



Department of
Justice

An Roinn Dlí agus Cirt

Männystrie O tha Laa

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REVIEW OF THE LAW ON CHILD SEXUAL EXPLOITATION

SUMMARY OF RESPONSES TO THE CONSULTATION AND NEXT STEPS

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INTRODUCTION

Background

1.1 This document has been produced in response to the Department's consultation on the law in relation to child sexual exploitation (CSE) which closed on 16 April 2019. The document provides readers with an overall summary of the responses received by the Department, and a more detailed consideration of some of the issues which were raised by key stakeholders. Where appropriate, the document provides a view on the preferred way forward, while also setting out the areas on which further engagement is required. While every effort has been made to reflect the range of responses received, it has not been possible to include the detail of all responses.

Summary of responses received

1.2 58 responses to the consultation were received. The responses came from a variety of sources including statutory bodies, academics, political parties, parenting and children's rights groups, and individual members of the public. A small number of submissions did not include any substantive response, but the majority provided useful views on at least one recommendation of the consultation.

General comments provided outside of the recommendations

1.3 A number of respondents offered to meet with officials to discuss some of the issues raised in their responses, and a number of organisations offered to facilitate engagement on the issue with young people. The majority of responses welcomed the consultation and were in favour of strengthening the law around CSE, however one respondent criticised the perceived lack of publicity around the launch. One response highlighted the lack of focus on offenders, stating that greater focus on, and investment in, working with perpetrators could lead to a reduction in this type of activity. A number of respondents felt that any legislative changes should be accompanied by public awareness campaigns aimed at young people vulnerable to CSE.

Next steps

1.4 Following the consultation, it has become clear whilst there are recommendations which have a lot of support, there are some areas where further work and consultation with relevant stakeholders is required. In relation to those recommendations, the Department now intends to carry out further engagement. The next steps around each

of the recommendations and topics are highlighted throughout this document and summarised in annex A.

Issues and proposed changes to the law

Legislative references to 'child prostitution' and 'child pornography'

Review Consideration

2.1 The Department asked a number of questions in relation to this area. Firstly whether the terms 'child prostitute', 'child prostitution', and 'child pornography' should be removed from relevant legislation and replaced with the term 'sexual exploitation of children', and secondly whether respondents agreed with the proposed definition of 'sexual exploitation of children' as set out in the consultation document.

Removal of references in legislation to child prostitute/prostitution and child pornography.

Agree	Disagree
46	0

2.2 Across the board there was agreement that the terms 'child prostitute', 'child prostitution', and 'child pornography' should be removed, with some responses noting the harm caused by labelling children in such a way.

Proposed definition of 'sexual exploitation of children': 'a person (B) is sexually exploited if on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, or an indecent image of B is recorded or streamed or otherwise transmitted'.

Agree	Disagree
36	11

2.3 A small number of responses disagreed with the proposal to use the term 'sexual exploitation of children'. Dr Helen Beckett pointed out that this approach in England and Wales has led to a misalignment between policy and legislative definition, and has led to confusion over what actually constitutes CSE. Professor Anne-Marie McAlinden pointed out that the proposed definition was too simplistic and narrow in scope, whilst a number

of responses highlighted the unnecessary emphasis on the transactional nature of the relationship. Further responses pointed out that the proposed legislative definition differs from the non-legislative definition of CSE which is presently adopted in NI, which may cause some confusion.

Next Steps

2.4 Whilst there is consensus on the terms which should be removed from relevant legislation, it is less clear about the best way to replace those terms. However, the Department has taken note of the concerns outlined in the previous paragraph and will bring forward legislative proposals for a Bill in this Assembly mandate. The proposals will seek to change the provisions in the Sexual Offences (Northern Ireland) Order 2008 in a way which takes account of the need to avoid confusion over terminology between policy and the law, whilst acknowledging the requirement for clarity within the criminal law framework to ensure that offenders can be brought to justice.

Inclusion of live streamed images in child sexual exploitation offences

Review Consideration

2.5 In this section of the consultation, respondents were asked to consider whether the law should be amended to ensure that images that are streamed or otherwise transmitted are included for the purposes of the child prostitution and pornography offences. This would mirror recent changes to legislation in England and Wales, which were made following a case where child sexual abuse involving live streaming of images was not successfully prosecuted.

Responses

Agree	Disagree
47	0

2.6 All who addressed this recommendation were supportive. A number of additional comments were also provided, with PSNI suggesting that real-life scenarios which do not involve technology are also included.

Next Steps

2.7 The Department will seek to include an amendment in legislative proposals for a Bill in this Assembly mandate to include live streaming of indecent images and will also consider the issue of live performances of a sexual act.

