

## Response ID ANON-TKEH-B5KA-F

Submitted to **Review of the law on child sexual exploitation**

Submitted on **2019-04-16 00:40:32**

### About this consultation

#### Privacy notice

#### About you

##### A What is your name?

Please enter your name:

Emma Campbell

##### B Are you responding on behalf of an organisation?

Yes

If yes, what is the name of your organisation?:

Alliance for Choice

##### C What age are you?

I am 18 years or older

##### D What is your email address?

Please enter your email address:

alliancechoice4@gmail.com

##### E Would you like us to contact you when the summary of responses is published?

Yes

### Introduction

#### The current legislative framework

#### 1. Legislative references to 'child prostitution' and 'child pornography'

1(a) Do you agree or disagree with the proposal to remove legislative references to 'child prostitute', 'child prostitution' and 'child pornography' and replace these with the term 'sexual exploitation of children'?

Agree

If you disagree, please explain why:

1(b) Do you agree or disagree with the proposed legislative definition of 'sexual exploitation of children' as set out above?

Agree

If you disagree, please explain why:

1(c) Do you have any other comments on this issue?

Please provide any additional comments:

#### 2. Inclusion of live streamed images in child sexual exploitation offences

2(a) Do you agree or disagree with the proposal to amend the law to ensure that images that are streamed or otherwise transmitted are included for the purposes of the child prostitution and pornography offences?

Agree

If you disagree, please explain why:

**2(b) Do you have any other comments on this issue?**

**Please provide any additional comments:**

I believe there are problems with this case:

<https://www.irishnews.com/news/northernirelandnews/2019/03/06/news/jay-donnelly-indecent-sex-photo-still-in-the-possession-of-others--1565830/>

every single person that immediately received the images of the sexual acts with the underage girl then shared them, should also face prosecution.

This is something that should be known as a criminal offence and which actually puts a huge question mark over the sharing of any pornographic imagery if there is no permission from all of the people engaged in the sexual acts, and therefore if any are participants are under 18 there can be no consent. Without a public education campaign there will be little public understanding of what is criminal behaviour, especially given the widespread normalisation of sharing porn.

**3. Adequacy of the existing grooming offence**

**3(a) Do you agree or disagree that the offence of grooming is adequate and appropriate?**

Agree

If you disagree, please explain why:

**3(b) Do you agree or disagree that no changes to this offence are required?**

Agree

If you disagree, please explain why:

**3(c) Do you have any other comments on this issue?**

Please provide any additional comments:

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

**4(a) Do you agree or disagree with the proposal to change the burden of proof so that, if a defendant wishes to rely on a defence of reasonable belief, 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

If you disagree, please explain why:

**4(b) Do you agree or disagree with the proposal that 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

If you disagree, please explain why:

**4(c) Do you agree or disagree with the proposal that 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

If you disagree, please explain why:

**4(d) Do you agree or disagree with the proposal that an individual who is subject to a Risk of Sexual Harm Order should not be allowed to use a defence of reasonable belief?**

Agree

If you disagree, please explain why:

**4(e) Are there any other circumstances where you think individuals should not be able to use a defence of reasonable belief in relation to sexual offences against children?**

No

If you think there are other circumstances, please provide details:

**4(f) Do you have any other comments on this issue?**

Please provide any additional comments:

## 5. Abuse of trust offences

**5(a) Do you agree or disagree that the abuse of trust offences should not be extended to include sports coaches and other roles and groups outside of the state sector?**

Disagree

**If you disagree, please explain why and tell us what types of role should be included:**

Any group that is formal or informal where the position, care and trust of the child, including group reward procedures. is administered by an adult or by someone of a significant age gap older than them, including private security teams in workplaces and private buildings such as shopping centres and hospitals, must also be liable for an abuse of trust. Church groups in particular have regularly demonstrated that their mechanisms for dealing with child abuse are not robust and child-centred.

