



Call for Evidence on

**The Justice
(Sexual Offences and
Trafficking Victims) Bill**

September 2021

A submission by Women's Aid NI

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Submission Contents

Women's Aid Statistics & Information	3
Our Submission Response	5
Justice Bill – Part 1: Sexual Offences	7
Justice Bill – Part 2: Human Trafficking	14
Justice Bill – Part 3: Prevention Orders	16
Proposed Amendments	17

Women's Aid – Information & Statistics

Who We Are

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic abuse and provides support services for women, children and young people. Women's Aid NI is made up of eight local Women's Aid groups and Women's Aid Federation Northern Ireland.

Women's Aid exists to challenge attitudes and beliefs which perpetuate domestic violence. We work to promote healthy, non-abusive relationships.

Our vision is the elimination of domestic abuse and sexual violence

What We Do

Women's Aid supports all women and children affected by domestic abuse.

We work to help women and children be safe, to break free from the cycle of abuse, and to rebuild their lives. Women's Aid has nine local groups and one regional umbrella body covering the whole of Northern Ireland, and our wraparound services are available across Northern Ireland.

Our core work includes:

- **Refuge accommodation** for women and their children suffering domestic abuse.
- **Support services** to enable women affected by domestic abuse to rebuild their lives and the lives of their children.
- Support services for **children and young people** who have experienced domestic abuse.
- **Preventative education programmes** in schools and other settings.
- Educating and **raising awareness** among the public, media, police, courts, social services, and other agencies of the impact of domestic and sexual violence.
- **Advising and supporting** other agencies in responding to domestic abuse.
- **Working in partnership** with other agencies to ensure a joined-up response to domestic abuse.

Throughout this response, the term “Women's Aid” refers to the overall Women's Aid movement in Northern Ireland, including our local groups and Women's Aid Federation.

Domestic & Sexual Violence in 2019-20: a year in numbers

- **561** women and **316 children** stayed in a Women's Aid refuge.
- **36** pregnant women were supported in refuge and **205** pregnant women accessed outreach services.
- **11** babies were born to women in refuge.
- **5,536** women and **5,143** children accessed Women's Aid outreach services, enabling them to get support while staying in their own homes.
- **1,197** women took part in programmes run by Women's Aid, including our Journey to Freedom and You and Me, Mum programmes.
- We trained **168** teachers across **105** primary schools to deliver the Helping Hands preventative education programme.

Domestic Abuse in Northern Ireland: Trends

- Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.
- The Stopping Domestic & Sexual Violence and Abuse Strategy estimates the cost of domestic and sexual violence in Northern Ireland to be **£931 million**.
- UNICEF research released in 2006, showing per capita incidence, indicates that there are up to **32,000 children** and young people living with domestic violence in Northern Ireland.
- **69%** of all domestic abuse crimes were female and **31%** were male. Of all offenders dealt with by police in 2018/19 in connection with domestic abuse crimes that resulted in an outcome, **86%** were male and **12%** were female.

Crime Statistics 2019-20

- Domestic Violence is a crime. Domestic abuse crimes¹ (**18,640**) accounted for **17.5% of all crime** reported to the PSNI.
- Police responded to a domestic incident **every 17 minutes** of every day of the year.
- Between 2019 – 2020 (statistics captured over financial year), there were **2 murders** with a domestic abuse motivation in Northern Ireland and all victims were female. In 2017, Northern Ireland there was the joint highest level of femicide in Europe per 100,000 people.

¹ Findings from the PSNI Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 31 March 2019 N.B. “Adult” defined as aged 18 and over.

Our Submission Response

Women's Aid greatly welcomes the opportunity to provide written evidence in relation to the Justice (Sexual Offences & Trafficking Victims) Bill currently going through the Northern Ireland Assembly.

The piece of legislation covers many wide-ranging topics, and our response to the Justice Committee has been informed by our experience supporting women and children for over 40 years, many of whom have experienced the acts that are highlighted in this important piece of legislation.

The Justice (Sexual Offences & Human Trafficking Bill) is a vital piece of legislation, that if passed, will help give extra protections to victims of sexual offences, give more tools to our justice system to tackle child sexual exploitation, and enhance protections for the public by strengthening prevention orders.

We also particularly welcome the proposed amendments to this Bill relating to the so called 'Rough Sex Defence' and the extension to existing image-based violence provisions to include a threat of publication, which Women's Aid have long campaigned for to help strengthen the law for victims of domestic abuse who've unfortunately experienced these acts as part of their cycle of abuse.

We welcome the proposals within the Bill, but are also aware that in other jurisdictions across the rest of the UK, there are more robust measures being put in place through the current domestic abuse legislation which has the opportunity to transform lives with many robust measures to restore confidence in the legal system for victims and survivors.

