

# **Justice (Sexual Offences and Trafficking Victims) Bill**

[AS INTRODUCED]

## LEGISLATIVE COMPETENCE

At Introduction the Minister of Justice had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Justice (Sexual Offences and Trafficking Victims) Bill would be within the legislative competence of the Northern Ireland Assembly.”*

## SECRETARY OF STATE’S CONSENT

The Secretary of State has consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.

# Justice (Sexual Offences and Trafficking Victims) Bill

[AS INTRODUCED]

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## **BILL**

TO

Make provision about and in connection with sexual offences; regulate particular matters relating to cases of trafficking or exploitation; and amend rules applying with respect to certain sexual or violent offences prevention orders.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### PART 1

#### SEXUAL OFFENCES

#### CHAPTER 1

#### CRIMINAL CONDUCT

5 **Voyeurism: additional offences**

1.—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended in accordance with subsections (2) and (3).

(2) After Article 71 (voyeurism) insert—

**“Voyeurism: additional offences (genitals and buttocks)**

10 71A.—(1) A person (A) commits an offence if—

(a) A operates equipment beneath the clothing of another person (B),

(b) A does so with the intention of enabling A or another person (C), for a purpose mentioned in paragraph (3), to observe—

15 (i) B’s genitals or buttocks (whether exposed or covered with underwear), or

(ii) the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, and

(c) A does so—

- (i) without B's consent, and
- (ii) without reasonably believing that B consents.

(2) A person (A) commits an offence if—

- (a) A records an image beneath the clothing of another person (B),
- (b) the image is of—
  - (i) B's genitals or buttocks (whether exposed or covered with underwear), or
  - (ii) the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible,
- (c) A does so with the intention that A or another person (C) will look at the image for a purpose mentioned in paragraph (3), and
- (d) A does so—
  - (i) without B's consent, and
  - (ii) without reasonably believing that B consents.

(3) The purposes referred to in paragraphs (1) and (2) are—

- (a) obtaining sexual gratification (whether for A or C);
- (b) humiliating, alarming or distressing B.

(4) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

**Voyeurism: additional offences (breasts)**

71B.—(1) A person (A) commits an offence if—

- (a) A operates equipment beneath or above the clothing of another person (B),
- (b) A does so with the intention of enabling A or another person (C), for a purpose mentioned in paragraph (3), to observe—
  - (i) B's breasts (whether exposed or covered with underwear), or
  - (ii) the underwear covering B's breasts, in circumstances where the breasts or underwear would not otherwise be visible, and
- (c) A does so—
  - (i) without B's consent, and
  - (ii) without reasonably believing that B consents.

(2) A person (A) commits an offence if—

- (a) A records an image beneath or above the clothing of another person (B),
- (b) the image is of—
  - (i) B's breasts (whether exposed or covered with underwear), or

- (ii) the underwear covering B’s breasts,  
in circumstances where the breasts or underwear would not  
otherwise be visible,
- (c) A does so with the intention that A or another person (C) will look  
at the image for a purpose mentioned in paragraph (3), and
- (d) A does so—
  - (i) without B’s consent, and
  - (ii) without reasonably believing that B consents.
- (3) The purposes referred to in paragraphs (1) and (2) are—
  - (a) obtaining sexual gratification (whether for A or C);
  - (b) humiliating, alarming or distressing B.
- (4) A person guilty of an offence under this Article is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding  
6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not  
exceeding 2 years.”.
- (3) In Article 72 (voyeurism: interpretation), after paragraph (1) insert—
  - “(1A) For the purposes of Articles 71, 71A and 71B operating  
equipment includes (in the case of equipment that is capable of activation)  
enabling or securing its activation by another person without that person’s  
knowledge.”.
- (4) Schedule 1 contains amendments consequential on the insertion made by  
subsection (2).

**Sexual grooming: pretending to be a child**

2.—(1) After Article 22A of the Sexual Offences (Northern Ireland) Order 2008  
insert—

**“Communicating with a person with a view to grooming a particular  
child**

- 22B.—(1) A person aged 18 or over (A) commits an offence if—
- (a) A communicates with another person (B),
  - (b) at the time of the communication, A intentionally presents himself  
or herself to B, to a group of persons that includes B or to the  
public at large as being under 18,
  - (c) A’s intention in communicating with B is to establish or participate  
in an exchange of communications with a particular person whom  
A has in mind (C) with a view to subsequently committing a  
relevant offence against C, and
  - (d) C is under 16 and A does not reasonably believe that C is 16 or  
over.
- (2) B and C may be the same person.
- (3) If—
- (a) A communicates with a group of persons, and

- (b) the group contains a person to whom A intentionally presents himself or herself as being under 18,

A is to be regarded as communicating with that person.

**Communicating with a group with a view to grooming a particular child**

22C. A person aged 18 or over (A) commits an offence if—

- (a) A communicates with a group of persons,
- (b) at the time of the communication, A intentionally presents himself or herself to the group or to the public at large as being under 18,
- (c) A's intention in communicating with the group is to establish or participate in an exchange of communications with a particular person whom A has in mind (B) with a view to subsequently committing a relevant offence against B, and
- (d) B is under 16 and A does not reasonably believe that B is 16 or over.

