

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

COMMENTARY ON SECTIONS

Part 1: Sexual offences

Chapter 1: Criminal Conduct

Section 1: Voyeurism: additional offences

This section amends the Sexual Offences (Northern Ireland) Order 2008 to add new Articles 71A and 71B – Voyeurism: additional offences (genitals and buttocks) and Voyeurism additional offences (breasts). New Article 71A deals with “up-skirting” and includes two offences of ‘operating equipment’ and ‘recording images’.

Under Article 71A (1) a person (A) commits an offence if they: operate equipment (e.g. phone camera) beneath another person’s (B’s) clothing with the intention of enabling them or another (C) to observe B’s genitals or buttocks, whether exposed or covered with underwear, or the underwear covering the genitals or buttocks, where they wouldn’t ordinarily be visible; with the intention of A or another (C) looking at the image for the purpose of sexual gratification (for A’s or C’s); to humiliate, alarm or distress B or; are reckless as to whether B is humiliated, alarmed or distressed and B is, in fact, humiliated, alarmed or distressed; and without the consent of B and where they reasonably know that B had not consented

Under 71A (2) a person (A) commits an offence if they: record an image beneath another person’s (B’s) clothing; the image is of B’s genitals or buttocks, whether exposed or covered with underwear, or the underwear covering the genitals or buttocks, where they wouldn’t ordinarily be visible; with the intention of A or another (C) looking at the image for the purpose of sexual gratification (for A’s or C’s); to humiliate, alarm or distress B or; are reckless as to whether B is humiliated, alarmed or distressed and B is, in fact, humiliated, alarmed or distressed; and without the consent of B and where they reasonably know that B had not consented.

It will also be an offence where B has consented to the operation of equipment or the recording of an image for a particular purpose, and A operates the equipment or records the image for a different or additional purpose.

The penalties proposed for offences committed under Article 71A are: for summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and on indictment, imprisonment for a term not exceeding two years.

New Article 71B deals with “down-blousing” and includes two offences of ‘operating equipment’ and ‘recording images’.

Under Article 71B (1) a person (A) commits an offence if they: operate equipment (e.g. phone camera) beneath or above another person’s (B’s) clothing with the intention of enabling them or another (C) to observe B’s breasts whether exposed or covered with underwear, or the underwear covering the breasts, where they wouldn’t ordinarily be visible; they do so for the purpose of sexual gratification (for A’s or C’s); to humiliate, alarm or distress B or; are reckless as to whether B is humiliated, alarmed or distressed and B is, in fact, humiliated, alarmed or distressed; and without the consent of B and where they reasonably know B had not consented.

Under 71B (2) a person (A) commits an offence if they: record an image beneath or above another person’s (B’s) clothing; the image is of B’s breasts, whether exposed or covered with underwear, or the underwear covering the breasts, where they wouldn’t ordinarily be visible; with the intention of A or another (C) looking at the image for the purpose of sexual gratification (for A’s or C’s); to humiliate, alarm or distress B or; are reckless as to whether B is humiliated, alarmed or distressed and B is, in fact, humiliated, alarmed or distressed; and without the consent of B and where they reasonably know that B had not consented.

It will also be an offence where B has consented to the operation of equipment or the recording of an image for a particular purpose, and A operates the equipment or records the image for a different or additional purpose.

The penalties proposed for offences committed under Article 71B are: for summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and on indictment, imprisonment for a term not exceeding two years.

Section 2: Sending etc.an unwanted sexual image (Cyber-flashing)

This section amends the Sexual Offences (Northern Ireland) Order 2008 to add a new Article 72A (Sending etc. an unwanted sexual image).

Under Article 72A a person (A) commits an offence if they intentionally send or give a sexual image to another person (B), without the consent of B and where they reasonably know B had not consented; with the intention that B will look at the image and be humiliated, alarmed or distressed by it or; for the purpose

of obtaining sexual gratification and are reckless as to whether B is humiliated, alarmed or distressed.

