

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

www.justice-ni.gov.uk

Minister's Office
Castle Buildings Block C
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG

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

2 October 2025

Dear Kathy,

JUSTICE BILL – ORGANISED CRIME AMENDMENTS

Thank you for your letter of 16 September 2025 in which you forwarded a copy of the Assembly Research and Information Service's paper on the proposed Organised Crime amendment and asked the Department to respond to the scrutiny points contained therein.

Scrutiny Point 1: Will the new offences adequately cover 'organised' cyber-crime and internet-enabled crimes, particularly given that these must involve three or more people acting or agreeing to act together? Is the legislation sufficiently future proofed to be able to deal with emerging forms of crime involving AI?

Response:

The overall intention of the new offences is to further add to the robust suite of measures available to operational partners by strengthening the mechanisms which are already in place to investigate, prosecute, disrupt and punish those involved at any level in serious organised crime.

When constructing the definitions linked to organised crime groups, we carefully considered how the various elements of the provisions would interact with each other to



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ensure that the seriousness of this offending was captured. The clauses have been deliberately drafted to be broad in nature, and not tied to specific crime types, so they are not limited in scope. Therefore, the two new offences of *participating in the criminal activities of an organised crime group* and *directing the criminal activities of an organised crime group* do not relate to or target specific crime types, instead we have chosen to define the term *criminal activities* (Section 19A(4), (5) and (6) of the Bill) as activities carried on in Northern Ireland which constitute an *offence punishable on conviction on indictment with imprisonment for a term of 4 years or more*. The provisions also recognise criminal activities carried on outside Northern Ireland, where they constitute an offence in the place where they are carried out, and would constitute an offence in Northern Ireland. The draft legislation also contains a regulation making power which provides the ability to amend the definition of *criminal activities* should the need arise.

Whilst there is no requirement that the perpetrator is a member of the organised crime group, there should be evidence to suggest that the act is part of the criminal activities of an organised crime group, or that the act will facilitate, or is likely to facilitate, an organised crime group to carry on criminal activities. Where there is evidence of an organised crime group who carry out such activities online, the two new offences could be used to complement existing online crimes where the offence is punishable on conviction on indictment with imprisonment for a term of 4 years or more.

It is also important to note that some of the crime types that the report specifically references in scrutiny point one (cybercrime and internet-enabled crime) are complex and technical in nature. There are some elements which fall within the reserved or excepted sphere and therefore outside of our devolved legislative competency. In other cases, existing legislation can also offer protection i.e. it does not matter whether the offence is committed in person or online. Internet-enabled crimes would only be captured under these offences where there is an organised crime element. Separately, where specific gaps have been identified and resource is available, further policy development is underway e.g. sexually explicit deepfake images etc. In addition, the Online Safety Act



2023 and the Communications Act 2003 contain provisions

which can be utilised to deal with some elements of online offending and communications.

Scrutiny Point 2: Is the legislation as drafted sufficiently clear in terms of what is meant by the concept of “facilitating” an OCG to “carry on criminal activities” under clause 19A(3)? Would the “reasonable cause to suspect” state of mind threshold result in unwitting individuals being captured under the participation offence? Would legal professionals and/or accountants have to take any further steps to satisfy themselves that their services are not facilitating criminal activities down the line at some point?

Response:

The new offences are intended to provide a more flexible and future-proofed approach for law enforcement to capture involvement at all levels of organised crime. The participating offence is intended to target those who participate in, or contribute to, the criminal activities of an organised crime group; as well as those who are less actively involved and do acts often at a distance i.e. those who *facilitate* the activities of an OCG.

During the policy development phase, careful consideration was given to the most appropriate mens rea for the offence. Having consulted on this point and after discussions with other jurisdictions and operational partners, it was agreed that the mens rea element of the offence should be set at *knows, or has reasonable cause to suspect*, with reasonable cause to suspect being the minimum fault element. This will require the prosecution to prove that the person has knowledge or reasonable suspicion of activities of a particular kind (that are criminal in nature, and which constitute offences). This threshold is comparable with other thresholds in existing legislation e.g. the failure to disclose provision at Part 7 of the Proceeds of Crime Act (POCA) 2000.

In relation to legal professionals and/or accountants, we do not believe that they will have to take any additional steps once the legislation is introduced as there are already obligations in place due to the diligence and notification procedures under POCA for professionals. Before the legislation comes into force, we intend to carry out targeted engagement and awareness raising with partners and relevant stakeholders e.g. the legal

profession. This will be in addition to wider publicity to ensure that the general public are aware of the new offences.

