



Northern Ireland  
Assembly

Justice (Sexual Offences and Trafficking Victims) Bill  
Notice of Amendments tabled on  
1 February 2022 for Consideration Stage

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**Clause 15, Page 16, Line 10**

After ‘court’ insert ‘if satisfied that it is in the public interest or the interests of justice’

*Mr Jim Allister*

**New Clause**

After clause 2 insert -

**‘Abuse of position of trust: relevant positions**

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

(2) 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.”.

*Minister of Justice*

## **New Clause**

After clause 2 insert -

### **‘Private sexual images: threatening to disclose**

**2B.**—(1) The Justice Act (Northern Ireland) 2016 is amended as follows.

(2) In section 51 (disclosing private sexual photographs and films with intent to cause distress)—

(a) for subsection (1) substitute—

“(1) A person commits an offence if—

- (a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual (“the relevant individual”) appears,
- (b) by so doing, the person intends to cause distress to that individual, and
- (c) the disclosure is, or would be, made without the consent of that individual.”,

(b) in subsection (2)—

(i) after “disclose” insert “, or threaten to disclose,”,

(ii) for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”,

(c) in subsection (4), after “disclosure” insert “, or threat to disclose,”,

(d) in subsection (5), in each place, for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”,

(e) after subsection (7) insert—

“(7A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove—

- (a) that the photograph or film referred to in the threat exists, or
- (b) if it does exist, that it is in fact a private sexual photograph or film.”,

(f) for subsection (8) substitute—

“(8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.”.

- (3) In section 53 (meaning of “private” and “sexual”), in subsection (5), for “the person mentioned in section 51(1)(a) and (b)” substitute “the relevant individual (within the meaning of section 51)”.
- (4) In Schedule 4 (private sexual photographs etc: providers of information society services)—
- (a) in paragraph 3(1), after “sub-paragraph (2)” insert “, (2A)”,
  - (b) in paragraph 3(2), after “if” insert “, in the case of information which consists of or includes a private sexual photograph or film,”,
  - (c) after paragraph 3(2) insert—
 

“(2A) This sub-paragraph is satisfied if, in the case of information which consists of or includes a threat to disclose a private sexual photograph or film, the service provider had no actual knowledge when the information was provided—

    - (a) that it consisted of or included a threat to disclose a private sexual photograph or film in which another individual appears,
    - (b) that the threat was made with the intention of causing distress to that individual, or
    - (c) that the disclosure would be made without the consent of that individual.”,
  - (d) in paragraph 4(2), for “section 51” substitute “section 52”,
  - (e) for paragraph 4(3) substitute—
 

“(3) “Information society service” means any service normally provided—

    - (a) for remuneration,
    - (b) at a distance (namely, the service is provided without the parties being simultaneously present),
    - (c) by electronic means (namely, the service is—
      - (i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and
      - (ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and
    - (d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).”.

*Minister of Justice*

## Clause 7, Page 10

Leave out lines 16 to 26 and insert -

- ““information society service” means any service normally provided—
- (a) for remuneration,
  - (b) at a distance (namely, the service is provided without the parties being simultaneously present),
  - (c) by electronic means (namely, the service is—
    - (i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and
    - (ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and
  - (d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request);’

*Minister of Justice*

**Clause 7, Page 10**

Leave out lines 33 to 37

*Minister of Justice*

**Clause 15, Page 19, Line 20**

At end insert -

**‘Exclusion of public from appeal hearing**

27E.—(1) Paragraph (2) applies where a hearing is to be held by the Court of Appeal of any one or more of the following—

- (a) an application for leave to appeal against a conviction or sentence (or both) in respect of a serious sexual offence;
- (b) an appeal against a conviction or sentence (or both) in respect of a serious sexual offence;
- (c) an application for leave to refer a sentence in respect of a serious sexual offence to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (reviews of sentencing);
- (d) a reference under that section of a sentence in respect of a serious sexual offence;
- (e) an application for leave to appeal under section 12 or 13A of the Criminal Appeal (Northern Ireland) Act 1980 (appeals against findings of not guilty on ground of insanity and unfitness to be tried) in respect of a serious sexual offence;
- (f) an appeal under either of those sections in respect of a serious sexual offence.

(2) The court must give an exclusion direction before the beginning of the hearing (but this is subject to paragraph (4)).

(3) Paragraph (2) applies whether or not the hearing relates to other offences as well as a serious sexual offence.

