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- create, deliver and evaluate services for children which are innovative,

Justice (Sexual Offences and Trafficking Victims) Bill

Written submission to the Justice Committee

24th September 2021

distinctive and demonstrate how to enhance child protection;

Introduction

- provide advice and support to ensure that every child is listened to;

The NSPCC is the leading children's charity fighting to prevent child abuse in the UK and Channel Islands. We help children who have been abused to rebuild their lives, protect those at risk, and find the best ways of preventing abuse from every happening. To achieve our vision, we:

- campaign for changes to legislation, policy and practice to ensure the best protection for children; and
- inform and educate the public to change attitudes and behaviours.

We are grateful for the opportunity to provide evidence on the Justice (Sexual Offences and Trafficking Victims) Bill and welcome the proposals to strengthen the criminal law to protect children from sexual abuse. As we approach the end of the Assembly mandate, it is crucial that the Committee and wider Assembly expedite these legislative reforms without delay. NSPCC offers our full support to the scrutiny process. This submission is limited to the proposed and planned changes to the law which directly relate to the protection of children and young people. Below we have set out what we consider to be a number of shortcomings, as well as how they can be addressed.

Commentary on the provisions of the Bill

Clause 1 - Voyeurism: additional offences

motivated by a desire to exert power or control;² or to make a gain.³

We are pleased to see ‘upskirting’ and ‘downblousing’ included in the scope of the Bill. To ensure that these incidents are sufficiently captured in law we encourage members to closely scrutinise the proposed motive requirements. Specifically, Section 71A(3) requires the prosecution to prove that the defendant’s “purpose” was either to obtain sexual gratification (whether for A or C); or to humiliate, alarm or distress the person who is the subject of the taking or recording of images or video (B). The narrow scope of the offender’s intent has prompted debate in neighbouring jurisdictions. We draw attention to the recent Intimate Image Abuse consultation conducted by the Law Commission in England and Wales.¹ In it there is a common view that the taking or sharing of intimate images without consent can also be further, it is not clear to us if the additional offences include a ‘threat’ to share the non-consensual image. You could conceive a situation where an image could be taken without consent and then used as leverage to blackmail a victim in exchange for something with a threat of sharing the image. Therefore, the Bill must go further and we would welcome an amendment to the additional voyeurism offences under 71A and 71B to include threats to share images where there is an intention to cause fear that the threats to share images will be acted upon.

The Government has chosen not to differentiate between victims on the basis of age. We agree. These behaviours are harmful and humiliating violations of privacy and it

¹ Law Commission for England and Wales (2021) [Intimate Image Abuse consultation paper](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2021/02/Intimate-image-abuse-consultation-paper.pdf) available at <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2021/02/Intimate-image-abuse-consultation-paper.pdf>. See also NI Assembly Research and Information Service (2019) [Keeping up with technology: Upskirting and the law in Northern Ireland](https://www.assemblyresearchmatters.org/2019/05/01/keeping-up-with-technology-upskirting-and-the-law-in-northern-ireland/) available at <https://www.assemblyresearchmatters.org/2019/05/01/keeping-up-with-technology-upskirting-and-the-law-in-northern-ireland/>

² Ibid, 246 and 367

³ Ibid, 247

responding to risks. For pupils, robust and consistent education on healthy sexual development and the laws relating to sexual behaviour should be a priority.

is vital that child victims are afforded the fullest protections and support. Notwithstanding, the law must be implemented in a child-centred manner that minimises the risk of unintended consequences or perverse outcomes, such as overcriminalisation of children. This is a particular concern in the context of the extremely low age of criminal responsibility in Northern Ireland. In the context of harmful sexual behaviour by children, the scale and nature of these cases is limited because there is no tangible trend data.

