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Dear Christine

PROTECTION FROM STALKING BILL

Thank you for your letter of 5 November, following the Committees' informal deliberation on the clauses in the Bill at its meeting of 4 November.

We have outlined our response under each of the issues raised.

Clause 2 – the reasonable person

The draftsman of the Bill has confirmed that, under clause 2, the prosecution has to prove 3 things: what the accused person did; how a reasonable person would be affected by what was done; and the accused person's state of mind. It may also have to rebut the defence by proving that what was done was not reasonable.

There is no need to prove that anyone actually suffered fear and alarm, and therefore it doesn't matter whether the person against whom the behaviour was targeted, is or is not, a reasonable person.

Of course, if the person targeted comes across as a reasonable person, evidence that they were actually scared might help the prosecution prove that a reasonable person would have suffered fear or alarm, but that goes beyond what is required by clause 2.

Accordingly, if the behaviour was directed at an exceptionally resilient person who was not scared by it, but a reasonable person would have been, the second element of the offence is still satisfied.

In contrast, if the behaviour was directed at an exceptionally timid person, and they were scared by it but a reasonable person would not have been, the second element of the offence is not satisfied.

Our legal advisers have also advised that Clause 2(1)(b) should not be read as “implying a reasonable victim” as such, but rather, as a mechanism for specifying the scope of the behaviour to be captured. It is a different and very specific use of the “reasonable person” test and injects an objective element that must apply to the clause 2 offence.

As such, the Department is satisfied that no lacuna is created by the use of different wording and there is no benefit in attempting to change the existing, carefully drafted wording.

Clause 17 – scope of the guidance

The guidance is directed to Chief Constable as he is responsible for seeking and operating Stalking Protection Orders (SPOs) and interim SPOs.

However, the intention is that it will also include a specific section on the stalking offence and will be published and available to all the criminal justice agencies and the nongovernment & voluntary organisations for assistance and guidance.

Amendments to provide for data collection, mandatory training and to place a requirement on the Department to report on the operation of the offence

The Department does not consider the addition of these provisions necessary or an appropriate inclusion on the face of the Bill. Provisions should only be included in primary legislation where there is no other means by which they can be facilitated.

Officials assured members during the Committee's meeting on 14 October, data collection will automatically commence by PSNI, PPS and NICTS once the stalking offence becomes law (as is the case for every new offence that is placed in statute).

The new offence will also come within Causeway which is a strategically important criminal justice integrated messaging system which supports electronic information sharing between the five main NI criminal justice organisations - the Police Service for NI (PSNI), the Public Prosecution Service (PPS), Forensic Science Northern Ireland (FSNI), NI Courts and Tribunals Service (NICTS) and NI Prison Service (NIPS) and generates the NI Criminal History database.

Members were also advised of the training that is currently being planned within the criminal justice agencies and were assured that training is a priority for the Department.

Training is and remains a top priority objective of the Stalking Implementation Oversight Group, with justice bodies feeding back their training proposals and preparations to the Department on a regular basis. Membership of the Oversight Group is currently being increased to include victims' groups, to ensure that the victim's perspective is adequately addressed.

Members are aware that the Department has led on 2 awareness raising sessions for criminal justice agencies. Keynote speakers from the College of Policing, Crown Prosecution Service, Aurora New Dawn Stalking Advocacy and a former police officer who has trained forces in England shared their expertise, best practice and guidance. The Department will also be making plans for a third event to coincide with the offence becoming law.

Brian Grzymek also assured the Committee that the Department will report to the Committee at regular intervals on the operation of the provisions in the Bill, which will also be scrutinized by CJINI at a suitable point, and will be keeping the roll-out of the legislation under review.

The proposed provisions will do no more than place in statute that which the Department and its agencies were already committed to undertake administratively.

Whilst the convention is that we should not place on statute that which can be delivered by some other means, the Minister appreciates the Committee's strong desire to include these provisions in the Bill and, exceptionally, has agreed that the provisions should be brought forward as Departmental amendments to the Bill.

In light of this decision, officials have engaged with the Office of the Legislative Counsel (OLC) and are currently preparing draft instructions – in collaboration with DSO legal resources - in order for these provisions to be added to the Bill.

Due to the lead in time required to prepare legally proofed instructions and pressures within the Office of Legislative Counsel, it is possible that we may not be in a position to share the final text of the amendments with the Committee before Committee Stage ends on 10 December.

However, officials will be available and happy to discuss the amendments with the Committee as part of any Committee meetings prior to Consideration Stage.

Further consideration to introducing a Stalking Register

There are no plans to introduce a register for stalkers in Northern Ireland. The Department is content that where possible victims raise concerns about stalking behaviour with the PSNI, its access to the Criminal Record's Viewer will ensure that links to any stalking convictions will be immediately picked up.

PSNI is also setting in place arrangements to ensure that records of Stalking Protection Orders or interim Stalking Protection Orders will be similarly available to investigating officers. This will be kept under continual review.

Discussions with colleagues in Public Protection Branch are ongoing within the Department regarding the stalking offence and SPOs coming within Public Protection Arrangements NI (PPANI).

This work-stream forms an important component within the remit of the Stalking Implementation Oversight Group and will amend the guidance in Article 50 of the Criminal Justice (NI) Order 2008 which governs PPANI.

PPANI enables agencies to work together to enhance public protection and provide effective assessment and management of the risks posed by certain sexual and violent individuals.

By bringing the stalking offence and SPOs within PPANI those agencies will be better able to manage the risk from stalking offenders.

The overall aim of the Bill is to provide protection to the victim from risk of stalking from their perpetrator.

Stalking Protection Orders (SPOs) will manage that risk by placing notification requirements on the perpetrator (Clause 14 of the Bill) and this information (name and address) provides a form of “register” not dissimilar to what is commonly referred to as the ‘sexual offenders’ register (even though no such register actually exists, nor is there any reference to such in legislation).

The requirement on the individual to notify their name and address to police within 3 days of an order coming into force, will enable police to manage risk for the purpose of preventing them from carrying out further acts associated with stalking towards their victim.

The Orders have a duration of at least 2 years and they may be varied or renewed depending on the risk assessed and need to continue further protection of the victim.

I trust that the committee finds this helpful.

FROM THE OFFICE OF THE JUSTICE MINISTER



CLAIRE McCORMICK DALO