**5(b) Do you have any other comments on this issue?**

Please provide any additional comments:

## 6. Indecent 'self' images of children under 18

**6(a) Do you agree or disagree that the current law in relation to indecent images of children is appropriate?**

Don't know

**If you disagree, please explain why:**

**If you disagree, do you think that the law should not apply to children under 18 who share indecent images of themselves, or who share images of others unless done with malicious intent?:**

**6(b) Do you have any other comments on this issue?**

Please provide any additional comments:

## 7. Using online anonymity to harass

**7(a) Do you agree or disagree that there is no need to create a new law on harassment to deal with the aggravated impact where an individual uses anonymity provided by the internet and/or the ability to create multiple online accounts to harass another person?**

Agree

**If you disagree, please explain why:**

**7(b) Do you have any other comments on this issue?**

Please provide any additional comments:

## 8. Adults masquerading as children online

**8(a) Do you agree or disagree that there is no need to create a new offence of an adult masquerading as a child online?**

Agree

**If you disagree, please explain why:**

**8(b) Do you have any other comments on this issue?**

Please provide any additional comments:

## 9. Up-skirting

**9(a) Do you agree or disagree that there is a need to change the law to make up-skirting a criminal offence?**

Agree

**If you disagree, please explain why:**

Yes, Alliance for Choice agree there is a need to change the law to make up-skirting a criminal offence in Northern Ireland.

Without a specific offence of up-skirting this issue has the potential to remain a hidden or even acceptable crime. The lack of a specific offence minimises the impact of up-skirting on victims as it fails to acknowledge the specific and long lasting harms felt by victims. It can also lessen the seriousness of the offence and leads to the perpetrator's behaviour being diminished to a merely nuisance crime rather than the sexual harassment it is.

We believe the lack of a specific offence makes it more likely for up-skirting to reoccur as there is no explicit way of challenging this type of behaviour. The existing legislation under which up-skirting may be challenged (see general comments section) contains gaps which mean that some examples of this type of behaviour may not be able to be legally challenged. There should not be a situation where victims are deterred from complaining about such degrading acts.

By creating a specific offence of up-skirting and making it a criminal offence it sends out a powerful message that this form of harassment is unacceptable, that victims complaints will be taken seriously and that perpetrators of this crime will be properly held to account.

However while we would welcome the creation of a specific offence of up-skirting, laws are not enough to address the cultural acceptability of this kind of sexual harassment. There is a wider societal view that "smaller sexual assaults" are not a problem and there is a need to change social norms around these issues. While the creation of a specific offence would set a precedent it does not change people's opinions and there is still a lot of work to be done in creating narratives around the issue of up-skirting.

We believe that there needs to be further research on the prevalence of sexual harassment, including up-skirting, in Northern Ireland. This research should inform the work of government on the causes of sexual harassment and how to prevent it. This should include a more preventative approach including public awareness campaigns and inclusion of what constitutes such form of sexual abuse in work and school environments to tackle the societal attitudes that support sexual harassment.

We would also suggest that the creation of laws are not enough if they are not properly enforced. There is a need for training/education on this issue for all the criminal justice agencies involved so that there is widespread knowledge of the existence of this new crime as well as how it is enforced.

All the criminal justice agencies involved must properly understand any new legislation around up-skirting and its impact on victims. Services that do not adequately take into consideration the negative effects of up-skirting or that treat victims insensitively run the risk of re-victimising service users. It is important that complaints about up-skirting are treated seriously and that victims are fully supported through the process. Much like the lesser crime of flashing often being a signal that the perpetrator is more likely to commit more serious sexual offences in the future, up-skirting should be treated as a contemporary similar offence. Often, those wishing to commit serious sexual crimes will 'test' their public boundaries by trying less serious crimes first. This is why stalking, harassment and up-skirting legislation are so vital to the safety of women and girls.

