

REVIEW OF THE LAW ON CHILD SEXUAL EXPLOITATION

Consultation on policy proposals
February 2019

Closing date for responses: 16 April 2019

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Section 1: About this consultation

Introduction

- 1.1 The Department of Justice ('the Department') has carried out a review of the current law relating to child sexual exploitation (CSE) and sexual offences against children in Northern Ireland. The review meets a commitment by former Justice Ministers to consider a wide range of legislative issues arising from the Report of the Independent Inquiry on Child Sexual Exploitation in Northern Ireland 2014 ('the Marshall Report') and the Justice Committee Report on 'Justice in the 21st Century' 2015.
- 1.2 This review has considered a wide range of issues, some of which have resulted in proposals to strengthen the law to prevent CSE and to further protect children from sexual abuse. This consultation seeks your views on these and any other issues that you think relevant but which have not been included.
- 1.3 In the absence of an Executive and an Assembly, it will not be possible to make significant policy changes or to take forward amendments to the law; these stages will have to await Ministerial direction. However, this consultation provides a timely opportunity to examine these issues carefully and to develop comprehensive policy proposals, informed by your views, which will be ready to be considered and taken forward by Ministers once the Executive is restored.

Responding to the consultation

- 1.4 The best way to access this consultation is online at <https://consultations.nidirect.gov.uk/doj-corporate-secretariat/review-of-the-law-on-child-sexual-exploitation>. The consultation includes a number of questions on which we would particularly welcome your views. The question numbers in this document correspond with those in the online questionnaire. You are also welcome to submit any other comments you might have on the content of the consultation.

- 1.5 The Department encourages you to respond using the online survey via the link above. Alternatively, you can send comments by email to CPB@justice-ni.x.gsi.gov.uk or by post to the address at paragraph 1.9 below. Please clearly indicate whether you are responding as an individual or on behalf of an organisation.
- 1.6 The consultation will be open for eight weeks. **The closing date for receipt of responses is 5pm on Tuesday 16 April 2019.** Please note that it is unlikely that responses to the consultation will be accepted after this date.

Alternative formats and further information

- 1.7 You may make additional copies of this report without seeking permission.
- 1.8 Hard copies and copies in other formats, including Braille, large print etc. can be made available on request. If you require an alternative format or a language other than English, please let us know and we will do our best to assist you. If you require any further information on the consultation process or the content of this document, or any other assistance to make a response, please contact the Department.
- 1.9 We can be contacted using the details provided below:

Address: Criminal Policy Branch
Department of Justice
Massey House
Stormont Estate
Belfast
BT4 3SX

Phone: (028) 90 169584

Email: CPB@justice-ni.x.gsi.gov.uk

Website: www.justice-ni.gov.uk/consultations

Screening

1.10 These policy proposals have been screened for equality impact and rural needs impact. No adverse impacts have been identified. Copies of these screening assessments are available on our website alongside the consultation document. We welcome any comments you might have on these screening documents. These screening assessments will be revisited if necessary if there are significant changes to the policy proposals as a result of consultation comments.

Freedom of information and General Data Protection Regulations

1.11 The Department intends to publish a summary of responses on its website on completion of the consultation process. Any contact details that will identify a respondent as a private individual will be removed prior to publication.

1.12 All information will be handled in accordance with the General Data Protection Regulations (GDPR). Respondents should be aware that the Department's obligations under the Freedom of Information Act 2000 may require that any responses, not subject to specific exemptions under the Act, be disclosed to other parties on request.

1.13 For further information about Freedom of Information and GDPR please contact the Information Commissioner's Office at <https://ico.org.uk/>.

Complaints

1.14 If you have any concerns about the way this consultation process has been handled, you should submit your complaint by email to standardsunit@justice-ni.x.gsi.gov.uk or write to the following address:

Standards Unit, Department of Justice
Knockview Buildings
Stormont Estate
Belfast, BT4 3SL

Section 2: Introduction

Background and scope

2.1 The Department has carried out a review of the law relating to CSE and sexual offences against children. This review meets a commitment by previous Justice Ministers to consider a number of issues where changes could be made to the law to strengthen protection for children from this type of abuse. The purpose of the review was to assess the adequacy and effectiveness of the current law to protect children from harm and the extent to which current offences remain appropriate, particularly in light of the way in which technology has changed how perpetrators now target and abuse children.

2.2 The specific issues under consideration arose from:

- the Report of the Independent Inquiry into Child Sexual Abuse and Exploitation in Northern Ireland ('the Marshall Report'). This Report, published in 2014, made 17 Key Recommendations and 60 Supporting Recommendations relating to cross-sectoral child protection, safeguarding arrangements and measures to prevent and tackle CSE. The Marshall Report found that the legislative framework in place in 2014 was largely adequate to protect children from sexual exploitation and abuse, and no significant gaps were identified. However, the Report also highlighted six areas where consideration could be given to improving and strengthening the law, all of which are included in this consultation;
- the Justice Committee's Report on Justice in the 21st Century ('Justice in the 21st Century'). This Report, published in 2015, made three proposals for legislative change relating to online child sexual exploitation. These proposals were presented to the Committee as possible amendments to the Justice (No. 2) Bill, but it was agreed that these would be considered later as part of the review of child sexual exploitation, to allow for proper engagement on these complex and difficult policy issues. These issues are now included in this consultation;

- examination of the law on CSE and sexual offences against children in neighbouring jurisdictions; and
 - other emerging issues relating to CSE which could require changes to the criminal law.
- 2.3 This consultation analyses these issues and presents some proposals for legislative change.
- 2.4 During the review, the Department engaged with the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service (PPS) to take the views of key criminal justice partners into account.
- 2.5 Preventing and stopping CSE requires a multi-agency approach including: early intervention and prevention; support for victims; disruption of CSE-related activities; and investigation and prosecution of perpetrators.
- 2.6 This consultation is specifically concerned with the criminal law in relation to CSE and sexual offences against children, as well as statutory powers to disrupt and stop abuse. Wider issues such as the criminal justice process, trafficking, public protection arrangements, organised crime, or support services for victims are outside the scope of this consultation.

Definitions

- 2.7 The Children (Northern Ireland) Order 1995 defines a **child** as a person under the age of 18. The words ‘child’ or ‘children’, as well as ‘young person’ and ‘young people’ are used throughout this document to refer to people under the age of 18 unless specified otherwise.
- 2.8 The **age of consent** to any form of sexual activity in Northern Ireland is 16. This means that it is an offence to have any sexual activity with a person under the age of 16. In cases where the child is over 13, the law provides that sexual activity is not unlawful if the defendant reasonably believes that the other person is over 16.

2.9 **Child sexual abuse** “occurs when others use and exploit children sexually for their own gratification or gain or the gratification of others.”¹ Sexual abuse involves forcing or enticing a child to take part in sexual activities which may involve physical contact, including penetrative or non-penetrative acts, and non-contact activities, such as involving children in looking at, or in the production of, pornographic material, watching sexual activities or encouraging children to behave in sexually inappropriate ways.²

2.10 **Child sexual exploitation** is “a form of sexual abuse in which a person(s) exploits, coerces and/or manipulates a child or a young person into engaging in some form of sexual activity in return for something the child needs or desires and/or for the gain of the person(s) perpetrating or facilitating the abuse”³.