We would also call on the Justice Committee to consider that domestic abuse does cross many sectors and departments and does not just fall within the criminal justice sector in NI. We would call on all government departments to take ownership of the key issues because without their support, no reforms to domestic abuse legislation will work. It is paramount that our housing departments, health departments, education and family courts all take part to make this work moving forward and transform and change the lives of all those experiencing domestic violence and abuse.

We need to catch up and not offer a postcode lottery in relation to protections based on our geographical location. Women's Aid as a campaigning body for women, children and young people have been fundamental in supporting change in legislation in relation to many of the proposed Clauses and Amendments within this draft Bill. We do however, acknowledge that many of the provisions outlined within the Gillen recommendations should also automatically apply to those where there is a domestic abuse offence. Those who have experienced domestic abuse should be offered the same protections and considerations within legislation for their protection, to reduce the re-traumatisation that comes with trial proceedings.

The new legislation needs sustainable funding which enables life-saving specialist services, and the public sector agencies that respond to domestic abuse, to meet the

increasing demand for help and ensure every victim and survivor gets the support they need.

In recent research Monica McWilliams recognises progress “*in domestic violence policy, services and legislation over the last three decades, particularly following the end of the conflict, gaps still remain. In policy terms, Northern Ireland continues to fall behind when compared to what is happening on domestic violence elsewhere in the UK. Key pieces of domestic violence legislation operating in England, Wales and Scotland have yet to be introduced in Northern Ireland, including the aforementioned coercive control*”.² We cannot afford to move further behind!

We would ask our Justice Committee to consider the following omissions that are not included within this Bill for all victims and survivors of domestic abuse in Northern Ireland:

- A statutory gendered definition of Domestic Abuse to include violence against women and girls.
- Violence Against Women and Girls Strategy.
- Reforms to the family court and review of child contact system.
- Changes to housing and homelessness legislation for those escaping domestic violence and abuse.
- Ensure that welfare policies protect women and their children.
- Reforms to ensure migrant survivors have equal access to protection and support.
- Funding and resourcing of the Bill which is essential to respond to all victims and survivors of domestic and sexual crimes.
- Urgent need for emergency Barring Orders. □ Education and Awareness programme.
- Clarify the use of ‘barring orders’ in the family courts to prevent abusive expartners from repeatedly dragging their victims back to court – which can be used as a form of continuing domestic abuse – we would need them in place first (as above)
- Legal Aid waiver

Justice (Sexual Offences & Trafficking Victims) Bill

² Doyle, J. and McWilliams, M., 2018. Intimate Partner Violence in Conflict and Post-Conflict Societies: Insights and Lessons from Northern Ireland.

PART 1 – SEXUAL OFFENCES

CHAPTER ONE – CRIMINAL CONDUCT

Clause 1 – Up Skirting & Down Blousing

Women's Aid greatly welcome legislation that criminalises the acts known colloquially as "Up Skirting" and 'Down Blousing' which is a violation of the victim's privacy and causes great unnecessary distress to them. These acts are often dismissed as 'not a serious' as other sexual crimes, and as a result, victims feel societal pressure to trivialise what's happened to them and to not pursue any further action, even though the act has caused them serious distress and feeling violated.

Creating specific legislation for these particular acts will also send a message to potential perpetrators that this is a seriously violating act, and to the public, that this is an incredibly distressing experience for victims and a problem that we need to tackle as a society. A 2018 poll conducted by men's magazine GQ and polling company You Gov found the worrying result that 1 in 10 men don't think up skirting is sexual harassment.³ The specific criminalisation of these acts will send a strong message to our society that 'up skirting' 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.

We would recommend an awareness campaign and greater education around the issue as many people don't appreciate the seriousness of this as a crime. If the law is changed and people know they could get a custodial sentence this will change behaviours. Awareness is needed – people need to be taught from a really young age that this is wrong, and if you were to do this, this is the punishment you will get. It will offer a route to justice for victims and a broader understanding of what sexual abuse is.

We need greater education in schools together and as part of a strengthened RSE programme to look at what amounts to abuse in an effort to shape behaviour. This is more than just a contact offence, it can occur online, and with multiple people and we must take into account the use of technology. This law would highlight the kind of technology and it makes it very clear that taking an image and sharing it is not acceptable.

It is essential that we have a legal criminal framework for adult offenders but also an understanding that young people need more education to understand what is and isn't abuse. Our children and young people also need to receive help and support if

³ [What is upskirting? One in ten men don't think upskirting is sexual harassment | British GQ | British GQ \(gqmagazine.co.uk\)](#)

they demonstrate harmful sexual behaviour. There would be much work that would need to take place within this area and appropriate resourcing of same if this is to be brought into legislation.