A sexual image means a photograph or film of any person engaging in sexual activity or of any person's genitals. References to a photograph or film include an image made by computer graphics, or in any other way, which appears to be a photograph or film or; a copy of the image. Data stored by any means which is capable of conversion into a photograph or film is also included.

References to sending or giving include sending by any means whether electronically or otherwise; sending it to another person and; placing it for another person to find.

The penalties proposed for offences committed under Article 72A are: for summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and on indictment, imprisonment for a term not exceeding two years.

Section 3: Consequential amendments

This section amends the Sexual Offences (Northern Ireland) Order 2008 by inserting new Article 72(1B) which introduces new Schedule 1 which lists the consequential amendments required by the introduction of the offences of up-skirting, down-blousing and, sending an unwanted sexual image.

Section 4: Sexual grooming: pretending to be a child

This section amends the Sexual Offences (Northern Ireland) Order 2008 to include new Articles 22B to 22G. This provision is not limited to online communication.

Under new **Article 22B** (communicating with a person with a view to grooming a particular child) a person (A) commits an offence if they: are aged 18 or over; communicate with another person (B); and intentionally present to B, to a group including B, or to the public at large, as being under 18.

A's intention in communicating with B must be to establish or participate in a communication exchange with a 'particular person' (C) who they have in mind with a view to committing a relevant offence against C. An example may be that A knows C and is acutely aware that they are under 16. Equally, A may not be personally acquainted with C, or know they are under 16. Regardless of the scenario, A must reasonably believe that the person is 16 or over to have committed an offence.

B (the person with whom A first communicates) does not have to be a child (under 16), but the particular person with whom A seeks to engage (C) must be a child and A must reasonably believe that C is a child.

'Relevant offence' is defined at Article 22F.

Under new **Article 22C** (communicating with a group with a view to grooming a particular child) a person (A) commits an offence if they are aged 18 or over and A communicates with a group of persons with a view to establishing, or participating in, an exchange of communication with a particular person whom A has in mind (B), with a view to subsequently committing a relevant offence against B.

At the time of the communication, A must intentionally present to the group or to the public at large as being under 18 and B must be a child (under 16) and A must reasonably believe B is a child.

The key difference with this provision and that provided for under Article 22B is the perpetrator's approach.

Under Article 22B, the perpetrator is communicating with a particular individual (who may or may not be a child) to reach a child they have in mind (who may or may not be the same person as the individual communicated with). This may or may not be within the context of a group setting.

However, with Article 22C, the perpetrator is communicating with a group specifically to find a child they have in mind. It is considered that the inclusion of this additional provision ensures a more robust protection should a perpetrator approach a particular child they have in mind, but where they seek to do so by means of communicating with a group.

Under new **Article 22D** (communicating with a person with a view to grooming any child), a person (A) commits an offence if they are 18 or over and A communicates with another person (B) who may or may not be a child (under 16).

At the time of the communication, A must intentionally present to B (who does not have to be under 16), or to a group of persons that includes B, or to the public at large, that they are under 18.

A's intention in communicating with B must be to establish, or participate in, an exchange of communication with any child with a view to subsequently committing a relevant offence against them. In this case, A does not have a particular child in mind at the time of the communication.

This particular provision differs from Articles 22B and 22C in that the perpetrator does not have a particular child in mind, rather, they are communicating with someone for the purposes of conducting a fishing exercise in the hope of finding any child with whom they can communicate.

Under new **Article 22E** (communicating with a group with a view to grooming any child), a person (A) commits an offence if they are 18 or over and A communicates with a group of persons. At the time of the communication, A must intentionally present to the group, or to the public at large, as being under 18.

A's intention in communicating with the group must be to establish or participate in an exchange of communication with any child with a view to subsequently committing a relevant offence against them. In this case, A does not have to have a particular child in mind at the time of the communication.