Clause 2 - Sexual grooming: pretending to be a child

Moving forward it is essential that the Government coordinates a public education campaign to raise awareness of the offences, associated harm and consequences to ensure that victims understand their rights and legal remedies. Reports from England indicate that upskirting incidents have been committed in schools,⁴ therefore clear guidance is needed for education settings to ensure consistent procedures are put in place to allow for informed decision making in identifying and NSPCC welcomes the intent of the Bill to create four new offences to deal with an adult pretending to be a child (masquerading as a child). We recognise that the Department seeks to close gaps that have emerged in operational practice, going beyond existing protections in Britain. We wholeheartedly support the intention for the new offences to allow for the earlier disruption of grooming or other offences where this behaviour would indicate that they present a risk to children.⁵ However, a major challenge will be the outworking of these provisions, and specifically proving that someone is communicating with a child with the intention of subsequently committing an offence. We understand these operational elements are being explored by the Department and law enforcement agencies, including the Police Service of Northern Ireland.

⁴ [Upskirting law: Children among 150 victims, figures show - BBC News](#)

⁵ Para 36, [EFM - As Introduced \(niassembly.gov.uk\)](#)

Clause 3 - Miscellaneous amendments as to sexual offences

Abuse of children under 18: payment for sexual services and involvement in indecent images

We strongly support the principle of Schedule 2 Part 1 to remove legislative references to ‘child prostitute/prostitution’ and ‘child pornography’ which misrepresent and mask the abuse and harm that occurs to children in these contexts.

The Bill makes no further changes to the law in this area and we understand that the rationale for the proposed changes is to address concerns with the language used. However, we believe that the definition of “payment” in the context of these offences is problematic. In particular, under Article 41(5) of the Sexual Offences (NI) Order 2008 payment is defined as, “*any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.*” While the ‘exchange’ element in cases of CSE may involve a tangible inducement like payment or provision of material goods such as money, alcohol, shelter or drugs etc; cases often involve complex dynamics between a victim/perpetrator and so may also involve intangible forms of exchange, reward or inducement such as affection or protection for the victim.

Further, the stated definition of payment does not appear to reflect the policy definition of CSE as outlined in the regional ‘Cooperating to Safeguard Children guidance’¹ which states that CSE, “*occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) **in exchange for something the victim needs or wants**, and/ or (b) for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual.*”⁶

⁶ Department of Health (2017) [Cooperating to Safeguard Children guidance](https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland) available at <https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland>

We ask the Committee to consider the payment definition, particularly with regard to the potential inclusion of 'other inducements', to ensure that it is broad enough to capture the wide range of cases of CSE and to make sure that there is enough clarity and certainty in its application.

Streaming or other transmission of indecent images

NSPCC supports the intent of the Bill to extend offences that relate to the recording of indecent images to the streaming or other transmission of such images under Schedule 2 Part 1. Specifying the use of live streaming in statute is a good approach that will allow for easier future proofing as new types of content and online communication develop.

Engaging in sexual communication with a child

Part 2 of the Bill makes a minor amendment to bring Article 22a offences covering sexual communication with a child into scope of extra-territorial arrangements to provide further protection to children travelling outside of this jurisdiction. NSPCC supports this provision.

Clauses 4-14 Anonymity and Privacy

NSPCC welcomes the principles of the Bill to exclude the public from all serious sexual offence hearings and to introduce anonymity for defendants pre-charge, to extend the current lifelong anonymity of the victim of a sexual offence and to provide for their anonymity for 25 years after death. These changes will strengthen protections for complainants, thus encouraging more victims to report abuse, seek justice and receive support. Moreover, these provisions will ensure consistency in approach.

Clause 15: Exclusion from Proceedings

NSPCC welcomes the proposed exclusion of the public from the court in serious sexual offence cases. We would suggest that this be extended to all sexual offence cases involving a child, whether they are tried in the Crown or Magistrates' courts in

order to protect the privacy of the young witnesses who may be involved. Currently in Magistrates' court cases, listed contests of a sexual nature can be observed by the public, which is extremely difficult for the young witnesses involved. We understand that there are some variances in the PPS and PSNI's interpretation of what constitutes a 'serious sexual offence' in the context of the protocol for expediting serious sexual offence cases. In the interests of legal clarity, we would recommend that the exclusion of the public provisions are extended to include 'all cases of a sexual nature' where a child is involved.