Whilst Women's Aid support the introduction of these specific clauses that criminalise 'Up Skirting' and 'Down Blousing', we would strongly argue that the summary conviction (Section 4A of Clause One) is not in line with sentencing guidelines for almost identical legislation for the same crime in England and Wales.

4A in Clause One of this bill states that "*on summary conviction, to imprisonment of term not exceeding 6 months or a fine not exceeding the statutory maximum or both*"

But in section 4A of **Voyeurism (Offences) Act 2019**⁴ that applies to England & Wales reads that: "on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both"

We would argue that by lessen the summary conviction for these crimes in Northern Ireland to less than the rest of the UK, and indeed in the Republic of Ireland, that Northern Ireland will not be seen to be taking this violating crime as seriously as we aren't in line with our neighbouring jurisdictions, and as such, may result in some victims not coming forward to report what has happened to them.

Northern Ireland would be the first part of the UK to legislate for down blousing which would be remarkable considering how far behind we are in relation to other parts of the UK and Ireland in relation to domestic abuse legislation.

Recommendation: That section 4A of Clause One be amended to read "*on summary conviction, to imprisonment of term not exceeding 12 months*" in line with our neighbouring jurisdictions.

Clause 2 - Sexual Grooming: Pretending to be a Child

As a charity that supports vulnerable children and young people, Women's Aid greatly welcome specific legislation that helps protect our young people in every changing world. In our increasing digitilised world, our children and young people live a lot of their lives online now, especially since the pandemic began in March 2020. Unfortunately, this digital evolution means there are now more opportunities than ever for children and young people to be vulnerable to perpetrators who attempt to groom them online.

The NSPCC's recent paper, ***The impact of the coronavirus pandemic on child welfare: online abuse***, highlights this issue with testimonies for children and young people who have contacted them for support saying that "*both Childline and the NSPCC helpline heard about adults posing as children online, in order to form*

⁴ [Voyeurism \(Offences\) Act 2019 \(legislation.gov.uk\)](https://legislation.gov.uk)

relationships with children and young people. What began as a seemingly platonic online friendship could escalate into sexual abuse⁵.

The paper also highlights that *“Since the stay-at-home guidance was issued, Childline has seen a 11% increase in the number of counselling sessions about online sexual abuse, from an average of 207 sessions per month before lockdown to an average of 230 sessions per month since lockdown began⁶.”*

Child Line also highlighted that *“Some children talked to Childline about using online platforms for the first time during the pandemic, to communicate with friends they already knew. In some cases, they were targeted by perpetrators of sexual abuse”* and that *“techniques used by perpetrators (of online grooming) include: using multiple channels to communicate with children; moving conversations from one platform to another; and taking conversations from public to private online spaces⁷.”*

In the same period, *“the NSPCC helpline saw a 60% increase in contacts from people with concerns about children experiencing online sexual abuse, from an average of 117 per month before lockdown, to an average of 187 per month since lockdown⁸.”*

Women’s Aid welcome these new four proposed offences to help protect children and young people in Northern Ireland. We do however strongly recommend that sentencing for these offences be in line with other UK jurisdictions.

The proposed sentencing within this Bill under 22G is that:

“a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both”

But similar legislation pertaining to sexual communication with a child under the **Serious Crime Act 2015**⁹ in England & Wales under section 3A has summary conviction as:

“on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both;

It is the position of Women’s Aid that given the incredibly serious nature of this type of crime against children and young people, and the fact that leading child protection agencies are highlighting it’s on the rise, we feel that that the summary conviction should be at least 12 months as reflected in similar legislation in neighbouring jurisdictions. We strongly recommend that the summary conviction under Section

⁵ [The impact of the coronavirus pandemic on child welfare: online abuse \(nspcc.org.uk\)](https://www.nspcc.org.uk)

⁶ [The impact of the coronavirus pandemic on child welfare: online abuse \(nspcc.org.uk\)](https://www.nspcc.org.uk)

⁷ [The impact of the coronavirus pandemic on child welfare: online abuse \(nspcc.org.uk\)](https://www.nspcc.org.uk)

⁸ [The impact of the coronavirus pandemic on child welfare: online abuse \(nspcc.org.uk\)](https://www.nspcc.org.uk) ⁹⁹
[Serious Crime Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

22G should be amended from 6 months to 12 months to show that this crime isn't taken less seriously in Northern Ireland, and to send a strong message to perpetrators that this crime is taken seriously in this jurisdiction.

Recommendation: That section 22G of Clause Two should be amended to read “*on summary conviction, to imprisonment of term not exceeding 12 months.*”

Clause 3 - Miscellaneous Amendments as to Sexual Offences

Women's Aid strongly welcome this Clause which removes victim blaming terminology in legislation that is designed to protect children and young people from sexual exploitation.