As with Article 22D, this provision differs from Articles 22B and 22C in that the perpetrator does not have to have a particular child in mind.

This provision differs from Article 22D in that the perpetrator is communicating with a group rather than an individual, but again with the hope of finding any child with whom they can communicate. They are communicating with a group and not an individual person.

New **Article 22F** (communication with a view to grooming: interpretation) provides a 'reasonable person' test in respect of whether A has presented themselves as being under 18. It provides that for the purposes of Articles 22B to 22E, a person (A) presents to a person (or persons) as being under 18 if a reasonable person would consider that, in all the circumstances, A presents to that person as being under 18.

Relevant offence is defined at Article 22F as an offence under the 2008 Order, a human trafficking offence under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 in so far as it relates to sexual exploitation or anything done outside Northern Ireland which is not such an offence, but would be if done in Northern Ireland.

New **Article 22G** (communication with a view to grooming: sentencing) sets out the penalties for an offence committed under Articles 22B to 22E whereby those convicted summarily would be liable to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and on indictment, they would be liable to imprisonment of a term not exceeding two years.

Section 5: Abuse of position of trust: relevant positions

This section amends existing provision made for abuse of position of trust of a child in Part 3, Articles 23 to 31, of the Sexual Offences (Northern Ireland) Order 2008.

Section 5(2) makes minor amendment to existing Article 2 of the 2008 Order (interpretation) by inserting new paragraph (4A) to clarify that reference to the Department means the Department of Justice.

Section 5(3) amends existing Article 28 (1)b (positions of trust) by substituting "an order made by the Secretary of State" with "regulations made by the Department (of Justice)".

Section 5(4) inserts new Article 29A into the 2008 Order.

New Article 29A(1) provides that, for the purpose of the offences contained in Articles 23 to 26 of the Order, a person (A) is in a position of trust in relation

to another person (B) if A (knowingly) coaches, teaches, trains, supervises or instructs B on a regular basis in a sport or a religion.

Paragraph (2) defines sport and religion for the purpose of paragraph (1).

Sport includes “any game in which physical skill is the predominant factor or any form of physical recreation which is also engaged in for purposes of competition or display”.

Religion includes “a religion which involves belief in more than one god or a religion which does not involve belief in a god”.

Paragraph (3) provides that paragraph (1) does not apply where A holds a position of trust as already provided for in existing Article 28 provision (within the statutory sector).

Paragraph (4) allows the Department of Justice to amend paragraphs (1) and (2) by regulations, but only in so far as this relates to the settings involved (not the activities).

Paragraph (5) amends Article 80 of the 2008 Order. It changes the Article 80 heading to read “Orders and regulations” and inserts new paragraphs Article 80(4) and (5).

New Article 80(4) provides that regulations made under Article 28(1)(b) or 29A(4) may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

New Article 80(5) provides that such regulations may include any incidental, supplementary, consequential, transitory, transitional or saving provision which the Department of Justice considers necessary or expedient.

Paragraph (6) provides that the Department (of Justice) must annually review Article 29A(1) and (2) of the Sexual Offences (Northern Ireland) Order 2008 so as to inform the Department on whether the power in Article 29A (4) of that Order should be exercised.

Section 6: Private sexual images: threatening to disclose

Section 6 amends provision in section 51 of the Justice Act (Northern Ireland) 2016 (disclosing private sexual photographs and films with intent to cause distress) to extend the scope of the existing disclosure offence to provide for a new offence of threatening to disclose a private sexual photograph and film with intent to cause distress.

Under section 6(2) a new section 51(1) is substituted for existing section 51(1) of the 2016 Act to make it an offence where a person threatens to disclose a private sexual photograph or film in which ‘the relevant individual’ appears, without consent and with the intent to cause distress to that individual..

Subsection 51(2) is amended to provide that it will not be an offence to threaten to disclose the image to the individual involved.

Subsections 51(4) and (5) are amended to apply the defences available for the disclosure offence to the offence of threats to disclose. These include that the threat to disclose in the course of publication of journalistic material was in the public interest, or that there was a previous disclosure for reward.