Clause 17: Reports on slavery and trafficking offences

NSPCC supports the amendment to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 which changes annual reporting to three-yearly reporting in relation to the Modern Slavery Strategy; allowing a multi-agency response to safeguarding and protecting children and young people from slavery, trafficking and exploitation.

Planned amendments

Abolition of the rough sex defence

In principle, we welcome legislation that will outlaw consent as a defence to serious harm for sexual gratification. We look forward to seeing the drafted amendment.

An extension to existing revenge porn provisions to include a threat of publication

In principle, we support the policy intent to make the 'threat' of disclosing private sexual photographs and films with the intent to cause distress an offence. We look forward to seeing the drafted amendment.

Provisions to widen the scope and strength of the current law on abuse of trust

NSPCC has long campaigned for a change to the abuse of trust legislation and we support the principle of the Bill to strengthen protections for 16 and 17 years in non-statutory settings. We hope that this provision will include as broad a range of

environments and extracurricular activities as possible to ensure that 16 and 17 year olds are protected from potential grooming and child sexual exploitation.

We are aware from the Department's evidence to the Committee on 9th September 2021 that the intention is to extend the current provision for abuse of a position of trust to cover adults in sport and religious settings; with a delegated power to enable extension of those settings at a future stage should it be considered necessary. We note this policy intent broadly replicates the principle of the associated legislative amendment in England and Wales as provided in the Police, Crime, Sentencing and Courts Bill.⁷ In particular, Clause 45 of the Bill 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."

There remains ambiguity about the scope of this clause and further clarity is needed on what activities or roles come within sport and religious settings. For example, it is unclear if dance and drama would be included under the '*competition or display*' element of the sporting definition; or youth activity leaders and youth workers. Further, it is unclear if organisations with a religious ethos fall under this scope, for example, uniformed bodies such as Scouts, Guides, Cadets etc. There is further confusion if children involved in music, art, drama or youth group activities etc. that are provided by leaders employed by, or based in a premises owned by, a religious

⁷ Police, Crime, Sentencing and Courts Bill as introduced on 6th July 2021. See [Police, Crime, Sentencing and Courts Bill \(HL Bill 40\) \(parliament.uk\)](#)

organisation would be protected under the proposed legislation in England and Wales. In this context, you could conceive of a situation where a 16 or 17 year old involved in a dance group related to a religious organisation could be protected, but their peer who attends a dance group not connected to a religious organisation or in a different location would not be protected.

Without sight of the drafted amendment our advice is limited. However, as noted there are clear deficiencies and confusion with the scope of the proposed amendment in Westminster. These gaps could be addressed by inserting ‘hobby’ or ‘extracurricular activity’ in addition to the identified sport and religious settings.⁸ 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 make sure that there is enough clarity and certainty in its application.

We welcome the further expansion of protection, enabled by the power to add or remove fields of activity by way of affirmative instrument. To further strengthen and future proof the provision, consideration should also be given to the inclusion of a statutory review mechanism.

Equal Protection

Both clause 18 and 19 of the Bill, which relate to the prevention orders, as well as the Minister’s planned amendment on the proposed extension of positions of trust, come within the public protection objectives of the Bill.⁹ One additional area in need of urgent legal reform in Northern Ireland which has not been addressed in the Bill is the removal of the defence of reasonable punishment to afford children equal

⁸ 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 at p59.

