FROM THE OFFICE OF THE JUSTICE MINISTER

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Dear Christine

Justice (Sexual Offences and Trafficking Victims) Bill – Key Issues

Thank you for your letter of 17 December requesting additional information on a number of areas of the Justice (Sexual Offences and Trafficking Victims) Bill on behalf of the Committee.

I regret that, due to staff absences and Christmas leave arrangements, the Department was unable to provide a response by your requested deadline of 4 January.

However, thanks to the efforts of officials, I am pleased to now be able to provide responses to all of the issues raised in your letter, which I trust will assist the Committee with its informal clause by clause consideration of the Bill at the Committee's meeting on Tuesday 11 January 2022.

For ease of reference, responses to the Committee's questions are set out in a series on discrete annexes to this letter as follows:

<u>Part 1 – Sexual Offences</u>

1) Exertion of control motivations and lack of consent in relation to new up-skirting and down-blousing offences.

*The Department's response to this issue is provided at **Annex A** to this letter.*

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2) Review of the legislation in place in Scotland in respect of cyber-flashing.

The Department's response to this issue is provided at ***Annex B*** *to this letter.*

Part 2 – Trafficking and Exploitation

3) Confirm when the previous consultation was undertaken on Slavery and Trafficking Risk Orders.

4) Clarify whether the extension of support to those appealing a negative National Referral Mechanism decision can be done via the discretionary powers in section 18(9) of the Human Trafficking and Exploitation (NI) Act 2015 or would instead require legislative change.

The Department's response to these issues is provided at ***Annex C*** *to this letter.*

Part 3 – Prevention Orders

5) Difference between Sexual Offences Prevention Orders (SOPOs) and how they operate in Northern Ireland and arrangements in other parts of the UK.

6) Assessment of Sexual Harm Prevention Order (SHPOs) and Sexual Risk Orders (SROs) in England & Wales for lessons learned / update of legal framework in Northern Ireland

7) Views on aspects of The Police, Crime, Sentencing and Courts (PCSC) Bill to strengthen and streamline the framework for managing sex offenders and if there will be gaps in Northern Ireland when this legislation is implemented.

The Department's response to these issues is attached at ***Annex D*** *to this letter*.

Departmental Amendments

8) Clarification of the rationale for the approach adopted in relation to the abuse of position of trust amendment.

The Department's response to this issue is attached at ***Annex E*** *to this letter*.

9) Confirmation that the amendment in relation to the rough sex defence as currently drafted, will address the points raised by Women's Aid in their written submission to the Committee's Call for Evidence.

The Department's response to this issue is attached at ***Annex F*** *to this letter*.

10) Confirmation of when the text of the other two departmental amendments will be available.

*The text of the amendment to 'exclude the public from hearings of serious sexual offence cases', to include the Court of Appeal is provided at **Annex G** to this letter.*

*The text of the amendment to make 'threats to disclose private sexual photographs and films with intent to cause distress' an offence is provided at **Annex H** to this letter.*

*Finally, the text of the planned amendment to create a new offence of non-fatal strangulation is provided at **Annex I** to this letter.*

There may be some further small refinements to the texts of these amendments as a result of final quality assurance checks by officials and OLC ahead of tabling but the substance of the amendments will not change.

I trust that the Committee will find this helpful and that you will be reassured that officials will endeavour to provide the Committee with co-ordinated responses to the points raised in your composite summary table of evidence at the earliest possible opportunity.

CLAIRE McCORMICK DALO

ANNEX A

Public Prosecution Service comments on motivations and exertion of control; and Department's views on basing the offence on lack of consent.

Background

The proposed provisions in the Bill to provide for the up-skirting and down-blousing offences require proof of the intent to humiliate, alarm or distress the victim, or proof

that the offence was committed for the sexual gratification of the offender or another person.

The provisions for these offences are based on the proposal to legislate for up-skirting put forward in the consultation on the review of the law on child sexual exploitation, where there was overwhelming support for the proposal.

Of the 42 respondents who addressed the issue, only one respondent disagreed on the grounds that there was no need for further legislation in this area, pointing to successful prosecutions made under the offence of Outraging Public Decency.

No concerns were raised at that time about the inclusion or the requirement to prove motivations. The provisions for the offence of down-blousing were based on the upskirting proposals.

Subsequently, during their consideration of the provisions, Committee members, and some of those giving evidence to the Committee, raised concerns about the requirement to prove motivation. The concerns included that this would make the offence difficult to prove; would inhibit conviction; and could mean that many instances of up-skirting would not be captured: in particular, the motivation of the exertion of control over the victim was highlighted.

In this context, your letter references a view given during evidence from the Public Prosecution Service, represented by Ciaran McQuillan, that, where the offence has been committed to exert control over the victim, it would not come within scope of the offence.

Your letter also references the PPS comments on basing the offence on lack of consent. Such an offence would mean that there would be no requirement to prove the motivation of the offender.

Motivations

On the issue of motivations, and in response to a question from the Chair on the intention to exert control or power, PPS advised that in these types of cases there may be no single over-riding motivation; that there is often a range of motivations.

The motive may be for the purpose of sexual gratification, but also with the intention of humiliating or distressing the victim or exerting control over the victim. Where there is no evidence of sexual gratification being a motivation or no evidence that there was an intent to humiliate, alarm or distress, then PPS considered that it would not be covered by the provisions.

Up-skirting and down-blousing, by nature, are often a surreptitious and covert behaviour carried out by opportunists. We find it difficult to envisage a scenario where an up-skirt or down-blouse image would be used to coerce an individual, where the individual and the offender were not, or had been, in a relationship.

However, in the case that the individuals are in a relationship and a person was using the image as a means to exert control, then it is likely that other offences would be more appropriate, including offences under the Domestic Abuse and Civil Proceedings Act 2021, where abusive behaviour includes behaviour that is threatening and has the effect of controlling the victim and making the victim subordinate to the perpetrator.

