

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Chapter 1: Prevention Orders**

##### ***Section 25: Qualifying offences for Sexual Offences Prevention Orders (SOPO)***

Section 25 amends provisions contained within the Sexual Offences Act 2003 by including ‘abduction of children in care’ (as provided for in Article 68 of the Children (Northern Ireland) Order 1995) within the list of specified offences of Schedule 5 to that Act.

This is intended to improve the effectiveness of the SOPO by slightly widening the scope of offences to which the SOPO provision apply.

Schedule 5 offences allow for a SOPO to be made in respect of offences specified therein (as well as those specific to sexual offences and contained within Schedule 3) if they are committed in the overall context of sexual crime and where there is evidence of a risk of serious sexual harm.

##### ***Section 26: Time limit for making Violent Offences Prevention Orders (VOPO)***

Section 26 amends provision contained within section 57 of the Justice Act (Northern Ireland) 2015 (VOPOs made on application by the Chief Constable) by inserting a new subsection (6) to dis-apply statutory time limits provided for under Article 78 of the Magistrates Court (Northern Ireland) Order 1981 (time within which civil complaint must be made to give jurisdiction).

Section 26(2) ensures that provision made under 28(1) will apply to a complaint made after its coming into operation even where the cause of complaint arose more than six months before the making of the complaint.

## **Chapter 2: Causing or risking serious harm**

### **Section 27: Consent to harm for sexual gratification is no defence**

This section provides that, for the purposes of determining whether a person ('D'), who inflicts "serious harm" on another person ('V') is guilty of a "relevant offence", it is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification.

Subsection (2) makes clear that it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.

Subsection (3) defines what is meant by "*relevant offence*" and "*serious harm*" by reference to sections 18 (causing grievous bodily harm with intent), 20 (inflicting grievous bodily harm) and 47 (actual bodily harm) of the Offences Against the Person Act 1861 ("the 1861 Act").

Subsection (4) provides for an exception in the case of an offence under section 20 or 47 of the 1861 Act where the serious harm consists of, or is a result of, the infection of V with a sexual transmitted infection in the course of sexual activity, and V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.

This subsection prevents D's criminalisation in such cases, but preserves the position (as set out paragraph 58 of the judgment in *R v Dica*) that consent would provide no defence to a charge under section 18 of the 1861 Act.

Subsection (5) provides that nothing in this section affects any enactment or rule of law relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

Well recognised examples include instances of medical treatment; injuries sustained in certain sports; and tattooing.

### **Section 28: Offence of non-fatal strangulation or asphyxiation**

This section creates a new offence of non-fatal strangulation or asphyxiation of another person.

Subsection (1) states that a person ("A") commits an offence if the conditions set out in subsections (2) and (3) are met.

The conditions are that A:

- intentionally applies pressure on or to the throat or neck of another person ("B"), or does some other act amounting to battery of B; and
- intends to affect B's ability to breathe or the flow of blood to their brain, or is reckless in this regard.

Subsection (4) provides that the offence is committed irrespective of whether B's ability to breathe or flow of blood to the brain is in fact affected. This means that a victim does not need to prove injury for the offence to be committed: the

necessary components of the offence are the application of pressure or battery in combination with the perpetrator's intention or recklessness as set out in subsections (2) and (3).

Subsection (5) makes clear that it does not matter how the act is done, so, for example, the person may use their hands, another part of their body or an object to apply the pressure or inflict the battery.

Subsections (6) to (8) make provision for a limited defence of consent to the offence. The defence is not available where:

- B suffers "serious harm" as a result of the act; and
- serious harm is intended by A, or A is reckless in this regard.

This reflects the law as set out in the case of *R v Brown* [1993] 2 W.L.R. 556 and subsequent cases, that where a person consents to an act that results in anything less than serious injury, their consent is a valid defence for the person who did the act.

Subsection (9) makes it an offence triable in Northern Ireland, as if it occurred in Northern Ireland, for a person who is a United Kingdom national or is habitually resident in Northern Ireland to do an act in a country outside the United Kingdom that amounts to an offence under the section.

Under subsection (10) the offence is triable in either a magistrates' court or in the Crown Court. The maximum penalty on summary conviction in a magistrates' court is 2 years' imprisonment and/or a fine not exceeding the statutory maximum. On conviction on indictment in the Crown Court the maximum penalty is 14 years' imprisonment and/or an unlimited fine.

Subsection (11) is an interpretive provision, defining "the 1861 Act", "serious harm" and "United Kingdom national".