Adequacy of the existing grooming offence

Review Consideration

2.8 The consultation paper asked whether the current offence of meeting a child following sexual grooming is adequate and appropriate. This question was prompted by the recommendation in the Marshall Report that this offence, under Article 22 of the Sexual Offences (Northern Ireland) Order 2008, should be extended to include situations where an individual ‘entices’ a child under the age of 16.

2.9 The consultation paper then sets out two legislative changes which have been made since publication of the Marshall report, and which may have closed the legislative gap identified. The offence of meeting a child following sexual grooming under Article 22 of the 2008 Order has been amended to lower the threshold to having met or communicated on one rather than two occasions, and a new offence of communicating sexually with a child under Article 22A of the 2008 Order.

Responses

Do you agree or disagree that the offence of grooming is adequate and appropriate?

Agree	Disagree	Don't know
32	6	3

Do you agree or disagree that no changes to this offence are required?

Agree	Disagree	Don't know
29	9	3

2.10 As a result of these changes the Review concluded that the legislative gap identified in the Marshall Report has been closed and therefore no further legislative changes are proposed.

2.11 The majority of responses agreed with the Department's recommendation. Three responses offered substantive comments without confirming whether they agreed with the recommended approach. Professor Anne-Marie McAlinden gave a detailed response in respect of grooming, and strongly felt that the current offence was inadequate and

inappropriate. She suggested the drafting of a new stand-alone offence of grooming, which would criminalise wider forms of grooming, including in off-line contexts.

2.12 The remainder of the comments focussed on the age limitations for both perpetrator and victim. Some felt that victims aged 16 or over should be offered the same protections as those under 16, and others commented that a perpetrator should not have to be over the age of 18, particularly given the rise of peer-on-peer sexual abuse. It was also suggested in one response that grooming of vulnerable adults should be considered.

Next Steps

2.13 Although the Department's recommendation that the offence is adequate to deal with this type of criminal behaviour was widely accepted, we will, in light of some of the responses to the consultation, consider further with key partners whether the particular issues raised around the required threshold for the offence and the age of perpetrators and victims amount to a legislative gap, and whether this is something which needs to be addressed in future legislation.

Defence of 'reasonable belief' in relation to sexual offences against children

Review Consideration

2.14 This section of the consultation focussed on that part of the Sexual Offences (Northern Ireland) Order 2008 which provides for a number of sexual offences against children. Currently a defendant charged with one of the relevant offences can state that he or she believed that the child was over the relevant age, and it is up to the prosecution to prove that the defendant's belief was not reasonable.

2.15 The Marshall Report recommended that the burden of proof should lie with the defendant, and it should be for the defendant to prove that his or her belief was reasonable. This change has been applied in Scotland through the Sexual Offences (Scotland) Act 2009, and was subsequently considered by the Supreme Court, who concluded that this does not breach the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR).

The onus would be on the defendant to prove that he or she reasonably believed that the child was over the age specified in the offence.

Agree	Disagree	Don't know
39	4	2

An individual with a previous conviction for a sexual offence against a child should not be allowed to use a defence of reasonable belief.

Agree	Disagree	Don't know
38	4	3

2.16 The consultation asked five separate questions (4(a) to 4(e)) relating to the proposal to change the burden of proof, so that the onus would be on the defendant to prove that he or she believed that the child was over the age specified in the offence. Four of the questions outlined the different circumstances in which this could be considered.

An individual who is subject to a Risk of Sexual Harm Order should not be allowed to use a defence of reasonable belief.

Agree	Disagree	Don't know
40	3	2

An individual with a previous conviction for a relevant foreign offence against a child should not be allowed to use a defence of reasonable belief.

Agree	Disagree
40	3

2.17 A number of the responses did not provide views on this section of the consultation, and the majority of the substantive responses were strongly in support of what was proposed by the Department. However there were a number of notable exceptions to this which raised concerns about the legal technicalities of the recommendations.

2.18 The Bar Library, Law Society and PPS responses all clearly disagreed with the Department's recommendations. The PPS felt that some of the suggested wording used in the proposal should be amended or clarified, and highlighted the fact that taking forward the proposals as they currently stand would make some of the offences 'strict liability' offences, which was perhaps not the intention.

2.19 The response from the Bar Library referred to concerns that "any potential change might impose a legal burden on an accused which could prevent a fair trial under Article 6" and "whether the burden would be read down to be evidentiary only." The response also suggested that "current use of bad character provisions is an existing proportionate measure which can be used to inform a jury as to the reasonableness or honesty of a belief which a defendant claims to hold." It was suggested that further exploratory work was necessary before concluding that any of the recommendations were necessary.

