



**Submission to consultation on the Justice (Sexual
Exploitation and Trafficking Victims) Bill**

September 2021

1. Introduction

1.1 Unite the union welcomes this opportunity to make a submission to the consultation on the Justice (Sexual Exploitation and Trafficking Victims) Bill. Issues of sexual exploitation, violence and abuse have been unaddressed for far too long in Northern Ireland.

1.2 In general, Unite would welcome the Executive's commitment to bring forward legislation to provide additional protections to victims here but we call for these protections to at least meet the legislative threshold established by similar laws elsewhere within the UK and Ireland.

1.3 In the end of our submission we identify further provisions and protections which are not included in the draft legislation but which should be appended to the current legislation.

1.4 Clause 1 – Up Skirting & Down Blousing

1.4.1 Unite agrees with the proposal for legislation that criminalise 'Up Skirting' and 'Down Blousing'. Despite the fact that these represent violations of the victim's privacy and results in huge distress to them, these acts are often dismissed or not recognised as seriously as other sexual crimes. As a result, victims feel societal pressure to not pursue legal action, even though the act has caused them serious distress.

1.4.2 Dedicated legislation for these acts will send a message to potential perpetrators that this a seriously violating act; that this is incredibly distressing experience for victims and a problem for society as a whole. Legislation is needed to send a strong message to society that 'upskirting' and 'down blousing' is an offence that causes serious distress to the victim and that appropriate action will be taken on this type of crime.

1.4.3 The fact is that it is female workers who have been subject to this abuse in their place of work. This is completely unacceptable and we therefore support the introduction specific clauses that criminalise 'Up Skirting' and 'Down Blousing'.

1.4.4 We consider that the fact that the summary conviction term (Section 4A of Clause One) of not 'exceeding six months' is substantially weaker than that in place in with sentencing guidelines for the same crime in England and Wales 'not exceeding 12 months'.

1.4.5 Women in Northern Ireland deserve as strong protection as that provided in the rest of the UK. We therefore call for the revision of section 4A of Clause One to read “*on summary conviction, to imprisonment of term not exceeding 12 months*”.

1.5 Clause 2 - Sexual Grooming: Pretending to be a Child

1.5.1 Unite the union supports any legislation that seeks to help protect young people vulnerable to perpetrators who attempt to groom them online.

1.5.2 We therefore welcome the four new proposed offences to help protect children and young people in Northern Ireland. Again we strongly recommend that sentencing for these offences is in line with that in other UK jurisdictions (i.e. twice as long as that proposed in this Bill under 22G).

1.6 Clause 3 - Miscellaneous Amendments as to Sexual Offences

1.6.1 Unite the union welcomes this Clause which removes victim blaming terminology in legislation designed to protect children and young people from sexual exploitation.

1.6.2 Victims of child sexual exploitation need protection and reassurance that the abuse they have endured is not their fault and that they do not have the capacity to consent to their own exploitation.

1.6.3 Removing these outdated terms from the legislation puts the responsibility on the perpetrators of child sexual exploitation. The legislation must be clear that children and young people bare no share of responsibility for the traumatic exploitation they have suffered.

1.7 Clauses 4 & 5 – Extended anonymity of victims

1.7.1 Unite welcomes the proposed provisions under Clause 4 of this Bill to help strengthen anonymity of victims in sexual offence cases. The proposed legislation will provide greater assurance to victims that their privacy and right to anonymity will be strengthened and encourage greater numbers to report these crimes.

1.8 Clause 6 - Increase in penalty for breach of anonymity

1.8.1 Unite welcomes the increased penalty for breach of anonymity. This will deter potential breaches and afford reassurance to victims of serious offences that measures are in place to protect their right to privacy.

1.9 Clause 7 - Special rules for providers of information society services

1.9.1 Unite welcomes this clause which seeks to remove any ambiguity in the law regarding illegal publication of content.

1.10 Clauses 8 and 9 – Restrictions on reports as to suspects of sexual offences

1.10.1 Unite welcomes the removal of anonymity for suspected perpetrators of sexual offences subject to the specific conditions stated in section 3, subsection 2 of Clause 8 of this bill.