2.11 Some examples of types of behaviour, which would normally occur outside of familial relationships and would be considered CSE include:

- planned and systematic exploitation of young people by gangs etc.;
- ‘party house’ scenarios where young people are expected to ‘pay’ for drugs and alcohol with sexual activity;
- worrying relationships between children aged under 16 and adults who are a few years older;
- seemingly consensual relationships which develop to include an expectation that the young person engages in sexual activity with the partner’s friends;
- online sexual grooming; and
- making and sharing of indecent images of a young person which can become the focus of bullying or blackmail.⁴

¹ Department of Health (2017) *Cooperating to Safeguard Children and Young People in Northern Ireland*

² Department of Health (2017) *Cooperating to Safeguard Children and Young People in Northern Ireland*

³ Safeguarding Board Northern Ireland (2014) *Professional Information: Child Sexual Exploitation Definition and Guidance*

⁴ Marshall, K. (2014) *Child Sexual Exploitation in Northern Ireland: the Report of the Independent Inquiry*

2.12 A young person may believe that they are in a consensual relationship with the perpetrator and not realise that they are victims of abuse. They may also feel that they are getting something ‘in return’ for the abuse by way of tangible items such as alcohol, drugs, cigarettes, money or other gifts, or intangible ‘rewards’ such as perceived affection, a sense of belonging or protection. Young people may also be afraid of what might happen if they do not comply with the perpetrator’s demands. These factors are part of the abusive process and distinguish CSE from other forms of sexual abuse.

2.13 CSE is a generic term used to describe various forms of the sexual exploitation of children. There is no specific offence of CSE, and cases of CSE generally include a range of different sexual and non-sexual offences.

Context

2.14 Awareness of CSE has increased considerably in recent years in light of high profile cases such as those in Rotherham and Rochdale in England which involved the large scale exploitation of children and young people. These cases prompted a number of wide ranging reviews, which have resulted in new legislative and non-legislative measures being put in place to prevent abuse and to provide better protection for children and young people.

2.15 The Marshall Report sets out the findings of the independent inquiry into CSE in Northern Ireland, making 17 key recommendations and 60 supporting recommendations relating to cross-sectoral child protection, safeguarding arrangements and measures to prevent and tackle CSE. The majority of these recommendations have been implemented. The status of each of the 17 key recommendations is provided at Annex A.

2.16 Recent digital and technological advancements have changed the way in which many perpetrators target children and carry out abuse.⁵ There have been significant increases in online and technology-based offending such as online

⁵ Centre for Youth and Criminal Justice, Barnardo’s Scotland (2017) *Over the Internet, Under the Radar: Prevention of Online Child Sexual Abuse and Exploitation in Scotland*

grooming, 'sexting', revenge pornography and live streaming^{6 7}. There have also been increases in image-based abuse, as indecent images and films depicting abuse can be made and shared quickly and easily while perpetrators exploit the anonymity and encryption of the 'dark web'.⁸

2.17 The rapid expansion of high speed internet access, combined with the ease with which children, from a very young age, can access it on a range of devices such as tablets, phones, smart televisions and games consoles, allows perpetrators to interact with children easily and instantaneously from almost anywhere in the world.⁹ The use of technology allows perpetrators to use a 'scattergun approach' to target large numbers of children using blanket messaging across a number of platforms, in the hope that a few of the children respond.¹⁰

2.18 Online abuse, including online sexual exploitation and sexting, are growing areas of concern for organisations delivering support services to children and young people.

2.19 For example, in 2016/17, ChildLine delivered 12,248 counselling sessions about online safety and abuse, representing an increase of 9% from the previous year, and 2,132 sessions on online child sexual exploitation, an increase of 44% from the previous year. 'Sexting' has been the most viewed topic on the ChildLine information pages for the last four years.¹¹

2.20 There are significant challenges in ensuring that the criminal law, as part of the overarching framework of legislation, policies and procedures to prevent and stop abuse, is adequate to address the changing way in which perpetrators operate. In particular, there is a need to ensure that existing offences remain appropriate in light of the changing nature of CSE, and to put in place new or amended measures if any 'gaps' in the law emerge.

⁶ Barnardo's (2015) *Digital Dangers: The impact of technology on the sexual abuse and exploitation of children and young people*

⁷ Internet Watch Foundation (2018) *Trends in Online Child Sexual Exploitation: Examining the Distribution of Captures of Live-streamed Child Sexual Abuse*

⁸ WeProtect Global Alliance (2018) *Global Threat Assessment*

⁹ See, for example, OFCOM (2016) *Children and Parents Media Use and Attitudes Report*

¹⁰ Barnardo's (2015) *Digital Dangers: The impact of technology on the sexual abuse and exploitation of children and young people*

¹¹ NSPCC (2017) *How safe are our children - report briefing: Northern Ireland context*

2.21 Recently, there has been increased awareness of other types of activity that may fall within the scope of this review, including: 'up-skirting', which describes the covert taking of photographs or filming underneath clothing; the importation and possession of child sex dolls; and offences involving abuse of a position of trust.

Who is at risk?

2.22 Although Northern Ireland has not seen any large scale cases of exploitation such as those in England, the nature of CSE in Northern Ireland, for example in terms of the ways in which perpetrators target children and the factors which make children vulnerable to abuse, is perceived to be similar to that elsewhere in the UK and Ireland,

2.23 Any child, regardless of age, gender, socio-economic or other factors, can be a victim of CSE.

2.24 CSE primarily affects young people at post-primary age (where concerns are first reported when a child is around 12-15 years old). Older children aged 16 and 17, although legally able to consent to sexual activity, can also be sexually exploited in situations where there is a power differential, an exchange of tangible or intangible 'rewards' or where they are not able to freely give informed consent.¹²

2.25 Most cases of CSE relate to young females but young males are also abused. Young males may have particular difficulties and a reluctance to identify their situation as abusive or to tell anyone about the abuse. Children in care are at a disproportionate risk of CSE, although most victims of CSE live at home. There are a wide range of complex risk factors which may make some children more

¹² Safeguarding Board Northern Ireland (2014) *Professional Information: Child Sexual Exploitation Definition and Guidance*

vulnerable to CSE. While most perpetrators are believed to be adult males, abuse can also be perpetrated by adult females and by other young people.¹³

- 2.26 It is difficult to determine the actual numbers of children affected by CSE as the abuse is, by its very nature, clandestine and hidden, with most sexual abuse never reported.¹⁴
- 2.27 The Marshall Report concluded that, in September 2014, 97 to 120 children across Northern Ireland were recorded as being at significant risk of CSE and 145 children were considered appropriate for a service referral. However, given the significant difficulties in estimating the numbers of children and young people at risk, the Report found that the actual number of children at risk was likely to be significantly higher.¹⁵
- 2.28 Other research indicates that amongst the general population of 16 year olds in Northern Ireland, one in nine had experienced grooming and one in 15 reported having been taken advantage of whilst under the influence of drink or drugs.¹⁶ It is also important to place these estimates in the context of the rapid changes in online and digital offending which have increased even in the short number of years since this data was collected.
- 2.29 The Police Service of Northern Ireland (PSNI) recorded 1,875 sexual offences against victims under 18 in 2016/17. This represents an increase of 3.6% from 2015/16 (1,809 sexual offences recorded against under 18s) and a further 23.7% increase from 2014/15 (1,516 sexual offences recorded against under 18s). The data only reflects the year in which an offence was reported, rather than when it was committed.
- 2.30 In 2017/18 there were 10 recorded cases of child abduction in Northern Ireland, as well as 36 recorded cases of kidnapping committed against people of all ages.