The victims of child sexual exploitation need protection and reassurance that the horrendous acts done to them are not their fault as they do not have the capacity to consent to their own exploitation.

By removing these outdated terms from our legislation, we as a society take a step in the right direction to put the onus back on the perpetrators of child sexual exploitation for the crimes they have committed, and we need to make sure that the language used in legislation is clear that children and young people bare no fault in traumatic exploitation they have suffered.

CHAPTER TWO – ANONYMITY AND PRIVACY

Clauses 4 & 5 – Extended anonymity of victims

Women's Aid greatly welcome the proposed provisions put forward in Clause 4 of this Bill that will help strength anonymity of victims in sexual offence cases. As the Committee are aware, Sexual offences are greatly underreported and within the financial years 2019/20, the PPS saw a 5.6% increase in the Public Prosecution Service received a total of 1,684 files involving a sexual offence. This was an increase of 5.6% on 2018/19 (1,594) and there was a rise of 6.9% in the number of files received involving a rape offence.⁹

These proposed strengthen protections will give more reassurance to victims that their privacy and right to anonymity will have strengthen protections legislatively, and as a result, hopefully encourage those who are reluctant to report what was happened to the reassurance they need they that their privacy will be protected.

⁹ [Sexual Offences Publication 2019-20 \(and 18-19\) Final.pdf \(ppsni.gov.uk\)](#)

Clause 6 - Increase in penalty for breach of anonymity

Public confidence that breaches of anonymity are taken incredibly seriously in criminal justice proceedings are essential to assure the victims of serious sexual offences that they can feel more confidence that all measures possible are in place to protect their anonymity through an incredibly daunting process for them.

Women's Aid are in support of increasing the penalty for breach of anonymity to deter any potential breaches and give victims of serious offences reassurance that all measures possible are in place to protect their right to privacy following the trauma they have endured.

Clause 7 - Special rules for providers of information society services

Women's Aid understands this Clause is to remove any ambiguity in the law regarding illegal publication of content when the service provide is merely a conduit for the relevant information and understands the Department of Justice's rational in including it in this Bill.

Clause 8 – Restrictions on reports as to suspects of sexual offences

In cases of serial perpetrators of sexual offences, it is the disclosure of their name and charge against them that can encourage other victims to come forward and provide evidence of their own experiences. This in turn may establish a pattern of offending or escalating behavior and aid convictions of dangerous perpetrators.

In short, given that sexual violence crimes are one of the most under-reported and difficult to secure a conviction, granting anonymity is that the last thing that would overcome these problems and may stop previous victims coming forward to share their own experience.

Women's Aid therefore support the removal of anonymity upon the specific conditions stated in section 3, subsection 2 of Clause 8 of this bill.

Clause 9 – Meaning of Sexual Offences in Section 8

We understand that this Clause provides clarification on the meaning of sexual offences relating to Clause 8, and thus the need for the further explanation of the definitions in this Clause.

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

Women's Aid understand that some provisions are needed in circumstances that 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 therefore understand the need for Clause 10 as a result, and as referenced in our response to Clause 8, the disclosure of their name and charge against them that can encourage other victims to come forward and provide evidence of their own experiences. We are conscious of the need for fine balance in dealing with suspects in these circumstances, and therefore understand the need for the provisions in this Clause.

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

Women's Aid understands the need for appropriate sentencing when it comes to breaches of privacy for victims of serious sexual offences. We support this Clause as another deterrent to help protect the victim's privacy and believe that strengthening the law in this area will give more reassurance to victims that more measures are in place to protect their wellbeing and try to prevent any unnecessary distress.

Clause 14 – Consequential amendment

We understand the need for this consequential amendment to ensure there is no legislative overlap when it comes to reporting and offences that could identify a person as involved in an offence while that person is under the age of 18.

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

Women's Aid welcome the proposed piece of legislation in this Clause relating to the exclusion of the public in court proceedings. Victims of sexual offences often feel a reluctance to come forward and report the crimes committed against them for fear of being ostracized in their communities if their identity becomes well known. It is the position of Women's Aid that the current public access to sexual offence trials is ultimately not in the best interests of the wellbeing of the victim, so excluding nonrelevant parties from the trial will ultimately make the experience of the trial proceedings less distressing for the victim.

It is essential that the court process is trauma informed. Trauma can impact the brain and behaviour. It causes trauma for the victim, and she (or he) may experience symptoms of Post-Traumatic Stress Disorder, including hyperarousal,

reexperiencing, avoidance and numbing and this is apparent when witnesses attend court in their presentation. The court process is difficult enough without having a court full of the public listening, observing, and monitoring the victim's every move.

