

Committee for Justice,  
Room 242,  
Parliament Buildings,  
Ballymiscaw,  
Stormont,  
Belfast  
BT4 3XX

21<sup>st</sup> December 2021

Dear Chair and Committee Members,

NSPCC NI is grateful for the opportunity to provide oral and written evidence on the Justice (Sexual Offences and Trafficking Victims) Bill and further advice to the Committee on the Department of Justice's proposed amendment on abuse of positions of trust. In our oral evidence to the Committee on the 11<sup>th</sup> November 2021 we offered to provide additional advice to the Committee once we had sight of the proposed amendment. We have now seen the proposed amendment and as expected, it mirrors the proposed amendment in England and Wales as provided in the Police, Crime, Sentencing and Courts Bill.<sup>1</sup>

The Committee will be aware that it is NSPCC's 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 our 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 environments and extracurricular activities as possible, to include, but not be limited to sport and religious settings.

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

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<sup>1</sup> Police, Crime, Sentencing and Courts Bill as introduced on 6<sup>th</sup> July 2021. See [Police, Crime, Sentencing and Courts Bill \(HL Bill 40\) \(parliament.uk\)](https://www.parliament.uk/bills/2021-22/police-crime-sentencing-and-courts-bill)

respondents overwhelming supported an inclusive approach to legislative change which should include all adults working in a position of trust to a child.

As highlighted in our 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.

We welcome 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 remains our view that to further strengthen and future proof the provision, consideration should also be given to the inclusion of a statutory review mechanism.

NSPCC believes 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. We refer you to our previous Committee briefing papers on this issue, which outline how the law has been amended in other countries. However there are two options which we recommend the Committee gives consideration to in its deliberations on the proposed amendment.

Firstly, we would suggest that consideration is given to the inclusion of ‘hobby’ or ‘extracurricular activity’ in addition to sport and religious settings<sup>2</sup> 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 to ensure that there is enough clarity and certainty in its application.

An alternative option is to consider the legislative amendment in England and Wales as provided in the Police, Crime, Sentencing and Courts Bill.<sup>3</sup> The mirror provisions to those

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<sup>2</sup> A different approach has been suggested by MP Sarah Champion in a proposed amendment to remove Clause 45 of the Police Crime, Sentencing and Courts Bill. The proposed amendment would remove reference to the discrete statutory settings *extend the criminal sanction to “all adults in positions of trust would be caring for, training, supervision or being in sole charge of a child.”* See [https://publications.parliament.uk/pa/bills/cbill/58-02/0133/amend/police\\_day\\_rep\\_0705.pdf](https://publications.parliament.uk/pa/bills/cbill/58-02/0133/amend/police_day_rep_0705.pdf) at p59.

<sup>3</sup> Police, Crime, Sentencing and Courts Bill as introduced on 6<sup>th</sup> July 2021. See [Police, Crime, Sentencing and Courts Bill \(HL Bill 40\) \(parliament.uk\)](https://www.parliament.uk/bills/2021-22/police-crime-sentencing-and-courts-bill)

proposed for Northern Ireland can be found in Clause 46<sup>4</sup> of the Bill, which proposes to insert Section 22A to the Sexual Offences 2003 Act to define a person who is “*in a position of trust*” as –

*(a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion, and (b) A knows that they coach, teach, train, supervise or instruct B, on a regular basis, in that sport or religion.”*

“Sport” is stated to include “*(a) any game in which physical skill is the predominant factor, and (b) any form of physical recreation which is also engaged in for purposes of competition or display.*”

“Religion” is stated to include “*(a) a religion which involves belief in more than one god” and (b) a religion which does not involve belief in a god.*”

A different approach has been suggested by MP Sarah Champion in April 2021 when she proposed a further amendment to the definition of positions of trust in Section 21 of the Sexual Offences Act 2003 in England and Wales. The proposed amendment would include an additional, broader definition to the discrete statutory settings detailed in Section 21 and would read –

***(5A) This subsection applies if A is regularly involved in caring for, training, supervising or being in sole charge of B and none of subsections (2) to (13) of this section otherwise applies.***

The intention of the proposed amendment is stated in the MP’s explanatory statement as –

*This amendment aims to ensure that all adults who are in a position of trust are subject to the child sexual abuse offences provided for by section 16 to 19 of the Sexual Offences Act 2003, rather than simply extending the definition to those who coach, teach, train, supervise or instruct children in a sport or a religion.*<sup>5</sup>

As referenced in our oral evidence to the Committee, NSPCC sought a pro-bono legal opinion from the Public Interest Litigation Service (PILS) to advise on the, “*...best and most effective*

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<sup>4</sup> Previously Clause 45 of the Police, Crime, Sentencing and Courts Bill.

<sup>5</sup> See [https://publications.parliament.uk/pa/bills/cbill/58-02/0133/amend/police\\_day\\_rep\\_0705.pdf](https://publications.parliament.uk/pa/bills/cbill/58-02/0133/amend/police_day_rep_0705.pdf) at p59 and 60.

*way to bring about the change to the law that will avoid any unintended consequences for other pieces of legislation and will extend the position of trust definition to include all adults in positions of power and authority over children, whether employees or volunteers, aged 16 and 17, regardless of the setting.”*

The legal opinion stated that this objective could be achieved through adopting a similar approach to that proposed by MP Sarah Champion by amending Article 28 of the Sexual Offences (NI) Order 2008 to add the “*catch all*” provision defining positions of trust as involving persons, “*regularly involved in caring for, training, supervising or being in sole charge of B and none of subsections (2) to (13) of this section otherwise applies.*”

It also suggested that such an amendment could be given additional clarity by being complimented with Department of Justice guidance listing the roles included in the provision for example: sports coaches, music tutors and tutors in theatre and arts, church leaders and church staff, youth club and group workers, tutors and instructors, whether paid or voluntary.

We hope that our comments will be useful to the Committee in its consideration of the Justice (Sexual Offences and Trafficking Victims) Bill. If the Committee requires clarification or further information on anything raised in this submission, please do not hesitate to contact me.

Yours sincerely,

Natalie Whelehan

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**NSPCC Northern Ireland**