¹³ Pinkerton, J. et al, (2015) *Getting Focused and Staying Focused: A Thematic Review*, Safeguarding Board Northern Ireland and Queen's University Belfast

¹⁴ Barnardo's NI (2011) *'Not a world away': The sexual exploitation of children and young people in Northern Ireland*

¹⁵ Marshall, K. (2014) *Child Sexual Exploitation in Northern Ireland: the Report of the Independent Inquiry*

¹⁶ ARK (2010) *Northern Ireland Young Life and Times Survey*

2.31 In 2017/18 there were 123 recorded cases of harassment and 121 cases of malicious communications (including the offence of disclosing private sexual photographs and film with intent to cause distress) against people under the age of 18.

Section 3: The current legislative framework

3.1 The current legislative framework in Northern Ireland provides for a range of sexual offences, including some offences which can only be committed against children and which are categorised according to the age of the victim. There is no single, specific offence of CSE. Instead, cases of CSE are likely to include a number of different sexual offences as well as other, non-sexual offences including child abduction, trafficking, domestic violence and abuse, and blackmail.

Sexual offences

3.2 The **Sexual Offences (Northern Ireland) Order 2008** ('the 2008 Order') provides for a number of sexual offences against children which are categorised according to the age of the victim. These include:

- **Articles 12-15** - which provide for the offences of rape and other offences against children under 13. These articles include offences of assault by penetration, sexual assault and causing a child to engage in sexual activity without consent. In law a child under the age of 13 can never consent to sexual activity and there is no defence of believing that the child was of an older age.
- **Articles 16-22A** - which provide for offences against children under 16. These articles include offences of sexual activity with a child, causing or inciting a child to engage in sexual activity, engaging in sexual activity in the presence of a child, causing a child to watch a sexual act, arranging or facilitating the commission of a sex offence against a child, meeting a child following sexual grooming, and sexual communication with a child. In law a child under 16 cannot consent to sexual activity, but the law provides that sexual activity with a child aged 13-16 is not unlawful if the defendant reasonably believes that the child is aged 16 or over. These articles also make provision for child sex offences committed by children (for example in cases of peer on peer abuse).

- **Articles 23-42** - which provide for offences against children under 18. These articles provide for sexual offences against all children, in particular circumstances where older children might also be vulnerable, including abuse of a position of trust, familial sexual offences and abuse through prostitution or pornography.
- 3.3 The 2008 Order also includes other sexual offences which are not specific to children or categorised according to the age of the victim. Some of these offences may feature in cases of CSE or sexual abuse against children and are relevant to the this consultation, such as **Article 71** which provides for the offence of voyeurism.
- 3.4 Section 51 of the **Justice Act (Northern Ireland) 2016** ('the 2016 Act') provides for the offence of disclosing private sexual photographs and films with intent to cause distress. This offence is not specific to children and is not categorised according to the age of the victim. This offence targets behaviour commonly referred to as 'revenge pornography'. This type of behaviour may also engage other, non-sexual, offences such as harassment (under the **Protection from Harassment (Northern Ireland) Order 1997**), improper use of a communications network (under the **Communications Act 2003**) and blackmail (under the **Theft Act (Northern Ireland) 1969**).
- 3.5 The **Serious Crime Act 2015** provides for the offence of possession of a paedophile manual, defined as an item that contains advice or guidance about abusing children sexually.
- 3.6 The **Justice Act (Northern Ireland) 2015** ('the 2015 Act') amended the 2008 Order to provide for the offence of sexual communication with a child. It is an offence for a person over 18, for the purposes of obtaining sexual gratification, to intentionally communicate with a child under 16 where the communication is sexual in nature or is intended to encourage such as response from the child. For an offence to have been committed the perpetrator must have been aware that the person with whom they were communicating was under 16.
- 3.7 The 2015 Act also amended the offence of meeting a child following sexual grooming etc. (under Article 22 of the 2008 Order). The test to determine if

there has been an offence now requires there to have been contact between the perpetrator and victim “*on at least one occasion*”, a reduction from the previous threshold of “*on at least two occasions*”.

- 3.8 The **Criminal Justice and Immigration Act 2008** provides for an offence of possessing extreme pornographic images. The scope of this offence was extended by the 2016 Act to include images depicting rape or other non-consensual sexual acts.
- 3.9 The **Protection of Children (Northern Ireland) Order 1978** provides for an offence of taking, making, showing, distributing and possessing indecent photographs of children under the age of 18. The **Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988** provides for the offence of possession of an indecent photograph of a child. The **Coroners and Justice Act 2009** provides for an offence of possession of prohibited images of children (not photographs).

Abduction offences

- 3.10 The **Child Abduction (Northern Ireland) Order 1985** provides for offences of abduction of a child by a parent and abduction of a child by persons other than a parent. These offences only apply where the child is under 16.
- 3.11 The **Children (Northern Ireland) Order 1995** provides for the offence of abduction of a child in care etc. This offence applies to all children under the age of 18 who are in care, subject to an Emergency Protection Order, or in police protection.
- 3.12 The common law offence of kidnapping is the taking or carrying away of one person by another, by force or fraud, without the consent of the person taken or carried away and without lawful excuse. The related offence of false imprisonment applies when the individual is detained, rather than taken or carried away. These offences apply to both adult and child victims.

Civil prevention orders

3.13 The **Sexual Offences Act 2003** provides for civil prevention orders that can be used to place restrictions and/or positive requirements on individuals who pose a risk in the community for the purpose of protecting the public or particular members of the public from serious sexual harm. The orders in place in Northern Ireland are Sexual Offences Prevention Orders (SOPOs), Foreign Travel Orders (FTOs) and Risk of Sexual Harm Orders (RoSHOs). It is an offence to breach any of these orders.