In the unlikely event that an image was being used to exert control over a person with whom the offender is not in a relationship, it is difficult to envisage a case where the court would not consider that this would come within scope of humiliating, alarming or distressing the victim. The intention to humiliate, alarm or distress covers a wide spectrum of behaviour and the court considers all the circumstances in the individual case.

During evidence sessions to the Committee some stakeholders offered a view that the criminal law is not generally concerned with why an offence has been co mmitted.

This is not the case. The Public Prosecution Service and the PSNI made it very clear that proving intent is an integral part of any criminal offence.

There was also a view expressed that if a person said that they had taken an up-skirt image as a joke or a prank then there would be no prosecution. In this context we would wish to highlight what PPS said on this issue and on the issue of motivations in the Bill more generally:

> *'Simply because a defence is put forward does not mean that we would accept it when making a prosecutorial decision. Indeed, it does not mean that we would not be able to prove the case. If we feel the case is one where sexual gratification was the motivation, we could prove that before a court, based on the circumstances of the case. In a case that we bring before the court, if a defence is put forward, we would invite the court not to accept that defence, depending on the circumstances and the evidence. There are cases where we could point to evidence that would be enough to satisfy a court so that it is sure that, for instance, the motivation was sexual gratification or that the motivation was to humiliate, alarm or distress. …….. My own view, and the view that we would take, having seen these cases come in, is that the motivations in the Bill, as drafted, would cover most situations that we might see.'*

<u>An offence based on lack of consent</u>

Your letter also references 'PPS views on basing the offence on lack of consent'.

This relates to a query brought up during the evidence session on 16 December when the Chair quoted part of a response from the PPS as follows:

> *'If you went forward with it simply on the basis of whether or not there was consent to the taking of the image, that would be in line with nearly all the other offences in the 2008 Order'*

This quote was presented as the PPS view on basing the offence on lack of consent. We have confirmed the position with Ciaran McQuillan who has asked that we set out

the entirety of his comment in this regard, and within the wider context of the discussion, to better clarify matters with the Committee. The quote formed part of his response to a question from a Committee member who asked:

> '*If the Bill went completely silent on intent and leaned and pivoted towards consent, would there be a difficulty with proving the absence of consent in order to secure a prosecution?'*

The PPS answer was addressing the particular issue of proving consent and was clarifying that proof of consent, or a reasonable belief in consent, is a requirement for the majority of offences in the Sexual Offences (Northern Ireland) Order 2008.

The full response given by Ciaran is provided below:

> *'Proof is required that the victim of an offence does not consent or that the defendant does not reasonably believe that there was consent. As drafted, clause 1 amends the 2008 Order to introduce article 71A(c):*
>
> *"A does so—*
>
> *(i) without B's consent, and*
>
> *(ii) without reasonably believing that B consents."*
>
> *There are two levels to it. That runs throughout sexual offence legislation generally, including the 2008 Order. It is for us to prove the lack of consent. That is most frequently proven by the victim saying that they did not consent, but we also need to prove that the defendant did not reasonably believe that the victim consented. That defence can be put forward by a suspect in one of those cases. They are entitled to say, "Well, they may not have consented, but I believed they were consenting to me taking this image". It will depend on the evidence. We are not bound to accept that without questioning it.*

We would explore whether we can prove our case, even where the defendant claims that they reasonably believed that the victim consented. That challenge is not unique to this.

If you went forward with it simply on the basis of whether or not there was consent to the taking of the image, that would be in line with nearly all the other offences in the 2008 Order. We are well used to looking at and dealing with that. That does not mean that it would be not a challenge, but it is in line with other provisions.'

On the issue of an offence based solely on lack of consent, one of the Department's primary concerns is that the removal from the offences of the requirement to prove intent could unnecessarily criminalise children and young or vulnerable people and lead to over-criminalisation.

While not minimising the impact on those who are victims in these circumstances, there will be some young people who may act on impulse without considering the consequences of their actions or act because of peer pressure – for example, someone who is the weaker person in a group of friends and is 'egged on' to act out of character.

These concerns have been echoed in responses to the Law Commission's consultation[1] on its proposals for reform of the criminal law governing the taking, making and sharing of intimate images, proposals which include an offence based solely on lack of consent and which was referenced by Committee members, and by some of those giving evidence to the Committee.

We think it important to highlight that the Commission's proposals are for a complete reform of the criminal legislative framework in this area and are based on a review which began in 2019. The Commission plan to publish its final report and recommendations later this year. The time taken points to the depth of the review and the complexity of the issues involved.

[1] Law Commission: Intimate-image-abuse-consultation-paper.pdf

The Commission sought views on the proposal to create four new offences which would address all aspects of taking, making and sharing intimate images. The proposed base offence would make it an offence where a person intentionally took an intimate image without consent or a reasonable belief in consent. There would be no additional intent element for this offence.

There is then a more serious offence where the intent is to humiliate, alarm or distress and a further more serious offence where the purpose was for sexual gratification. The offences would rely on proposed definitions for 'intimate images' and for 'taking', 'making' and 'sharing'.

The Commission also proposed the necessary inclusion of a reasonable excuse defence as recognition that the conduct can be justified because it is in pursuance of a legitimate aim or for the public good or in the public interest.

The Department has liaised with officials in the Commission and the Criminal Law Commissioner on their proposals and is aware that the Commission has received a number of responses which raise concerns about the base offence in particular, and its potential impact on children and young people.

During discussions with the Commission, officials highlighted the concerns raised during evidence sessions to the Committee of the requirement to prove motivations and of the interest expressed for an offence which relies on lack of consent and without the need to prove any further intent.

The Commission expressed concern about using such an offence in isolation and outside the context of wider reform of the criminal framework governing this complex area.

A further concern we have is that the removal of the requirement to prove the intent of the offender dilutes the offence, where the offence would be reduced to the lowest bar. Something done on the spur of the moment without thinking of the

consequences and the action of a sexual predator would fall under the one offence.

There would be no means to identify and differentiate between a low-level offender and the sexual predator.

This would impact on the justice system's capacity to monitor the risk that a person presents to the public or to protect the community from further offending.

