

Ms Christine Darrah
The Committee Clerk,
Room 242, Parliament Buildings,
Stormont,
Belfast, BT4 3XX

16 Sept 2021

By email

Dear Christine

Justice (Sexual Offences and Trafficking Victims) Bill

I refer to the letter of 28 July from the Assistant Clerk seeking views on the above. I am pleased to respond on behalf of the Information Commissioner's Office (ICO). Amongst other legislation, the Information Commissioner enforces and oversees the Data Protection Act 2018 (DPA18) and the UK General Data Protection Regulation (UK GDPR).

Under Art 36(4) of the UK GDPR, the relevant Northern Ireland department must consult the Information Commissioner during the preparation of a proposal for a legislative measure to be adopted by the Northern Ireland Assembly. Such consultation should be directly with the ICO and not through a public call for views. We previously responded to the public consultations on Review of the Law on Child Sexual Exploitation and to the Gillen Review. However, we were not subsequently consulted directly as per the statutory requirement.

Our interest in this legislation relates primarily to the provisions of Chapter 2 (Anonymity and Privacy). However, elements of Chapter 1 (Voyeurism) also fall within our regulatory remit.

Section 1 of the Bill creates offences associated with the operating of equipment to observe or create images of intimate areas of an individual

where that individual has not given consent or it is reasonable to believe that consent has been given. It is probable that the use of such equipment and creation of these images would mean that the DPA18/UK GDPR apply. In that regard, it is important that consent meets the standard within data protection law, ie, it is both informed and freely given. Where a power imbalance exists between the viewer and the subject, it is unlikely that consent will meet data protection standards.

Section 4 of the Bill effectively extends the period of anonymity for the victim from their lifetime to a period of 25 years beyond their death. Although data protection legislation only applies to living persons, we nevertheless welcome this extension as it provides further protection to the privacy of other persons connected in some way to the individual. However, we note that the Bill proposes that the period of 25 years after death can be modified (upwards or downwards) by application to the Court by specified individuals. Whilst that decision correctly lies with the Judiciary, we wish to draw attention to our Code of Practice on [Anonymisation and Data Protection Risk](#) which gives guidance on how to protect the identity of individuals.

The Code of Practice is also relevant to Section 8 which concerns the anonymity of suspects. We note that 8(5) provides a list of some matters to which restrictions would apply. However, as explained within the Code, other information which could lead to the suspect's identification may be available. We would urge 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.

I trust you find the above useful but please do not hesitate to contact me if you wish further information.

Yours sincerely

Dr Ken Macdonald
Head of ICO Regions

