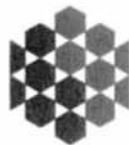


FROM THE OFFICE OF THE JUSTICE MINISTER



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Alastair Ross MLA
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20 November 2015

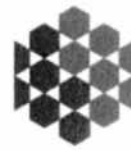
Dear Alastair

PROPOSALS BY JIM GAMBLE: ON-LINE CHILD PROTECTION

Thank you for your letter of 11 November asking for my views on proposals by Jim Gamble for possible legislative changes to improve on-line protection for children.

I am sure you will appreciate that my Department has not had sufficient time to engage in detail with the policy issues to enable me to give you a full assessment of the proposals. However, there are one or two points which might be useful to bear in mind at this stage. Firstly, it would be highly unlikely under current law that any person under the age of 18 would find themselves facing prosecution for possessing or distributing a self-image. If such a set of circumstances ever arose, the public interest test would rarely, if ever, result in a decision to prosecute. I understand the point about perception and fear of criminalisation, but I think there may be other ways to handle such difficulties.

Secondly, I have some concern that the flip side of this proposal, that is the injection of an element of malicious intent in the offence of distributing indecent images, would add a difficult subjective test where a prosecution was considered to be in the public



interest. The level of difficulty involved in proving malicious intent, especially in the case of an immature young person, is likely to be extremely burdensome and not as straightforward as the illustrations given to the Committee during the evidence session.

I would also have some reservations about the need to create a specific offence of using anonymity provided by the internet to harass another person. We believe that the current law on harassment is likely to adequately cover this type of offending behaviour.

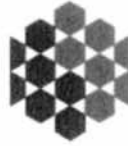
On the final proposal, to create an offence of 'masquerading', we would like to look in more detail as to how this would work in relation to age of the victim and the types of offending behaviour intended.

I have attached as an annex to this letter a short brief on the current legislative framework which might help to illustrate the extent of the offences which might already apply to the offending behaviour described in the proposals.

My overall view is that I can see obvious merit in looking carefully at this area of the law, but doing so in a way that allows for detailed consideration of the issues. I fear that amending the Bill at Consideration Stage means changes to this important area of the law won't have had the benefit of proper policy consideration and consultation, and the results could have unintended consequences.

I would therefore like to include these issues amongst those we are currently considering with a view to a proper policy consultation. Keeping the criminal law and child protection up to date with digital and technological changes is a very serious issue on which I would want to reflect to ensure it is right. The Committee's deliberations on the merits of such changes to the legislation would nonetheless be very helpful to us in shaping the policy consultation.

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I would therefore ask that, instead of pursuing these proposals in the Justice No. 2 Bill, the Committee supports the Department's desire to include the proposals in a policy consultation for future legislative change, as part of a wider review into a number of related areas covering certain sexual offences and child protection. I would aim to brief the Committee more fully in the early part of next year, allowing an opportunity to demonstrate that this work is progressing.

DAVID FORD MLA
Minister of Justice