Police powers

3.14 In addition to the use of the civil prevention orders described above, the PSNI has a range of statutory and non-statutory powers to help prevent and stop CSE including:

- Article 65 of the **Children (Northern Ireland) Order 1995**, which allows a child under 18 years old to be taken into police protection where police believe the child is at risk of 'significant harm';
- Article 19 of the **Police and Criminal Evidence (Northern Ireland) Order 1989**, which allows police to enter premises to arrest an individual for an indictable offence;
- Article 68 of the **Children (Northern Ireland) Order 1995**, which allows police to apply to the court for a Recovery Order to grant police specific powers to recover a child aged under 18 who is in care, under emergency protection orders, or in police protection, where that child has been abducted;
- A **Police Information Notice (PIN)** can be issued to individuals who have had an allegation of harassment made against them. These can be used in future legal proceedings to show that a suspect was aware that their behaviour would count as harassment.

- A **Child Abduction Warning Notice (CAWN)**, which is an administrative tool that can be issued against individuals who are suspected of grooming children. A CAWN states that the individual has no permission to associate with the named child and that, if they do so, they can be arrested. A CAWN has no statutory basis but can be used to form an evidence base for prosecutions for child abduction by rebutting the defence that the perpetrator did not know the child's age. A CAWN can be issued in respect of all children under 16 and children in care under 18.
- Other types of prevention order such as **Forced Marriage Protection Orders** and **Female Genital Mutilation Protection Orders** may also be used in CSE cases, although practices such as forced marriage and female genital mutilation are not thought to be prevalent in Northern Ireland.

The law in other jurisdictions

3.15 Given the similarities in the nature of CSE in Northern Ireland and elsewhere, we have examined the legislation relevant to CSE and sexual offences against children in England and Wales, Scotland and Ireland to identify any differences and to consider whether any recent changes should be adopted in Northern Ireland to strengthen the law.

3.16 In general, the law in these jurisdictions is very similar to that of Northern Ireland and recent changes have been aimed primarily at consolidating and strengthening existing provisions.

3.17 While the overall framework of legislation is similar, there are some differences in the legislative approach adopted elsewhere and, where that is the case, we have referenced these differences in this consultation, including: the various approaches to accommodating a defence of reasonable belief in the age of a victim; the law on up-skirting; the inclusion of live streamed images in offences of sexual exploitation; legislative references to child prostitution and pornography; and police powers.

Overall assessment

- 3.18 Most of the sexual offences relevant in cases in CSE are contained in the 2008 Order, which followed a comprehensive and wide ranging review of the law on sexual offences in Northern Ireland. More recently, the law has been supplemented with additional offences aimed at protecting both adults and children from sexual abuse.
- 3.19 In 2014, the Marshall Report found that, in general, the legislation provided adequate protection for children and that most of the issues with the law were about awareness and training.
- 3.20 The Report of the Parliamentary Inquiry into the effectiveness of legislation for tackling child sexual exploitation and trafficking within the UK found that the law in England and Wales was sufficiently robust to tackle CSE¹⁷. The law on sexual offences in England and Wales is very similar to the law in Northern Ireland, and many of the offences are identical. It would therefore seem reasonable to conclude that this assessment could extend to the Northern Ireland legislative framework.
- 3.21 However, the Report of the Parliamentary Inquiry did find that the application of the law in England and Wales was inconsistent, although this was mostly in respect of its application across the 43 different police forces, in contrast to Northern Ireland where there is only one police service.
- 3.22 Overall, the Department considers that the law relating to sexual exploitation and sexual offences to be generally robust and up to date. The review did not identify any significant gaps where the law could be considered inadequate or inappropriate. However, there are some areas in which the law could be further strengthened to protect children from CSE and sexual abuse. These issues are analysed in the next section along with proposals for legislative change where these may be necessary and appropriate.

¹⁷ Barnardo's (2014) *Report of the Parliamentary inquiry into the effectiveness of legislation for tackling child sexual exploitation and trafficking within the UK* (Chaired by Sarah Champion MP)

Section 4: Analysis of issues and proposed changes to the law

Introduction

4.1 This section sets out the Department's analysis of issues relating to the law on CSE and sexual offences against children. It makes a number of proposals for changes to the law which may be necessary to address identified 'gaps' and to strengthen protection for children and young people from sexual exploitation and abuse.

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

4.2 Children who have been sexually exploited or involved in prostitution or pornography should be considered as victims of abuse. It is important to ensure that the rights of child victims are protected, that they are treated as victims rather than criminals and that they are not held responsible for their abuse.

4.3 Offences under Articles 38-40 of the 2008 Order use the terms 'child prostitute', 'child prostitution' and 'child pornography'. The use of these terms is now considered outdated and minimises the abuse suffered by children through these forms of exploitation. Such terms imply that child victims are somehow responsible or willing participants in their own abuse, which has the effect of stigmatising and 'blaming' victims for what has happened to them.

4.4 The Department proposes that these terms should be removed from the legislative framework and replaced with the term 'sexual exploitation of children'. This will help to raise awareness of the status of children as victims of exploitation rather than as willing participants or complicit in the abuse perpetrated by others. This reflects a recommendation of the Marshall Report as well as recent legislative changes in England and Wales under Section 68 of the Serious Crime Act 2015.

- 4.5 Under this proposal, Articles 37-40 of the 2008 Order would be amended to remove references to child prostitution and child pornography and replace these with references to causing, inciting, controlling, arranging or facilitating the sexual exploitation of children. It seems sensible to adopt the same terminology and definitions as used in England and Wales in the equivalent provisions under sections 47-51 of the Sexual Offences Act 2003.
- 4.6 The proposed definition is: *‘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’*. In this context ‘payment’ means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount. The term ‘sexual exploitation’ would be interpreted according to this definition.
- 4.7 These proposed changes to the terminology will not affect the operation of the law. Other legislative provisions that refer to these offences will require consequential amendment.

QUESTION 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’? If you disagree, please explain why.

QUESTION 1(b): Do you agree or disagree with the proposed definition of ‘sexual exploitation of children’ as set out above? If you disagree, please explain why.

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

- 4.8 Article 41 of the Sexual Offences (Northern Ireland) Order 2008 (‘the 2008 Order’) makes provision for the interpretation of terms in the current child prostitution and pornography offences at Articles 37-40 of the 2008 Order.

Recently, the equivalent provision in England and Wales, Section 51(2) of the Sexual Offences Act 2003 ('the 2003 Act'), has been amended to make it explicit that the definition of child sexual exploitation (previously known as the child prostitution and pornography offences) covers images that are live streamed or otherwise transmitted as well as images which are recorded.

4.9 This amendment was a direct response to a case in England and Wales where child sexual abuse involving the live streaming of images was not successfully prosecuted due to it being unclear that such behaviour was covered by the relevant offences in the 2003 Act.

4.10 In order to clarify that images that are streamed or otherwise transmitted are included for the purposes of the child prostitution and pornography offences, it is considered that a similar amendment should be made to Article 41 of the 2008 Order.

4.11 There is a clear rationale for ensuring that images that are streamed or otherwise transmitted are included within the definitions of the prostitution and pornography offences, particularly given the changing nature of sexual abuse and the rise in the use of technology and digital devices by perpetrators in the sexual exploitation of children.