**Communicating with a person with a view to grooming any child**

22D.—(1) A person aged 18 or over (A) commits an offence if—

- (a) A communicates with another person (B),
- (b) at the time of the communication, A intentionally presents himself or herself to B, to a group of persons that includes B or to the public at large as being under 18, and
- (c) A's intention in communicating with B is to establish or participate in an exchange of communications with a person or persons aged under 16 with a view to subsequently committing a relevant offence against such a person; but without having a particular person in mind at the time of the communication.

(2) If—

- (a) A communicates with a group of persons, and
- (b) the group contains a person to whom A intentionally presents himself or herself as being under 18,

A is to be regarded as communicating with that person.

**Communicating with a group with a view to grooming any child**

22E. A person aged 18 or over (A) commits an offence if—

- (a) A communicates with a group of persons,
- (b) at the time of the communication, A intentionally presents himself or herself to the group or to the public at large as being under 18, and
- (c) A's intention in communicating with the group is to establish or participate in an exchange of communications with a person or persons aged under 16 with a view to subsequently committing a relevant offence against such a person; but without having a particular person in mind at the time of the communication.

**Communication with a view to grooming: interpretation**

22F. For the purposes of Articles 22B to 22E—

- 5 (a) A presents himself or herself to a person (or persons) as being under 18 if a reasonable person would consider that, in all the circumstances, A presents himself or herself to that person (or those persons) as being under 18;
- (b) “relevant offence” means—
  - (i) an offence under this Order,
  - 10 (ii) an offence under section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation), or
  - 15 (iii) anything done outside Northern Ireland which is not an offence under sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) or (ii) if done in Northern Ireland.

**Communication with a view to grooming: sentencing**

22G. A person guilty of an offence under any of Articles 22B to 22E is liable—

- 20 (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.”.

(2) In Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of notification requirements), after paragraph 92IA (as inserted by Schedule 2) insert—

“92IB. An offence under Article 22B of that Order (communicating with a person with a view to grooming a particular child).

30 92IC. An offence under Article 22C of that Order (communicating with a group with a view to grooming a particular child).

92ID. An offence under Article 22D of that Order (communicating with a person with a view to grooming any child).

92IE. An offence under Article 22E of that Order (communicating with a group with a view to grooming any child).”.

35 (3) In Part 2 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (specified sexual offences), in paragraph 14A, after the entry relating to Article 22A of the Sexual Offences (Northern Ireland) Order 2008 insert—

“Article 22B (communicating with a person with a view to grooming a particular child),

40 Article 22C (communicating with a group with a view to grooming a particular child),

Article 22D (communicating with a person with a view to grooming any child),



Article 22E (communicating with a group with a view to grooming any child),”.

**Miscellaneous amendments as to sexual offences**

3. In Schedule 2—

- 5 (a) Part 1 contains provision which—
- (i) amends references in the Sexual Offences (Northern Ireland) Order 2008 to certain forms of child sexual abuse, and
  - (ii) extends offences that relate to the recording of indecent images to the streaming or other transmission of such images;
- 10 (b) Part 2 makes minor amendments relating to the offence of engaging in sexual communication with a child; and
- (c) Part 3 makes a minor amendment relating to the offence of paying for the sexual services of a person.

CHAPTER 2

15 ANONYMITY AND PRIVACY

*Anonymity of victims*

**Extended anonymity of victims**

4.—(1) Section 1 of the Sexual Offences (Amendment) Act 1992 (anonymity of victims of certain offences) is amended as follows.

20 (2) In subsection (1), for “shall during that person’s lifetime be included” substitute “shall—

- (a) during that person’s lifetime, or
- (b) during the period of 25 years beginning with the date of that person’s death,

25 be included”.

(3) In subsection (2), for “shall during the complainant’s lifetime be included” substitute “shall—

- (a) during the complainant’s lifetime, or
- (b) during the period of 25 years beginning with the date of the complainant’s death,

30 be included”.

**Disapplication of anonymity of victim after death**

5.—(1) The Sexual Offences (Amendment) Act 1992 is amended as follows.

35 (2) In section 1(3)(b) (anonymity of victims of certain offences), at the end insert “and

- (c) has effect subject to any order made under section 3A.”.

(3) After section 3 insert—

**“Disapplication of section 1 after victim’s death**

3A.—(1) Subsection (2) applies where matters relating to a person (“A”) are prohibited from publication by virtue of section 1(1) or (2).

5 (2) An interested party may after A’s death apply to a magistrates’ court for an order—

- (a) disapplying, or
- (b) modifying the application of,

section 1(1) or (2) in relation to A.

10 (3) For the avoidance of doubt, the modifications that may be made under subsection (2)(b) include increasing or decreasing the period mentioned in section 1(1)(b) or (2)(b) (the period during which publication is prohibited).

(4) In this section, “interested party” means—

- 15 (a) a person who was a family member of A at the time of A’s death;
- (b) a personal representative of A;
- (c) a person interested in publishing matters relating to A which are prohibited from publication by virtue of section 1(1) or (2).