1.10.2 The disclosure of suspect perpetrators' names and details of the charge against them can encourage other victims of the same individual to come forward and provide evidence. This may establish a pattern of offending or escalating behavior and aid convictions of dangerous perpetrators.

1.10.3 Given that sexual violence crimes are one of the most under-reported and difficult on which to secure a conviction, anonymity may stop previous victims coming forward to share their own experience.

1.10.4 Subsection (1) of clause 9 lists the offences which fall within the meaning of 'sexual offence' for the purposes of clause 8 and subsections (2) and (3) provide that the Department can amend the meaning of 'sexual offence' by regulations which must be laid in draft before, and approved by a resolution of, the Assembly. We are therefore supportive of its inclusion.

1.11 Clauses 10 & 11 – Power to Disapply Reporting Restriction & Magistrates Court Rules

1.11.1 Unite recognizes that provisions are needed for circumstances in which the listed relevant persons in this bill may wish to apply to a Magistrates' court to apply or modify reporting restrictions that are given in Clause 8. We support the need to fine balance dealing with suspects in these circumstances, and therefore support the inclusion of this clause.

1.12 Clauses 12 & 13 – Offences Relating to Reporting & Interpretation of sections 8 to 12

1.12.1 Subsection (1) of this clause details those who are held accountable when information identifying a suspect is included inappropriately in a newspaper or periodical, in a relevant programme or in any other publication. Subsections (2), (3) and (4) relate to the defences available to a person charged with the offence. Subsection (5) provides that a person guilty of an offence is liable on summary conviction to a maximum of six months imprisonment, or to a fine not exceeding a level 5 fine on the standard scale, or to both. Proceedings for an offence can only be brought with the consent of the Director of Public Prosecutions. Unite is happy with these provisions.

1.13 Clause 14 – Consequential amendment

1.13.1 This clause makes a consequential amendment to section 44(4)(a) of the Youth Justice and Criminal Evidence Act 1999 (restrictions on reporting alleged offences involving persons under 18). Section 44(4)(a) prohibits the publication of matters that could identify a person as involved in an offence while that person is under the age of 18. The amendment excludes from section 44(4)(a), a suspect to whom new clause 8(2) applies to ensure that the two legislative regimes do not overlap. Again, Unite is happy to support the inclusion of this clause.

1.14 Clause 15 – Serious sexual offences: exclusion of public in court

1.14.1 Unite the union welcomes this Clause which relates to the exclusion of the public from court proceedings. Victims of sexual offences can be reluctant to come forward and report crimes committed against them for fear of their identity becoming known. The current public access to sexual offence trials is ultimately not in the best interests of justice and the wellbeing of the victim. Unite supports the exclusion of non-relevant parties from such trials given that this clause allows the victim's support network and press to remain in court, balances the need for transparent, accessible justice with lessening distress to the victim.

1.15 Clause 16 – Support for victims of trafficking etc

1.15.1 Unite the union is acutely aware of issues around human trafficking, modern day slavery and worker exploitation. As such we strongly support the inclusion of Clause 16 which extends support to victims of forced servitude who were not directly trafficked.

1.15.2 We support the widening of the definition of 'qualifying victim' in this Clause, which allows more victims to be able to formally access support from the relevant authorities.

1.16 Clause 17 – Reports on slavery & trafficking offences

1.16.1 Given the increased prevalence of human trafficking and slavery in Northern Ireland, Unite the union welcomes the adoption of a longer-term and more serious approach to best support victims and rescue those still subject to exploitation.

1.16.2 Unite agrees with the proposed change arising from this clause that would result in reporting takes place every three years instead of every year and feel this would best

to strategically tackle this issue and help support victims of modern slavery and human trafficking in Northern Ireland.

1.17 Clause 18 – Qualifying offences for sexual offences prevention orders

1.17.1 Unite welcomes the inclusion of this qualifying offence for a Sexual Offences Prevention Order (SOPOs) to help protect children and young people in Northern Ireland. This offers another method of protection for those placed in care and provides another tool to ensure that adults who pose a threat to the safety of children and young people can be closely monitored.