2.20 Finally, the Law Society response noted considerable reservations and concerns about the burden of proof shifting to the defendant, and suggested that it would be wrong to erode the presumption of innocence and the right to a fair trial of an accused.

Next Steps

2.21 The Department remains of the view that a change is justifiable. However, given that the specific concerns which have been raised by a small number of dissenting respondents represent fundamental component parts of the criminal justice system, the Department will now carry out further work and engagement with key stakeholders to ensure that any recommendations for a future legislative change are workable and appropriate within the current legal system.

Abuse of trust offences

Review Consideration

2.22 Articles 23-26 of the Sexual Offences (Northern Ireland) Order 2008 provide for offences of sexual activity with a child through abuse of positions of trust. Currently the offences apply only where the position of trust is in the context of a statutory responsibility such as education, state care and criminal justice. Parental and other familial relationships are covered by Articles 32-33 of the same Order.

2.23 The Department is aware that, in recent years, there have been calls for the abuse of trust offences to include sports coaches and other groups of people working with children and young people such as church groups and youth groups. In particular it has been argued that those in authority within sports have substantial influence and power over young people.

Responses

Agree	Disagree	Don't know
6	38	1

2.24 The Department considered a range of arguments for and against extending the position of trust offences, and these are set out in the consultation document. Given that there has not been significant new evidence since the previous review of the issue in 2010, it was determined that there was no clear need to change the law to further expand the scope of abuse of trust offences. The Department proposed to keep the issue under review, in line with the Department for Digital, Culture, Media and Sport, the Ministry of Justice and the Home Office, but not to make any changes at this stage.

2.25 The vast majority of respondents disagreed with the Department's suggested way forward. The view that the offences should be extended came from a range of organisations and individuals, including a number of organisations which would be included in any extended provisions. All of the responses from statutory agencies which work with young people, including Children in Northern Ireland, NICCY, Barnardo's in NI, NSPCC, and the Safeguarding Board NI, were of the same view, as were a number of health trusts.

2.26 Respondents felt that it was important for young people to be protected while taking part in *all* activities, pointing out that ‘the current abuse of trust offence does not reflect contemporary configurations of how services are delivered on behalf of statutory agencies, nor a clear understanding of the power dynamics of sexual abuse.’ Another response indicated that the offence should focus on the trust and the relationship between the parties, rather than the title the adult holds.

2.27 Eleven responses were received on behalf of sporting organisations based in Northern Ireland and Ireland. Of these eleven, one organisation agreed with the Department’s proposal, and the other ten were strongly against the proposal, and felt that the offences should be extended to include a range of organisations including sports groups. Many of the responses highlighted the large amounts of time spent by adults in authority with young people, as well as the power differentials at play within many non-statutory groups. In this context, a respondent highlighted that research demonstrates the silencing effects of power dynamics, influencing reporting rates and consequently, understanding of the scale of the issue.

2.28 Aside from sporting organisations, a number of responses referred to other types of organisation which should be considered under any extension. These included church groups, youth work scenarios, the Scouts, provision of private tuition, as well as care facilities which are privately run outside of the state sector. Many respondents were of the view that all roles where an adult has significant contact with young people should be considered as positions of trust, and therefore included in the legislation.

Next Steps

2.29 Given that the majority of respondents felt that the abuse of trust offences *should* be extended to positions outside of the current context of state responsibilities, the Department will engage with relevant stakeholders in order to carry out further exploratory work on the detail of adopting a wider definition of positions of trust in order to consider future legislative provision.

Indecent 'self' images of children under 18

Review Consideration

2.30 This section of the consultation considered whether the current law provided an appropriate response to 'sexting' which involves making and sending sexually explicit texts, images and videos via mobile phones, tablets, computers and other digital devices.

2.31 Currently Article 3 of the Protection of Children (Northern Ireland) Order 1995 provides that anyone taking, allowing to be taken, or sharing an indecent image of a child under 18 is guilty of an offence and the consultation highlighted concerns that children, who have taken and shared indecent images of themselves, are being unnecessarily criminalised or may be afraid to ask for help where they are being exploited as a consequence. The Justice in the 21st Century Report recommended that there should be an exception to the law for children under 18 who take or share an indecent photograph of themselves and for children under 18 who take or share an indecent image of another person under 18 unless it is done with 'malicious intent'.

2.32 The Department, in liaison with PPS and PSNI, considered how the law is applied in practice and found that, in these cases, the focus of the criminal justice agencies was on safeguarding children rather than commencing unnecessary criminal proceedings.

2.33 In consideration of the further proposal in the Justice Committee's report that there should be prosecution of under 18s only where there was 'malicious intent', the Department found that this would create a high evidential test and make those few cases, where a prosecution is in the public interest, more difficult to prosecute.