A new subsection 51(7A) is inserted after subsection (7) which provides that where a person is charged with an offence of threats to disclose, it is not necessary for the prosecution to prove that the photograph or film referred to in the threat exists, or if it does exist, that it is in fact a private sexual photograph or film.

A new subsection 51(8) is substituted for the existing subsection (8) to provide that a person charged with threats to disclose is not to be taken to have intended to cause distress merely because this was a natural and probable consequence of having made the threat. (This provision already applies to the disclosure offence.)

Section 6(3) involves a consequential amendment to section 53 to take account of substituted new section 51(1).

Section 6(4) amends Schedule 4 to the 2016 Act to bring within scope of the new offence the protections already afforded to online service providers from prosecution for the disclosure offence where they are merely storing, hosting or caching information, and are unaware of illegal content.

The Schedule is also amended to remove reference to the E-Commerce Directive [2000/31/EC](#) which has ceased to have effect in the UK.

Similar consequential amendment has been made to remove references to the E-Commerce Directive in section 11 and Schedule 3 (Special rules for providers of information society services) to the Act which relate to the offences of breach of anonymity of the victim or complainant in a sexual offence and breach of anonymity of the suspect in a sexual offence case.

Section 7: Miscellaneous amendments as to sexual offences

Section 7 introduces Schedule 2 to the Act which:

- (1) makes certain amendments to references in the Sexual Offences (Northern Ireland) Order 2008 to certain forms of child abuse;
- (2) extends offences that relate to the recording of indecent images so that they apply also to streaming or other transmission of such images;
- (3) makes minor amendments regarding the offences of engaging in sexual communication with a child; and
- (4) makes a clarifying minor amendment relating to the offence of paying of sexual services of a person.

Chapter 2: Anonymity and privacy

Anonymity of victims

Section 8: Extended anonymity of victims

This section amends section 1 of the Sexual Offences (Amendment) Act 1992 (the 1992 Act) to extend the existing lifelong anonymity of the alleged victim of a sexual offence, or the complainant in a sexual offence case, for a period of 25 years after the death of the alleged victim or complainant.

Lifelong anonymity is provided under the 1992 Act by prohibiting the publication, during the victim's or complainant's lifetime, of anything that would help to identify them. This section extends the reporting restrictions for a period of 25 years after their death. The sexual offences to which the provisions apply are those listed in section 2 of the 1992 Act.

Section 9: Disapplication of anonymity of victim after death

This section amends the 1992 Act by inserting new sections 3A (Disapplication of section 1 after victim's death) and 3B (Rules of Court). Section 3A(2) provides for interested parties to make application to the court for an order disapplying or modifying the reporting restrictions under amended section 1 of the 1992 Act as they apply to the prohibition of reporting anything that would lead to the identification of a victim for 25 years after their death.

Section 3A(4) clarifies that any order of the court to modify the reporting restrictions can reduce or increase the 25 year period.

Under section 3A(4) an 'interested party' means a family member or a personal representative of the deceased victim, or a person interested in publishing matters relating to the deceased victim. Sections 3A(8) and 3A(9) further define 'family member'.

Section 3A(5) places a duty on the court to make an order where an application has been made and where it is in the interests of justice or the public interest to do so. Under section 3A(6), any order made can be subsequently varied or revoked by the court on an application by an interested party, where the court is satisfied that the same tests are met.

New section 3B makes express provision for the making of Court Rules relating to the process of making applications to the court to dis-apply or modify reporting restrictions and the consideration of these applications by the court.

Section 10: Increase in penalty for breach of anonymity

This section amends section 5 of the 1992 Act to provide that a person guilty of breach of anonymity will be liable, on summary conviction, to a term of imprisonment of up to six months, or a fine not exceeding level 5 on the standard scale, or both.