**9(b) If you agree that up-skirting should be a criminal offence, do you agree or disagree with our proposal to achieve this by amending the existing voyeurism offence as per the law in Scotland and expected changes to the law in England and Wales?**

Agree

**If you disagree, please explain why:**

We agree that up-skirting should be a criminal offence and that this could be achieved by amending the existing voyeurism offence as per the law in Scotland, England and Wales. We understand, as suggested in the consultation, that this would seem to be a sensible approach as it would use an existing legislative definition and would ensure consistency across the jurisdictions.

However we would recommend learning from the experiences in other jurisdictions particularly Scotland where up-skirting has been a crime since 2010. We note with concern some recent press coverage in Scotland highlighting the lack of prosecutions for up-skirting since the legislation was introduced.

The Scotsman revealed an average of just 3.5 prosecutions a year since 2011. It concluded the explanation for the disparity between prosecutions and actual offences appeared to be that the design of the law is flawed. The Scotsman pointed to a number of loopholes in the law, for example, upskirting is only illegal in Scotland if the motive of the perpetrator is either sexual gratification or causing distress to the victim. The only person that can truly know the motivation is the offender and proving this beyond reasonable doubt may prove too difficult for police and prosecutors.

As previously stated the creation of legislation is not adequate without enforcement. If enforcement is not working in other jurisdictions then lessons will need to be learned to ensure that any new laws introduced in Northern Ireland are as effective as possible. There is also the question of whether the Department of Justice is properly engaging with Westminster on the Draft Domestic Abuse Bill?

If the DoJ is so concerned with these crimes with such serious potential harms, this draft Bill in Westminster should absolutely and without doubt include Northern Ireland in its scope. To not engage in the processes of that Bill would be a great failure on the part of the DoJ of NI.

**9(c) Do you have any other comments on this issue?**

**Please provide any additional comments:**

Departments that are concerned with the safety and well-being of its citizens ought to be more pro-active in considering the potential harms of new technologies.

The sexual abuse of mostly women and children is widely acknowledged in most societies, from the invention of photography, every new communication tool has been used to aid in the spread of abusive material, therefore departments should clearly understand their roles in preventing such abuse by working with large communications corporations to understand the global risks involved.

All laws are only as good as the application of them demonstrates. As we are so far behind England, Scotland and Wales in terms of rates of prosecutions for serious sexual crimes such as rape and incest, it is vital that the actors within our legal systems, solicitors, barristers and judges etc, are properly trained in the impact of sexual crimes on the victims rather than the impact of sentencing on the accused.

## **10. Child sex dolls**

**10(a) Do you agree or disagree with this proposed approach to keep the issue of child sex dolls under review, informed by learning emerging from England and Wales, and to consider specific proposals at a later date?**

Agree

If you disagree, please explain why:

**10(b) Do you have any other comments on this issue?**

Please provide any additional comments:

## **11. Sexual offences against children: compliance with international standards**

**11(a) Do you agree or disagree that our legislative framework relating to CSE and sexual offences against children is compliant with international standards and that no legislative change is required?**

Disagree

If you disagree, please identify which provisions are not compliant and explain why.:

There has been evidence that a number of children who have been the victims of sexual abuse, crimes and incest, have been forced, due to the 1861 Offences Against the Person's Act (Sections 58/59) to travel to England to access abortions.

<https://www.independent.co.uk/news/uk/home-news/northern-ireland-girl-rape-victim-abortion-england-travel-police-escort-age-12-a8750016.html>

These children have become pregnant due to sexual crimes that ought to have been investigated by the correct state bodies, however instead they have been forced to seek medical treatment on England or risk imprisonment through the self-administration of abortion pills.

<https://www.bbc.co.uk/news/uk-northern-ireland-45550006>

The lawyer acting for the girl in the case in court above stated; "conception followed underage sex and that compelling the girl to continue with her pregnancy would have been inhuman treatment under European law."

In both of these cases each victim was treated as a criminal or potential criminal, or their parents have been treated as criminals when in fact the State followed to act in a far more abusive manner towards the welfare of the child than the mother in question.