2.34 The consultation sought views on the Department's conclusion that the current law, as applied by criminal justice agencies, worked well, providing a satisfactory balance between protecting children from exploitation while also protecting them from unnecessary criminalisation where there is no intention to cause harm, and that there was insufficient justification to change it.

Responses

Agree	Disagree	Don't know
30	10	3

2.35 Where respondents considered the law not appropriate, views were sought on changes to the law and on the inclusion of 'malicious intent'.

2.36 The majority were in broad agreement that no change to the law was needed, but a number of concerns were highlighted by both those who considered the current law appropriate and those who wanted to see it changed.

2.37 Some considered that the Department should keep the law under regular review. Others felt that the Department's position did not reflect fully the complexity of the issues involved in 'sexting' and should consider the full range of measures that could be put in place to provide the correct balance between protection from exploitation and criminalisation. Barnardo's, while not wanting to see legislative change, were concerned that PPS non-court diversions could still result in a permanent criminal record and recommended that PPS Guidelines flag these cases as safeguarding concerns and direct young people to early intervention services rather than criminal justice.

2.38 The issue of PPS guidance was raised by a number of respondents and NIHRC and NICCY recommended that the PPS adopt guidance similar to that issued by the Crown Prosecution Service in England and Wales that 'it would generally not be in the public interest to prosecute consensual sharing of images'. NICCY and the Green Party also queried whether the Department had considered the application of Outcome 21 which was introduced by the Home Office in 2016 and enables reported incidents of sexting to be recorded without formal action being taken and the record being unlikely to be disclosed in criminal record checks. NICCY asked for further engagement with DOJ on this issue.

2.39 NSPCC expressed concern that practice changes by PSNI outlined in the consultation were not well documented and that there was the potential for a lack of transparency and inconsistency. It is their view, echoed by other responses, that there is

a need for liaison between the Department, SBNI agencies, PSNI and PPS to develop regional guidance as a framework for decision making in this area.

2.40 Of those who thought that the legislation should be changed, all agreed that under 18s should be excluded from the offence, arguing that the criminalisation of those who share images with their peers makes them more vulnerable to exploitation and abuse and

2.41 There were mixed views on the inclusion of 'with malicious intent' in legislation. Some accepted the Department's view that it presented evidential difficulties but believed that it was important to consider the context in which images are shared. The Bar Council, who considered the current law appropriate, suggested that, if change were considered in the future, malicious intent might be better replaced with 'intent to cause distress'.

2.42 Two respondents (the Bar Council and Dr Helen Beckett) highlighted the contradiction that despite being able to legally consent to sexual activity at age 16, a 16/17 year old cannot legally share a sexual image with a person they are in a relationship with. In this context, other respondents also pointed out that many young people regard sharing of such images (when done so mutually) as a 'normal' part of sexual interaction.

Next Steps

2.43 Taking account of the responses to the consultation, the Department remains of the view that that the current law, as applied by criminal justice agencies, works well, providing a balance between protecting children from exploitation while also protecting them from unnecessary criminalisation and that there is insufficient justification to change it. However, there is a body of expert opinion in the replies to the consultation which suggests that more could be done within the current legal framework to ensure the best decisions are made in relation to young people who find themselves at odds with the law on indecent images. With that in mind, the Department will engage with key stakeholders to explore further the issues recommended by respondents in relation to the handling of cases within the current legal framework.

Using online anonymity to harass

Review Consideration

2.44 The consultation sought views on whether or not new provisions should be introduced to address situations where individuals use online anonymity to harass others. Concerns had been raised in the Justice in the 21st Century report about the perceived low number of prosecutions under the current legislation, resulting in proposals in the report that amendment of the Protection from Harassment (Northern Ireland) Order 1997 might be required.

Responses

Agree	Disagree	Don't know
27	8	2

2.45 his recommendation was considered in the consultation in light of how the current law on harassment is working and the Department, in liaison with PSNI and PPS, found that it was working well and that statistics did not indicate low levels of prosecution and convictions. The Department concluded that no changes were needed.

2.46 Of those who agreed, one commented that the law should be kept under review, another that it should be carefully monitored to ensure consistency in its application by PSNI. A need for liaison with social media providers was also highlighted.

2.47 Of those who disagreed, one respondent suggested that a person creating multiple accounts in false names and or giving false information about themselves in a potentially dangerous way or when suspected that this would be used for grooming should be charged with grooming and placed on the sex offenders register even if they had not met with any of the contacts.

2.48 NSPCC commented that they would expect social media platforms to ensure that the anonymity offered by sites is not exploited to abuse children online. If users have been found to be in breach of the platform's terms and conditions, the relevant platforms should

take steps to ensure that they cannot continue to set up new accounts to further target or harass somebody.