Many international frameworks and treaties recognize the need for the state to not re-traumatise victims. **The Istanbul Convention** identifies that all measures to provide protection and support to victims from should be with the aim of preventing secondary victimisation.¹⁰ Similarly, the **UN Committee against Torture (CAT)** requires that *“judicial and non-judicial proceedings shall apply gender-sensitive procedures which avoid re-victimization and stigmatization of victims of torture or ill treatment.”*¹¹

We would also strongly recommend that such legislative provisions be extended in circumstances where there is a domestic abuse offence. Those who have experienced domestic abuse should be offered the same protections and considerations within legislation for their protection, to reduce the re-traumatisation that comes with trial proceedings.

Ultimately, we believe that this clause, which still allows the victim's support network and press to remain in court, balances the need for transparent, accessible justice and that anything that makes the victim's experience of the criminal court process less distressing is greatly welcomed.

¹⁰ Article 18(3), Istanbul Convention

¹¹ UN Committee against Torture, General Comment 3: Implementation of article 14 by States parties, CAT/C/GC/3 (13 December 2012) para 33.

PART 2 - TRAFFICKING AND EXPLOITATION

Clause 16 – Support for victims of trafficking etc.

As an organisation that supports women who have experienced horrendous abuse and supports victims of human trafficking, Women's Aid understand the need for the inclusion of Clause 16 to help support victims of forced servitude who were not directly trafficked. From 1st April 2020 to 31st March 2021, Women's Aid directly supported 51 who were victims of human trafficking here in Northern Ireland.

Women's Aid services support victims of human trafficking through:

- Providing safe accommodation
- Emotional & practical support
- Liaising with the Human Trafficking Unit of the PSNI
- Liaising with solicitors and other legal professionals

Women's Aid support this 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 and get the support they need.

We also understand as an organisation that more can be done to help support the victims of this horrendous act against human dignity, and we would support further legislative protections to help effectively support survivors of human trafficking and slavery.

Enhanced legislative provisions that would help victims of trafficking include:

- Social security entitlement for survivors of trafficking
- Statutory defence for survivors of trafficking
- Quashing historical convictions relating to exploitation
- Healthcare entitlement for survivors of trafficking

We as a society could be doing more to support victims of human trafficking and modern slavery, so we hope you consider any opportunities possible for amendments that will help such a vulnerable population here in Northern Ireland.

Clause 17 – Reports on slavery & trafficking offences

Given the increase in reports of human trafficking and slavery in Northern Ireland and throughout the UK, Women's Aid welcome a long-term strategic approach to crimes in of this nature to best support victims and rescue those still be exploited.

The **Modern Slavery & Human Trafficking Report** by The Criminal Justice Inspection of Northern Ireland in October 2020 highlights that: *"we don't know enough about the true scale and extent of Modern slavery and human trafficking in Northern*

Ireland. The police know it is a growing issue and have a dedicated MSHT Unit¹² This finding reflects the need for strategic planning in Northern Ireland to effectively tackle this issue.

Women's Aid therefore would agree with the proposed change in this clause that would result in reporting takes place every 3 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.

¹² [Modern Slavery and Human Trafficking; An inspection of how the criminal justice system deals with modern slavery and human trafficking in Northern Ireland. \(cjini.org\)](https://www.cjini.org/)

PART 3 PREVENTION ORDERS

Clause 18 – Qualifying offences for sexual offences prevention orders

Women's Aid welcome the inclusion of this qualifying offence for a Sexual Offences Prevention Order (SOPOs) to help protect children and young people in Northern Ireland from exploitation.

We understand the inclusion of the qualifying offence offers another method of protection for vulnerable children and young people who've been placed in care and provides another tool in which the PSNI can use to ensure that adults who pose a threat to the safety of children and young people can be closely monitored.

Ultimately the addition of this qualifying offence will be another method of protection for our children and young people from offenders, and therefore Women's Aid support its inclusion to the SOPO criteria.

Clause 19 – Time limit for making violent offences prevention orders

As part of our work supporting women who've experienced domestic abuse, Women's Aid see firsthand the experiences of women whose perpetrators have had violent offences prevention orders (VOPOs) placed upon them for the protection the victim and the wider public. Often the women we support are terrified for their personal safety and traumatised from the abuse they've experienced, so orders such as VOPOs are key in ensuring they feel adequately protected by authorities and that perpetrators of violent offences are effectively monitored by the relevant authorities.