Under current proposed provisions, where the intent of sexual gratification is proved, the offender can be made subject to notification requirements ('the sex offender register') and as a sexual offender could be made subject to prevention orders, such as the Sexual Offences Prevention Order. Identification of sexual offending is critical to help manage the risk they present going forward and ensuring public protection from this type of offending behaviour.

This concern was also highlighted by the PPS. In response to a question relating to an offence based on lack of consent, Ciaran McQuillan responded:

> *' … a consequence may be that you would have only one class of offence and that everything, from the prank or the ill-judged action right up to the predatory, malicious and deeply damaging actions, would be covered under the same offence. That might create challenges for those who are sentencing. It may be possible to deal with those challenges through guidelines, guideline cases or identifying aggravating or mitigating factors without the need for other legislation. However, it would set the bar at the lowest level to capture all the offending, which might dilute some of the approaches that the Committee might wish to be taken to the most serious and predatory offending.'*

There may be a risk of unintended consequences, including a potential reduction in effective public protection, in the introduction, in isolation, of an offence based on lack of consent without very careful consideration of the wider issues.

The Department considers that the provisions as drafted, and which are supported by the PPS and the PSNI, provide additional, effective, and much needed protections - now.

When the Law Commission analysis of consultation responses is completed and its final report and recommendations are published, the Department will to consider their applicability to Northern Ireland within the wider framework of the criminal law in this area.

At that point, and taking account of the responses to them and further developments in other jurisdictions, we will identify whether further change is required.

Any areas for change identified within that wider framework would be subject to full public consultation.

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ANNEX B

Cyber flashing.

The act of cyber-flashing generally involves a person sending an unsolicited image of sexual activity or genitalia to another.

Unlike other forms of intimate image abuse, where the victim is the subject of the image, in cyber-flashing the victim is not the subject of the image but the recipient of the unsolicited image.

Scotland

Scotland is the only jurisdiction in the UK which has legislated in this area. Section 6 of the Sexual Offences (Scotland) Act 2009 provides for the offence of 'coercing a person into looking at a sexual image'.

An offence is committed if a person intentionally (and for the purposes of obtaining sexual gratification or for the purpose of humiliating, distressing or alarming the victim) causes the victim to look at a sexual image.

The offence is only committed if the victim did not consent to looking at the image and the accused had no reasonable belief that the victim consented.

A sexual image is defined as an image of a person, whether real or imaginary, engaging in a sexual activity or an image of the genitals of a person, whether real or imaginary.

A person convicted of a section 6 offence is liable to a maximum of 12 months' imprisonment on summary conviction and up to 10 years' imprisonment on conviction on indictment.

England and Wales

Members may already be aware that the UK Government has committed to making cyber-flashing an offence in England and Wales.

While no decision has yet been made on the detail of the provisions, the Government is considering the recommendation made in the Law Commission's Report on Modernising Communications Offences[2] for the creation of a specific sexual offence of cyber-flashing in the Sexual Offences Act 2003.

The Commission recommends that it should be an offence for a person to send an image or video recording of genitals (whether the sender's or not) to another: either intending to cause that person alarm, distress or humiliation; or, where the image was sent for a sexual purpose, reckless as to whether it would cause alarm, distress or humiliation.

The Commission recommends that it should a triable either-way offence liable to up to 6 months' imprisonment on summary conviction or two years' imprisonment on conviction on indictment.

Ireland

In the Harassment, Harmful Communications and Related Offences Act 2020, Ireland has legislated for an offence of distributing, publishing or sending threatening or grossly offensive communication.

Under the provisions, a person who, by any means, distributes or publishes any threatening or grossly offensive communication about another person or sends any threatening or grossly offensive communication to another person, with intent to cause harm, is guilty of an offence.

The intention to cause harm is defined as: where a person intentionally seriously interferes with the other person's peace and privacy or causes alarm or distress to the other person.

[2] Modernising-Communications-Offences-2021-Law-Com-No-399.pdf

The offence is liable to up to 12 months' imprisonment on summary conviction and up to three years' imprisonment on conviction on indictment.

Review

As members will note, different approaches are being adopted to the offence.

The Department's intention is to review existing and proposed legislation in the UK and Ireland and research any relevant approaches in other jurisdictions and consider their applicability to the Northern Ireland legislative framework.

This review will assist in the development of robust policy proposals for public consultation, with the aim of legislating for the offence of cyber-flashing in the next mandate.

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ANNEX C

Part 2 – Trafficking and Exploitation

1. Confirm when the previous consultation was undertaken on Slavery and Trafficking Risk Orders.

The Department of Justice (the Department) previously consulted on these measures over a 12 week period between 21 January 2014 and the 15 April 2014.

The consultation paper was entitled “Human Trafficking and Slavery: Strengthening Northern Ireland’s Response.” The public consultation document proposed the introduction of Slavery and Trafficking Prevention Orders (STPOs) and Slavery and Trafficking Risk Orders (STROs).

In relation to Slavery and Trafficking Risk Orders the following points were made by consultees at that time.

- There were strong concerns about their impact on human rights and civil liberties, including that if STROs were to be introduced, further safeguards would need to be put in place to ensure that such orders did not constitute an interference with Article 8(1) rights.
- Some respondents had concerns that although these were civil orders they could potentially stigmatise the recipient to the same degree as an actual conviction, even though they are not conditional on a conviction or previous caution. Linked to this, respondents argued that if there is sufficient evidence to satisfy the criminal standard, then criminal law is the appropriate means by which to tackle this behaviour and expressed concerns that such civil orders could be used to circumvent criminal proceedings.
- Several responses were concerned that further clarification was needed about the circumstances which would warrant such a Risk Order. PSNI argued that the Orders would simply replicate provision available elsewhere.

Based on views expressed by stakeholders the then Justice Minister advised that he did not plan to bring forward legislation on Slavery and Trafficking Risk Orders at that time.

In the period since the consultation in 2014 there has been more experience of dealing with the issues of modern slavery human trafficking (MSHT).

The issue of STROs has been referred to in the Criminal Justice Inspection Northern Ireland Report on MSHT and by the Independent Anti-Slavery Commissioner, who recommended in her report for 2020/21 that the Department should consider the introduction of STROs in Northern Ireland.