2.49 Two commented on the conclusions but had no firm view on law change, with one respondent of the view that the distinction between harassment and an adult masquerading as a child for the purpose of sexual exploitation has not been sufficiently explored in the consultation.

Next Steps

2.50 The majority of responses to the consultation largely support the Department's view that the current law on harassment is adequate to deal with a situation where a person uses online anonymity to harass. This view is further supported by the prospect of new stalking legislation which will include online harassment likely to cause fear or alarm. Also of relevance in this context is the independent Review of Hate Crime Legislation, currently being carried out by Judge Marrinan, in which online hate crime, where hostility is demonstrated on the grounds of a person's actual or perceived race, religion, sexual orientation or disability, is one of the issues considered. The Department does not intend at this stage to bring forward legislative proposals to change the law, but will keep the issue under review and revisit again once the current law on harassment has been strengthened by the proposed legislation on stalking and Judge Marrinan has reported his findings and recommendations from the Hate Crime Review.

Adults masquerading as children online

Review consideration

2.51 Justice in the 21st Century proposed a new law to prohibit an individual of 18 or over, who masquerades as someone below that age, from engaging online with an individual they know or believe to be under the age of 18. The consultation sought views on whether or not a new offence should be created to deal with such situations.

Responses

Agree	Disagree
17	20

2.52 In its review, the Department concluded that the current law and associated sentencing guidelines appeared to be working as intended and that there was no legislative gap. This conclusion was based on the view that the existing grooming offences and other measures are adequate to protect children from harm in the circumstances which this proposal seeks to address. On this basis the Department did not propose to make any changes to the existing grooming offences.

2.53 PSNI in its response suggested that an additional offence is needed as a precursor to other sexual offending particularly where the interaction does not meet the threshold of sexual communication with a child or grooming offences. This would assist in the ability of police to intervene and safeguard at an earlier stage.

2.54 Barnardo's, Children in NI, the Education Authority, PBNI, NOTA NI and some sporting organisations all took the view that a new offence was needed, with the predominant view being that child protection issues should be prioritised over the rights of adults to masquerade as children. The Education Authority considered that effective implementation and awareness raising of the legislation will encourage children to seek advice from trusted adults regarding their engagement with others whilst on-line and therefore has the potential to prevent and safeguard through earlier intervention.

2.55 The SBNI, while neither agreeing nor disagreeing, thought that, in this complex and difficult area, more consideration of the issue is required.

Next Steps

2.56 The Department has taken note of the various responses to the consultation, particularly that from the PSNI, which has now concluded that there are grounds for legislative change where the interaction does not meet the threshold of sexual communication with a child or grooming offences. The Department will now seek to bring forward legislative proposals for a new offence for inclusion in a Bill in this Assembly mandate.

Up-skirting

Responses

Agree	Disagree
44	1

2.57 The consultation sought views on its conclusion that there was a need to change the law to make up-skirting an offence and whether this should be achieved by amending the existing voyeurism offence in line with the definition in Scotland, England and Wales. The provisions there provide that a person commits the offence of voyeurism if, without consent, they operate equipment, or record an image beneath an individual's clothing with the intention of enabling themselves or a third party to observe that individual's genitals or buttocks in circumstances where they would not otherwise be visible, and where it may reasonably be inferred that the person acted for the purposes of obtaining sexual gratification or humiliating, distressing or alarming the individual.

2.58 Only one respondent disagreed that there was a need to change the law, considering that a recent successful prosecution supported this position.

2.59 On the proposed definition, while agreeing that the law needed to be changed, three respondents expressed concern about the need to prove sexual gratification for the act to be an offence. One respondent highlighted reports of the low level of prosecutions in Scotland (where legislation has been in place since 2010) which indicated that this was due, in part, to the requirement to prove sexual gratification.

Next Steps

2.60 The Department has noted the widespread support in the consultation responses for a new offence of up-skirting and intends to bring forward proposals, as indicated in the consultation document, for amendments to the voyeurism offence in the Sexual Offences (NI) Order 2008. The intention is to legislate in this Assembly mandate.

Child Sex Dolls

Review Consideration

2.61 Currently, the possession, manufacturing and distribution of child sex dolls is not a criminal offence and across the UK there have been no prosecutions for any offences relating to child sex dolls other than importation.

Responses

Agree	Disagree
22	20

2.62 The Home Office, National Crime Agency and police in England and Wales are carrying out work to improve understanding of the nature and extent of behaviour involving child sex dolls and consider whether any future legislative or non-legislative change might be necessary. The Department concluded that it would be of benefit to await the conclusion of this work which may impact on matters which are not devolved such as online regulations and importation, with an undertaking to keep the issue under review.