(4) Paragraph (2) does not apply if the time at which the exclusion direction would fall to be given (in the absence of this paragraph) is not within the lifetime of the complainant.

(5) Where an exclusion direction is given under this Article in relation to a hearing, the direction—

- (a) has effect from the beginning of the hearing, and
- (b) subject to paragraph (7), continues to have effect until, in respect of each relevant application or appeal to which the hearing relates, either—
  - (i) a decision has been made on the application or appeal, or
  - (ii) the application or appeal has been abandoned.

(6) In paragraph (5) a “relevant application or appeal” means any application, appeal or reference mentioned in paragraph (1).

(7) The exclusion direction does not have effect during any time when any of the following decisions is being pronounced by the court—

- (a) a decision to grant or refuse leave to appeal;
- (b) a decision on an appeal;
- (c) a decision to grant or refuse leave to make a reference under section 36 of the Criminal Justice Act 1988;
- (d) a decision on such a reference.

(8) In this Article—

“complainant” has the meaning given by Article 27A(7), reading the reference in Article 27A(7) to the trial as a reference to the hearing;

“effect” has the same meaning as in Article 27A (see Article 27A(7));

“exclusion direction” is to be read in accordance with Article 27F(1);

“sentence” has the same meaning as in Part 1 of the Criminal Appeal (Northern Ireland) Act 1980;

“serious sexual offence” has the same meaning as in Article 27A (see Article 27A(7)).

(9) A reference in this Article to a hearing is not to be taken to include any proceedings on an application for leave to appeal, or on an application for leave to refer a sentence, that are of a kind which (ignoring this Article) are not held in open court.

#### **Exclusion from appeal hearings: further provision**

27F.—(1) Subject to paragraph (5), in Article 27E and this Article “exclusion direction” has the meaning given by Article 27A(2).

(2) The following provisions apply in relation to exclusion directions given under Article 27E as they apply in relation to exclusion directions given under Article 27A—

(a) Article 27B(1) to (3), (5) and (6);

(b) Article 27C; and

(c) Article 27D(1) to (4).

(3) As well as being subject as mentioned in Article 27D(4), an exclusion direction given under Article 27E has effect subject to section 24 of the Criminal Appeal (Northern Ireland) Act 1980 (right of accused to be present at hearing of appeal and limitations on that right).

(4) Rules made under section 55 of the Judicature (Northern Ireland) Act 1978 may make provision about any matter mentioned in paragraph (4) of Article 27B or paragraph (5) of Article 27D (reading the references in those paragraphs to Article 27A(2)(c) and (d), Article 27B(6) and Article 27C(3) as references to those provisions as applied by this Article).

(5) In their application by virtue of this Article, Article 27A(2) and the provisions mentioned in paragraph (2)(a) to (c) are to be read as if—

(a) in the definition of “the complainant” in Article 27A(7), the reference to the trial were a reference to the hearing, and

(b) in the definition of “persons directly involved in the proceedings” in Article 27A(7), sub-paragraph (e) were omitted.’

*Minister of Justice*

#### **New Clause**

After clause 19 insert -

#### **‘CHAPTER 2**

#### **CAUSING OR RISKING SERIOUS HARM**

#### **Consent to harm for sexual gratification is no defence**

**19A.**—(1) For the purpose of determining whether a person (“A”) who inflicts serious harm on another person (“B”) is guilty of a relevant offence, it is not a defence that B consented to the infliction of the serious harm for the purpose of obtaining sexual gratification.

(2) The reference in subsection (1) to obtaining sexual gratification is to obtaining it for any person (whether for A, B or some other person).

(3) In this section—

“the 1861 Act” is the Offences Against the Person Act 1861,

“relevant offence” means any of these—

(a) an offence under section 18 of the 1861 Act,

(b) an offence under section 20 of the 1861 Act,

(c) an offence (but not common assault) under section 47 of the 1861 Act,

“serious harm” means any of these—

- (a) wounding within the meaning of section 18 of the 1861 Act,
- (b) grievous bodily harm within the meaning of section 18 of the 1861 Act,
- (c) actual bodily harm within the meaning of section 47 of the 1861 Act.

(4) However, this section does not apply in the case of an offence under section 20 or 47 of the 1861 Act where—

- (a) the serious harm consists of, or is a result of, the infection of B with a sexually transmitted infection in the course of sexual activity, and
- (b) B consented to the sexual activity in the knowledge or belief that A had the sexually transmitted infection.

(5) Nothing in this section affects the operation of any rule of law, or any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954), relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.'