Section 11: Special rules for providers of information society services

This section inserts a Schedule into the 1992 Act which sets out protections for certain online service providers from legal responsibility for illegal publication where the online service providers are a mere conduit for the relevant information, caching the information or hosting the information.

Anonymity of suspects

Section 12: Restriction on reports as to suspects of sexual offences

Subsections (1) and (2) of this section provide anonymity to a person against whom an allegation of having committed a sexual offence has been made to the police or a person who is being investigated by the police in connection with a sexual offence – ‘the suspect’. Nothing can be published that would lead to the identification of the suspect.

Subsection (5) details a list of non-exhaustive matters to which the reporting restrictions particularly apply. Subsection (3) provides that the reporting restrictions apply only up to the point of charge and sets out what constitutes a charge. Subsection (4) provides that where no charge is made, the reporting restrictions apply for the life of the suspect and for 25 years after the suspect’s death. Subsection (6) provides that the reporting restrictions will apply to a suspect regardless of whether the allegation is made, or there is a police investigation, before or after this section comes into operation.

Section 13: Meaning of sexual offence in section 12

Subsection (1) lists the offences which fall within the meaning of ‘sexual offence’ for the purposes of section 12. Subsections (2) and (3) provide that the Department can amend the meaning of ‘sexual offence’ by regulations which must be laid in draft before, and approved by a resolution of, the Assembly.

Section 14: Power to dis-apply reporting restriction

This section provides that a ‘relevant person’ can apply to a magistrates’ court to dis-apply or modify the reporting restrictions provided by section 12. During the suspect’s lifetime, ‘relevant person’ means the suspect or the Chief Constable.

After the suspect’s death, ‘relevant person’ means a family member or a personal representative of the suspect, or a person interested in publishing matters relating to the suspect.

Subsection (3) clarifies that any order of the court to modify the reporting restrictions can reduce or increase the 25 year period of anonymity provided in section 12(4) but cannot override the loss of anonymity upon charge.

Subsections (8) and (9) define what is meant by ‘a family member’. Where an application has been made, subsection (5) places a duty on the court to make an order where it is in the interests of justice or the public interest to do so. An

initial order can dis-apply or modify the reporting restrictions. A further order can vary or revoke the reporting restrictions.

Section 15: Magistrates' courts rules

This section makes express provision for the making of magistrates' courts rules relating to the making of applications to the Court to dis-apply or modify reporting restrictions and the consideration of these applications by the Court.

Section 16: Offence relating to reporting

Subsection (1) of this section details those who are held accountable where information identifying a suspect is included in a newspaper or periodical, in a relevant programme or in any other publication. Subsections (2), (3) and (4) relate to the defences available to a person charged with the offence.

Subsection (5) provides that a person guilty of an offence is liable on summary conviction to a maximum of six months imprisonment, or to a fine not exceeding a level 5 fine on the standard scale, or to both. Proceedings for an offence can only be brought with the consent of the Director of Public Prosecutions.

Section 17: Interpretation of sections 12 to 16

This section provides interpretation of the terms 'picture', 'publication', relevant programme, 'statutory provision' and 'suspect' for the purposes of sections 12 to 16

Section 18: Consequential amendment

This section makes a consequential amendment to section 44(4)(a) of the Youth Justice and Criminal Evidence Act 1999 (restrictions on reporting alleged offences involving persons under 18). Section 44(4)(a) prohibits the publication of matters that could identify a person as involved in an offence while that person is under the age of 18.

The amendment excludes from section 44(4)(a), a suspect to whom new section 12(2) applies to ensure that the two legislative regimes do not overlap.

Exclusion from proceedings

Section 19: Serious sexual offences: exclusion of public from court

This section amends the Criminal Evidence (Northern Ireland) Order 1999 by inserting new Articles 27A to 27D to provide for the exclusion of the public from hearings of serious sexual offences tried on indictment.