2.63 Dr Helen Beckett echoed the Department's view stating that the issue is emerging as an area of concern but as yet there is no clear evidence base as to the most appropriate response.

2.64 20 respondents, including NSPCC, NICCY and Barnardo's, disagreed and considered that the legislative gap needed to be filled, with many of the view that a 'wait and see' approach should not be adopted. The NIHR stated that sex dolls fall within the scope of activities that should be criminalised under the UNCRC Optional Protocol.

2.65 Should legislation be introduced, some respondents were of the view that those convicted of possession of child sex dolls should be subject to sex offender notification.

Next Steps

2.66 Given the differing responses to the consultation paper on this subject, and the clear view that many of the prominent children's organisations took that legislation was required, the Department proposes to undertake further engagement with key stakeholders and interested parties to assess how best to ensure that the law protects children from exploitation arising from the sale and possession of child sex dolls.

Sexual Offences against Children: compliance with international standards

Review Consideration

2.67 The Marshall Report recommended that the Department should ensure compliance with international standards by extending protection in relation to all sexual offences and other protective law to children up to the age of 18. This recommendation reflects concerns that some legal protections for children stop at the age of 16 whereas the definition of a child under international law is under 18.

Responses

Agree	Disagree	Don't know
26	9	3

2.68 In the Review, the Department concluded that the current law strikes the right balance between protecting children from abuse while also allowing young people aged 16 and 17 to have consensual sexual relationships.

2.69 A majority of respondents agreed with the Department's view that no changes to the law were required.

2.70 Of those who disagreed, some stated that abuse of trust offences should apply to children under 18 (which they already do). Three of the Health and Social Care Trusts considered that there needed to be clear evidence that the right balance is in place and, setting aside the age of consent, legislation needs to be specific to CSE to fully protect 16 and 17 year olds.

2.71 The Health and Social Care Board and NOTA NI were of the view that resistance to extending the abuse of trust legislation to those in regulated activities leaves 16 and 17 year olds in the unregulated sector vulnerable.

2.72 Children in NI commented that further consideration needs to be given to the inclusion of children up to the age of 18 especially where they are vulnerable because of language or communication difficulties or a learning disability.

2.73 Alliance for Choice held that there was a huge gap in the proper safeguards afforded to abused children where they are at risk of pregnancy as a result of sexual abuse.

2.74 Dr Helen Beckett referred to the issue raised by the UNCRC that our criminal age of responsibility is not in line with international standards and, in this regard, stated that our legislative framework is not in line with international standards.

2.75 One respondent considered that legislation in the Republic of Ireland is more developed but did not provide further detail on relevant legal protections.

Next Steps

2.76 The Department continues to believe that the current law is compatible with international standards. It matches the law in other jurisdictions of the UK and there is no indication that adopting 16 as the age of consent in UK law is not compliant with international obligations. There are areas where additional protection is made available to young people aged 16 and 17, and the Department remains of the view that these provisions strike the right balance between protection and the rights of young people.

Inclusion of all children under 18 in scope of abduction offences

Review Consideration

2.77 The Marshall Report recommended that the Department should ensure compliance with international standards by extending protection to children up to the age of 18 in relation to the Child Abduction (Northern Ireland) Order 1985. Articles 3 and 4 of the 1985 Order provide for offences of abduction of a child by a parent and by other persons, where the child is aged under 16.

Article 3

Responses

Agree	Disagree	Don't know
19	13	8

2.78 The Article 3 offence of abduction relates to situations where a parent takes or sends a child outside of the UK for more than 28 days without consent, where the child is under 16. The Department was not aware of any specific concerns relating to Article 3 and sought views on its conclusion that there was no need to extend the scope of the offence to include 16 and 17 year olds.

2.79 Of those who disagreed, a common theme in the comments was that not to do so represented an inconsistency in the treatment of 16 and 17 year olds who should have the same level of protection as those aged under 16, particularly where there is vulnerability through disability or family circumstances.

2.80 Others disagreed with the Department's view that the Article 3 offence was unlikely to feature in cases involving CSE, stating that this assumption could not be made.

Article 4

2.81 The Article 4 offence of abduction applies where a person who is not a child's parent or guardian takes or detains a child under the age of 16. While the extension of the scope of this offence would provide PSNI with an additional tool to protect older children, it could potentially criminalise the partners of 16 and 17 year olds in an otherwise legal and

consensual relationship and would run contrary to the current law which allows 16 or 17 year olds to make their own decisions about relationships and where they live.