1.18 Clause 19 – Time limit for making violent offences prevention orders

1.18.1 Victims can be terrified for their personal safety and traumatised from the abuse they've experienced and so violent offences prevention orders (VOPOs) have a vital role to play in ensuring that victims feel protected and that perpetrators of violent offences are being effectively monitored.

1.18.2 Abuse and coercive control which extends into years can often result in victims being slow to come forward to report experiences. Time limits can then present a barrier to justice. Unite supports the removal of the six-month time limit on making a complaint, which will give a wider window for victims to come forward and report the violence they've experienced.

AMENDMENTS

1.19 Abolition of the 'rough sex' defence

1.19.1 The law dealing with violent crimes where the term "rough sex" is used as a defense in by the accused is not fit for purpose. Unite strongly recommends an amendment to this bill to abolish the increasingly used term as a defense in criminal proceedings and in regard to seriously violent crimes such as homicide and non-fatal violence against women.

1.19.2 We would argue for the need for legislation to outlaw this defence, ensuring that victims have effective recourse to justice and that "rough sex" cannot be used as an excuse to perpetrate acts of violence against women, nor will it be used by courts as a mitigation to a sentence.

1.19.3 It is important to have legislation and policies in place that offer recourse to justice for those who are victims of non-fatal harm and for those victims who are murdered as a result. Any proposed legislation must take into consideration offences relating to

strangulation; but at the same time needs to be carefully worded not to criminalise non-conventional, consensual sex.

1.19.4 While legislation in Northern Ireland is gender neutral, we would support calls for the Justice Department to consider the gendered nature of this crime in any subsequent guidance produced.

1.19.5 Unite also supports the implementation of the findings of the Gillen Review – one of which recommendations is the roll out of a programme of education around rough sex and consent to ensure that wider society is aware of this as a wider issue and to clarify a no tolerance approach to these crimes. In particular statutory healthy relationships programmes should be delivered in schools to promote respect, equality, values and consent within all relationships.

1.19.6 In particular we seek that any proposal on consent to sexual gratification specifically exclude consent to non-fatal strangulation assaults. If non-fatal strangulation is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.

1.20 Extend revenge porn provisions to include a threat of publication and renaming as 'Image Based Violence'

1.20.1 Unite strongly advocates for a robust consequential amendment to this bill to extend existing 'revenge porn' provisions to include a threat of publication. We further request that the term 'revenge porn' is replaced with 'Image Based Violence' as the former suggests victims are somehow culpable in the violating acts against them.

1.20.2 Any sentencing in regards to the consequential amendment be made in line with that in England & Wales to send a strong message to perpetrators of this act that it is completely unacceptable.

1.21 Extend legislation covering an abuse of position of trust of a child to include sports and faith settings.

1.21.1 Unite the union calls for inclusion of robust child protection legislation to remove any ambiguity with regard to the legal requirements of sporting and faith-based organizations to safeguarding of children and young people. We call for the extension of existing legislation to cover the abuse of position of trust of a child to organisations in sports and faith-based settings.

1.22 Wider legislation required.

1.22.1 In addition to these specific provisions, Unite the union calls for legislation to:

- Recognise the gendered nature of violence which disproportionately impacts women which and the underlying, deep-rooted attitudes of misogyny in our society; and,
- Establish gender as a protected characteristic, and specifically recognise misogyny and trans misogyny as a form of hate crime.

1.22.2 Any new legislation on these matters should be victim-led, with recognition of the intersectional needs of different groups and societal factors that put some victims at greater risk or create barriers to accessing justice. In particular it should:

- Recognise and address barriers for disabled women seeking support and unique forms of coercive abuse they face;
- Address harmful heteronormative stereotypes that prevent LGBT people seeking help or recognising abuse;
- Remove inhumane policies such as No Recourse to Public Funds which create barriers for women with uncertain immigration status from reporting abuse due to fears of being reported to the Home Office; and,
- Recognise and address the unique barriers faced by victims of honour-based abuse when accessing the justice system, including victims of spiritual abuse and coercive control.

1.22.3 We further call for the immediate implementation of all the outstanding Gillen Review Recommendations.