*Minister of Justice*

## **New Clause**

After clause 19 insert -

### **'Offence of non-fatal strangulation or asphyxiation**

**19B.**—(1) A person ("A") commits an offence if the first and the second conditions are met.

(2) The first condition is that A intentionally—

- (a) applies pressure on or to the throat or neck of another person ("B"), or
- (b) does something to B, of any other sort, amounting to battery of B.

(3) The second condition is that A—

- (a) intends A's act to affect B's ability to breathe or the flow of blood to B's brain, or
- (b) is reckless as to whether A's act would affect B's ability to breathe or the flow of blood to B's brain.

(4) An offence under this section is committed irrespective of whether in fact A's act affects B's ability to breathe or the flow of blood to B's brain.

(5) An offence under this section can be constituted by virtue of A's act irrespective of how A's act is done (for example, by use of a hand or another part of A's body or by A making use in any way of an object of any kind).

(6) It is a defence to an offence under this section for A to show that B consented to A's act, but the defence is not available if—

- (a) B suffers serious harm as a result of A's act, and
- (b) A—
  - (i) intended A's act to cause B to suffer serious harm, or
  - (ii) was reckless as to whether A's act would cause B to suffer serious harm.

(7) No question as to B's consent to A's act may be considered for the purpose of this section unless the question is relevant in relation to the defence in this section.

(8) The matter of B's consent on which the defence in this section may be based is to be taken to be shown by A if—

- (a) evidence adduced is enough to raise an issue with respect to the matter, and

(b) the contrary with respect to the matter is not proved beyond reasonable doubt.

(9) If—

(a) an act is done in a country or territory outside the United Kingdom,

(b) an offence under this section would be constituted by virtue of the act if done in Northern Ireland, and

(c) the person who does the act is a United Kingdom national or is habitually resident in Northern Ireland,

the person commits an offence under this section as if the act is done in Northern Ireland.

(10) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

(11) In this section—

“the 1861 Act” is the Offences Against the Person Act 1861,

“serious harm” means any of these—

(a) wounding within the meaning of section 18 of the 1861 Act,

(b) grievous bodily harm within the meaning of section 18 of the 1861 Act,

(c) actual bodily harm within the meaning of section 47 of the 1861 Act,

“United Kingdom national” means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of the British Nationality Act 1981.

(12) Schedule 4 contains consequential amendments in connection with this section.’

*Minister of Justice*

## **Clause 21, Page 21, Line 20**

Leave out paragraph (a) and insert -

‘(a) sections 16 to 19A, ’

*Minister of Justice*

## **Schedule 3, Page 27**

Leave out lines 18 to 28 and insert -

““information society service” means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

- (ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and
- (d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request);’

*Minister of Justice*

### **Schedule 3 , Page 27**

Leave out lines 33 to 36

*Minister of Justice*

### **New Schedule**

After schedule 3 insert -

#### **‘SCHEDULE 4**

#### **OFFENCE OF NON-FATAL STRANGULATION OR ASPHYXIATION: CONSEQUENTIAL AMENDMENTS**

*Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)*

1. In Article 53A (qualifying offences for particular investigative purposes), in paragraph (2)—

(a) the second of the two sub-paragraphs numbered as (t) is renumbered as (u),

(b) after the second of those two sub-paragraphs insert—

“(v) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).”.

*Sexual Offences Act 2003 (c. 42)*

2. In Schedule 5 (lists of offences for making particular orders), after paragraph 171G insert—

“171H An offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).”.

*Criminal Justice (Northern Ireland) Order 2008 (NI 1)*

3. In Schedule 2 (lists of offences for sentencing matters), in Part 1—

(a) the second of the two paragraphs numbered as 31A is renumbered as 31B,

(b) after the second of those two paragraphs insert—

“*The Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022*

31C An offence under section 19B (non-fatal strangulation or asphyxiation).”.

*Domestic Violence, Crime and Victims Act 2004 (c. 28)*

4. In section 7A (certain rules of evidence and procedure), after paragraph (b) of subsection (2) insert—

“(c) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).”.



*Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (NI 14)*

5. In Article 2 (unjustifiable punishment of children), in paragraph (2)—

(a) omit the “and” preceding sub-paragraph (e),

(b) after sub-paragraph (e) insert—

“(f) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).”.

*Minister of Justice*

**Long Title**

Leave out ‘rules applying with respect to certain sexual or violent offences prevention orders’ and insert ‘certain rules of law and procedure for the purpose of protecting people from harm’

*Minister of Justice*