New **Article 27A** (Exclusion of public from trial) imposes a duty on the court to give an exclusion direction where a person is to be tried on indictment for a serious sexual offence. The duty to give an exclusion direction also applies where the trial includes offences additional to the serious sexual offence.

Article 27A does not apply where the complainant has died. Under an exclusion direction, all persons are excluded from the court with the exception of those listed in Article 27A(2).

These are: members and officers of the court; persons directly involved in the proceedings; a relative or friend of the complainant as nominated by the complainant; a relative or friend of the accused as nominated by the accused; bona fide representatives of news gathering or reporting organisations; and any other person excepted from the exclusion direction at the discretion of the court.

Under Article 27A(5) an exclusion direction has effect from the beginning of the trial until the proceedings have been determined or abandoned and does not apply during any time when a verdict is being delivered. Article 27A(7) provides definitions for terms used in Articles 27A to 27D. These include: ‘complainant’ which means any person who is the complainant in respect of a serious sexual offence to which the trial relates; and ‘serious sexual offence’ which is defined as any offence listed in section 2(3) of the Sexual Offences (Amendment) Act 1992.

New **Article 27B** (Nomination etc. of persons to be excepted from exclusion) supplements Article 27A(2)(c) and (d) which enable nominations to be made by the complainant and the accused for a relative or friend to remain in the court. The court can specify the nominated person as excepted from the exclusion direction and therefore allowed to remain in the court. Under Article 27B(3) the court also has the power to refuse to specify the nominated person as excepted from the exclusion direction.

The court can exercise this power either on application by a party to the proceedings or the complainant, or of its own motion, where it is in the interests of justice to do so. Article 27B(5) and (6) also supplement the power of the court under Article 27A(2)(f) to except other persons from the exclusion direction. This power can be exercised either on an application or of the court’s own motion, and only where excepting the person is in the interests of justice.

New **Article 27C** (Variation of exclusion directions given under Article 27A) provides that the court may vary an exclusion direction either: by revoking the specification of a person nominated in accordance with Article 27B; by specifying a person not already specified in the exclusion direction as allowed to remain in the court; or by revoking a specification of any person previously specified by the court as being allowed to remain in the court.

Variations may be made by the court only where it is in the interests of justice to do so and either on application by a party to the proceedings or the complainant where there has been a material change of circumstances, or of its own motion.

New **Article 27D** (Exclusion directions under Article 27A: general)

Article 27D(1) requires the court to state in open court its reasons for specifying or refusing to specify persons to be excepted from an exclusion direction and

varying or refusing to vary exclusion directions. The reference to ‘open court’ means the court from which the public are excluded under Article 27A.

Article 27D(4) details the provisions and the powers of the court which take precedence over an exclusion direction.

Article 27D(5) makes express provision for the making of Crown Court rules relating to the process of making applications to the court under Articles 27B and 27C.

New Article 27E (Exclusion of public from appeal hearing)

Article 27E imposes a duty on the court to give an exclusion direction where a hearing relating to a serious sexual offence is to be held by the Court of Appeal.

This duty applies to: an appeal or an application for leave to appeal against a conviction or sentence (or both) for a serious sexual offence; an application for leave to refer a sentence for a serious sexual offence to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (reviews of sentencing); a reference under section 36 and; an application for leave to appeal or an appeal under section 12 or 13A of the Criminal Appeal (Northern Ireland) Act 1980 (appeals against findings of not guilty on ground of insanity and unfitness to be tried).

The duty to give an exclusion direction also applies where the appeal or leave to appeal hearing includes offences additional to the serious sexual offence. Article 27E does not apply where the complainant has died.

Under an exclusion direction, all persons are excluded from the court with the exception of those listed in Article 27A(2).

Under Article 27E(5) an exclusion direction has effect from the beginning of the appeal hearing until the proceedings have been determined or abandoned and does not apply during any time when a decision is being pronounced by the court. Article 27A(7) provides definitions for ‘decisions’ of the court.

Article 27E(8) provides definitions for terms used in Articles 27E and 27F.