⁹ Letter from the Department of Justice to the Justice Committee Clerk, 25th June 2021. [r-20210625---doj---justice-sexual-offences-and-trafficking-victims-bill---contents-of-revised-bill.pdf](https://www.niassembly.gov.uk/~/media/DOJ/2021/06/20210625---doj---justice-sexual-offences-and-trafficking-victims-bill---contents-of-revised-bill.pdf) ([niassembly.gov.uk](https://www.niassembly.gov.uk))

harmful. In 2015, an international literature review on the impact of physical

protection from assault as adults. In Northern Ireland, the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 provides for a defence of 'reasonable punishment' for parents and carers who are accused of assault against a child. It is our view that this is a key public protection issue and we would like to see the removal of the defence being brought forward as an amendment to this Bill. punishment on children,¹⁰ found strong and consistent evidence that physical This Bill offers an extremely important opportunity to change the law in Northern Ireland to better protect our infants, children and young people from the harmful effects of physical punishment. Removing the defence would bring us in line with more than 60 countries. In Wales, legal change is underway and the law has already changed in the Scotland, Jersey and the Republic of Ireland; leaving children in Northern Ireland with less protection from assault than their peers in other parts of the UK and Ireland. punishment increases aggression, antisocial behaviour, depression and anxiety in The international research is unequivocal that the physical punishment of children is children, which may continue into their adult lives. In addition, harsh forms of discipline and physical forms of abuse in particular can have long-lasting impacts on future behaviour and mental health.¹¹

A UK-wide study published earlier this year¹² using data from the Millennium Cohort Study which included a Northern Ireland sample examined the impact of Adverse

¹⁰ Heilmann, A, Kelly, Y and Watt. R.G. (2015) Equally Protected - A review of the evidence on the physical punishment of children. Edinburgh: Children and Young People's Commissioner Scotland, NSPCC Scotland, Children 1st, Barnardo's Scotland.

¹¹ Gershoff, E.T. and Grogan-Kaylor, A. (2016). Spanking and child outcomes: old controversies and new meta-analyses. *Journal of Family Psychology*, Volume 30, Issue 4, pp. 453-469; Farrington, D.P. (2005) Childhood origins of antisocial behaviour. *Clinical Psychology and antisocial behaviour*, Vol. 12, Issue 3, p. 177-190; Fergusson, D.M., Boden, J.M. and Horwood, L.J. (2008) Exposure to childhood sexual and physical abuse and adjustment in early adulthood. *Child Abuse and Neglect*, 32, 607-619; Gross, A.B. and Keller, H.R. (1992) Long-term consequences on childhood physical and psychological maltreatment. *Aggressive Behavior*, 18(3), 171-185.

¹² Bevilacqua, L., Kelly, Y., Heilmann, A., Priest, N. and Lacey, R.E. (2021) Adverse childhood experiences and trajectories of internalizing, externalizing, and prosocial behaviors from childhood to adolescence. *Child Abuse and Neglect*, 112, 104890. The Millennium Cohort Study is a UK-wide nationally representative study. The research examined eight ACEs: (1) parental separation, (2) parental depression/anxiety, (3) parental drug use, (4) parental alcohol use, (5) inter-parental use of

Childhood Experiences on later mental health. Using parent-reported data, it was found that harsh parenting and physical punishment were particularly strongly associated with externalizing problems from childhood to adolescence.

Research from Harvard University published in 2020 found that physical punishment experienced by very young children predicted reductions in cognitive development.¹³ Previous studies have confirmed that physical abuse is linked to lower cognitive skills.¹⁴

Physical punishment also carries a worrying and serious risk of escalation into injurious physical abuse and maltreatment. While not all physical punishment results in child abuse, many child abuse deaths across the UK are from physical assaults which began as physical punishment. The deaths of both Victoria Climbié and Peter Connelly involved harsh physical punishment. Victoria Climbié's 'carers' initially punished her with slaps and smacks which escalated into horrific torture that led to her death.

The 2015 international literature review on the impact of physical punishment on children, reviewed seven studies into the link between punishment and abuse and concluded that, "*...the association between corporal punishment and physical abuse was statistically significant and considered moderate.*"¹⁵

Physical punishment is among a range of important risk factors for child physical abuse. Most physical abuse starts out as physical punishment in the attempt to correct misbehaviour, where the punishment escalates in force and intensity.¹⁶

force, (6) parental discord, (7) harsh parenting, (8) physical punishment. Mental health outcomes were measured as internalising, externalising and prosocial behaviour at ages 3, 5, 7, 11 and 14 years.