The women we support have often experienced years of abuse at the hands of their perpetrator, for some, even decades. The years of abuse and conceive controlling behavior can often result in being more difficult for women to come forward to report experiences, so a time limit is a barrier for victims of domestic abuse to be able to access justice, as for some victims, it can take a long time to build up the courage to try to break free from the cycle of abuse. Women's Aid therefore support the removal of the 6-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.

PROPOSED AMENDMENTS

Abolishment of the ‘rough sex’ defence

It is the position of Women’s Aid that the law currently does not fit for purpose in dealing with violent crimes where the term “rough sex” is used as a defense in by the accused, and we strongly recommend an amendment to this bill to abolish the terms as a defense in criminal proceedings. This ‘defence’ is being increasingly used in criminal proceedings both locally and in other neighboring jurisdictions and is being used in seriously violent crimes such as homicide and non-fatal violence against women.

This ‘defence’ and the implications of claiming ‘rough sex’ as the cause of grievous harm to victims can be reflected in the R v Brown judgement, which concerns two gay men engaged in consensual sadomasochism. The judgement outlined that consent is not a defence to more than transient or trifling injury¹³. This decision is rarely cited in decisions where the rough sex defence is being used and has been undermined by decisions such as Slingsby (1995). R v Brown deals with a case involving consensual sex, however if we view this in the context of violence against women and girls in the UK, it does not address the violence that isn’t consented to. Women who experience domestic abuse fear their personal safety is threatened by their perpetrator, so when serious bodily harm occurs when the woman physically survives the violence, putting forward evidence in trials outlining that there was no consent, there needs to be specific legislation in place to provide recourse. This amendment needs to be carefully worded to not criminalise non-conventional, consensual sex to avoid being considered an issue of morality.

The campaigning organisation, We Can't Consent To This, has collated 60 examples of women "who were killed during so-called 'sex games gone wrong'" in the UK, since 1972.¹⁴ with the latest taking place in Newry in 2020. This defence is also used in non-fatal assaults of women including non-fatal strangulation, all of whom say they did not consent to this. Currently not a specific crime in Northern Ireland, non-fatal strangulation is a major indicator of a potential homicide in domestic abuse situations and Women’s Aid strongly argue that robust, specific legislation is needed to tackle the serious nature of non-fatal strangulation. Women’s Aid do not think that the law in Northern Ireland as it stands is sufficient and we need change now.

It is the position of Women’s Aid that the increasing numbers of abusers using this defence in non-fatal and fatal violent acts in criminal proceedings is a growing concern. Therefore, it is important to have legislation and policies in place that offer recourse to justice for those who are victims of non-fatal harms and for those victims who are murdered as a result. Statistics show that 38% of women in the UK have experienced

¹³ [Regina v. Brown \[1994\], House of Lords \(cirp.org\)](#)

¹⁴ [We Can't Consent To This \(wecantconsenttothis.uk\)](#)

some form of rough sex that was unwanted¹⁵ and the claim that a dead woman consented to 'rough sex' has been made in 60 UK homicides¹⁶. Further research shows that of those 60 homicide cases where a rough sex defence was used, 2 were found not guilty, 3 cases were not pursued, 17 cases were convicted as manslaughter, 3 murder convictions where the death was originally decided not to be a crime, 1 murder conviction where the defence had a sentencing benefit and 33 murder convictions¹⁷. From this research we can see that only 33 cases out of 60 where this defence was used ended in a murder conviction without mitigations to sentences. Clearly notions of rough sex are benefiting perpetrators of violence in court and depriving victims access to justice for the violent acts inflicted upon them.

Without change, more men will use this defence, as outlined above and Women's Aid believe that men who use these defences do so because they see them working. Those accused of sexual and sadistic murders have a particular incentive to recast sadistic sexual violence as consensual, as these have a 30-year life-sentence starting point. In the last Femicide Census¹⁸ there were 8 homicides of women with sadistic conduct: 6 of the men used a rough sex claim in defence.

Therefore, 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. There are too many cases in which sentences do not reflect the crime and the perpetrator has got off because of the current defence available. Any proposed legislation must take into consideration offences relating to strangulation. The campaign group "We Cannot Consent to This" found that strangulation is a feature of most homicides and over half of non-fatal assaults in which "rough sex" has been used as a defence.

We are aware that the Department of Justice has made a commitment to bring forward legislation on fatal and non-fatal strangulation and would encourage the department to consider this as another opportunity to emphasise that "rough sex" is not a defence for harm caused. We would also note that "We Cannot Consent to This" identified that of 115 non-fatal assault charges in their research, all perpetrators were male and 114 victims were female. All women in these non-fatal assault cases said they did not consent to the violence.

While we understand that legislation in Northern Ireland is gender neutral, we would encourage the department to consider the gendered nature of this crime in any subsequent guidance produced to supplement an offence.