Scrutiny Point 3: Are existing safeguards sufficient in the event of a vulnerable individual or a group of individuals being coerced into participating in an act of organised crime? Or being forced to do something against their will or agreeing under duress? How will the offences be operationalised by the PSNI, PPS and NCA?

As part of the policy deliberations, robust consideration was given to whether there was a requirement for statutory defences to be included in the new legislation. We examined other relevant legislation and noted that statutory duress defences tend not to apply to offences with a maximum sentence of less than 5 years imprisonment on indictment.

We also tested this point with operational partners, and it was highlighted that there were concerns that such a defence could be used to evade prosecution in some cases. As a safeguard, it was noted that the common law defence of duress could potentially apply in a situation where threats are made and where there is evidence to support this.

Colleagues in the Public Prosecution Service (PPS) were also of the view that protections are provided for through independent prosecutorial discretion in decision making by applying the test for prosecution to the evidence available and applying public interest considerations on a case-by-case basis.

With regards to how the new offences will be operationalised by law enforcement, the Department has plans to establish an Implementation Group which will prepare for the commencement and introduction of the new legislation. As part of this work, we intend to work with partners to prepare guidance which will be essential to ensure that there is clarity and consistency of approach.

Scrutiny Point 4: Given that there were only 15 responses to the public consultation in 2020, is the Department confident that the feedback was representative? Has there been further stakeholder engagement since then to test or refine the proposals, particularly with groups representing vulnerable individuals?

Response:

We are conscious that Northern Ireland remains the only jurisdiction in both the UK and Ireland which does not have bespoke legislation to tackle serious organised crime. We acknowledge that some time has passed since the consultation was conducted and the clauses brought forward; this delay was mainly due to being able to identify a relevant legislative vehicle during the period that the Assembly was not sitting.

During this time, there has been ongoing engagement with operational partners at all stages of the process to agree on the operational requirements for the legislation. This has included attending numerous workshops, providing input to briefings, and reviewing and signing off the draft clauses. Operational partners also met with Office of Legislative Counsel to talk through the practical details of the legislation to ensure the policy intention has been achieved and matches their requirements.

We have not recently engaged with wider stakeholders; however, as part of our implementation plans, we fully intend to ensure that organisations which represent children and vulnerable people are engaged and consulted as we develop guidance and raise awareness.

Scrutiny Point 5: Has adequate consideration been given to the potential impact of the ‘participating’ offence on children and young people who are being abused or exploited by organised crime gangs? How will Child Criminal Exploitation Prevention Orders be implemented in Northern Ireland? What awareness raising will be undertaken in relation to the child criminal exploitation offence included in the Crime and Policing Bill which will apply across the UK?

Response:

We are very alert to the harm caused by organised crime groups and the seriousness of this offending. During the policy development stage, we did actively consider how the legislation could be drafted to ensure that children or young people were not innocently captured by the new offence. As previously mentioned, guidance will be developed and in place to support operational partners, there are also additional safeguards such as the common law defence of duress, the National Referral Mechanism (the UK wide referral system for identification of victims/potential victims of modern slavery/human trafficking), and the introduction of the new Child Criminal Exploitation Offence. Section 22 of the Human Trafficking and Exploitation (Criminal Justice and support for Victims) Act (NI) 2015 provides a statutory defence for slavery and trafficking victims in relation to certain criminal offences. Section 22 only applies to offences with a maximum term of less than 5 years imprisonment for persons over the age of 21. As such, children and young people may avail where appropriate of this statutory defence in respect of the ‘participating’ offence.

Offence of Child Criminal Exploitation (CCE)

The CCE offence has already been introduced for Northern Ireland at the Commons report stage, clauses 40 and 41. The introduction of a specific offence in Northern Ireland against the criminal exploitation of children would criminalise any adult over the age of 18 who engages in conduct towards or in respect of a child under the age of 18, for the purpose of causing the child to commit an offence. The intention is to create an offence which prosecutes the adult as the primary offender against the child; it is not the intention of this provision merely to extend liability to the adult for the underlying offence committed by the child.

The policy outcomes that a standalone offence should aim to deliver are:

- an increase in prosecutions by driving behavioural change and addressing evidential challenges with existing offences;
- a deterrent to gangs from enlisting children by charging them as child exploiters with a maximum penalty of 10 years imprisonment;
- it will also improve identification of victims.

Child Criminal Exploitation Prevention Orders (CCEPOs)

These are civil orders which are currently included in the UKG Crime and Policing Bill for England and Wales at clauses 42 – 55 and Schedule 5. Drafting instructions for Northern Ireland (& Scotland) have now been received by the Office of the Parliamentary Counsel, and it is planned that the relevant provisions will be introduced at Lords Committee Stage. These measures are intended to disrupt exploitative behaviours and safeguard children and are modelled on existing frameworks such as Slavery and Trafficking Prevention Orders and Sexual Offences Prevention Orders. They will seek to prevent CCE conduct before it occurs or to prevent it from re-occurring, by placing prohibitions or requirements on the subject of the order. This will assist both in seeking to protect and prevent harm to potential victims, and in diverting potential (or recurrent) perpetrators away from the criminal justice system by changing the behaviour and conduct of potential offenders. Breach of an order (including any notification condition) will be a criminal offence, punishable on conviction on indictment to imprisonment by up to 5 years.

DOJ officials are in the early stages of engaging with Home Office in relation to the development of Statutory and Non-Statutory Guidance for these provisions. The two sets of guidance will be developed for Northern Ireland in partnership with PSNI and wider operational partners, forming part of the initial awareness-raising efforts. Additionally, training and awareness actions are embedded within the CCE action plan and Modern Slavery Human Trafficking Strategy for Northern Ireland, therefore training and awareness of these provisions will be included within this future work.

Scrutiny Point 6: Why have provisions relating to offences aggravated by connection with serious organised crime (detailed in the 2020 consultation) not been included in the amendment to the Justice Bill? Are there any plans to further develop these provisions?

Response:

When finalizing our policy development and drafting of clauses for these offences, we carefully reviewed this element of the original proposals with operational partners who highlighted that there are difficulties and challenges associated with an aggravator which can create complications from an operational perspective to use it in a meaningful way.

It was noted that there was a risk of conflating the issue within courts as to whether there is a direction on the participation offence, or an aggravation of the predicate offence, which has the lower sentencing capability, and could therefore defeat the purpose of the participation offence.

It was also highlighted that organised crime is already a recognised aggravating factor for sentencing purposes in case law, and is reflected in the sentencing authorities in this jurisdiction.

All operational partners agreed that a specific organised crime aggravator was not necessary and flagged concerns regarding the financial and practical implications of operationalising such an aggravator, to little operational and prosecutorial benefit. At this stage we do not have any plans to further develop a statutory aggravator for organised crime.

Scrutiny Point 7: How will the Department monitor the operation of the new offences?

Response:

As previously highlighted, the Department is establishing an Implementation Group to work through how the new offences will be operationalised. After the legislation has been commenced, we envisage that this Group will continue to meet for a period of time to work through any issues, and also to monitor how the legislation is working in practice.



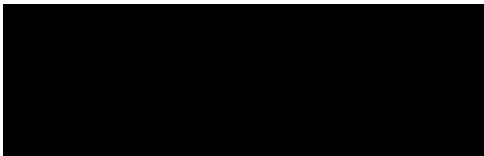
Whilst recognising that it will take time for cases to progress through the criminal justice system, we intend to monitor the number of arrests, prosecutions and convictions under the legislation through the Organised Crime Task Force structures. It should be noted that we do not anticipate that there will be a significant number of cases under these new offences. The introduction of this legislation will improve our ability to measure offending of this nature, which in turn will help support, inform and enhance policy development in this area.

Scrutiny Point 8: Will the offences of ‘directing’ and ‘participating in’ serious organised crime be added to the list of offences which can be referred to the Court of Appeal by the Director of Public Prosecutions where a sentence is considered unduly lenient?

Response:

The issue of *unduly lenient sentences* was re-examined in advance of drafting the clauses. Having considered the issue more fully and after engaging with operational partners, it was noted that Part 4 of the Criminal Justice Act 1988, as amended by the Justice (Northern Ireland) Act 2002, empowers the Director of Public Prosecutions (“DPP”), with the leave of the Court of Appeal, to refer certain cases to that Court where the DPP considers that the sentences imposed were unduly lenient. The power can be exercised in respect of all cases which can be tried only on indictment, and to certain other cases which can be tried either on indictment or summarily (“the either way” offences). Therefore, it was agreed that because the participating and directing offences are offences triable only on indictment, they would automatically be within scope of Part 4 of that Act and specific legislation is not required for this purpose.

I trust you will find this response helpful.



**DAVID GRAHAM
DALO**



**Northern Ireland Assembly
Committee for Justice**

David Graham
DALO
Department of Justice
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

16 September 2025

Justice Bill – Organised Crime Amendments

Dear David

At its meeting on 11 September 2025, the Committee for Justice considered the Assembly Research and Information Service's paper on the proposed Organised Crime amendment. The Committee agreed to forward the paper to the Department for response to the scrutiny points included.

I should appreciate a response by 30 September 2025.

Yours sincerely

Kathy O'Hanlon

**Kathy O'Hanlon
Clerk to the Committee for Justice**

Enc.