4.12 This proposal would require a minor amendment to the law. The Department has not identified any unintended or adverse consequences that would result from this change to the law.

QUESTION 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? If you disagree, please explain why.

3. Adequacy of the existing grooming offence

4.13 The Marshall Report recommended that the grooming offence under Article 22 of the Sexual Offences (Northern Ireland) Order 2008 ('the 2008 Order') should

be extended to include situations where an individual 'entices' a child under the age of 16.

4.14 This recommendation was intended to target the common 'scatter gun approach', used by perpetrators online to target a large number of potential victims with messages intending to solicit a sexual response, or indicate some degree of openness to becoming involved in such communication. The recommendation reflected concerns that the existing offence was not adequate to address this type of behaviour and did not allow the police to act or intervene at an earlier stage to prevent and stop abuse.

4.15 Since the publication of the Marshall Report in 2014, the offence of meeting a child following sexual grooming under Article 22 of the 2008 Order has been amended to lower the threshold. A perpetrator would now commit the offence if, for the purposes of sexual gratification, a person (aged 18 or over): met or communicated with a child (under 16, and who the adult does not believe to be 16 or over) on at least one occasion (previously two occasions); and intentionally met, travelled to meet, arranged to meet or travelled with the intention to meet the child; and did so with the intention of committing a sexual offence as defined in the 2008 Order. There is also now a new offence of communicating sexually with a child under Article 22A of the 2008 Order.

4.16 These changes were intended to allow for earlier intervention by police where they believe a child to be at risk of grooming but where elements of the grooming offence (prior to amendment) had not been met. These changes have the same rationale and have had a similar effect to what was intended in the Marshall recommendation.

4.17 There is evidence that these offences are working as intended, for example, between 1 April 2015 and 31 March 2018, the PPS made 70 prosecution decisions in relation to these two offences, of which 29 were for prosecution, three were for diversion and 38 were for no prosecution.

4.18 As a result of these recent changes to the law, the legislative 'gap' identified in the Marshall Report has been closed and the law now provides adequate measures to combat grooming and allow police to intervene earlier to prevent

children coming to harm. No further legislative gaps have been identified and therefore no further legislative changes are proposed.

QUESTION 3(a): Do you agree or disagree that the offence of grooming is adequate and appropriate? If you disagree, please explain why.

QUESTION 3(b): Do you agree or disagree that no changes to this offence are required? If you disagree, please explain why.

4. Defence of ‘reasonable belief’ in relation to sexual offences against children

4.19 The Sexual Offences (Northern Ireland) Order 2008 (‘the 2008 Order’) currently provides for a number of sexual offences against children which are defined according to the age of the child. For sexual offences against children aged over 13 but either under 16 or under 18, the law provides that a defendant does not commit the offence if he or she reasonably believes that the child is either 16 or over, or 18 or over. The offences that this applies to are:

- Sexual offences against under 16s (Articles 16-22A of the 2008 Order);
- Abuse of position of trust offences against under 18s (Articles 23-26 of the 2008 Order);
- Familial sexual offences against under 18s (Articles 32-33 of the 2008 Order); and
- Offences against children under 18 through prostitution and pornography (Articles 37-40 of the 2008 Order).

4.20 Under the current law, a defendant charged with one of these offences can state that he or she believed that the child was over the relevant age and it is then up to the prosecution to prove beyond all reasonable doubt that the defendant’s belief regarding the age of the child was not reasonable.

4.21 The Marshall Report recommended that this burden of proof should be changed so that, if the defendant wishes to rely on a defence of reasonable

belief, it should be for the defendant to prove that his or her belief was reasonable.

4.22 This recommendation arises from the fact that it is for the prosecution to disprove reasonable belief, which effectively allows perpetrators to avoid liability for their actions, and therefore falls short of an absolute prohibition on the sexual exploitation and abuse of children. The UN Committee on the Rights of the Child and the Northern Ireland Human Rights Commission have expressed the view that this aspect of the current law is not compliant with human rights standards.

4.23 Section 39 of the Sexual Offences (Scotland) Act 2009 ('the 2009 Act') introduced the defence of reasonable belief so that, in Scotland, the onus is now on the defence to prove the defendant's reasonable belief with regards to the age of the child, if the defendant wishes to avail of that defence.

4.24 The Supreme Court recently considered the law in Scotland and concluded that the defence of reasonable belief under Section 39(2)(a)(i) of the 2009 Act is lawful and does not breach the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR)¹⁸.

4.25 Changing the law so that it would be up to a defendant to prove his reasonable belief in relation to a child's age for the sexual offences listed at paragraph 4.19 above could be considered proportionate and justifiable as part of a general responsibility to protect children from sexual exploitation and abuse. This proposal is also consistent with international human rights standards and would ensure that the law is clear that it is an individual's responsibility to be sure of the age of a young person before engaging in any sexual activity with them.

4.26 If this change to the burden of proof is made, it would still be up to the prosecution to prove each element of the relevant offence to the criminal standard, including the age of the victim.

QUESTION 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

¹⁸ *AB v HM's Advocate (Scotland)* 2017 UKSC 25

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? If you disagree, please explain why.

4.27 The Department has also considered whether there may be circumstances where a defendant should not be able to use such a defence of reasonable belief.

4.28 The 2009 Act provides for three circumstances in which the defence of reasonable belief cannot be used. These exceptions are designed to prevent individuals who are already known or suspected of being a risk to children from being able to use such a defence:

- if the defendant has previously been charged by the police with a relevant sexual offence;
- if the defendant has a previous conviction for a relevant foreign offence committed against a person under the age of 16; or
- if a risk of sexual harm order is in force in respect of the defendant.

4.29 However, the Supreme Court has found the first of these exceptions to be in breach of a defendant's right to privacy under Article 8 ECHR because prior charges can relate to offences in which the age of the victim is not an essential component and do not therefore provide a sufficiently clear official warning or notice that consensual sexual activity with children between the ages of 13 and 16 is an offence.

4.30 The prior charges would therefore fail to alert the person charged to the importance of a young person's age in relation to sexual behaviour, and so could not justify depriving that person, if later charged with a sexual offence against a child, of the ability to use the reasonable belief defence.¹⁹ The Scottish Government has not yet formally responded to this finding.

¹⁹ *AB v Her Majesty's Advocate (Scotland)* [2017] UKSC 25

- 4.31 Since this has been found to be a breach of Article 8 ECHR it would not be appropriate to include this exception in any proposed legislative change. It could be considered reasonable and desirable to provide an exception where the defendant has a previous conviction (as opposed to a charge) for a relevant sexual offence.
- 4.32 It is arguable that a conviction constitutes sufficient warning to the defendant in relation to the law on sexual activity with children, and therefore depriving the defendant of the right to use a defence of reasonable belief would be reasonable and proportionate.
- 4.33 It may be necessary to restrict the list of offences considered 'relevant' for the purposes of this defence to those offences to which the defence itself would apply to ensure that the law does not breach ECHR.