(5) On an application under subsection (2), the court must make an order under that subsection if the court is satisfied that it would be—

- 20 (a) in the interests of justice, or
- (b) otherwise in the public interest,

to make such an order.

25 (6) An order made under subsection (2) may be varied or revoked by order of a magistrates’ court on the application of an interested party where the court is satisfied that it would be—

- (a) in the interests of justice, or
- (b) otherwise in the public interest,

to make such a variation or revocation.

30 (7) An order made under this section does not affect the operation of section 1 at any time before the order was made.

(8) In this section, “a family member of A” means—

- 35 (a) a person who at the time of A’s death was—
  - (i) married to A;
  - (ii) in a civil partnership with A;
  - (iii) living with A as if a spouse;
- (b) a relative of A.

(9) For the purposes of this section—

- 40 (a) “relative” means parent, child, grandparent, great-grandparent, grandchild, great-grandchild, brother, sister, uncle, great-uncle, aunt, great-aunt, nephew, great-nephew, niece or great-niece;
- (b) a relationship of the half-blood or by affinity is to be treated as a relationship of the whole blood;

(c) the stepchild of a person is to be treated as that person's child.

(10) In this section, "a person interested in publishing matters" means a person who—

(a) wishes the matters to be included in a publication, and

(b) in relation to the publication, is a person mentioned in section 5(1) (persons by whom an offence relating to publishing may be committed).

(11) In subsections (1) and (4)(c), a reference to matters being prohibited from publication includes matters being partially prohibited from publication following the making of an order under this section modifying the application of section 1(1) or (2) in relation to A.

### **Rules of Court**

3B.—(1) Rules of Court may make such provision relating to orders under section 3A as appears to the authority making them to be necessary or expedient for the purposes of that section.

(2) Rules of Court may, in particular, make provision—

(a) for notice of applications to be given to such persons as may be prescribed by the rules;

(b) for applications to be heard in private;

(c) as to the matters to be taken into consideration by a court in determining whether it is in the interests of justice, or the public interest, to make, vary or revoke an order under section 3A.

(3) Nothing in subsections (1) and (2) is to be taken to affect the generality of any enactment conferring power to make Rules of Court; and no particular provision of those subsections prejudices any general provision of them."

### **Increase in penalty for breach of anonymity**

6.—(1) Section 5 of the Sexual Offences (Amendment) Act 1992 (offences) is amended as follows.

(2) In subsection (1) omit the words from "and liable" to "standard scale".

(3) After subsection (1) insert—

"(1A) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both."

### **Special rules for providers of information society services**

7.—(1) In section 5 of the Sexual Offences (Amendment) Act 1992 (offences), at the end insert—

"(9) The Schedule contains special rules relating to providers of information society services."

(2) After section 8 of the Sexual Offences (Amendment) Act 1992 insert—

“SCHEDULE

Section 5(9).

OFFENCE OF BREACH OF ANONYMITY: PROVIDERS OF  
INFORMATION SOCIETY SERVICES

5

*Exceptions for mere conduits*

1.—(1) A service provider does not commit an offence under section 5 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—

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- (a) initiate the transmission,
- (b) select the recipient of the transmission, or
- (c) select or modify the information contained in the transmission.

(2) For the purposes of sub-paragraph (1)—

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- (a) providing access to a communication network, and
- (b) transmitting information in a communication network,

include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

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(3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

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2.—(1) A service provider does not commit an offence under section 5 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.

(2) The first condition is that the storage of the information—

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- (a) is automatic, intermediate and temporary, and
- (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.

(3) The second condition is that the service provider—

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- (a) does not modify the information,
- (b) complies with any conditions attached to having access to the information, and
- (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—

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- (a) the information at the initial source of the transmission has been removed from the network,
- (b) access to it has been disabled, or

- (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

*Exception for hosting*

5 3.—(1) A service provider does not commit an offence under section 5 by storing information provided by a recipient of the service if—

- (a) the service provider had no actual knowledge when the information was provided that its provision constituted an offence under section 5, or  
10 (b) on obtaining actual knowledge that the information constituted such an offence, the service provider promptly removed the information or disabled access to it.

(2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

*Interpretation*

15 4. In this Schedule—

“information society services”—

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and  
20 (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

25 “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

30 “service provider” means a person providing an information society service;

35 “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).”.

*Anonymity of suspects*

**Restriction on reports as to suspects of sexual offences**

40 8.—(1) Subsection (2) applies where—

- (a) an allegation that a particular person has committed a sexual offence has been made to the police, or

(b) the police have taken any step to investigate whether a particular person has committed a sexual offence (but an allegation within paragraph (a) has not been made in respect of the offence),

and references in this section and sections 10 and 12 to “the suspect” are to the person mentioned in paragraph (a) or (b).

(2) No matter relating to the suspect is to be included in any publication if it is likely to lead members of the public to identify the suspect as a person who is alleged to have, or is suspected of having, committed the offence.