There has also been widespread support for the introduction of STROs by a range of NGOs and bodies involved in MSHT issues.

In light of these views and the time that has elapsed since the previous consultation, the Department intends to take forward a consultation on STROs and is finalising the consultation document to enable this to happen in the very near future.

2. Clarify whether the extension of support to those appealing a negative National Referral Mechanism decision can be done via the discretionary powers in section 18(9) of the Human Trafficking and Exploitation (NI) Act 2015 or would instead require legislative change.

Section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 sets out the assistance and support available to persons pending determination by the competent authority.

Under Section 18(3) assistance and support is to be provided to a person, until such times as any of the following are made: a negative reasonable grounds determination; a negative conclusive determination; or a positive conclusive determination (that has been made after the 45 day period, where the positive determination is made before the 45 day has ended, assistance and support should be provided until the end of that period).

There is a discretion available to the Department of Justice under Section 18(9):

"18(9) Where—

(a) assistance and support has been provided to a person under this section; and

(b) that person ceases, by virtue of a conclusive determination that the person is a victim of trafficking in human beings or the ending of the relevant period, to be a person to whom assistance and support is to be provided under this section, the Department may nevertheless ensure that assistance and support continues to be provided to that person under this section for such further period as the Department thinks necessary."

The Department has taken legal advice on this section and in particular on the scope of the discretion that may be available to the Department in the circumstances set out in the query by the Justice Committee.

In the first instance assistance and support must have been provided under section 18.

Secondly, under 18(9) (b), the applicant must have received a conclusive determination that they are a victim of human trafficking.

Section 18 (9) refers to those who have received a reasonable or conclusive grounds decision that they have been a victim of human trafficking and the discretion available to the Department applies only to them.

There is no discretion to providing continuing support to someone who has received a negative conclusive grounds determination.

Consequently, an amendment to the legislation would be necessary to change this.

ANNEX D

Sexual Offences Prevention Orders

The Sexual Offences Prevention Order (SOPO) is a civil preventative order designed to protect the public from the risk of serious sexual harm.

It is one of three orders originally provided for, on a UK-wide basis, in the Sexual Offences Act 2003 ('the 2003 Act'). The other two orders include the Risk of Sexual Harm Order (RoSHO) and the Foreign Travel Order (FTO).

A SOPO can be placed on an individual who demonstrates a risk of serious harm and who has been convicted of an offence listed in Schedules 3 and 5 to the 2003 Act (sexual offences and certain other offences, respectively).

No age limit applies to the SOPO and so the order can be used to address risk posed by both adult and young offenders.

Whilst a civil order, breach of its conditions, or the notifications requirements it carries, is a criminal offence. Breach without reasonable excuse is punishable by up to six months imprisonment on summary conviction and up to five years imprisonment on indictment.

Key characteristics

The key characteristics of the SOPO are that it:

- places certain prohibitions or requirements on the behaviour of a sexual offender. For example, this could be that they are prohibited from going to a particular place, live near a school/playground, or associate with a particular individual. A requirement may be that they have to attend a rehabilitative programme. Conditions are tailored to deal with the specific risk posed at an individual level. Those subject to an order will also be subject to notification requirements (commonly referred to as the 'sex offender register');

- can be made by the court on conviction of the offender's original offence (Crown or magistrates' court), or at a subsequent stage through application to the magistrates' court by the police, where there is evidence of risk of serious sexual harm;

- can also be made on an interim basis whilst a full order is being determined by the court. It can also be varied to add or remove conditions, renewed for a longer period, or discharged; and

- can last for a period of up to five years, unless it is renewed, varied or discharged during the lifetime of the order.

Position in the rest of the UK

England and Wales

As highlighted, the SOPO, RoSHO and FTO had been applied on a UK-wide basis since the introduction of the orders by the Sexual Offences Act 2003. However, the orders were replaced in England and Wales in 2015 by way of the Anti-Social Behaviour Crime and Policing Act 2014, which created the Sexual Harm Prevention Order (SHPO) and the Sexual Risk Order (SRO).

The impetus for change arose from a review commissioned by the Association of Chief Police Officers, and carried out by Hugh Davies QC, amidst particular concerns from practitioners in England and Wales that the civil orders available to police for sex offender risk management purposes at that time were not adequate.

The review found that the then statutory regime presented unnecessary and unreasonable obstruction to the objective of preventing sexual abuse of children and its report recommended a new order specifically designed to protect children by incorporating elements from the existing orders under the 2003 Act.

The SHPO is largely a consolidation of the SOPO and the FTO, combining measures to address risk within and outside the UK. The SRO replaces the RoSHO and addresses risk from non-convicted sources.

Scotland

The Scottish Government wanted to re-establish parallel regimes with England and Wales (noting the land border it shares) and also wanted to provide more flexibility and clarity to encourage use of the orders in the courts.

The Scotland SHPO and SRO provision, provided for in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, mirrors that made for the SHPO and SRO in England and Wales.

The 2016 Act provision, to allow for introduction of the new orders in Scotland, has not yet been introduced, as Scotland was keen to ensure that legislation was in place to enable cross-jurisdictional management and enforcement of the orders across the UK before commencement.

Accordingly, subsequent provision has been made in the Westminster Policing, Crime, Sentencing and Courts Bill, with provision for Northern Ireland included following the approval of a Legislative Consent Motion by the Assembly on 23 November 2021.

Retention of 2003 Act Orders in Northern Ireland

The Department consulted with key criminal justice agency partners, PSNI and PBNI, to obtain views on the use of civil orders in this jurisdiction when the replacement orders in England and Wales were being considered.

Partners were of the view that the current framework was working well in this jurisdiction, in terms of applying for orders through the courts and general order management. This could be due to our smaller geographical size and because of our close partnership working across singular criminal justice organisations, which benefits consistency in practice.

Police, in particular, were conscious of difficulties expressed by English colleagues in obtaining orders through the court system, where there was specific mention of the

courts applying the criminal burden of proof to applications, as opposed to the intended civil burden of proof. No such issue exists in Northern Ireland.

