

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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Kathy O'Hanlon
Clerk to the Committee for Justice
Room 242
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Stormont
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23 September 2026

Dear Kathy,

**CRIMINAL JUSTICE (SENTENCING ETC) BILL – PUBLIC PROSECUTION SERVICE
ORAL EVIDENCE FOLLOW UP**

Thank you for your letter of 16 September 2026 seeking the Department's response to observations outlined by the Public Prosecution Service (PPS) during its oral evidence session on the vulnerability aggravator included in the Sentencing Bill.

The PPS acknowledged the importance of recognising vulnerability but said they saw a number of potential difficulties with clause 36 of the bill which makes a victim's vulnerability a statutory aggravating factor. In summary they questioned whether a statutory aggravator is a practical and effective way of addressing it and made a number of points which we address in turn below.

- **PPS noted that the proposed definition is very broad, particularly in its inclusion of vulnerability arising "for any other reason". They consider this may create uncertainty for investigators and prosecutors about when the aggravator should be applied.**

The Department's response to this point is that the definition found at clause 36(7) of the Bill was modelled on and draws heavily from the definition found in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015, which has been in operation since that Act was made.

Section 25 of that Act defines a vulnerable adult as “a person aged 18 or over whose ability to protect himself or herself from violence, abuse or exploitation is significantly impaired through physical or mental disability or illness, old age, addiction to alcohol or drugs or for any other reason”¹.

The Department’s Sentencing Review Northern Ireland public consultation included a dedicated section on the definition, recognising vulnerability as a broad concept and highlighting the benefit of a consistent understanding by using a similar definition. The consultation specifically asked if such a definition should be used.

In its response to the consultation, the PPS preferred to avoid excessive statutory intervention, but agreed that “a common understanding of ‘vulnerability’ where it applies across NI legislation would be helpful in that it should foster consistency of approach across the criminal justice system”.

The Department has not been made aware of concerns about the definition found in the 2015 Act, and on that basis is content with the definition included in the Sentencing Bill as drafted.

- **PPS suggested that, if the prosecution does not apply the vulnerability aggravator to a charge at the outset of a case, the court may be prevented from taking vulnerability into account when sentencing. They commented that this would be extremely unfortunate, particularly in a case in which the nature or extent of vulnerability becomes apparent only over the course of the proceedings.**

The Department does not consider that the court would be prevented from taking vulnerability into account if the aggravator is not applied to the charge from the outset. As PPS points out this could lead to a perverse situation in cases where the vulnerability only becomes apparent later in the proceedings.

We note that this point was addressed by the Bar in its evidence to the Committee on 10 September, and they confirmed that the court is never stopped from taking vulnerability into account.

¹ [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#)



- **PPS commented that vulnerability is inherently subjective, and that victims may not identify as vulnerable or may disagree with decisions taken by the prosecution on whether to apply the aggravator, which may give rise to distress.**

The Department does not take issue with this observation, but equally does not consider this to be a bar to the introduction of the clause. It should be noted that under clause 36(2)(b), the offender must have known, or ought reasonably to have known that the victim was a vulnerable person. The Department considers that this requirement is of assistance as it underlines that the vulnerability is most likely to be one that is reasonably recognised.

The Committee will also wish to note that the clause does not require an allegation of vulnerability to be specified, but says “It may be specified...” This affords PPS the flexibility to assess whether it considers a vulnerability should be specified on the basis of the facts of the case.

Ultimately it will be a matter for the court to decide whether the offence is aggravated by reason of the victim’s vulnerability.

- **PPS said that vulnerability may depend on matters that are removed from the circumstances of the offence and which may be complex to prove by evidence. Formally relying on it may raise disclosure issues, particularly where personal information about the victim is involved and disclosure is potentially intrusive.**

The Department considers that these concerns must also be true of the provisions of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015, and, as with that legislation, these are not concerns that should militate against the creation of the statutory aggravator. Reverting to the fundamental reason for inclusion of a statutory aggravator, the Sentencing Policy Review was concerned with increasing the protections afforded by the law to vulnerable people and giving a clear message that attacks on the vulnerable would not be tolerated.

The Department would draw the Committee’s attention to clause 36(6) which is included by way of safeguard to ensure that the whole prosecution will not fail only by reason of the aggravator not being proved, should that situation arise.

- **In the PPS view, the attachment of a statutory aggravator is likely to make cases more difficult to resolve as defendants are less likely to plead guilty where an aggravator is an issue, potentially leading to more contested hearings. Where multiple aggravators apply this would compound the potential problems.**

The Department notes that this concern was echoed by the Bar in their evidence to the Committee. The Department considers that this may be an unavoidable consequence of introducing the statutory aggravator, and one that must be accepted if the Assembly supports the need to introduce such provisions with the intention of protecting vulnerable people and ensuring that offenders are sufficiently accountable for their crimes.

- **PPS said the breadth of definition risks limiting the practical value of the aggravator as what the presence of such an aggravator signifies may not be clear in any given case.**

The Department would again make the point that it is not a requirement that a vulnerability will be specified and it will be a matter for the PPS to make its decisions on the basis of the evidence it can present to the court.

The Department considers that the definition of “vulnerable person” provides important context as to the significance of the aggravator, insofar as the vulnerability is one that significantly impairs the victim from protecting themselves from violence, abuse, neglect or exploitation.

- **Finally PPS considered that the provision appears to create thresholds that may be difficult to satisfy. They give the example that it requires the victim's ability to protect themselves to be "significantly impaired". It also requires the prosecution to prove that the defendant knew, or ought to have known, about the vulnerability. Their concern here is that the introduction of a statutory aggravator in the proposed form might add complexity and create operational problems without necessarily improving clarity or outcomes.**

The Department accepts that the clause creates such thresholds, and considers that, if an offender's sentence is to be aggravated, it is right that these matters should be satisfied. The Department accepts that the courts take vulnerability into consideration in sentencing. It is considered that the creation of the statutory aggravator, accompanied by the requirements imposed on the court at clause 36(4), will help to improve clarity and awareness that this kind of offending will be taken seriously by the courts.

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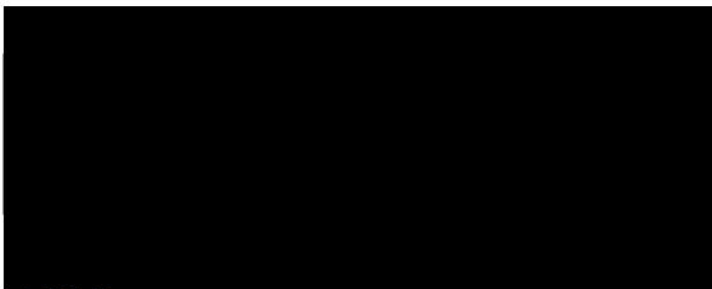
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We hope this response is of assistance to the Committee in its consideration of clause 36.

Yours sincerely,



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