investigation report - March 2022”. The report, and the call for evidence response, also included the specific example of the abuse of a young girl at the same tutor’s home, which continued for a number of years during her time at the music school.
18. A further example provided referenced a music tutor based in Northern Ireland, who was the subject of a Sexual Offences Prevention Order (SOPO), but continued to offer private tuition in his home, in direct breach of the SOPO.
19. One response mentioned statutory and non-statutory youthwork settings. That particular response also suggested that the “Department should give consideration to the creation of a wider offence of a sexual act with a child aged

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<sup>1</sup> [IICSA: sexual abuse and exploitation of children in residential schools - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108122/iicsa-sexual-abuse-and-exploitation-of-children-in-residential-schools-report-march-2022.pdf)

16/17 years old by a person in authority, similar to that which exists within the Republic of Ireland”.

20. As set out above, several responses provided examples or case studies involving heinous and harmful behaviours, but where the person responsible had been punished through already existing, and more appropriate, offences. Whilst it is right that we consider how best to deal with these abusive behaviours, the detail of these examples shows that often the suitable punishments are already in place and have been received by the offenders.
21. Having considered the responses received, the Department had further conversations with the Police Service of Northern Ireland (PSNI), to explore further whether it considered there was an identifiable gap in the law. PSNI is of the view that there are no specific areas outside the current legislative framework which would lead the organisation to express a particular concern. The Department is mindful, given the nature of this area, that there will be incidents which have not been reported to police, and in this regard we would welcome any evidence available by any other means.

## Response

22. A number of the responses suggested environments or sectors which could potentially be vulnerable to this kind of abuse. Whilst there could be potential for abuse in any environment, as has already been highlighted, it is important that legislative change to add further specific categories is supported by evidence of an identifiable problem.
23. Some of the responses have provided examples where other forms of sexual abuse have taken place.
24. In respect of the music tutor example, staff and tutors at schools are already covered by the abuse of position of trust legislation, so there is no need for any extension of the legislation. The acts which took place in the tutor’s home are clearly child sexual abuse – as well as involving children under the age of consent. While it is extremely disappointing that the victims felt that they were not heard,

and did not receive justice at the time of their abuse, extending the abuse of position of trust offence would have no impact in these circumstances.

25. Similarly, in the example of the Northern Ireland offender who was in receipt of a SOPO, given breach of a SOPO is already a criminal offence the application of abuse of position of trust legislation would not have added anything in this case.
26. In respect of non-statutory youth work settings, the specific concern set out in the response was that these settings, whilst often associated with the Education Authority, do not fit into the statutory education sector, which is covered in the legislation as it was originally made. As noted above, the Department has engaged with the Education Authority to work with them on gathering and collating relevant information which could be used in future reviews of the legislation.
27. It was suggested that the Department should consider the Republic of Ireland legislation. The law in Ireland is held in the Criminal Law (Sexual Offences) Act 2006 (as amended), and provides for 'persons in authority' - a person of authority (in addition to adults within family relationships) includes 'any other person who is or has been responsible for the education, supervision, training or care or welfare of a child'. This covers teachers, sports coaches, carers and others who were persons in authority in respect of the child at some time in the past, though not necessarily when the offence was committed. It should be noted, however, that sexual acts within Republic of Ireland legislation are more narrowly defined.
28. When drafting the legislation, the Department studied the laws in place in a variety of jurisdictions, and these provided a range of systems for consideration. The position in Ireland was not considered to be suitable / appropriate for Northern Ireland, given the differences in the wider sexual offences legislative framework.

**Question 3:** Is there any further information that you consider relevant in support of extending the scope of the abuse of position of trust provisions through this call for evidence? Please provide detail

29. Two of the responses suggested that the Department should consider amendment or removal of the marriage / civil partners clause, and the prior sexual relationship

clause. This proposal would include explicit reference to coercive control, to ensure that the marriage and prior sexual relationship exemptions would not be applicable where coercive control had been present.

## Response

30. These suggested amendments are clearly borne from a well-placed concern for the welfare of those who may be vulnerable. However, where coercive control is present there is already a legislative framework in place to address this particular behaviour. The Domestic Abuse and Family Proceedings Bill 2020 created a new domestic abuse offence for Northern Ireland which captures patterns of controlling and coercive behaviour, as well as physical abuse, against a partner, former partner or family member.
  
31. As set out previously in this paper, the abuse of position of trust legislation was created to tackle a very specific type of offending, between two individuals who are specified. It would be inappropriate, and most likely ineffective, to try to use this legislation to tackle other issues such as coercive control, particularly when there is already a strong focus on tackling this behaviour from law enforcement.

## Departmental response and next steps

32. This call for evidence was issued in order to fulfil a commitment to review the abuse of position of trust legislation, which was amended by the Justice (Sexual Offences and Trafficking Victims) Act 2022. The exercise provided interested parties, and members of the public, with an opportunity to provide the Department with any evidence that might justify any further legislative change.
33. While the call asked for evidence, what was provided, for the most part, was a selection of strong and clearly articulated views on the desirability of further amending the legislation but it stopped short of demonstrating evidence of need to add further categories to the legislation.
34. As was highlighted in the call for evidence paper itself, and throughout this response paper, the abuse of position of trust offences were never intended to cover all situations where an adult might have contact with, or supervisory role over, under 18s. Rather, they were developed, and subsequently extended, to capture those particular relationships where there is a significant imbalance in power between an adult and child, and where there is scope for that position of trust to be abused.
35. In terms of protecting young people. the provisions are only one element of the wider robust legislative framework used by PSNI and PPS which provides extensive and significant protections to young people from the harm caused by sexual offending. This framework makes it an offence for anyone to engage in sexual activity with someone under the age of 16, whether or not they consent to that activity. Where an offender in a case is in a position of trust, this should be treated as a significant aggravating factor by the courts at the point of sentencing.
36. The Department is committed to protecting young people in vulnerable situations. However, this must sit alongside respect for their right to give legal consent to sexual activity from the age of 16. This has been set in law, and it would be wrong to use the abuse of position of trust legislation to hamper this right in a disproportionate way.

This is a highly important aspect of the legislation which should not be undermined. It is crucial that a careful balance is maintained and that the Department is proportionate in its response to changing the law.

37. However, whilst there was a lack of evidence of harm having occurred, what was evident was a widely held view among respondees that the Department should not wait for harm to have occurred in particular settings before taking action. In response to this, the Department intends to look at this area more widely going forward, with a view to considering the best legislative approach. This might include, for instance, exploring the option of introducing a 'reasonable person' test, either instead of or in addition to listing categories of adults in a position of trust based on specific settings or occupations. This would allow other adults to be captured by the offences where a 'reasonable person' would consider there to have been an imbalance of power that has been abused. The next review will provide an opportunity to take views on whether such an approach could help allay concerns without unduly widening the scope of the offences.
38. In terms of next steps, the Department will review this area on an annual basis, which will keep a continued focus on this issue. The legislation was drafted to include this commitment, so that any new information or evidence relevant to this policy area could be considered.
39. The Department will continue to work with relevant and interested organisations to ensure that young people are provided with the protections they need, whilst respecting the rights to which they are entitled.

## Call for evidence respondents

	ORGANISATION
1	Women's Platform
2	SE area Domestic & Sexual Violence and Abuse Partnership
3	NSPCC
4	Thirtyone:eight
5	Information Commissioner's Office
6	Safeguarding Board of the Church of Ireland
7	Commissioner Designate for Victims of Crime
8	Education Authority - Child Protection Support Service
9	NEXUSNI
10	Barnardo's
11	Women's Policy Group
12	Disability Action
13	PSNI