From those discussions and following Ministerial consultation, it was agreed that there was no immediate need to undertake a formal review of the existing frameworks in the local context.

Instead, the Department would continue to monitor progress of the effectiveness of the new orders, with a view to the potential for a formal review at a future stage.

Anecdotal evidence from partners is that the existing order regime continues to work well in Northern Ireland. There are, for example, around 100 SOPOs made by the courts each year.

The Police, Crime, Sentencing and Courts (PCSC) Bill

The Department engaged with Home Office officials in development of the relevant PCSC Bill provision to enable UK-wide management and enforcement of all related prevention orders, which would be consequential to the intended commencement of the Scotland SHPO and SRO.

Provision of the PCSC Bill will enable:

- Northern Ireland courts to vary, renew or discharge a Scotland order and to enforce any breach of that order and/or the notification requirements it contains;
- Northern Ireland courts to renew or discharge an England and Wales made order. Provision has already been made for Northern Ireland to vary and enforce breach of an England and Wales made SHPO and SRO, which was provided for at the time of their introduction; and
- the courts in Scotland and England and Wales to vary, renew or discharge a Northern Ireland equivalent order and to enforce any breach of that order and/or any notification requirements it contains.

The PCSC Bill provision is critical to managing the risk of those sex offenders who move from one jurisdiction to another, in order to protect the public from risk of further offending.

In practical terms it will help ensure that individuals cannot move to another UK jurisdiction to evade conditions imposed. It will enable local courts to tailor the orders of anyone transferring from another jurisdiction, so that they better suit the individual's new environment and in line with relevant public protection arrangements. It also ensures that breach can be managed locally, without the need to transfer the offender back to the jurisdiction where the original order was made.

The Committee has highlighted some additional elements included in the Bill to strengthen the England and Wales SHPO and SRO and seeks the Department's views on these aspects and whether there would be any gaps in Northern Ireland when this legislation is implemented. Specifically:

Enabling positive obligations and electronic monitoring requirements to be imposed by SHPOs and SROs

Provision to enable the application of position obligations on the SHPO and SRO in England and Wales are being made, following a review of the operation of the orders by Home Office which covered the period from their commencement in March 2015 up to December 2018. Whilst the review found the SHPO to be an effective tool in sex offender management, it considered that it could be improved if positive requirements could be imposed.

By comparison, the SOPO provision already includes the ability to apply positive requirements to the orders' conditions which were made by way of section 5 of the Criminal Justice Act (Northern Ireland) 2013. This provision was made unique to Northern Ireland at the time and did not apply to SOPO provision across the wider UK.

The inclusion of electronic monitoring requirements is also being made in respect of the England and Wales orders only. By comparison Northern Ireland electronic monitoring arrangements are not available to the SOPO, but can be applied as a condition of bail

or a licence or by a requirement set by a probation order or a youth conference plan (for young offenders).

Specifying that the court should apply the lower civil standard of proof (balance of probabilities) when determining whether the individual application is made in respect of the act in question for SHPOs and SROs.

This is being made in respect of the England and Wales orders to address the particular difficulties in progressing the orders through the courts in that jurisdiction. The same issue does not extend to Northern Ireland - where the civil burden of proof is being applied to the related SOPO, FTO and RoSHO - as civil orders.

Providing for the mutual enforcement of SHPOs and SROs in the different nations of the United Kingdom

The PCSC provisions will enable all parts of the UK to enforce the relevant provisions of all related orders, including the Northern Ireland orders.

Giving the police in England & Wales the power to impose notification requirements on sex offenders who commit relevant offences abroad, removing the requirement to apply for a notification order through the courts.

This provision is being included in England and Wales to address particular issues identified from its review of the operation of its orders. It highlighted the low take-up as regards the SRO and showed that there were very few foreign travel restrictions imposed on both the SRO and the SHPO.

The main obstacle to imposition was considered to be the level of specific evidence, of prior risky behaviour abroad, or of intention to commit an offence abroad, required by the courts. It also identified a limited awareness and understanding of the SRO and found that the application process was resource intensive.

We are not aware of any particular obstacle concerning our related orders, but this issue can be explored as part of any review of our order framework.

Enabling the British Transport Police (BTP) and Ministry of Defence Police (MDP) to apply for a SHPO or SRO in England and Wales

This is specific to England and Wales, where provision was made in consultation with BTP and MDP. Similar provision has not been sought in this jurisdiction, but as with the point above, we can explore this as part of any review of our order framework.

Publishing a list of countries considered to be at high risk of child sexual abuse and exploitation by UK nationals and residents, and requiring applicants and the courts to have regard to the list in respect of applications for SHPOs and SROs

This provision is being included in England and Wales to address particular issues identified from its review of the operation of its orders which highlighted the limited number of foreign travel restrictions imposed and obstacles to their imposition.

As highlighted above, we are not aware of any particular issues with our current order framework, but can explore this matter as part of any review.

ANNEX E

Clarification of the rationale in approach to abuse of trust amendment

The main aim of this amendment is to prevent the manipulation of young people to consent to sexual activity by those who hold a position of trust with them in certain environments outside of those contained within the current abuse of position of trust legislation. Whilst the provisions apply to under 18s, by virtue of the Northern Ireland statutory age of consent, the provisions mainly relate to persons aged 16 or 17.

This amendment seeks to strengthen the existing legislative framework by extending the scope of its definition, which presently applies to those responsible for young people within the statutory sector (such as in education, state care and detention). The amendment does not propose to extend the offences themselves, rather it extends the category of offender who would fall within scope of the offences.

Policy intention

The abuse of position of trust provision was originally created to protect young people in particular situations where there was some element of dependency on an adult, which is often combined with an element of vulnerability on the part of the young person.

The offences were not intended to cover all situations where an adult might have contact with, or supervisory role over, under 18s. Instead, they were intended to capture those relationships where there is an imbalance in power held by the child and adult, and therefore scope for that position of trust to be abused. The current provision, therefore, focuses on particular areas where Government has a duty to protect young people in its care: residential care homes, hospitals, educational institutions, detention facilities etc.