(3) Subsection (2) does not apply after the earliest time (if any) when any of the following events occurs—

(a) a summons or warrant is issued under Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981 against the suspect in respect of the offence;

(b) the suspect is charged with the offence after being taken into custody without a warrant;

(c) an indictment charging the suspect with the offence is presented under section 2(2)(c) or (e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969;

(d) a magistrates’ court commits the suspect to the Crown Court for trial on a new charge alleging the offence.

(4) If none of those events occurs, then subsection (2) does not apply after the end of 25 years beginning with the date of the suspect’s death.

(5) The matters relating to a suspect in relation to which the restriction imposed by subsection (2) applies (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—

(a) the suspect’s name;

(b) the suspect’s address;

(c) the identity of any school or other educational establishment attended by the suspect;

(d) the identity of any place of work;

(e) any still or moving picture of the suspect.

(6) For the avoidance of doubt, for the purposes of subsection (1) it does not matter whether the allegation is made, or the step is taken, before or after this section comes into operation.

### **Meaning of sexual offence in section 8**

**9.**—(1) In section 8, “sexual offence” means any of the following offences against the law of Northern Ireland—

(a) an offence under section 61 or 62 of the Offences against the Person Act 1861 (buggery, attempt to commit buggery, assault with intent to commit buggery or indecent assault on a male);

(b) an offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (buggery);

(c) an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008;

- (d) an offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images);
- (e) an offence under section 69 of the Serious Crime Act 2015 (possession of a paedophile manual);
- 5 (f) any attempt to commit any of the offences mentioned in paragraphs (a) to (e);
- (g) any conspiracy to commit any of those offences;
- (h) any incitement of another to commit any of those offences;
- (i) aiding, abetting, counselling or procuring the commission of any of those offences;
- 10 (j) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to any of those offences;
- (k) an offence (not falling within any other paragraph of this subsection) under a provision listed in Part 2 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008.
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(2) The Department of Justice may by regulations amend this section so as to alter the meaning of “sexual offence” for the purposes of section 8.

(3) Regulations under subsection (2) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

#### 20 **Power to disapply reporting restriction**

**10.**—(1) Subsection (2) applies where matters relating to a suspect are prohibited from publication by virtue of section 8(2).

(2) A relevant person may apply to a magistrates’ court for an order—

- (a) disapplying, or
- 25 (b) modifying the application of, section 8(2) in relation to the suspect.

(3) The modifications that may be made under subsection (2)(b) include increasing or decreasing the period mentioned in section 8(4), but do not include the disapplication or modification of section 8(3).

30 (4) In this section, “relevant person” means—

- (a) during the suspect’s lifetime—
  - (i) the suspect;
  - (ii) the Chief Constable;
- (b) after the suspect’s death—
  - 35 (i) a person who was a family member of the suspect at the time of the suspect’s death;
  - (ii) a personal representative of the suspect;
  - (iii) a person interested in publishing matters relating to the suspect which are prohibited from publication by virtue of section 8(2).

40 (5) On an application under subsection (2) the court must make an order under that subsection if it is satisfied that it would be—

- (a) in the interests of justice, or

(b) otherwise in the public interest,  
to make such an order.

5 (6) An order made under subsection (2) may be varied or revoked by order of a  
magistrates' court on the application of a relevant person where the court is  
satisfied that it would be—

(a) in the interests of justice, or  
(b) otherwise in the public interest,  
to make such a variation or revocation.

10 (7) An order made under this section does not affect the operation of section  
8(2) at any time before the order is made.

(8) In this section, "a family member of the suspect" means—

(a) a person who at the time of the suspect's death was—  
(i) married to the suspect;  
(ii) in a civil partnership with the suspect;  
15 (iii) living with the suspect as if a spouse;  
(b) a relative of the suspect.

(9) For the purposes of this section—

(a) "relative" means parent, child, grandparent, great-grandparent, grandchild,  
great-grandchild, brother, sister, uncle, great-uncle, aunt, great-aunt,  
20 nephew, great-nephew, niece or great-niece;  
(b) a relationship of the half-blood or by affinity is to be treated as a  
relationship of the whole blood;  
(c) the stepchild of a person is to be treated as that person's child.

25 (10) In this section, "a person interested in publishing matters" means a person  
who—

(a) wishes the matters to be included in a publication, and  
(b) in relation to the publication, is a person mentioned in section 12(1)  
(persons by whom an offence relating to publishing may be committed).

30 (11) In subsections (1) and (4)(b)(iii), a reference to matters being prohibited  
from publication includes matters being partially prohibited from publication  
following the making of an order under this section modifying the application of  
section 8(2) in relation to the suspect.

### **Magistrates' courts rules**

35 **11.**—(1) Magistrates' courts rules may make such provision relating to orders  
under section 10 as appears to the authority making them to be necessary or  
expedient for the purposes of that section.

(2) Magistrates' courts rules may, in particular, make provision—

(a) for notice of applications to be given to such persons as may be prescribed  
by the rules;  
40 (b) for applications to be heard in private;



(c) as to the matters to be taken into consideration by a court in determining whether it is in the interests of justice, or the public interest, to make, vary or revoke an order under section 10.