The Committee on the Rights of the Child has recommended that "States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal." ( General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 70.)

There was also an issue in 2018 with regard to the Human Rights Committee General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life.

"

8. Although States parties may adopt measures designed to regulate voluntary terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant. Thus, restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering which violates article 7, discriminate against them or arbitrarily interfere with their privacy. States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable. [8] In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and they should revise their abortion laws accordingly. [9] For example, they should not take measures such as criminalizing pregnancies by unmarried women or apply criminal sanctions against women and girls undergoing abortion [10] or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion. States parties should not introduce new barriers and should remove existing barriers [11] that deny effective access by women and girls to safe and legal abortion [12], including barriers caused as a result of the exercise of conscientious objection by individual medical providers. [13] States parties should also effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions. In particular, they should ensure access for women and men, and, especially, girls and boys, [14] to quality and evidence-based information and education about sexual and reproductive health [15] and to a wide range of affordable contraceptive methods, [16] and prevent the stigmatization of women and girls seeking abortion.[17] States parties should ensure the availability of, and effective access to, quality prenatal and post-abortion health care for women and girls, [18] in all circumstances, and on a confidential basis. [19]"

There is also a clear duty on states to provide children with adequate related health services where they have been sexually exploited - as pointed out in section 37 on the Convention of the Rights of the Child General Comment, Adolescent health and development in the context of the Convention on the Rights of the Child;

"37. Adolescents who are sexually exploited, including in prostitution and pornography, are exposed to significant health risks, including STDs, HIV/AIDS, unwanted pregnancies, unsafe abortions, violence and psychological distress. They have the right to physical and psychological recovery and social reintegration in an environment that fosters health, self respect and dignity (art. 39). It is the obligation of States parties to enact and enforce laws to prohibit all forms of sexual exploitation and related trafficking; to collaborate with other States parties to eliminate intercountry trafficking; and to provide appropriate health and counselling services to adolescents who have been sexually exploited, making sure that they are treated as victims and not as offenders."

Clearly there is a huge gap here in the proper safeguards that should be afforded to abused children where they are at risk of pregnancy as a result of their sexual abuse.

Once again the Dept. of Justice in Northern Ireland should be engaging with the process of the Domestic Abuse Bill in Westminster, in order that they might ensure NI is included on the bill in the absence of a functioning devolved body for over 2 years.

**11(b) Do you have any other comments on this issue?**

Please provide any additional comments:

**12. Inclusion of all children under 18 in scope of abduction offences**

**12(a) Do you agree or disagree that there is no need to extend the offence of child abduction by a parent under Article 3 of the Child Abduction (Northern Ireland) Order 1985 to include children aged 16 and 17?**

Don't know

If you disagree, please explain why.:

**12(b) Do you agree or disagree that there is insufficient justification to extend the offence of child abduction by persons other than parents under Article 4 of the Child Abduction (Northern Ireland) Order 1985 to include children aged 16 and 17?**

Don't know

If you disagree, please explain why:

**12(c) Do you have any other comments on this issue?**

Please provide any additional comments:

**13. Recovery orders for children not in care**

**13(a) Do you agree or disagree that recovery orders would not be an appropriate tool in relation to children not in care who may have been abducted?**

Don't know

If you disagree, please explain why:

**13(b) Do you have any other comments on this issue?**

Please provide any additional comments:

**14. Police powers to request information on guests in hotel-type accommodation**

**14(a) Do you agree or disagree with this proposal to introduce new powers to allow police to request information on guests staying in hotel type accommodation?**

Agree

If you disagree, please explain why :

**14(b) Do you have any other comments on this issue?**

Please provide any additional comments:

**Equality impact and rural needs impact screening**

**EQ Do you have any comments on the equality impact screening assessment?**

Please provide your comments:

**RI Do you have any comments on the rural impact screening assessment?**

Please provide your comments:

**Additional comments**

**ADD Do you have any other comments in relation to this consultation?**

Please provide your comments: