

Written Ministerial Statement

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Department of Justice

Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022: Anonymity of Suspects - Judicial Review Judgment: Decision on Way Forward

Published at 11.00am on Wednesday 3 July 2024

Mrs Long (Minister of Justice): Due to the level of Members' and public interest in this matter and the timing of Assembly recess, I am issuing this urgent written statement.

I wish to inform Members of my decision on the way forward with regards to the Judicial Review judgment concerning sections 12 to 16 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 ("the Act").

Sections 12 to 16 of the Act relate to anonymity of suspects in sexual offence cases. The judgment of the court delivered on 31 May 2024 determined that the anonymity of suspect provisions of the Act were incompatible with Article 10 ECHR (freedom of expression) and consequently are outside of the legislative competence of the Assembly and are now not law.

This incompatibility finding is narrow and relates to the ability of media representation to revoke or modify the anonymity provision during the suspect's lifetime. There are a number of options available to me to address this point which I will want to consider further. That is a matter for me and my Department to address and is not the subject of this statement.

The legal advice available to me, however, also set out clearly wider and potentially significant consequential impacts of what is a profound constitutional ruling by the court. It advises that the ruling will have a substantial effect on Assembly processes for scrutinising its laws, as well as for Executive Ministers and all Departments in taking forward legislation. These potential impacts go much further than my Department or this particular piece of Assembly legislation.

Specifically, the judgment imposes a high standard of rationality upon the reasoning in Assembly and Committee debates during the passage of the legislation. This is a finding which imposes a standard upon the legislative process which may be difficult to meet in practice and which often cannot be fully captured by Hansard or committee minutes.

Furthermore, in the absence of a challenge in this case, I was advised that the prospects of another Department successfully defending any similar challenge to Assembly legislation in the future would, at first instance, be significantly compromised as any other High Court judge would have to be satisfied that the Judge in this case had been plainly wrong before they could depart from his reasoning.

It is for these reasons only that I explored the potential of an appeal. I did so by writing to Executive colleagues on 28 June 2024, following receipt of written legal opinion. I did so to raise awareness of the issues and also to seek their views on the constitutional implications, with the intention of discussing this more fully at the Executive meeting on 1 July 2024. I indicated that I was minded, on the strength of the legal advice, to challenge the judgment on the constitutional issues alone, but sought their written responses by 5pm today (2nd July 2024).

I have now had an opportunity to consider their responses which indicate that they do not share my concerns about the wider implications of the judgment. Given my only reason for considering an

appeal was these wider implications to the Assembly, its departments and Ministers, I have decided not to proceed with an appeal.