

Kathy O'Hanlon
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Email: committee.justice@niassembly.gov.uk

1 October 2026

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

Thank you for your letter dated 25 September offering the opportunity to comment on the Department's response to the concerns raised by the PPS in relation to the vulnerability aggravator.

There were seven points raised by us and upon which the Department have commented. Each of these is dealt with in turn below.

Breadth of the definition

We understand that the proposed definition is modelled on that contained in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. However, we are unaware of any reported case in which that definition has required substantive judicial interpretation since its introduction. Given the relatively limited number of prosecutions brought under that legislation, it is difficult to regard its operation as providing a substantial evidential basis for the adoption of the same definition in a significantly wider context.

More fundamentally, the context in which vulnerability arises under the 2015 Act is materially different from that in which it would operate as a statutory aggravator. In proceedings under the 2015 Act, vulnerability is not an element of the offence which the prosecution must establish beyond reasonable doubt. Rather, the prosecution must prove that the defendant held another person in slavery or servitude or otherwise committed the relevant trafficking offence. In determining whether an offence has been

committed, the court may have regard to all the circumstances of the case, including any personal circumstances of the victim that may make that person more vulnerable than others. Vulnerability therefore forms part of the factual matrix which may assist the court in assessing whether exploitation has occurred.

By contrast, where vulnerability operates as a statutory aggravator, prosecutors will be required to identify, particularise and prove vulnerability in a broad range of cases, extending far beyond the relatively specialised context of trafficking and exploitation offences. It is therefore likely to generate difficult evidential and legal questions in circumstances quite different from those in which the definition currently operates.

Interestingly, for the purposes of sentencing for an offence under the 2015 Act, section 6(1)(e) provides that the court must treat the fact that the offence was committed against a vulnerable adult (or a child) as an aggravating factor. This approach of identifying vulnerability as an aggravating factor which the court must have regard to when sentencing is an alternative approach that we raised in the course of our evidence and one that, whilst not necessary in our view, would be less problematic than that of a statutory aggravator. As was also noted in the course of our evidence, we are unaware of any other jurisdiction which has approached the issue of vulnerability by way of the statutory aggravator model and it seems to us, therefore, that there is a real gap in terms of the evidence base for how it will operate.

Stage at which the aggravator is applied

Some confusion has arisen in relation to our evidence on this point. It is, of course, correct that the aggravator would not need to be applied at the time of the police charge and that the PPS could add it when directing prosecution or that it could potentially be added by way of an amendment to the indictment. When we made reference to the “outset of the case” our intention was to refer to the start of the trial. This is because a defendant is entitled to know the case that they are required to meet and vulnerability is something that the jury would have to make a finding on.

Our interpretation of the evidence provided by the Bar was that the court is never stopped from taking vulnerability into account *under the current law*. The Bar contrasted this position – which is clearly desirable – with “trying to prescribe it in the way that is suggested ...[which] may cause more difficulties in allowing the prosecution to put those vulnerabilities properly before the court.”

Subjective views of vulnerability

The point that we were seeking to make here was simply that the approach taken by the PPS to vulnerability could cause distress to certain victims whose perception of their own vulnerability (or lack of) may differ from what can be proven beyond a reasonable doubt on the basis of the available evidence. There may also be cases in

which issues arise as to whether a plea to the substantive offence, but not the vulnerability aggravator, should be accepted. These will be new issues that may, in certain cases, be difficult to manage and upsetting for victims.

We understand that the PPS has flexibility to assess whether we consider it appropriate to apply the aggravator in the particular circumstances of the case and that it will for the court to make a determination where the matter is contested. However, those points tend to highlight and provide the context for the challenges, rather than address our concerns.

Vulnerability and disclosure issues

We have sought to explain above the different circumstances in which vulnerability arises under the 2015 Act and the fact that it provides no real evidence base capable of allaying any of the concerns that we have raised in relation to the statutory aggravator. The potential for disclosure of personal sensitive information in very many cases is a real one. In trafficking cases, which are very rare and arise in a particular context, vulnerability is considerably less likely to be a disputed issue that generates disclosure of sensitive personal information that would not otherwise form part of the prosecution case.

Resolution of cases and the statutory aggravator

The Department acknowledges that the introduction of the statutory aggravator may unavoidably make cases more difficult to resolve. The resolution of cases will often be in the interests of victims and the wider criminal justice system. We would suggest that, in circumstances where this consequence is foreseen, the arguments in favour of the introduction of the statutory aggravator should be the subject of very close scrutiny. The Committee is aware that the view of the PPS is that the operational difficulties attached to the introduction of this new aggravator outweigh the potential benefits.

The practical value of the aggravator

The point that was made on behalf of the PPS is that the public messaging that arises from a finding that a vulnerability aggravator is found proven is arguably less clear than that, for example, which arises from a finding in relation to the hostility aggravator. A finding in relation to the latter sends a signal that the law will protect minority groups and seeks to highlight society's condemnation of racial, religious etc. hostility. That provides some comfort and reassurance to members of such groups. It is perhaps more difficult to see equally clear and targeted messaging arising from the vulnerability aggravator which is capable of applying in a very wide range of cases and across many different types of victims.

Vulnerability and evidential thresholds

The Department accepts that the definition of vulnerability creates evidential thresholds around the level of vulnerability and the defendant's knowledge (actual or constructive) of the vulnerability. It states that it is right that these matters should be satisfied if a sentence is to be aggravated. However, this appears to be an acknowledgment that vulnerability will be found to exist and become relevant to sentencing in fewer cases that is currently the case. In our view this would be unfortunate and would not appear to align with the policy objective of the Bill. It appears to us that, absent a finding that the statutory aggravator is proven, there will be no scope for a court to increase a sentence on the basis of vulnerability. This is an issue that the Committee may wish to explore with the Department.

We hope that these further observations are of assistance to the Committee.

Yours sincerely,

[Redacted Signature]

[Redacted Name]

Head of Policy and Information

Copy:

Deputy Director
PIU Policy Lead

Yours sincerely

[Redacted Signature]

Kathy O'Hanlon
Clerk to the Committee for Justice

Encs.