QUESTION 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? If you disagree, please explain why.

- 4.34 Although the Supreme Court did not consider the second and third exceptions under the 2009 Act, it could reasonably be argued that either a previous conviction for a relevant foreign offence or a risk of sexual harm order (which, although it does not require a previous conviction, applies specifically where the individual is considered a risk to children) would constitute sufficient warning that sexual activity with children under the age of 16 is unlawful. The Department is therefore of the view that these exceptions would be compliant with Article 8 ECHR.
- 4.35 On balance, it would seem appropriate to follow the Scottish model and provide exceptions so that individuals who are demonstrably a risk to children, either because they have been convicted of sexual offences against children abroad or because they are subject to a Risk of Sexual Harm Order, are not able to avail of a defence of reasonable belief. This would help to prevent people who

deliberately and repeatedly target children from being able to avoid responsibility for their crimes and continue to abuse children.

QUESTION 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? If you disagree, please explain why.

QUESTION 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? If you disagree, please explain why.

QUESTION 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? Please provide details.

5. Abuse of trust offences

4.36 Articles 23-26 of the Sexual Offences (Northern Ireland) Order 2008 ('the 2008 Order') provide for offences of sexual activity with a child through abuse of positions of trust which apply to all children under the age of 18. The offences currently only apply where the position of trust is in the context of a statutory responsibility such as education, state care and criminal justice.

4.37 The positions of trust do not include parental responsibility and other family relationships which are covered by Articles 32-33 of the 2008 Order (familial sexual offences).

4.38 The Department is aware of calls to change the law in relation to 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.

4.39 It has been argued that those in authority in sport have substantial influence and power over young people (particularly in relation to competitive sports) and that there have been a number of serious cases where this position of trust has been abused and resulted in the grooming of, and sexual relationships with, children and young people in sport.

4.40 While the law makes provision for sexual offences against children under 16, it has been argued that an otherwise consensual relationship between a 16 or 17 year old and a person in a position of authority over them is inappropriate on the grounds that it is open to exploitation and abuse. Some argue that there is therefore a legislative gap which needs to be addressed.

4.41 The issue of extending the position of trust offences to include sports coaches was previously considered in 2010, when consultation was carried out with sports bodies and the Department for Culture, Arts and Leisure. Following that work, it was decided that no changes would be made to the existing position of trust offences for the following reasons:

- the original policy intention underpinning these offences was not designed to include positions of trust outside of the strictly formal definition in the current legislation, which focuses on positions of trust governed by the state, for example in education, state care and the criminal justice system;
- adding sports coaches as a single group would be outside the scope originally envisaged;
- the opposition of sports organisations to being singled out in this way;
- the unclear evidence surrounding whether there is a real problem to be addressed; and
- the difficulties in defining a sports coach in legislation.

4.42 Since then, there has been a policy shift towards more administrative ways of addressing child protection issues in sport as well as other activities.

4.43 The Department has considered this issue again and concluded that there has not been any significant change or new evidence presented since the 2010 review clearly indicating a significant issue relating to abuse and exploitation of 16 and 17 year old children by sports coaches in Northern Ireland that would require a legislative response. There is also no clear evidence of problems relating to abuse of these older children involved in other activities, such as church groups, Scouts/Guides or other social clubs. There does not seem to be an established need to change the law to further expand the scope of abuse of trust offences.

4.44 The policy basis for establishing position of trust offences was to provide additional protection for 16 and 17 year olds, who could otherwise legally consent to sexual activity, in circumstances of state care. This is a reflection of the need for the state to adopt the highest level of safeguards towards children in its care. The evidence suggests that it may not be appropriate to extend this protection in relation to 16 and 17 year olds taking part in normal recreational activity. Children under the age of 16 are already protected, as any sexual activity with a child under 16 is prohibited by the law on consent.

4.45 We are aware that this issue is currently being considered by the Department for Digital, Culture, Media and Sport, the Ministry of Justice and the Home Office in relation to England and Wales. While we do not think a change to the law is appropriate at this stage, we would propose to keep this issue under review, taking account of experience and developments elsewhere as necessary and appropriate.

QUESTION 5(a): Do you agree or disagree that the abuse of trust offences should not be extended to include sports coaches and other groups outside of the state sector? If you disagree, please explain why.

6. Indecent 'self' images of children under 18

4.46 Article 3 of the Protection of Children (Northern Ireland) Order 1978 ('the 1978 Order') provides that a person who takes, allows to be taken, distributes, shows, possesses with a view to distribute or show, or publishes or causes to be published an indecent photograph or pseudo-photograph of a child under the age of 18 is guilty of an offence.

4.47 Justice in the 21st Century suggested an exception to the current law to provide that a person under 18 who takes etc. an indecent image of themselves would not commit a criminal offence. The report also suggested that someone under 18 who takes or shares an indecent image of another person under the age of 18 would only commit a criminal offence if it was done with malicious intent.

4.48 This recommendation arose from concerns that children who have shared images of themselves, often online, and are scared about what someone else might do with that image, may be reluctant or afraid to ask for help for fear of getting into trouble. This makes these children more vulnerable to further exploitation and harm.

4.49 This issue relates to activity commonly known as 'sexting' which involves making and sending sexually explicit texts, images and videos via mobile phones, tablets, computers and other digital devices.

4.50 The rationale underpinning this recommendation is that the law should protect rather than criminalise children, particularly in situations where they have taken or shared indecent images of themselves, because they lack maturity and judgement rather than through any intention to commit an offence or cause harm to others. In these circumstances, the knowledge that they have actually committed an offence can compound the trauma they experience around fears about the image being shared further than they intended.

4.51 The Department recognises these concerns and would similarly want to ensure that the law does not criminalise young people unnecessarily. As a result, the review looked carefully at whether the current offence, in practice, created outcomes of this nature. On the face of it, the suggested exception to the

current law for children under 18 who take etc. an indecent image of themselves might seem to offer a sensible way to ensure that young people are not subject to criminal sanction for an act of immature folly, and those who find themselves caught up in such behaviour can access help if their actions escalate beyond their control.

4.52 On the other hand, it is also important to consider that changing the law to allow young people to share indecent images of themselves could potentially create a 'gap' where these young people could distribute indecent images of themselves unsolicited to others which could be distressing for the recipient and, in the event that the images are shared with other children, could actually amount to abusive behaviour in itself. There is also the risk that indecent images of children under 18, even if taken legally by the young person themselves, could be acquired, shared and distributed by adults who pose a risk to children.

4.53 During the review, criminal justice agencies indicated that, in practice, situations where a child under 18 takes or shares indecent images of themselves are approached with a focus on safeguarding children rather than commencing unnecessary criminal proceedings.

4.54 PSNI guidance on 'Sexting and the Law' clearly states that, while it is an offence for a child to make and possess an indecent image of themselves, these cases will be dealt with sensitively and considered individually and with regard to all the circumstances, including issues such as any disparity in age between the young people involved, how many people the image was shared with, the nature of the images, and the response of parents, school and social services to the incident.