¹⁵ [Third of British women have experienced unwanted choking, slapping or spitting during sex | The Independent | The Independent](#)

¹⁶ [We Can't Consent To This \(wecantconsenttothis.uk\)](#)

¹⁷ [We Can't Consent To This \(wecantconsenttothis.uk\)](#)

¹⁸ [Femicide-Census-10-year-report.pdf \(femicidecensus.org\)](#)

It is also the position of Women's Aid that a programme of education around rough sex and consent is necessary to ensure that wider society is aware of this as a wider issue and tolerance for these types of crimes is eradicated. This is also one of the recommendations of the Gillen Review. It is important to make people aware of what consent is and how rough sex fits into wider concepts of rape and rape myths. We would note that RSE in schools should cover these issues as well. Women's Aid have long campaigned for statutory healthy relationships programmes to be delivered in schools to promote respect, equality, values and consent within all relationships. We are aware of the work of the Gillen Review Team in relation to this, but as always we have to focus on intimate partner sexual abuse and rape as part of this education programme.

The Assembly needs urgently to look at this issue and any proposal on consent to sexual gratification must ensure that non-fatal strangulation assaults are not able to be consented to. 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.

A study by St Mary's SARC¹⁹ showed non-fatal strangulation in adult females reporting sexual assault and rape was common, with 1 in 5 giving a positive history when the alleged assailant was either a partner or ex-partner. The vast majority will give a history of symptoms associated with non-fatal strangulation and have evidence of injuries which may be associated.

We Can't Consent to This²⁰ also reported that women were being seriously injured in what men claim to be consensual sexual violence, stating that it is now commonplace for a woman to be assaulted and abused by men they're dating, with 38% of UK women under the age of 40 reporting being assaulted, choked, slapped, gagged or spat on, as part of otherwise consensual sex. We Can't Consent to This stated this is not just a UK problem but one that occurs worldwide and argued that until it is made clear, in law, that consent is not a defence, defendants would continue to make claims in the pursuit of a lesser criminal charge or sentence, or with a view to being acquitted of any crime.

Recommendation: This amendment needs to be carefully worded to not criminalise non-conventional, consensual sex to avoid being considered an issue of morality.

¹⁹ [White2018.pdf \(stmaryscentre.org\)](#)

²⁰ [We Can't Consent To This \(wecantconsenttothis.uk\)](#)

Extension to existing ‘revenge porn’ provisions to include a threat of publication

Women’s Aid strongly advocate for robust consequential amendment to this bill which creates legislation extensions to existing so called ‘revenge porn’ provisions to include a threat of publication.

It is however, the position of Women’s Aid that the term ‘revenge porn’ is extremely problematic and implies victims of such an act are somehow couplable in these violating acts against them. We therefore strongly advocate for the term to be referred to as ‘Image Based Violence’ given then harm intended to its victims by the perpetrators of this act.

The women we support throughout Northern Ireland who have experienced domestic abuse have increasingly reported to us that they have been threatened by their perpetrator that if they attempt to leave the abusive relationship, explicit images of them will be leaked to their family, friends, employers or church which the perpetrator tells them ‘will ruin their lives.’

This threat of publication is used by perpetrators of domestic abuse to coercively control their victims into staying with them, threatening to publish these images without the victim’s consent if they fail to ‘comply’ to the abusers demands. The threat of publishing these images without the victim’s consent can stop them attempting to break free from the abuse and seeking help, and as a result, their abuse continues.

To give a snapshot of the scale of this issue, a survey conducted by Refuge in 2020 found that 1 in 14 adults in England & Wales have experienced threats to share intimate images or videos, and that 72% of women who were threatened with publication were threatened by their current or ex-partner²¹.

It’s the position of Women’s Aid that, from our experience providing support to women who’ve experienced domestic abuse, that the threat to publish these explicit images without the consent of the victim is tool used by perpetrator’s to stop victims of domestic abuse from breaking free from their abuser, and the threats to publish need to be a specific crime to ensure victims have the confidence to leave as soon as they are able to.

Women’s Aid also would strongly advocate that any sentencing in regards to the consequential amendment be in line with neighboring with jurisdictions such as England & Wales, to send a strong message to perpetrators of this act that is not acceptable in our society.

Under similar legislation in England & Wales in the **Criminal Justice & Courts Act 2015**²² that makes threat to publish illegal it states that:

²¹ [The-Naked-Threat-Report.pdf \(refuge.org.uk\)](https://www.refuge.org.uk/the-naked-threat-report.pdf)

²² [Criminal Justice and Courts Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2015/2)

“A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).”

