

Irish Congress of Trade Unions response to the Committee for Justice's call for Evidence on the **Justice (Sexual Offences and Trafficking Victims) Bill - Committee Stage.**

1. About the Irish Congress of Trade Unions (ICTU).

The Irish Congress of Trade Unions (ICTU) is the single umbrella organisation for trade unions on the island of Ireland. Congress is the largest civil society organisation on the island. It is the apex body representing 832,000 workers affiliated through 64 trade unions in Northern Ireland and the Republic of Ireland. The organisation is required, through its mission statement, to strive to achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality.

The Northern Ireland Committee (NIC) of the ICTU is the representative body for 34 trade unions with over 215,000 members across Northern Ireland. In membership terms, it is the largest civil society organisation in Northern Ireland.

2. Introduction

The ICTU welcomes the opportunity to respond to this call for evidence. As members of the Women's Policy Group, ICTU fully endorses the response made by the WPG and wishes to further signal our support for the response made by Women's Aid Federation NI. The organisations within the WPG, together with the particular expertise from WAFNI, have prepared a comprehensive response commenting on all aspects of the proposed Bill.

Rather than restating these positions, ICTU will mainly comment on the aspects of the draft Bill which propose to legislate for so-called 'upskirting and down-blousing'.

In addressing these aspects of the Bill, the ICTU would also like to endorse and draw attention to the submission made by our affiliate union NASUWT and the work of education unions in drawing attention to these issues.

The NASUWT has been campaigning for a change in the law in this area since NASUWT members in Enniskillen Royal Grammar school were subject to 'up-skirting' by a student while at work. The student was convicted for committing an act of a lewd, obscene and disgusting nature and outraging public decency. The current law does not protect all women and girls, in fact in the Enniskillen incident the conviction rested on proving that other pupils present were members of the public capable of being outraged. The other pupils were treated as the victims not the teachers, if others had not been present a conviction would not have been possible.

ICTU welcomes the Department's intention to legislate on these two matters however we have grave concerns that the proposed provisions are seriously flawed and therefore are not fit for purpose.

The draft provisions mirror those brought forward in Scotland in 2010 and subsequently in England and Wales, i.e. a person commits the offence of voyeurism if, without consent, they

Irish Congress of Trade Unions response to the Committee for Justice's call for Evidence on the **Justice (Sexual Offences and Trafficking Victims) Bill - Committee Stage.**

operate equipment, or record an image beneath an individual's clothing with the intention of enabling themselves or a third party to observe that individual's genitals or buttocks in circumstances where they would not otherwise be visible, **and where the person acted for the purposes of obtaining sexual gratification or humiliating, alarming or distressing the individual.**

In a blog by the Northern Ireland Assembly Research Matters team, it is pointed out that¹

Criticism of the current laws in Great Britain suggests that they do not go far enough to protect victims, making it inadvisable to import policies that may not be fit for purpose.

They further comment on the problematic issue of intent *in the GB legislation*

This narrow definition of the offender's intent has proven problematic in both jurisdictions. In the first six years since the new law came into effect, 142 people were charged with upskirting offences in Scotland, but only 19 were convicted: a rate of 13%. The difficulty of proving the nature of an offender's intentions beyond reasonable doubt may be contributing to cases never reaching court.

Despite evidence which suggests that the requirement to prove intent inhibits conviction, ICTU is concerned that the Department is intent on replicating this flawed legislation - it would still be the case that 'up skirting' 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

The Department has an opportunity to learn from the GB experience and we would urge the Minister to be bold and to develop bespoke provisions for Northern Ireland.

We would support recommendations made by the NASUWT in terms of the legislation, namely that the Bill is amended to remove the clause that requires evidence that the person acted for the purposes of obtaining sexual gratification or humiliating, alarming or distressing the individual and instead replaces it with a form of words that conviction rests on intent to record/distribute and whether consent was given for the image/video to be taken.

The proposed wording is attached in Appendix A.

3. Other general comments:

¹<https://www.assemblyresearchmatters.org/2019/05/01/keeping-up-with-technology-upskirting-and-the-law-in-northern-ireland/>

Irish Congress of Trade Unions response to the Committee for Justice's call for Evidence on the **Justice (Sexual Offences and Trafficking Victims) Bill - Committee Stage.**

We find it impossible to comment on the aspects of the Bill which will be dealt with through proposed amendments as we have not seen the draft of the text and understand that this will not be made available until 2022.