2.82 The Department had looked at ways to extend the Article 4 offence to include those aged 16 and 17, but also providing for a number of exceptions, such as a defence for marriage and other relationships and minimum age of 18 in relation to the defendant. However, analysis found that these exceptions did not appear to provide adequate protection for the rights of 16 and 17 year olds to engage in otherwise consensual relationships.

Responses

Agree	Disagree	Don't know
14	15	8

2.83 The Department concluded that there was insufficient evidence to justify extending the scope of the offence.

2.84 The PSNI was among those who disagreed with the Department's conclusion. While acknowledging the complexities in differentiating between those who are exploited and those who are freely consenting, they did not consider these were insurmountable. [The Department had conveyed the PSNI view in the consultation paper that the extension of the offence to 16 and 17 year olds would provide them with additional tools to protect older children from abuse.]

2.85 Others were of the view that not all older children are mature enough to understand that they are being manipulated or have the agency to resist abduction. The Education Authority suggested that the consent of 16 and 17 year olds to live with a partner, where competent to make such a decision, could be justified as based on assessment using Fraser guidelines¹.

2.86 Dr Helen Beckett was among those who were undecided on the issue. She stated that there is evidenced need for enhanced protective structures for 16 and 17 year olds and was supportive of the implementation of appropriate moves to address this. However, she was less certain, from the existing evidence base, about the most effective

¹ The Fraser Guidelines help people who work with children to balance the need to listen to children's wishes with the responsibility to keep them safe and are used to assess whether a child has the maturity to make their own decisions and to understand the implications of those decisions.

mechanism for achieving this. She recommended further exploration of the relative benefits and disadvantages of extending the scope of Articles 3 and 4. The UUP and SBNI echoed this view.

Next Steps

2.87 There is sufficient disagreement between respondents to suggest that further work is required before committing to a definitive way forward. The Department will undertake to engage further with key stakeholders and interested parties before reaching a conclusion on the need to amend the current law.

Recovery Orders for Children Not in Care

Review Consideration

2.88 The Marshall Report recommended that the Department should consider introducing recovery orders under the Child Abduction (Northern Ireland) Order 1985 for children who are living at home, or independently, who have been abducted, along the lines of the current recovery order, under Article 69 of the Children (NI) Order 1995, which apply only to children in care. Recovery orders are currently used by the police to ‘recover’ children under 18 in care who have been abducted, or have run away or are staying away from a responsible person.

2.89 The Department considered that the use of recovery orders for children not in care could be open to abuse through malicious or vexatious applications and could result in unnecessary increased costs and inappropriate use of police, social services and court time. Enforcement issues were also highlighted as such recovery orders are not provided for in the rest of the UK.

Responses

Agree	Disagree	Don't know
13	15	11

2.90 The Department concluded that the current law balances the need to protect older children whilst allowing independence, and that the additional protections for children in care reflect the particular duties and responsibilities arising from state care, as distinct from parental responsibility.

2.91 Of those who disagreed, NICCY and Sinn Fein were of the view that the case had not been made for not extending recovery orders to all children under 18, and that the Department should consider the issue further and provide evidence which underpins its concerns about vexatious claims and the application of orders in jurisdictions outside Northern Ireland.

2.92 Several respondents, including three of the Health and Social Care Trusts, held that all children under 18 were entitled to the same level of protection, highlighting that, while children in care are particularly vulnerable, there are other categories of children in the community who may be at greater risk of abduction and CSE. Examples given included -

those who are homeless, have low self-esteem, have had a recent bereavement or loss, or are a young carer. There was a recognition by many, including the SBNI, of the complexities involved in legislating in this area but the challenges these presented should not prevent these children from being protected.

2.93 The PSNI considered that recovery orders should be extended to all children and would provide an additional safeguarding tool.

2.94 Of those who were undecided, Dr Helen Beckett reiterated her view that while there is a need for enhanced protective structures for 16 and 17 year olds she was uncertain about the most effective mechanism for achieving this.

Next Steps

2.95 Given the mixed response to the consultation on this issue, the Department will engage further with key stakeholders before finalising a decision on whether the current law requires amendment to allow for recovery orders in relation to children and young people under 18 who are not in the care of the state.

Police Powers to request information on guests in hotel-type accommodation

Review Consideration

2.96 The Marshall Report recommended the creation of new powers to allow the PSNI to request information on guests staying at hotels, bed and breakfasts etc. where it is suspected that the accommodation is or will be used for the purpose of CSE.

Responses

Agree	Disagree	Don't know
41	2	1

2.97 The Department proposed the introduction of new powers along the lines of the powers recently made available in England and Wales.