4.55 The PSNI will often discuss a case with the PPS at an early stage, without formally opening an investigation, in order to prevent young people being brought unnecessarily into the criminal justice system. PSNI will however record details of referrals even where cases are not progressed so that concerning patterns of behaviour and repeat offending can be identified.

4.56 In the event that a case is progressed, the application of the public interest test by the PPS provides further protection against the unnecessary and

inappropriate criminalisation of a young person for distributing a self-image. In practice, these cases are unlikely to result in a decision to prosecute the child involved. For example of 113 prosecution decisions for suspects under the age of 18 relating to indecent images offences made between 1 April 2015 and 31 March 2018, only six were directed for prosecution. A further 22 decisions were for non-court diversions such as youth conferences or cautions and 85 were decisions of no prosecution, either on an evidential basis or in the public interest. There is therefore no evidence to suggest that children are being unnecessarily criminalised for taking indecent images of themselves.

4.57 The second part of the Justice Committee's proposal suggests that someone under 18 who takes or shares an indecent image of another person under the age of 18 would only commit a criminal offence if it was done with malicious intent.

4.58 The PSNI and PPS have previously expressed concerns about the term 'malicious intent'. The requirement on the PPS to prove this element of an offence would present an evidential burden that could be difficult to overcome.

4.59 The concern is that the inclusion, for under 18s, of a 'malicious intent' requirement in the offence of distributing etc. an image of another young person, would add a difficult subjective test where a prosecution was considered to be in the public interest. The level of difficulty involved in proving malicious intent, particularly in the case of an immature young person, is likely to be extremely high. This could have the unintended consequence of making those few cases, where a decision to prosecute is considered to be in the public interest, more difficult to prosecute.

4.60 The evidence suggests that the current law, as applied by criminal justice agencies, provides a satisfactory balance between protecting children from exploitation through the taking and sharing of indecent images, while also protecting them from unnecessary criminalisation where they have not intended to cause harm. Overall, the law seems to work well at present and there does not appear to be sufficient justification to change it.

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

7. Using online anonymity to harass

4.61 Justice in the 21st Century proposed an amendment to the Protection from Harassment (Northern Ireland) Order 1997 ('the 1997 Order') to deal with situations where an individual uses anonymity provided by the internet and/or the ability to create multiple online accounts to harass another person.

4.62 This recommendation stems from concerns based on the perceived low number of prosecutions. It has been suggested to us that a change in the law would allow for longer sentences for aggravated harassment offences.

4.63 This recommendation has been considered in light of how the current law on harassment is working and how the law takes account of the use of anonymity to commit harassment.

4.64 Articles 3 and 4 of the 1997 Order provide for the offence of harassment. Sentencing guidelines on offences within the 1997 Order provide scope for the courts to deal with aggravating factors that include issues such as anonymity. For example, the guidelines already recognise both 'creating email/website accounts purporting to be the victim' and 'offender using social media to target victim and/or commit the offence (e.g. cyber-bullying)' as aggravating factors when passing sentence.

4.65 This type of behaviour may also be captured under the offence of improper use of public electronic communications network under Section 127 of the Communications Act 2003 ('the 2003 Act').

4.66 The sentencing guidelines for offences under the 2003 Act recognise the use of social media to target the victim and/or commit the offence as an aggravating

factor. Both the PSNI and PPS have indicated that the existing offences and sentencing guidelines work well and that no changes to the law are necessary,

4.67 Also, statistics do not indicate low levels of prosecution and convictions that would suggest that there are any significant problems with the current law. In 2016 there were 349 prosecutions for harassment under Article 3 of the 1997 Order, resulting in 156 convictions. There were 197 prosecutions for offences under Section 127 of the 2003 Act in the same year, resulting in 105 convictions.

4.68 On balance, the current law on harassment appears to be working as intended and there does not appear to be a legislative gap where individuals are able to harass other people online without committing an existing offence. The existing sentencing guidelines appear adequate to address situations where a case involves aggravating factors such as anonymity so that this type of behaviour is taken into account by the courts.

QUESTION 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? If you disagree, please explain why.

8. Adults masquerading as children online

4.69 Justice in the 21st Century proposed a new law to prohibit an individual of 18 or above, who masquerades as someone below that age, from engaging online with an individual they know or believe to be under the age of 18. This would mean that an adult masquerading as someone under 18 would commit an offence unless they could prove that they did so with reasonable cause or lawful authority.

4.70 This proposal stems from concerns that some individuals are repeatedly pretending to be children online as a precursor to grooming or other offences

and that this behaviour is an indicator that these individuals present a risk to children. The act of simply pretending to be a child online does not meet the elements of the existing grooming offences under the Sexual Offences (Northern Ireland) Order 2008 ('the 2008 Order'), and it has therefore been argued that there is a legislative 'gap' that should be addressed.

- 4.71 This proposal has been considered only in the context of CSE and sexual offences against children. There may be innocent reasons why some adults might pretend to be children online for the purposes of non-sexual activity, for example, where an adult with an immature or childish hobby pretends to be under 18 when engaging in online discussion about that interest to prevent embarrassment, or to participate in online gaming.
- 4.72 There does not appear to be any clear reason why the law should seek to criminalise individuals in such circumstances where they have no intention of committing an offence and where they pose no risk to children.
- 4.73 Where an adult pretends to be a child online, and where that adult's intention is to commit, or try to commit, a sexual offence against a child, it is likely that related activities carried out by the adult would be covered by existing grooming offences in the 2008 Order.
- 4.74 For example, the adult's communications with a child online may fall within the offence of 'sexual communication with a child' (Article 22A of the 2008 Order) or the offence of 'arranging or facilitating commission of a sex offence against a child' (Article 21 of the 2008 Order) or, in the event that the adult intends or has travelled to meet the child, 'meeting a child following sexual grooming' (Article 22 of the 2008 Order).
- 4.75 While the Department recognises the need to intervene early to prevent abuse, it is difficult to see how an offence could be constructed to capture the act of an adult masquerading as a child online but where they have not said or done anything to suggest an intention to commit an existing sexual offence against a child. To do so would create a blanket offence which an individual could commit even if they have no intention of committing a sexual offence against a

child, where they are not a risk to children, and where no harm has been caused to a child.

4.76 Changing the law in this way could result in unnecessary criminalisation of individuals which would be a serious adverse consequence of expanding the grooming offences to include adults masquerading as children online.

4.77 There are other tools available to the PSNI to stop individuals who are a risk to children before the commission of a criminal offence, such as Police Information Notices (PIN) and Child Abduction Warning Notices (CAWN), although the latter can only be used in relation to a specific child and with the knowledge of the child's parents or carers. Where an individual has a previous conviction for a sexual offence, or where they are believed to have committed prior sexual offences against children but do not have a conviction, that individual could also be made subject to a civil prevention order which could place restrictions on them such as use of internet and mobile devices, or a prohibition on contact with children.