5 (3) Nothing in subsections (1) and (2) is to be taken to affect the generality of any statutory provision conferring power to make magistrates' courts rules; and no particular provision of those subsections prejudices any general provision of them.

### **Offence relating to reporting**

12.—(1) If any matter is included in a publication in contravention of section 8(2), the following persons are guilty of an offence—

- 10 (a) where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) where the publication is a relevant programme—
- (i) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and
- 15 (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
- (c) in the case of any other publication, any person publishing it.

(2) Where a person is charged with an offence under this section in respect of the inclusion of any matter in a publication, it is a defence, subject to subsection 20 (3), to prove any of the following—

- (a) that the suspect included matter of that description in a publication;
- (b) that the publication in which the matter appeared was one in respect of which the suspect had given written consent to the appearance of matter of that description;
- 25 (c) that at the time of the alleged offence under this section the person was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question;
- (d) that at the time of the alleged offence under this section the person was not aware, and neither suspected nor had reason to suspect—
- 30 (i) that the allegation mentioned in section 8(1)(a) had been made to the police, or
- (ii) that any step mentioned in section 8(1)(b) had been taken by the police.

(3) Written consent is not a defence under subsection (2)(b) if it is proved that—

- 35 (a) any person interfered unreasonably with the peace or comfort of the suspect, with intent to obtain it, or
- (b) the suspect was under the age of 16 at the time when it was given.

(4) If a person charged with an offence under this section relies on a defence in subsection (2)(c) or (d), and evidence is adduced that is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied 40 unless the contrary is proved beyond reasonable doubt.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

(6) Proceedings in respect of an offence under this section may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

5 (7) Where an offence under this section is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate, or

(b) a person who was purporting to act in any such capacity,

10 that person (as well as the body corporate) commits the offence and is liable to be proceeded against and punished accordingly.

(8) In relation to a body corporate whose affairs are managed by its members “director”, in subsection (7), means a member of the body corporate.

15 (9) Section 20(2) of the Interpretation Act (Northern Ireland) 1954 (offences committed by a body corporate) does not apply to offences under this section.

(10) Where an offence under this section is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

20 (11) Schedule 3 contains special rules relating to providers of information society services.

### **Interpretation of sections 8 to 12**

**13.**—(1) In this section and sections 8 to 12—

“picture” includes a likeness however produced;

25 “publication” has the same meaning as in the Sexual Offences (Amendment) Act 1992 (see section 6(1) of that Act);

“relevant programme” means a programme included in a programme service within the meaning of the Broadcasting Act 1990;

30 “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“suspect” is to be read in accordance with section 8(1).

(2) Nothing in section 8, 10 or 12 or Schedule 3 affects any prohibition or restriction imposed by virtue of any other statutory provision upon a publication or upon matter included in a relevant programme.

### **35 Consequential amendment**

**14.** In section 44(4)(a) of the Youth Justice and Criminal Evidence Act 1999 (restrictions on reporting alleged offences involving persons under 18), after “committed” insert “except a person in relation to whom section 8(2) of the Justice Act (Northern Ireland) 2021 applies in connection with the offence”.

*Exclusion from proceedings*

**Serious sexual offences: exclusion of public from court**

15.—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

5 (2) Before Article 28 (but after the heading “Protection of complainants in proceedings for sexual offences”) insert—

*“Serious sexual offences: exclusion of public from court*

**Exclusion of public from trial**

10 27A.—(1) Where a person is to be tried on indictment for a serious sexual offence, the court must give an exclusion direction before the beginning of the trial (but this is subject to paragraph (4)).

(2) An “exclusion direction” is a direction providing for the exclusion from the court, during the time the direction has effect, of all persons with the exception of—

- 15 (a) members and officers of the court;
- (b) persons directly involved in the proceedings and, where the complainant is not such a person, the complainant;
- (c) any relative or friend of the complainant nominated by the complainant and specified in the direction;
- 20 (d) any relative or friend of the accused nominated by the accused and specified in the direction;
- (e) bona fide representatives of news gathering or reporting organisations;
- (f) any other person specified in the direction as a person excepted from the exclusion.
- 25

(3) Paragraph (1) applies whether or not the trial relates to other offences as well as a serious sexual offence.

30 (4) Paragraph (1) 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, the direction has effect from the beginning of the trial and continues to have effect until, in respect of each serious sexual offence to which the trial relates, the proceedings have been either—

- 35 (a) determined (by acquittal, conviction or otherwise), or
- (b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused; but this is subject to paragraph (6).

40 (6) The exclusion direction does not have effect during any time when a verdict is being delivered in the proceedings, and “verdict” here includes any finding which constitutes the determination of the proceedings in relation to an accused and an offence.

