

These notes refer to the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c.19) which received Royal Assent on 27 April 2022

Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

EXPLANATORY NOTES

OVERVIEW

Part 1: Sexual offences

Chapter 1: Criminal Conduct

Voyeurism

4. The Act creates new offences that capture the highly intrusive behaviours known as “up-skirting” and “down-blousing”. The up-skirting offence will occur where a person operates observational equipment, or takes a picture, beneath a person’s clothing in order to observe, or record an image, of the person’s genitals, buttocks or underwear without the person’s consent.
5. The down-blousing offence will occur where a person operates observational equipment, or takes a picture, beneath or above a person’s clothing in order to observe, or record an image, of the person’s breasts or underwear without the person’s consent. Up-skirting is an offence within the rest of the United Kingdom, but the offence within this Act for down-blousing is unique to this jurisdiction.

Sending an unwanted sexual image (Cyber-flashing)

6. A new offence is created that captures the increasingly prevalent behaviour of sending an unwanted sexual image, more commonly referred to as cyber-flashing. The offence will occur where a person intentionally sends an image of sexual activity or genitals to another person without that person’s consent.

Sexual grooming

7. Provisions are also brought forward to strengthen the law on sexual offending to better protect children from child sexual exploitation by implementing specific proposals made during consultation on the ‘Review of the Law on Child Sexual Exploitation’
8. Under these provisions, four new offences are created, all of which seek to deal with an adult masquerading as a child and making a communication with a view

to sexually grooming a child under 16. The four offences, collectively, seek to cover all possible angles of approach – communicating with an individual, communicating with a group, communicating with a view to grooming a particular child and communicating with a view to grooming any child under 16.

9. This builds upon existing child grooming and sexual communication with a child offences contained within the 2008 Order (Articles 21, 22 and 22A). The proposals in this area aim to address behaviour at an earlier stage, where offenders pretend to be children as a precursor to grooming or carrying out other offences and where this behaviour would constitute an indicator that they present a risk to children.
10. The offending behaviour is not limited to online activity. The act of pretending to be a child does not fall within any of the existing offences contained within the 2008 Order and therefore this provision seeks to bridge that gap. The proposed offence will be unique to this jurisdiction.

Abuse of Position of Trust

11. New provision amends the current abuse of position of trust legislation, contained in Part 3 of the Sexual Offences (Northern Ireland) Order 2008. Specifically, it extends the scope of the relevant offences (provided for at Articles 23 to 26) to include the non-statutory sector settings of sport and religion.
12. This means that those who hold a position of trust where they knowingly coach, teach, train, supervise, or instruct a child on a regular basis within the area of sport or religion (as defined in the provisions) and who abuse that position, would be liable for any of the relevant offences contained in Articles 23 to 26.
13. These are: sexual activity with a child; causing or inciting a child to engage in sexual activity; sexual activity in the presence of a child; causing a child to watch a sexual act.
14. A delegated power is also included so that categories additional to sport and religion can be added by secondary legislation where the need for further legal intervention is evidenced and required. Provision also requires the Department to annually review the areas of sport and religion to determine whether the delegated power contained should be exercised.

Private Sexual Images

14. Provisions amend existing provision in section 51 of the Justice Act (Northern Ireland) 2016 which provides for the offence of disclosing private sexual photographs and films with intent to cause distress.
16. Section 51 is amended to make it an offence to threaten to disclose private sexual photographs and films with intent to cause distress.

17. All elements of the existing offence are attached to the new offence. An additional element which relates solely to the threats to disclose offence is that, where a person was charged with the offence, it would not be necessary for the prosecution to prove that the photograph or film referred to in the threat existed, or if it did exist, that it was in fact a private sexual photograph or film.

Miscellaneous amendments as to sexual offences

18. Provisions also amend the 2008 Order to remove and replace existing references to ‘child prostitution’ and ‘child pornography’.
19. The Department considers that this terminology is outdated and that its use tends to minimise the abuse suffered by children through such forms of exploitation. The terms may be taken as implying that children are somehow responsible or willing participants in their own abuse, which has the effect of stigmatising and ‘blaming’ victims for what has happened to them.
20. It is hoped that amending the legislative references will go some way to helping raise awareness of the status of children as victims of exploitation rather than as willing participants or being complicit in the abuse perpetrated by others. This change reflects particular recommendation made in the Marshall Report, as well as changes made in England and Wales.
21. The 2008 Order is also amended to widen the scope of the definition of ‘images’ relevant to specific offences within the Order to include ‘live streaming’. As it currently stands, the legislation around indecent images of a child only relates to ‘recorded’ images. Specifying the use of live streaming in statute is designed to ensure that the law in this regard is in keeping with updates in modern technology.
22. Provision is also made to bring the Article 22A offence of sexual communication with a child, contained within the 2008 Order, within scope of extra-territorial jurisdiction arrangements. Minor amendment is also being made to the offence of paying for sexual services as contained in Article 64A of the 2008 Order, but only in so far as to provide clarity on what constitutes an offence under this provision.

Chapter 2: Anonymity and Privacy

23. These provisions implement four of the Gillen recommendations. These are:
 - (1) To extend the current lifelong anonymity of the victim of a sexual offence to provide for their anonymity for 25 years after death. The provisions allow for applications to be made to the court to discharge or modify reporting restrictions, including to reduce or increase the period of 25 years;
 - (2) To provide for the anonymity of the suspect in a sexual offence case up to the point of charge. Where a suspect is not subsequently charged, then the anonymity will be protected during their lifetime and for

25 years after their death. The provision allows for applications to be made to the court to dis-apply or modify reporting restrictions, including to reduce or increase the period of 25 years;

- (3) To increase the penalty for breach of anonymity. Currently a penalty of up to a level 5 fine on summary conviction is available for breach of anonymity. The provisions increase the penalty to a maximum of six months imprisonment, or a fine, or both; and
- (4) To exclude the public from hearings of serious sexual offence cases (Crown Court and those proceeded by way of appeal to the Appeal Court). Only the complainant, the accused, persons directly involved in the proceedings, a witness while giving evidence, any person required to assist a witness, jury members and bona fide members of the press will be allowed to remain in the court during the hearing of a serious sexual offence. The court also has discretion to permit any other person to remain in the court where it considers it is in the interests of justice to do so.