¹³ Cuartas J., McCoy, D.C, Grogan-Kaylor, A. and Gershoff, E. (2020) Physical Punishment as a Predictor of Early Cognitive Development: Evidence From Econometric Approaches. *Developmental Psychology*, 56(11): 2013–2026. doi:10.1037/dev0001114.

¹⁴ Gershoff E. (2016) Should parents' physical punishment of children be considered a source of toxic stress that affects brain development? *Family Relations*, 65, 151–162.

¹⁵ Ibid.

¹⁶ Gershoff E.T. and Bitensky, S.H. (2007): The case against corporal punishment of children – Converging evidence from social science research and international human rights law and Physical punishment and physical abuse are part of a continuum of violence,

differing only by severity or degree.¹⁷ There is evidence that the removal of the legal defence is associated with accelerated declines in the prevalence of physical punishment as well as reductions in severe physical abuse.¹⁸

Widespread criminalisation of parents has not been the effect in any of the 62 countries that have passed similar laws. This is simply about clarifying the law and giving children the same protection against assault as adults. If the defence of reasonable punishment was to be removed, accusations of assault against a child would be investigated by police and social services exactly as they are now and the thresholds for intervention would not change. Following law reform, any parent or carer suspected of assaulting a child would no longer be able to defend themselves by claiming they were carrying out a “reasonable punishment”.

New Zealand was the first English-speaking country to ban all forms of physical punishment in 2007, and state organisations carefully monitored the amount and responses to cases of parental physical punishment. Regular police reports to the government show that there were just 8 prosecutions between 2007 and 2012.¹⁹ In November 2009 the Chief Executive of the Ministry for Social Development and Employment reported to the Minister that the police data showed that, although there had been a rise in the reporting of violence generally, parents had not been prosecuted for “light smacking.” He comments that the police believe that the new law, “has had a minimal impact on their business” and there has been no change in the reporting of smacking since the law was enacted.²⁰

implications for US public policy. *Psychology Public Policy and Law*, 13(4), 231-272; Gershoff E.T. (2002): Corporal punishment by parents and associated child behaviors and experiences: a meta-analytic and theoretical review. *Psychological Bulletin*, 128(4), 539-579.

¹⁷ *Op cit.* 6.

¹⁸ Zolotor AJ, Puzia ME (2010): Bans against corporal punishment: a systematic review of the laws, changes in attitudes and behaviours. *Child Abuse Review*, 19(4), 229-247.

¹⁹ See: <http://www.police.govt.nz/sites/default/files/resources/10-review-section-59.pdf>

²⁰ Ministry of Social Development (2009) Report to the Minister for Social Development and Employment: pursuant to section 7(2) of the Crimes (substituted section 59) Act. Wellington (New Zealand): Ministry of Social Development.

NSPCC believes the Government must give parents support and encouragement to find non-violent means of discipline for their children. We want to see the Northern Ireland Executive adopting a twin track approach to supporting parents through the removal of the legal defence and a widespread public education campaign on positive parenting. This has been a major factor in the success of legislative and cultural change on this issue in other countries. In 2007-8 the German Research Foundation funded a five-nation comparative study to assess the effects of banning physical punishment and the role of information and education campaigns. The authors concluded that, “...*there can no longer be any doubt about the violence-reducing effect of a ban on childrearing violence.*”²¹ Nevertheless, the cross-country comparison showed that, “...*the combination of law reform and intensive, long-term public education is more effective in changing attitudes and behaviours than either strategy alone.*”²²

The removal of the defence of reasonable punishment in Northern Ireland would be a key legislative amendment which would lead to better public protection and greater legal protections for children from the extremely damaging impacts of physical punishment as outlined above. Affording children equal protection from assault as adults, and their peers in other parts of the UK and Ireland, will send out a clear message from our Government that no form of physical violence is acceptable in any of our homes. It should therefore be considered as an amendment to this Bill.

²¹ *Op cit.* 10.

²² *Ibid.*