(7) In this Article and Articles 27B to 27D—

“complainant” means any person who is the complainant (within the meaning of Article 2(2)) in respect of a serious sexual offence to which the trial relates;

5 “effect”, in relation to a direction, means binding effect;

“persons directly involved in the proceedings” includes—

(a) the accused;

(b) legal representatives acting in the proceedings;

(c) any witness while giving evidence in the proceedings;

10 (d) any person acting in the capacity of an interpreter or other person appointed to assist a witness or an accused; and

(e) members of the jury;

15 “serious sexual offence” means an offence against the law of Northern Ireland mentioned in section 2(3) of the Sexual Offences (Amendment) Act 1992.

### **Nomination etc of persons to be excepted from exclusion**

27B.—(1) Only one person may be nominated by the complainant under Article 27A(2)(c), and only one person may be nominated by the accused under Article 27A(2)(d), but—

20 (a) if more than one person is a complainant, a nomination may be made by each of the complainants, and

(b) if more than one person is an accused in relation to the proceedings, a nomination may be made by each of the accused.

25 (2) Paragraph (1) has effect subject to Article 27C(1) (replacement nominated persons).

(3) The court may refuse to specify under Article 27A(2)(c) or (d) a person who has been nominated under that provision, but only where it appears to the court to be in the interests of justice to do so.

30 (4) Crown Court rules may make provision about nominations under Article 27A(2)(c) and (d), including provision—

(a) for notice of intended nominations to be given to such persons as may be prescribed by the rules;

(b) for a nomination to be withdrawn or substituted before a person is specified under Article 27A(2)(c) or (d).

35 (5) The court may specify a person under Article 27A(2)(f) only where it appears to the court to be in the interests of justice to do so.

(6) The court may exercise its power of refusal under paragraph (3), or specify a person under Article 27A(2)(f), either—

40 (a) on an application made by a party to the proceedings or the complainant, or

(b) of its own motion.

**Variation of exclusion directions given under Article 27A**

27C.—(1) Where a person has been specified under Article 27A(2)(c) or (d) in an exclusion direction, the court may vary the exclusion direction by revoking the specification of that person, and if it does so—

- 5 (a) the person who nominated that person may nominate under Article 27A(2)(c) or (d) (as the case may be) one other person instead,
- (b) Article 27B(3) applies accordingly, and
- (c) where the person nominated by virtue of this paragraph is specified under Article 27A(2)(c) or (d), this paragraph applies in relation to
- 10 that person.

(2) The court may vary an exclusion direction given under Article 27A so as to—

- (a) specify under paragraph (2)(f) of that Article a person not already specified in the direction, or
- 15 (b) revoke any specification of a person made under paragraph (2)(f) of that Article.

(3) The court may vary an exclusion direction under paragraph (1) or (2) only where it appears to the court to be in the interests of justice to do so, and may do so either—

- 20 (a) on an application made by a party to the proceedings or the complainant, if there has been a material change of circumstances since the relevant time, or
- (b) of its own motion.

(4) In paragraph (3) “the relevant time” means—

- 25 (a) the time when the exclusion direction was given, or
- (b) if a previous application was made for a variation under this Article, the time when the application (or last application) was made.

**Exclusion directions under Article 27A: general**

30 27D.—(1) The court must state in open court its reasons for—

- (a) specifying a person under Article 27A(2)(f),
- (b) refusing under Article 27B(3) to specify a person,
- (c) refusing an application made under Article 27B(6),
- (d) varying an exclusion direction under Article 27C(1) or (2), or
- 35 (e) refusing an application made under Article 27C(3).

(2) Where a statement is made by the court in proceedings from which persons are excluded by an exclusion direction, the fact that it is so made does not prevent the statement from being regarded as made “in open court”.

40 (3) Any proceedings from which persons are excluded by an exclusion direction shall nevertheless be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

- (4) An exclusion direction has effect subject to—
- (a) Article 21 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (court to be cleared while child is giving evidence in certain cases);
  - 5 (b) any power of the court to hear proceedings in private;
  - (c) any power of the court to exclude a witness until that witness’s evidence is required;
  - (d) any other power of the court to exclude a person from the court.
- (5) Crown Court rules may make provision—
- 10 (a) for uncontested applications under Article 27B(6) or 27C(3) to be determined by the court without a hearing;
  - (b) for preventing the renewal of an unsuccessful application under either of those provisions except where there has been a material change of circumstances;
  - 15 (c) for expert evidence to be given in connection with such an application;
  - (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the
  - 20 proceedings or the complainant.

*Sexual offences: restriction on certain evidence and questions”.*

## PART 2

### TRAFFICKING AND EXPLOITATION

#### **Support for victims of trafficking etc**

25 **16.**—(1) The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 is amended as follows.

(2) In section 17 (interpretation of this Part)—

(a) before subsection (1) insert—

30 “(A1) For the purposes of this Part, there is a conclusive determination that a person is, or is not, a victim of—

(a) being held in slavery or servitude, or

(b) being required to perform forced or compulsory labour,

when, on completion of an identification process corresponding to one required by Article 10 of the Trafficking Convention, a competent authority concludes that the person is, or is not, such a victim.”;

35

(b) after subsection (1) insert—

“(1A) A reference in this Part to—

(a) being held in slavery or servitude, or

(b) being required to perform forced or compulsory labour,

is to be construed in accordance with Article 4 of the Human Rights Convention.”.