Recommendation: Women’s Aid strongly advise that the sentencing above should be the minimum if this consequential amendment should make it into the Justice (Sexual Offences & Trafficking Victims) Bill to send a strong message to victims of this act in our society and to perpetrators that Northern Ireland takes these threats to publish incredibly seriously, and they will not be tolerated.

Extension of existing legislation covering an abuse of position of trust of a child to include sports and faith settings

As an organisation that directly supports vulnerable children and young people who have experienced domestic abuse, Women’s Aid greatly strengthened legislative protections for children and young people in Northern Ireland.

Robust, effective, and clear message child protection legislation ensures that there is no ambiguity with the legal requirements sporting and faith-based organizations must abide by to adequately safeguard our children and young people here in Northern Ireland. Women’s Aid support the extension of the existing legislation covering an abuse of position of trust of a child to include organisations that operate in sports and faith-based settings.

We do however feel that this potential amendment has the ability to tighten settings covering abuse of trust to extend protections for our children and young people here in Northern Ireland. We would strongly recommend that this amendment include not just sports and faith settings, but also extending this legislation to cover extra-curricular activities and hobbies where those who work in positions our trust with children and young people.

Recommendation: Broadening this proposed amendment to cover extra-curricular activities and hobbies settings, as well as sports and faith settings to give extra protections for children and young people in more areas of our society.

Abolishment of ‘reasonable punishment’ defence

Women’s Aid have long held the position that children and young people have often been referred to as the hidden or forgotten victims of domestic abuse, and in the Northern Ireland justice system, children are left behind when it comes to equal protection in the law relating to physical punishment.

Our guiding principles are non – violence, self-help, best practice and working in partnership, and Women’s Aid have long held the stance against physical punishment of children. It is our position that the law in Northern Ireland is outdated, ineffective and most importantly, not in the best interest of child welfare as there is clear evidence that use of physical punishment is ineffective in improving a child’s behaviour.

Women’s Aid supports children who’ve experienced domestic abuse, and we wish to highlight to you that the vast body of research that shows *“physical punishment and physical abuse are part of a continuum of violence, differing only in severity and degree²⁴.”* Our neighbouring jurisdictions are way ahead of Northern Ireland in terms of equal protection from assault for children, and we as a society need to ensure children and young people have equal protection to their peers in GB and in wider Europe.

The detrimental effects on the children’s welfare who have received physical punishment has been long researched and documented in showing it’s no benefit to the child’s behaviour or their overall wellbeing. Writing in the journal *Child, Abuse and Neglect²⁵*, Dr Rebecca Lacey of University College London conducted research and reported on the effects of physical punishment on children.

“The team looked at the frequency of eight “adverse events” reported by parents by the time their child was three years old. These included whether the parents smacked their child, had drug or alcohol problems, frequently used harsh parenting behaviours such as shouting at their children or sending them to a “naughty chair”, and whether the parents were separated.

The team found that while about a third of the children had experienced none of the eight types of adverse events by the time they were three, a third had experienced one type, and about a sixth had experienced three or more types. Parental depression, harsh parenting and physical punishment were the most commonly reported of the adverse events.

²⁴ [2015-equally-protected-report.pdf \(niccy.org\)](https://www.niccy.org/2015-equally-protected-report.pdf)

²⁵ [Adverse childhood experiences and multiple mental health outcomes through adulthood: A prospective birth cohort study - ScienceDirect](https://doi.org/10.1016/j.chab.2016.05.001)

Taking into account factors such whether the children were living in poverty, the team found the adverse events studied were associated with both behavioural and mental health problems.

“The more adversities a child has experienced by the age of three, the worse their mental health is by that point – but those differences persist over time, so right across early life at least to age 14,” said Lacey.

Lacey added that smacking and harsh parenting were most strongly associated with so-called “externalising problems”, such as fighting with other children, lying or cheating and being hyperactive²³.”

This shift in understanding of the informed opposition to so called ‘reasonable chastisement’ can be reflected in the Children (Equal Protection From Assault) Scotland 2019 which criminalises this Victorian defence of reasonable chastisement of children: *“The rule of law, that the physical punishment of a child in the exercise of a parental right or a right derived from having charge or care of the child is justifiable and is therefore not an assault, ceases to have effect.”*

As a modern society, we in Northern Ireland need to show through the law that our children and young people that they deserve the same equal protection from assault as any adult experiencing the same act. It is our firm recommendation that Northern Ireland needs to dispel this Victorian defence of ‘reasonable chastisement’, that fails to serve the overall wellbeing of children and young people here and show that Northern Ireland does its utmost to ensure our vulnerable children are protected and advocated for in our legal system.

Recommendation: That the defence known as ‘reasonable punishment’ is abolished in Northern Ireland to protect children and young people.

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²³ [Smacking children may have lasting impact, research suggests | Children | The Guardian](#)