



**SAM DONALDSON  
HEAD OF COMMAND SECRETARIAT**

Our Ref: Com Sec: 15\16171

20<sup>th</sup> November 2015

Dear Mr Ross,

**RE: Possible Legislative Changes To Improve On-Line Protection For Children**

Thank you for your letter of 11<sup>th</sup> November 2015 concerning the evidence given to your Committee by Mr Jim Gamble. In relation to the briefing document which Mr Gamble provided, I would comment on behalf of PSNI as follows:

1. The Protection of Children (Northern Ireland Order) 1978 as amended by the Sexual Offences (Northern Ireland) Order 2008 currently makes it an offence for a person below the age of 18 to take, make, show, distribute or possess an image of themselves.

Mr Gamble proposes that this order be amended to reflect the following:

- a) A child or young person under the age of 18 who takes, makes, shows, distributes or possesses an image of themselves will commit no criminal offence.

- Under current arrangements, it is likely that the public interest test currently applied by the Public Prosecution Service provides a large degree of protection against the unnecessary and inappropriate criminalisation of children and young people. However, PSNI believe that this proposal is worthy of further discussion to ensure that all agencies continue to have the best legal framework within which the safeguarding of young people remains the core objective.

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b) A child or young person under the age of 18 who takes, makes, shows, distributes or possesses an image of another child under the age of 18 with malicious intent does however commit a criminal offence.

- PSNI has concerns about the wording of this, in particular the requirement to prove "malicious intent" as a burden of proof for prosecution. The term may be open to interpretation and would therefore require further clarity. To prevent legal challenge, PSNI believe that it would be better to keep the showing or the distribution of such an image as an absolute offence, and in that regard I would refer to my response at a) above.

Consideration by both Police and Prosecution should seek to be consistent with the protections afforded to children and young people in the Sexual Offences Order 2008. It focusses upon the age ranges to be considered, which recognises there are different ages of understanding or consent for sexual activity. Each case would have to be considered individually, and police should still record details of any referral, even if there is to be no prosecution. Police can therefore notice if there is any pattern of behaviour, which while there may be no cause for concern with one individual incident, would allow repeat offenders to be quickly identified and prosecuted.

## 2. The Protection from Harassment (Northern Ireland) Order 1997

Mr Gamble proposes that this order should be amended or a new law created to deal with the aggravated impact when an individual or individuals use the anonymity provided by the Internet and/or the ability to create multiple online accounts to harass another person.

- PSNI does not believe there to be a need for further legislation in this area. There is already sufficient protection against this behaviour under current harassment legislation.

## 3. Masquerading (where a person of 18 or above, masquerades as a person below that age)

Mr Gamble proposes that a new law be created to prohibit an individual (aged 18 or above) from masquerading as someone below that age and engaging online with an individual they know or believe to be, under the age of 18. An individual who did so would commit a criminal offence unless they can prove that they did so with reasonable cause or lawful



authority. In reasonable cause defences, the burden of proof will shift to the alleged offender.

- PSNI broadly supports this proposal, but believes the scope of the offence should be defined as per offences under the Sexual Offences Order 2008, in terms of the ages of those involved and the nature of the offences arising. PSNI does not believe there is a pressing need to include masquerading for the purposes of non-sexual activity.

If you require further information in relation to these matters, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sam Donaldson'.

**SAM DONALDSON**  
Superintendent

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