However, we would like to robustly disagree with the language used and urge the Department to immediately desist from using the phrase 'revenge porn'. This phrase is misleading at best and suggests that the victims of sexual crime and assault are in some way culpable; victims of sexual crime are never to blame and this simple fact must be reflected in the language used by Northern Ireland's Department for Justice.

We would like to suggest that the Department use a phrase such as 'image based sexual assault' to reflect the serious nature of these offences.

We would further suggest that the new 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. Guidance for employers and workplaces should be co-designed with employers and trade unions.

Guidance for educational settings should include formats which are accessible and should be co-designed with young people. It is important that these new offences are understood in the context of relationships and sex education and what presents as a healthy relationship, including issues of consent. We would therefore repeat our call for the implementation of a resourced and comprehensive relationship and sex education curriculum for all schools, as recommended by the CEDAW Committee and reiterated by the Northern Ireland Human Rights Commission:

Ensure mandatory age-appropriate, comprehensive and scientifically accurate sexuality and gender identity education that promotes healthy relationships is provided in all NI schools.²

4. Contact information

We remain willing to engage with the Committee, for further information please contact:

Clare Moore

Irish Congress of Trade Unions, 45-47 Donegall Street, Belfast, BT1 2FG



² Submission to the United Nations Committee on the Elimination of Discrimination against Women Parallel Report to the Eighth Periodic Report Submitted by the United Kingdom of Great Britain and Northern Ireland.

Irish Congress of Trade Unions response to the Committee for Justice’s call for Evidence on the **Justice (Sexual Offences and Trafficking Victims) Bill - Committee Stage.**

Appendix A

Appendix A – ICTU proposed changes

Voyeurism: additional offences

1.—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended in accordance with subsections (2) and (3).

(2) After Article 71 (voyeurism) insert—

“Voyeurism: additional offences (genitals and buttocks)

71A.—(1) A person (A) commits an offence if—

- (a) A **intentionally** operates equipment beneath the clothing of another person (B),
- (b) A does so with the intention of enabling A or another person (C), ~~for a purpose mentioned in paragraph (3),~~ to observe—
 - (i) B’s genitals or buttocks (whether exposed or covered with underwear), or
 - (ii) the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, and
- (c) A does so
 - (i) without B’s consent, and
 - (ii) without reasonably believing that B consents.

(2) A person (A) commits an offence if—

- (a) A **intentionally** records an image beneath the clothing of another person (B),
- (b) the image is of—
 - (i) B’s genitals or buttocks (whether exposed or covered with underwear), or
 - (ii) the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, **and**
- (c) ~~A does so with the intention that A or another person (C) will look at the image for a purpose mentioned in paragraph (3), and~~
- (~~cd~~) A does so—
 - (i) without B’s consent, and
 - (ii) without reasonably believing that B consents.

Irish Congress of Trade Unions response to the Committee for Justice's call for Evidence on the **Justice (Sexual Offences and Trafficking Victims) Bill - Committee Stage.**

(3) ~~The purposes referred to in paragraphs (1) and (2) are— (a) obtaining sexual gratification (whether for A or C);~~

~~(b) humiliating, alarming or distressing B.~~

(34) A person 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.

Voyeurism: additional offences (breasts)

71B.—(1) A person (A) commits an offence if—

(a) A intentionally operates equipment beneath or above the clothing of another person (B),

(b) A does so with the intention of enabling A or another person (C), ~~for a purpose mentioned in paragraph (3),~~ to observe—

(i) B's breasts (whether exposed or covered with underwear), or

(ii) the underwear covering B's breasts, in circumstances where the breasts or underwear would not otherwise be visible, and

(c) A does so—

(i) without B's consent, and

(ii) without reasonably believing that B consents.

(2) A person (A) commits an offence if—

(a) A intentionally records an image beneath or above the clothing of another person (B),

(b) the image is of—

(i) B's breasts (whether exposed or covered with underwear), or

(ii) the underwear covering B's breasts, in circumstances where the breasts or underwear would not otherwise be visible, **and**

(c) ~~A does so with the intention that A or another person (C) will look at the image for a purpose mentioned in paragraph (3), and~~

~~(cd) A does so—~~

~~(i) without B's consent, and~~

~~(ii) without reasonably believing that B consents.~~

(3) ~~The purposes referred to in paragraphs (1) and (2) are—~~

~~(a) obtaining sexual gratification (whether for A or C);~~

Irish Congress of Trade Unions response to the Committee for Justice's call for Evidence on
the **Justice (Sexual Offences and Trafficking Victims) Bill - Committee Stage.**

~~(b) humiliating, alarming or distressing B.~~

(34) A person 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.”