(3) In section 18 (assistance and support pending determination by competent authority)—

5 (a) for “victim of trafficking in human beings” wherever occurring substitute “qualifying victim”;

(b) after subsection (10) insert—

“(11) In this section, “qualifying victim” means—

(a) a victim of trafficking in human beings, or

10 (b) a victim of—

(i) being held in slavery or servitude, or

(ii) being required to perform forced or compulsory labour.”.

### **Reports on slavery and trafficking offences**

15 **17.** In section 12 (strategy on offences under sections 1 and 2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, in subsection (1), for “in every year” substitute “every 3 years”.

## **PART 3**

### **PREVENTION ORDERS**

#### **20 Qualifying offences for sexual offences prevention orders**

**18.**—(1) In Schedule 5 to the Sexual Offences Act 2003, after paragraph 163 insert—

“163A An offence under Article 68 of the Children (Northern Ireland) Order 1995 (abduction of children in care, etc.).”.

25 (2) Section 130(3) (as read with (4)(a)) of that Act (so far as relating to section 106 of that Act) applies to the amendment made by this section.

#### **Time limit for making violent offences prevention orders**

**19.**—(1) In section 57 of the Justice Act (Northern Ireland) 2015, after subsection (5) insert—

30 “(6) Article 78(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 does not apply to a complaint under this section.”.

(2) The amendment made by this section applies to a complaint made after the coming into operation of this section even if the cause of complaint arose more than 6 months before the making of the complaint.

PART 4

FINAL PROVISIONS

**Ancillary regulations**

5     **20.**—(1) The Department of Justice may by regulations make such supplementary, incidental, consequential, transitional, transitory or saving provision as the Department considers appropriate for the purposes of, in connection with or for giving full effect to the provisions of this Act.

(2) Regulations under subsection (1)—

10     (a) except where they amend any text of primary legislation, are subject to negative resolution,

(b) if they amend any text of primary legislation, may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

(3) Primary legislation as referred to in subsection (2) is—

15     (a) any Northern Ireland legislation, or

(b) any Act of Parliament.

**Commencement**

**21.**—(1) The following provisions come into operation on the day after the day on which this Act receives Royal Assent—

20     (a) sections , 17, 18 and 19,

(b) this Part.

(2) The other provisions of this Act come into operation on such day or days as the Department of Justice may by order appoint.

25     (3) An order under this section may contain such transitional, transitory or saving provision as the Department of Justice considers appropriate.

**Short title**

**22.** This Act may be cited as the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2021.



SCHEDULES

SCHEDULE 1

Section 1.

CONSEQUENTIAL AMENDMENTS: VOYEURISM (ADDITIONAL OFFENCES)

5

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

1. In Article 53A(2) (questioning and treatment of persons by police: meaning of “qualifying offence”), in sub-paragraph (s), for “to 71” substitute “to 71B”.

*Sexual Offences (Amendment) Act 1992 (c. 34)*

10 2. In section 2(3) (offences under law of Northern Ireland to which the Act applies), in paragraph (hb)(ii), after “71,” insert “71A, 71B”.

*Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)*

15 3. In Article 13(4) (power to provide for restriction of publicity in certain cases), in sub-paragraph (b)(viii) of the definition of “sexual offence”, after “71” insert “71A, 71B”.

*Sexual Offences Act 2003 (c. 42)*

4. In Schedule 3 (sexual offences for purposes of notification requirements), after paragraph 92V insert—

20 “92VA.—(1) An offence under Article 71A or 71B of that Order (voyeurism: additional offences), if—

- (a) the offence was committed for the purpose mentioned in Articles 71A(3)(a) and 71B(3)(a) (sexual gratification), and
- (b) the relevant condition is met.

25 (2) Where the offender was under 18, the relevant condition is that the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

(3) In any other case, the relevant condition is that—

- (a) the victim was under 18, or
- (b) the offender, in respect of the offence or finding, is or has been—
  - 30 (i) sentenced to a term of imprisonment,
  - (ii) detained in a hospital, or
  - (iii) made the subject of a community sentence of at least 12 months.”.

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

5. In Part 2 of Schedule 2 (specified sexual offences), in paragraph 14A, for the words from “Article 71 (exposure),” to the end of the paragraph substitute—

“Article 70 (exposure),  
Article 71 (voyeurism),  
Article 71A (voyeurism: additional offences (genitals and buttocks)),  
Article 71B (voyeurism: additional offences (breasts)),  
Article 73 (intercourse with an animal),  
Article 74 (sexual penetration of a corpse).”.

SCHEDULE 2

Section 3.

MISCELLANEOUS AMENDMENTS AS TO SEXUAL OFFENCES

PART 1

AMENDMENTS OF REFERENCES TO CERTAIN FORMS OF CHILD  
SEXUAL ABUSE

1. The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.

2. For the italic heading preceding Article 37 substitute “*Abuse of children under 18: payment for sexual services and involvement in indecent images*”.

3.—(1) Article 38 is amended as follows.

(2) For paragraph (1) substitute—

“(1) A person (A) commits an offence if—

(a) A intentionally causes or incites another person (B) to offer or provide sexual services to a third person in return for payment, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(1A) A person (A) commits an offence if—

(a) A intentionally causes or incites another person (B) to be involved in the recording or streaming or other transmission of an indecent image of B, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.”.

(3) For the title substitute “Causing or inciting abuse: payment for sexual services and involvement in indecent images”.

4.—(1) Article 39 is amended as follows.

(2) For paragraph (1) substitute—

“(1) A person (A) commits an offence if—

(a) A intentionally controls any of the activities of another person (B) relating to the offering or provision by B of sexual services to a third person in return for payment, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(1A) A person (A) commits an offence if—

(a) A intentionally controls any of the activities of another person (B) relating to B’s involvement in the recording or streaming or other transmission of an indecent image of B, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.”.

(3) For the title substitute “Controlling a child: payment for sexual services and involvement in indecent images”.

5.—(1) Article 40 is amended as follows.

(2) For paragraph (1) substitute—

“(1) A person (A) commits an offence if—

(a) A intentionally arranges or facilitates the offering or provision by another person (B) of sexual services to a third person in return for payment, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(1A) A person (A) commits an offence if—

(a) A intentionally arranges or facilitates the involvement by another person (B) in the recording or streaming or other transmission of an indecent image of B, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.”.

(3) For the title substitute “Arranging or facilitating abuse: payment for sexual services and involvement in indecent images”.

6. For Article 41 substitute—

“41.—(1) This Article applies for the purposes of Articles 38 to 40.

(2) References to—

- (a) offering or providing sexual services, or
  - (b) the recording or streaming or other transmission of an image,
- are to doing so in any part of the world.

(3) In Articles 38(1), 39(1) and 40(1)—

- 5 (a) references to B offering or providing sexual services are to doing so on at least one occasion, and
- (b) it does not matter whether B is compelled to offer or provide the services.

(4) References to “payment”—

- 10 (a) include promises of payment, and
- (b) are to payment to B or another person.

(5) “Payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.”

15

## PART 2

### AMENDMENTS RELATING TO THE OFFENCE OF ENGAGING IN SEXUAL COMMUNICATION WITH A CHILD

7. In Article 76(10)(a) of the Sexual Offences (Northern Ireland) Order 2008 (offences outside the United Kingdom), omit “except Article 22A”.

20 8. In Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of notification requirements)—

- (a) omit paragraph 92HA;
- (b) after paragraph 92I insert—

25 “92IA. An offence under Article 22A of that Order (sexual communication with a child).”

9. In section 90 of the Justice Act (Northern Ireland) 2015, omit subsections (3) and (4).

## PART 3

### AMENDMENT RELATING TO THE OFFENCE OF PAYING FOR THE SEXUAL SERVICES OF A PERSON

30

10. In Article 64A of the Sexual Offences (Northern Ireland) Order 2008 (offence of paying for sexual services of a person), for paragraph (4) substitute—

35 “(4) No offence is committed under this Article unless the sexual services that are provided or are to be provided by B to A fall within paragraph (4A) or (4B).

(4A) Sexual services fall within this paragraph if they involve—

- (a) B being physically in A’s presence,
- (b) B touching A or A touching B, and

- (c) the touching being sexual.
- (4B) Sexual services fall within this paragraph if they involve—
  - (a) B being physically in A’s presence, and
  - (b) B touching B in a sexual manner for the sexual gratification of A.”.

5

SCHEDULE 3

Section 12.

OFFENCE OF BREACH OF ANONYMITY: PROVIDERS OF INFORMATION SOCIETY SERVICES

*Exceptions for mere conduits*

- 10 1.—(1) A service provider does not commit an offence under section 12 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
- (a) initiate the transmission,
  - 15 (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
- (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,
  - 20 include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

25

*Exception for caching*

- 2.—(1) A service provider does not commit an offence under section 12 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
- 30 (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
- (a) does not modify the information,
  - 35 (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge
- 40 that—

- (a) the information at the initial source of the transmission has been removed from the network,
- (b) access to it has been disabled, or
- (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

*Exception for hosting*

3.—(1) A service provider does not commit an offence under section 12 by storing information provided by a recipient of the service if—

- (a) the service provider had no actual knowledge when the information was provided that its provision constituted an offence under section 12, or
- (b) on obtaining actual knowledge that the information constituted such an offence, the service provider promptly removed the information or disabled access to it.

(2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

*Interpretation*

4. In this Schedule—

“information society services”—

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“service provider” means a person providing an information society service;

“the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

# **Justice (Sexual Offences and Trafficking Victims) Bill**

[AS INTRODUCED]

A Bill to make provision about and in connection with sexual offences; regulate particular matters relating to cases of trafficking or exploitation; and amend rules applying with respect to certain sexual or violent offences prevention orders.

Introduced by: Ms Naomi Long, Minister of Justice

On: 05 July 2021

Bill Type: Executive Bill

## **ACCOMPANYING DOCUMENTS**

**An Explanatory and Financial Memorandum is printed separately as  
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