Activity within such statutory sector settings was considered, at the time, to provide the most appropriate response in ensuring a proportionate balance could be achieved in terms of the need to protect young people in vulnerable situations whilst respecting the rights of those over 16 to give legal consent to sexual activity.

Framing the positions of trust too widely runs the risk of prohibiting any person aged 18 from having sexual relations with anyone aged 16/17, which could be considered a raising of the age of consent.

Ensuring proportionality

The Department is conscious that predatory behaviour can occur in any environment where an adult has significant influence or power over a young person in their care, and is conscious that there is particular interest in extending the law further than proposed in the Bill.

We are keen to ensure that our original policy intention is maintained as far as possible – where in strengthening the law, a proportionate balance is achieved in order to further protect young people from sexual exploitation, whilst at the same time safeguarding their right and ability to engage in legal consensual activity.

The draft provisions are based on the evidence presented to date and the particular concerns and risks identified by stakeholders.

The Department proposes inclusion of a delegated power to allow further settings to be included in the definition by way of secondary legislation, should a further gap in protections be identified at a future stage. This will mean that there will be no need to await a primary legislative vehicle for any potential change to be made.

Review, consultation and engagement

The decision on scope of the amendment was taken as a result of the Department's review, consultation and engagement on the issues involved, and following an examination of the experience of other jurisdictions. This has included liaison with the wider UK jurisdictions and Ireland, as well as Jersey.

The Department initially consulted in this area as part of its review of the law on child sexual exploitation and other sexual offences in 2019, concluding that further exploratory work with relevant stakeholders was needed in order to progress this policy area further.

It had been intended that work would be taken forward to enable introduction in the next mandate but, noting the specific concerns, the Minister decided to strengthen the law in this current mandate to ensure more protection for young people, where there is an identified power dynamic by adults who have responsibility for them.

The Department has been working closely with NSPCC in the development of its policy proposals since early 2021.

This included the holding of a joint stakeholder workshop in May 2021 to explore the areas where legislative intervention was needed.

The workshop and our other contacts with stakeholders did not provide evidence to suggest that legal intervention was required beyond the sport and faith settings at this point.

Evidence for change

NSPCC, together with key representatives of the faith and sports sector, have lobbied strongly for Government to regulate these areas with a change in the law; the need for which they believe is evidenced primarily by the significant number of high profile cases, locally and across the wider UK (and beyond), where members of the church and sports coaches have been convicted of sexual offences against children.

Supporting evidence gathered by NSPCC in England and Wales was also relied upon by NSPCC and the sport and faith sector, to demonstrate a level of prevalence.

Specifically, NSPCC made freedom of information requests to all local authority children's services in England and Wales asking for the number of complaints about adults having sexual relations with 16 and 17 year olds in their care who were not already covered by the criminal law between 2014 and 2018. Of the 495 complaints where the adult's role was recorded, the majority were in sport and religious settings.

The Ministry of Justice recently carried out a significant and extensive review of the scope of its legislation where evidence presented identified a need to extend the law to sport and religion.

This review was also influenced by findings of an Independent Inquiry into Child Abuse, which has been considering child abuse claims against bodies in England and Wales since 2014 (and which published its most recent report in September 2021).

It has recommended that legislation in England and Wales should be amended to extend the definition of abuse of trust to include the clergy.

An All-Party Parliamentary Group on Safeguarding in Faith Settings Inquiry report, published in March 2020, also recommended that the definition should be extended to adults who work with children in these settings.

Those who hold positions of trust in a sport or a religion are particularly influential over a child's development.

For example, sports coaches have unique opportunities for physical contact, and can hold major influence over a young person's career and future development.

Similarly, those who hold positions of responsibility in a religion have significant influence over a young person's spiritual and religious development, often against a background of emotional vulnerability or immaturity.

In both situations, individuals can command very high levels of trust, influence, power and authority, and these figures are well established and respected in the community.

No similar evidence has emerged to identify wider areas of concern where further legislative intervention is needed or appropriate at this point.

The current legislative framework used to tackle sexual offending across a range of behaviours is robust and this proposed provision seeks to bolster existing offences further.

Where an offender in a case is in a position of trust, this will always be treated as a significant aggravating factor by the courts when sentencing.

For example, the presence of this factor when an offence of rape is committed would increase the starting point from five to eight years imprisonment.
The PPS Code for Prosecutors specifically refers to the defendant being in a position of trust or authority as a consideration for prosecution when considering the Public Interest Test.

This demonstrates the importance of this factor at prosecution decision-making.

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ANNEX F

Abolition of Defence of Consent to Serious Harm – points raised by Women's Aid

The Department is pleased that Women's Aid welcomes the inclusion of provision abolishing the defence of consent to serious harm for the purpose of sexual gratification. In its written submission Women's Aid raises a number of related points to which the Department responds as follows.

(i) The common law position set out in the *R-v-Brown* case is rarely cited and the extent of its application has become blurred in light of subsequent judgments.

The statutory abolition of the defence will ensure that, where serious harm within the defined text of the amendment occurs, the perpetrator will not be able to raise the claim that the victim consented to the harm being inflicted. The wording of the amendment will make clear that there are no limits as to the nature of the relationship between the parties, making its application across the board absolutely clear.

(ii) The wording should not criminalise non-conventional, consensual sex to avoid being considered an issue of morality.

In developing the amendment, the Department considered views expressed through the 'Consent to serious harm: not a defence' multi-disciplinary reference group, and responses received to the public consultation, a number of which sought to ensure that the individual's right to engage in non-conventional practices was protected.

The selection of injury consistent with that resulting from the offence of assault occasioning actual bodily harm as the point where the defence would not be accepted in legislation represents what is considered an appropriate balance, recognising and safeguarding the individual's freedom to choose to act in a non-conventional way, while also providing a suitable level of protection where serious harm occurs.

(iii) Specific legislation is required to tackle non-fatal strangulation, to which the defence of consent should not be available.

The Department acknowledges the close link between 'rough sex' and non-fatal strangulation.

The Committee is aware of the Department's intention to bring a further amendment to the Bill to introduce a new offence of non-fatal strangulation, following the public consultation which closed in September 2021.

The intention is that the defence of consent will not be available for the new offence where serious harm occurs. Serious harm will be defined to have the same meaning in relation to non-fatal strangulation as in relation to the circumstances where consent may not be used as a defence for sexual gratification, thus aligning strangulation with other non-conventional practices and providing consistent protection to the individual's rights and victims of serious harm.

A person cannot consent to their own murder, so in cases where death occurs existing murder and manslaughter legislation remains valid. The choice of charge will be a matter for the prosecution based on available evidence. Decisions on conviction and sentencing will properly remain matters for the Courts.

(iv) Defendants should not be able to mitigate their sentences by raising the issue of consent

It is not possible to preclude defendants from raising an assertion in evidence that the injured party consented to the behaviour leading to the charge brought against them. This is an ECHR matter of fair trial which should not be interfered with.

In such cases it is and must remain a matter for the Court to determine whether consent was in fact present, and if so, whether any mitigation in sentence is merited.

(v) Any guidance to supplement this type of offending should note the highly gendered nature of the offence

To be fully effective any new legislation must be capable of application regardless of the gender of perpetrators and victims.

However, while victims are not exclusively women, any guidance and training will take the highly gendered nature of non-fatal strangulation and other 'rough sex' practices into account as appropriate.

(vi) A programme of education around rough sex and consent is required

The Committee is aware of the programme of work being taken forward by the Department following the Gillen Review which aims to address a range of public awareness needs relating to sexual offending.

The Department of Justice cannot determine the delivery of RSE in schools, but will promote public awareness of justice issues where possible. In this regard we will continue to work together with a view to dispelling commonly held myths and raising awareness of significant sexual offence issues, with the ultimate aim of reducing this type of offending.

ANNEX G Amendment to Justice (SO&TV) Bill: Anonymity in Court of Appeal

Clause 7, Page 10

Leave out lines 16 to 26 and insert—

'"information society service" means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).'

Clause 7, Page 10

Leave out lines 33 to 37

Clause 15, Page 19, Line 20

At end insert—

'**Exclusion of public from appeal hearing**

27E—(1) Paragraph (2) applies where a hearing is to be held by the Court of Appeal of any one or more of the following—

(a) an application for leave to appeal against a conviction or sentence (or both) in respect of a serious sexual offence;

(b) an appeal against a conviction or sentence (or both) in respect of a serious sexual offence;

(c) an application for leave to refer a sentence in respect of a serious sexual offence to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (reviews of sentencing);

(d) a reference under that section of a sentence in respect of a serious sexual offence.

(2) The court must give an exclusion direction before the beginning of the hearing (but this is subject to paragraph (4)).

(3) Paragraph (2) applies whether or not the hearing relates to other offences as well as a serious sexual offence.

(4) Paragraph (2) does not apply if the time at which the exclusion direction would fall to be given (in the absence of this paragraph) is not within the lifetime of the complainant.

(5) Where an exclusion direction is given under this Article in relation to a hearing, the direction—

(a) has effect from the beginning of the hearing, and

(b) subject to paragraph (7), continues to have effect until, in respect of each relevant application or appeal to which the hearing relates, either—

(i) a decision has been made on the application or appeal, or (ii)

the application or appeal has been abandoned.

(6) In paragraph (5) a "relevant application or appeal" means any application, appeal or reference mentioned in paragraph (1).

(7) The exclusion direction does not have effect during any time when any of the following decisions is being pronounced by the court—

(a) a decision to grant or refuse leave to appeal;

(b) a decision on an appeal;

(c) a decision to grant or refuse leave to make a reference under section 36 of the Criminal Justice Act 1988;

(d) a decision on such a reference.

(8) In this Article—

"complainant" has the meaning given by Article 27A(7), reading the reference in Article 27A(7) to the trial as a reference to the hearing;

"effect" has the same meaning as in Article 27A (see Article 27A(7)); "exclusion

direction" is to be read in accordance with Article 27F(1);

"sentence" has the same meaning as in Part 1 of the Criminal Appeal (Northern Ireland) Act 1980;

"serious sexual offence" has the same meaning as in Article 27A (see Article 27A(7)).

(9) A reference in this Article to a hearing is not to be taken to include any proceedings on an application for leave to appeal, or on an application for leave to refer a sentence, that are of a kind which (ignoring this Article) are not held in open court.

Exclusion from appeal hearings: further provision

27F—(1) Subject to paragraph (5), in Article 27E and this Article "exclusion direction" has the meaning given by Article 27A(2).

(2) The following provisions apply in relation to exclusion directions given under Article 27E as they apply in relation to exclusion directions given under Article 27A—

(a) Article 27B(1) to (3), (5) and (6);

(b) Article 27C; and

(c) Article 27D(1) to (4).

(3) As well as being subject as mentioned in Article 27D(4), an exclusion direction given under Article 27E has effect subject to section 24 of the Criminal Appeal (Northern Ireland) Act 1980 (right of accused to be present at hearing of appeal and limitations on that right).

(4) Rules made under section 55 of the Judicature (Northern Ireland) Act 1978 may make provision about any matter mentioned in paragraph (4) of Article 27B or paragraph (5) of Article 27D (reading the references in those paragraphs to Article 27A(2)(c) and (d), Article 27B(6) and Article 27C(3) as references to those provisions as applied by this Article).

(5) In their application by virtue of this Article, Article 27A(2) and the provisions mentioned in paragraph (2)(a) to (c) are to be read as if—

(a) in the definition of "the complainant" in Article 27A(7), the reference to the trial were a reference to the hearing, and

(b) in the definition of "persons directly involved in the proceedings" in Article 27A(7), sub-paragraph (e) were omitted.'

Schedule 3, Page 27

Leave out lines 18 to 28 and insert—

'"information society service" means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).'

Schedule 3, Page 27

Leave out lines 33 to 36

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ANNEX H

Amendment to Justice (SO&TV) Bill: Threats to Disclose

New clause

After clause 2 insert—

‘**Private sexual images: threatening to disclose**

2B.—(1) The Justice Act (Northern Ireland) 2016 is amended as follows.

(2) In section 51 (disclosing private sexual photographs and films with intent to cause distress)—

(a) for subsection (1) substitute—

“(1) A person commits an offence if—

(a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual (“the relevant individual”) appears,

(b) by so doing, the person intends to cause distress to that individual, and

(c) the disclosure is, or would be, made without the consent of that individual.”,

(b) in subsection (2)—

(i) after “disclose” insert “, or threaten to disclose,”,

(ii)for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”,

(c) in subsection (4), after “disclosure” insert “, or threat to disclose,”,

(d) in subsection (5), in each place, for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”,

(e) after subsection (7) insert—

“(7A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove—

(a) that the photograph or film referred to in the threat exists, or

(b) if it does exist, that it is in fact a private sexual photograph or film.”,

(f) for subsection (8) substitute—

“(8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.”.

(3) In section 53 (meaning of "private" and "sexual"), in subsection (5), for "the person mentioned in section 51(1)(a) and (b)" substitute "the relevant individual (within the meaning of section 51)".

(4) In Schedule 4 (private sexual photographs etc: providers of information society services)—

(a) in paragraph 3(1), after "sub-paragraph (2)" insert ", (2A)",

(b) in paragraph 3(2), after "if" insert ", in the case of information which consists of or includes a private sexual photograph or film,",

(c) after paragraph 3(2) insert—

"(2A) This sub-paragraph is satisfied if, in the case of information which consists of or includes a threat to disclose a private sexual photograph or film, the service provider had no actual knowledge when the information was provided—

(a) that it consisted of or included a threat to disclose a private sexual photograph or film in which another individual appears,

(b) that the threat was made with the intention of causing distress to that individual, or

(c) that the disclosure would be made without the consent of that individual.",

(d) in paragraph 4(2), for "section 51" substitute "section 52",

(e) for paragraph 4(3) substitute—

"(3) "Information society service" means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is (i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and (ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).".'

ANNEX I

Amendment to Justice (SO&TV) Bill: Strangulation

New clause

After clause 19 insert—

'**Offence of non-fatal strangulation or asphyxiation**

19B.—(1) A person ("A") commits an offence if the first and the second conditions are met.

(2) The first condition is met—

(a) if—

(i) A intentionally applies pressure on or to the throat or neck of another person ("B"), and

(ii) A's doing of this amounts to battery of B, or

(b) if A intentionally does something to B (of any other sort) that amounts to battery of B.

(3) The second condition is met if—

(a) A intends A's act to affect B's ability to breathe or receive blood to the brain, or

(b) A is reckless as to whether A's act would affect B's ability to breathe or receive blood to the brain.

(4) An offence under this section can be committed irrespective of whether in fact A's act affects B's ability to breathe or receive blood to the brain.

(5) An offence under this section can be constituted by virtue of A's act irrespective of how A's act is done (for example, by using a part of A's body or by A making use of an object).

(6) A question as to B's consent to A's act is to be disregarded for the purpose of this section except where the question is relevant in relation to a defence allowed by this section.

(7) It is a defence to an offence under this section for A to show that B consented to A's act, but the defence is not available if—

(a) B suffers serious harm as a result of A's act, and

(b) A—

(i) intended A's act to cause B to suffer serious harm, or

(ii) was reckless as to whether A's act would cause B to suffer serious harm.

(8) The matter of B's consent on which the defence may be based is to be taken to be shown by A if—

(a) evidence adduced is enough to raise an issue with respect to the matter, and

(b) the contrary with respect to the matter is not proved beyond reasonable doubt.

(9) If—

(a) an act is done in a country or territory outside the United Kingdom,

(b) the act, if done in Northern Ireland, would constitute an offence under this section, and

(c) the person who does the act is a United Kingdom national or is habitually resident in Northern Ireland,

the person commits an offence under this section as if the act is done in Northern Ireland.

(10) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

(11) In this section—

"serious harm" means any of these—

(a) wounding within the meaning of section 18 of the 1861 Act,

(b) grievous bodily harm within the meaning of section 18 of the 1861 Act,

(c) actual bodily harm within the meaning of section 47 of the 1861 Act,

"United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of that Act.

(12) Schedule 4 contains consequential amendments in connection with this section.'

New Schedule

After Schedule 3 insert—

'SCHEDULE 4

OFFENCE OF NON-FATAL STRANGULATION OR ASPHYXIATION: CONSEQUENTIAL AMENDMENTS

Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)

1. In Article 53A (qualifying offences for particular investigative purposes), in paragraph (2)—

(a) the second of the two sub-paragraphs numbered as (t) is renumbered as (u),

(b) after the second of those two sub-paragraphs insert—

"(v) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).".

Sexual Offences Act 2003 (c. 42)

2. In Schedule 5 (lists of offences for making particular orders), after paragraph 171G insert—

"171H An offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).".

Criminal Justice (Northern Ireland) Order 2008 (NI 1)

3. In Schedule 2 (lists of offences for sentencing matters), in Part 1—

(a) the second of the two paragraphs numbered as 31A is renumbered as 31B,

(b) after the second of those two paragraphs insert—

"*The Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022*

31C An offence under section 19B (non-fatal strangulation or asphyxiation).".

Domestic Violence, Crime and Victims Act 2004 (c. 28)

4. In section 7A (certain rules of evidence and procedure), after paragraph (b) of subsection (2) insert—

"(c) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).".

Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (NI 14)

5. In Article 2 (unjustifiable punishment of children), in paragraph (2)—

(a) omit the "and" preceding sub-paragraph (e),

(b) after sub-paragraph (e) insert—

"(f) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).".'

Clause 21

In clause 21, page 21, leave out line 20 and insert—

'(a) sections 16 to 19A,'

Long title

Leave out 'rules applying with respect to certain sexual or violent offences prevention orders' and insert 'certain rules of law and procedure for the purpose of protecting people from harm'