Article 27E(9) clarifies that a reference to an appeal in Article 27A does not include any proceedings on an application for leave to appeal, or on an application for leave to refer a sentence, that (ignoring Article 27E) are not held in open court.

New Article 27F (Exclusion from appeal hearings: further provision)

Article 27F(1) provides that an exclusion direction has the meaning given by Article 27A(2).

Article 27F(2) sets out the provisions in Articles 27B, 27C and 27D which apply to an exclusion direction in the Court of Appeal.

Article 27F(3) adds a further provision to the list of provisions and powers of the court detailed in Article 27D(4) which take precedence over an exclusion direction.

Article 27F(4) makes express provision for the making of Court of Appeal rules relating to the process of making applications to the court under Articles 27B and 27C.

Article 27F(5) sets out how the definitions of ‘complainant’ and ‘persons directly involved in the proceedings’, as referenced in Article 27A(7), are to be read in their application to Court of Appeal hearings.

Section 20: Guidance about Part 1

This section provides that the Department of Justice in Northern Ireland must issue guidance about the effect of Part 1 of the Act; and such other matters as the Department considers appropriate as to the criminal law or procedure relating to Part 1 in Northern Ireland.

The section specifies that the guidance must include information for the training of personnel in any public body that has functions within the Criminal Justice System in Northern Ireland that the Department considers appropriate on the effect of Part 1; and the sort of information to be obtained from them for the purpose of the assessment of the operation of the Act.

A person exercising public functions to whom the guidance relates must have regard to it in the exercise of those functions and the Department must keep any issued guidance about Part 1 under this section, under review and revise that guidance as necessary in light of review. Finally, the guidance (including any revised guidance) must be published.

Part 2: Trafficking and exploitation

Section 21: Support for victims of trafficking etc.

This section has the effect of extending the statutory assistance and support provided under section 18 of the 2015 Act to adult potential victims of slavery, servitude or forced or compulsory labour where there is no element of trafficking.

The section will have the effect of extending this support for an adult who has been given a reasonable grounds decision beyond the 45 days cited in the 2015 Act based on the needs of the individual.

Section 21 will also provide for support to a victim of slavery or trafficking after a positive conclusive grounds decision to be continued for a period of up to 12 months, or more than 12 months for such period as the Department may determine.

Section 22: Defence for slavery and trafficking victims

Section 22 amends Section 22(9) of the 2015 Act to include Class A drugs in the statutory defence provisions for a person over the age of 21 who has been compelled to commit the offence by reason of compulsion or exploitation

Section 23: Reports on slavery and trafficking offences

This section removes the requirement to publish an annual strategy on offences under section 1 and 2 of the Act and replaces it with a requirement to publish such strategy at least once every 3 years.

Section 24: Protective measures for victims of slavery or trafficking

Section 24 enables the Department to introduce steps or measures to protect a person from slavery or trafficking within 24 months of the date of Royal Assent. This will enable the Department to introduce measures such as Slavery and Trafficking Risk Orders (STROs), or activate the Duty to Notify provisions set out in the 2015 Act, if these are considered necessary, following an appropriate consultation process.

Any steps or measures will be introduced by regulations laid before and approved by the Assembly.

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".

Part 4: Final provisions

Section 29: Ancillary regulations

This section enables the Department to bring forward regulations to make any supplementary, incidental, consequential, transitional, transitory or saving provision considered necessary for the purposes of giving the full intended effect of the provisions of the Act; and specifies the Assembly control of any such regulations (i.e. whether the instrument is subject to negative resolution or if a draft of the instrument must be laid before and approved by a resolution of the Assembly).

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

Section 30: Commencement

This section sets out the commencement arrangements for the provisions of the Act, specifying those provisions that are to come into operation the day after Royal Assent and those that are to come into operation on days to be appointed by order made by the Department of Justice.

Section 31: Short title

This section sets out the short title for the Act, which is the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022.