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26 November 2021

Dear Christine,

### **Justice (Sexual Offences and Trafficking Victims) Bill – Proposed Amendments**

Thank you for your letter of 22 November, in which you ask when the text of the amendments relating to abuse of trust and the other three amendments the Minister intends to bring forward will be available to enable the Committee.

I am pleased to advise that the text of the amendments to widen the existing abuse of position of trust provisions and for the abolition of the rough sex defence has been finalised and is presented in the attached **Appendix**.

Committee members will wish to note that as part of the Department's accelerated development of legislative provisions to extend the current abuse of position of trust provisions, which were originally intended for the next mandate, Departmental officials worked closely with NSPCC – including holding a joint virtual workshop at the end of May - to gauge wider views, including those of key stakeholders, regarding the scope of the amendment.

As a result of that engagement, and having examined the experience of other jurisdictions, the Department's amendment will extend the current scope of abuse of position of trust of a child offences to include certain activities carried out in sports and faith settings.

The Department recognizes that there will be other areas where such legal intervention may be needed in future and a delegated power is proposed to enable additional settings to be included, by way of secondary legislation, where this is considered necessary.

In terms of ‘the rough sex defence’, consent to serious harm for sexual gratification has been raised in trials as a defence to serious harm, murder or manslaughter for many years.

Following the conclusion of a consultation exercise to seek views on proposals to set in legislation the existing common (case) law position that a person cannot lawfully consent to their serious harm for the purpose of sexual gratification, the amendment will give effect to the Minister’s desire to address perceived issues of clarity and consistency regarding the application of the existing case law position going forward.

Drafting of the two remaining amendments is at an advanced stage and will be shared with the Committee under separate cover as soon as they are finalised.

These amendments include provisions to extend the Gillen provisions in the Bill relating to the ‘exclusion of the public from hearings of serious sexual offence cases’, to include the Court of Appeal as a setting where the public can be excluded from appeal hearings against conviction or sentence in serious sexual offence cases; and provisions relating to ‘revenge pornography’, which will make ‘threats to disclose private sexual photographs and films with intent to cause distress’ an offence, alongside existing offence provisions relating to the disclosure of such material.

I trust that the Committee will find this helpful

**CLAIRE McCORMICK DALO**

**Enc – Appendix**

**Amendment to Justice (Sexual Offences and Trafficking Victims) Bill: Abuse of Trust**

**New clause**

After clause 2 insert—

**‘Abuse of position of trust: relevant positions**

**2A.**—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.

(2) In Article 2 (interpretation), after paragraph (4) insert—

“(4A) “The Department” means the Department of Justice.”.

(3) In Article 28 (positions of trust), in paragraph (1)(b), for “an order made by the Secretary of State” substitute “regulations made by the Department”.

(4) After Article 29 insert—

**“Positions of trust: further categories**

**29A.**—(1) For the purposes of Articles 23 to 26, a person (A) is in a position of trust in relation to another person (B) if—

- (a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion, and
- (b) A knows that A coaches, teaches, trains, supervises or instructs B, on a regular basis, in that sport or religion.

(2) In paragraph (1)—

“sport” includes—

- (a) any game in which physical skill is the predominant factor,
- (b) any form of physical recreation which is also engaged in for purposes of competition or display,

“religion” includes—

- (a) a religion which involves belief in more than one god,
- (b) a religion which does not involve belief in a god.

(3) Paragraph (1) does not apply where A is in a position of trust in relation to B by virtue of circumstances within Article 28.

(4) The Department may by regulations amend paragraphs (1) and (2) so as to add or remove an activity in which a person may be coached, taught, trained, supervised or instructed.”.

(5) In Article 80—

(a) the heading becomes “Orders and regulations”,

(b) after paragraph (3) insert—

“(4) Regulations under Article 28(1)(b) or 29A(4) may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

(5) Regulations under this Order may include any incidental, supplementary, consequential, transitory, transitional or saving provision which the Department considers necessary or expedient.”.’

**Amendment to Justice (Sexual Offences and Trafficking Victims) Bill: Rough Sex Defence**

**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’

**Clause 21**

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

‘(a) Parts 2 and 3,’

**New clause**

After clause 19 insert—

**‘CHAPTER 2**

**NO DEFENCE TO CERTAIN CULPABILITY**

**Consent to serious harm for sexual gratification is no defence**

**19A.**—(1) For the purpose of determining whether a person (“D”) who inflicts serious harm on another person (“V”) is guilty of a relevant offence, it is not a defence that V consented to the infliction of the serious harm for the purpose of obtaining sexual gratification.

(2) The reference in subsection (1) to obtaining sexual gratification is to obtaining it for any person (whether for D, V or some other person).

(3) In this section—

“the 1861 Act” is the Offences Against the Person Act 1861,

“relevant offence” means any of these—

- (a) an offence under section 18 of the 1861 Act,
- (b) an offence under section 20 of the 1861 Act,
- (c) an offence (but not common assault) under section 47 of the 1861 Act,

“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.

(4) However, this section does not apply in the case of an offence under section 20 or 47 of the 1861 Act where—

(a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity, and

(b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.

(5) Nothing in this section affects the operation of any rule of law, or any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954), relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.'