2.98 The Information Commissioner's Office (ICO), while not expressing a view on the effectiveness or otherwise of the current legal framework, was concerned about the data protection implications of this proposal. Based on the information provided, it considered that the proposed measure is likely to result in a risk to the rights and freedoms of individuals whose personal data would be processed. People who are not under investigation for such crimes could have their names and address details recorded for the purpose of investigating and preventing sexual offences against children. The ICO stressed the need to consider how such processing is in compliance with the data protection principles set out under Part 3 of the Data Protection Act 2018 and advised that, if the proposal developed, the ICO should be consulted directly.

2.99 The Law Society had reservations about the introduction of such a measure, considering it could be misused and result in an unmerited invasion of privacy. If legislated for, it should not be implemented unless accompanied by clear guidelines for the PSNI so that a consistent approach is used.

Next Steps

3.00 The Department acknowledges the support for such a change to the law and will seek to bring forward proposals for legislation in the next Assembly mandate. However, the Department also acknowledges the concerns expressed by the ICO and will consult with the ICO to ensure any proposals comply with data protection principles. .

SUMMARY OF PROPOSED ACTION ON EACH RECOMMENDATION

1. Removal of legislative references to ‘child prostitute’, ‘child prostitution’ and ‘child pornography’.

Amend provisions in the Sexual Offences (NI) Order 2008 to remove legislative references to ‘child prostitute’, ‘child prostitution’ and ‘child pornography’, taking account of the concerns raised over the replacement terminology.

2. Inclusion of live streamed images in CSE offences

Amend the 2008 Order to bring live streamed images within the definition of CSE.

3. Adequacy of existing grooming offence

To consider further with key partners whether issues raised need to be addressed in future legislation.

4. Defence of reasonable belief in sexual offences against children

To carry out further work and engagement with stakeholders to ensure that recommendations for future legislative change in the next Assembly mandate are workable and appropriate within the current legal system.

5. Abuse of Trust Offences

To engage with relevant stakeholders to carry out further work on the detail of adopting a wider definition of positions of trust before considering legislative proposals in the next Assembly mandate.

6. Indecent self-images of children under 18

To engage with key stakeholders to explore possible avenues for improving outcomes within the current legislative framework. No legislative change envisaged.

7. Using on-line anonymity to harass

To keep the issue under review and revisit once the current law on harassment has been strengthened by the proposed legislation on stalking and the Review of Hate

Crime Legislation has reported its findings.

8. Adults masquerading as children online

To legislate for a new offence.

9. Up-skirting

To legislate for a new offence.

10. Child sex dolls

To undertake further engagement with key stakeholders to assess how best to ensure that the law protects children from exploitation arising from the sale and possession of child sex dolls.

11. Compliance with international standards

No further action considered necessary.

12. Inclusion of all children under 18 within scope of abduction offences

To undertake further engagement with key stakeholders before deciding on the need for legislative change.

13. Recovery orders for children not in care

To undertake further engagement with key stakeholders before deciding on the need for legislative change.

14. New police powers to request information on guests in hotel-type accommodation

To bring forward proposals for legislation in the next Assembly mandate, in consultation with the ICO to ensure any proposals comply with data protection principles.

List of Respondents

Alliance for Choice

Alliance Party

Autism NI

Bar Library

Barnardo's NI

Basketball NI

Belfast Health & Social Care Trust

Campaign by Survivors of Abuse

Children in Northern Ireland

Cycling Ireland and Cycling Ulster

Dr Helen Beckett, University of Bedfordshire, Director, The International Centre:

Researching CSE, violence and trafficking

Education Authority NI

Education Authority NI – Post Primary Behaviour Support & Behaviour

R Geddis (on behalf of a Swimming Association)

Green Party

Health & Social Care Board

Information Commissioner's Office

Irish Athletic Boxing Association

Irish Rugby Football Union

Law Society NI

NASUWT – The Teachers' Union

Netball NI

Nexus NI

NICCY (NI Commissioner for Children and Young People)

NIHRC (NI Human Rights Commission)

Northern Health & Social Care Trust

Northern Ireland Judo Federation

NOTA NI – Supporting Professionals to Prevent Sexual Abuse

NSPCC NI (National Society for the Prevention of Cruelty to Children)

Office of Lord Chief Justice

Parenting NI

Policing Board NI

Public Prosecution Service NI

Probation Board NI

PSNI

Professor Anne McAlinden, School of Law, QUB

Royal College of Psychiatrists in Northern Ireland

Safeguarding Board NI (SBNI)

Sinn Fein

South Eastern Health & Social Care Trust

Southern Health & Social Care Trust

Swim Ireland

Special Olympics Ireland

Superintendent's Association of NI

Thompson's Solicitors

Ulster Angling Federation

Ulster GAA

Ulster Unionist Party

Women's Regional Consortium

Youth Justice Agency

8 responses from individuals