4.78 On balance, the Department is of 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 does not propose to make any changes to the existing grooming offences.

QUESTION 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? If you disagree, please explain why.

9. Up-skirting

4.79 'Up-skirting' is a term used to describe a situation where an individual covertly films or takes photographs directed up a female's skirt in order to obtain images of their underwear, genitals or upper-thigh area. There have been a number of recent cases involving up-skirting in Northern Ireland as well as in England and

Wales but there is currently no specific offence in Northern Ireland which covers this type of behaviour.

4.80 This type of behaviour falls within the scope of the voyeurism offence in Scotland under Section 9(4A) and (4B) of the Sexual Offences (Scotland) Act 2009 ('the 2009 Act'). Earlier this year the Voyeurism (Offences) Act 2019 ('the 2019 Act') amended the voyeurism offence under section 67 of the Sexual Offences Act 2003 to criminalise up-skirting in England and Wales. The 2019 Act will come into force on 12 April 2019.

4.81 While up-skirting can be committed against people of all ages, there is evidence that children have been the victims of this type of behaviour and this type of behaviour is related to concerns about the use of digital and technological advancements to exploit and abuse children and the taking and sharing of indecent images. For these reasons, it is appropriate to consider this issue within the context of this consultation.

4.82 Since there is currently no specific offence of up-skirting, if this behaviour is reported to the PSNI it is likely to be captured under non-sexual offences such as breach of the peace, disorderly behaviour or outraging public decency. These offences can only be prosecuted if the behaviour occurred in a public place and therefore may not cover, for example, instances where a teacher or pupil was up-skirted in a school.

4.83 These offences are not sexual offences and they do not capture the sexual element of the behaviour. Consequently, victims do not have automatic entitlement to anonymity and perpetrators are not considered to have committed a 'qualifying offence' for the purposes of obtaining a Sexual Offences Prevention Order or other civil prevention order which could place restrictions on them to protect people from sexual harm.

4.84 It could therefore be argued that there is no way of challenging or changing the offending behaviour, which makes it more likely to reoccur, and the fact that the only available offences are non-sexual may minimise the seriousness of the offending and the impact it can have on victims.

4.85 There are also limitations with the existing offences themselves which arguably create a 'gap' where behaviour that would constitute up-skirting would not be an offence. For example the offence of voyeurism only applies to filming of actions that take place in private, whereas up-skirting usually occurs where the victim is in a public place. The offence of outraging public decency usually requires someone to have witnessed the action but up-skirting is often unobserved and the victim may not even be aware that it is taking place.

4.86 Data on the prevalence of this type of behaviour is not available as up-skirting is not a separate criminal offence but we do believe that it occurs. In Scotland there were 13 prosecutions in total for up-skirting type behaviour under Section 9(4A) and (4B) of the 2009 Act between 2011/12 and 2015/16.

4.87 There appears to be a clear rationale to make up-skirting unlawful to protect people, including children, from this type of sexual crime. It is also clear that this type of behaviour may not be caught by other offences and, even if it is caught, the nature of those offences does not capture the sexual nature of the behaviour and may minimise the impact on victims. There is therefore a legislative 'gap' that needs to be addressed.

QUESTION 9(a): Do you agree or disagree that there is a need to change the law to make up-skirting a criminal offence? If you disagree, please explain why.

4.88 The Department proposes to amend the existing voyeurism offence under Article 71 of the Sexual Offences (Northern Ireland) Order 2008 ('the 2008 Order') to include up-skirting behaviour. This approach mirrors that in Scotland and in England and Wales, where up-skirting falls within the voyeurism offences. It also seems sensible to consider the precise legislative definitions of up-skirting in those jurisdictions.

4.89 The provisions in Scotland and in England and Wales 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 (whether exposed or covered with underwear) 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. It is also an offence to install equipment, or construct or adapt a structure for the purposes of committing such an act.

4.90 The Department proposes to make upskirting a criminal offence by amending the existing voyeurism offence in line with the definition of upskirting used in Scotland, and England and Wales. This seems to be a sensible approach as it would use an existing legislative definition which appears to be working well and it would also ensure consistency across the jurisdictions.

QUESTION 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? If you disagree, please explain why.

10. Child sex dolls

4.91 There have been a number of recent cases involving individuals in possession of child sex dolls in England and Wales. Child sex dolls are often manufactured to look like a child, are of lifelike weight, anatomically correct, have moving parts and may have functions such as warming up and vibration. They are often purchased via common trading sites such as Amazon and eBay and the main issue at present seems to involve individuals importing these dolls from countries such as Hong Kong and China.

4.92 The National Crime Agency believes that the purchase of child sex dolls can indicate other offences against children and the NSPCC argues that child sex dolls normalise sexual abuse against children and can lead to offending. For example, in recent cases in England and Wales defendants have also been convicted of possession of indecent images of children.

- 4.93 Under the Customs Consolidation Act 1876, which applies in all UK jurisdictions, it is an offence to import obscene or indecent items. This legislation has been used to prosecute people for importing child sex dolls in England and Wales. It is possible that other legislation could be used to deal with this type of behaviour, such as the Obscene Publications Act 1959 and Indecent Displays (Control) Act 1981 in England and Wales, or the common law offence of publishing, exhibiting or selling indecent or obscene things in Northern Ireland, but there have been no prosecutions to date for any offences relating to child sex dolls other than importation.
- 4.94 The Department is aware of only one case to date involving what was believed to be a child sex doll in Northern Ireland. The item was intercepted at a port, so therefore would have been covered under existing legislation, but the case did not proceed due to evidential difficulties.
- 4.95 The recent cases in England and Wales have highlighted a potential ‘gap’ in the law where the possession, manufacturing and distribution of child sex dolls is not a criminal offence, even though the possession of such a doll may suggest that an individual is a risk to children. There have been calls for the manufacturing, distribution and possession of child sex dolls to be criminalised in line with the laws on indecent images.
- 4.96 The NSPCC has also expressed concern that the existing offence of importing indecent or obscene items creates an unsatisfactory situation where it is up to Border Force officers to ‘police’ this issue by identifying and seizing items if they are deemed to be indecent or obscene. This process is arguably not sufficiently robust and there is a risk that dolls will be able to slip through the importation process to be used by individuals who are a risk to children.
- 4.97 This is a UK wide issue and the Home Office, National Crime Agency and police in England and Wales are currently undertaking work to improve understanding of the nature and extent of this behaviour involving child sex dolls, and consider whether any future legislative or non-legislative change might be necessary.

4.98 While there may be a gap in the law in relation to the possession and manufacture of these dolls, the Department believes it would be of benefit to await the conclusion of the work currently underway elsewhere, which may impact on matters which are not devolved such as online regulations and importation, before considering any future changes to the law in Northern Ireland. There is no evidence of a pressing need to change the law, given that only one case has been identified to date which was covered by existing offences in any case.

4.99 The Department intends to stay abreast of developments and keep this issue under review. Subject to the outcome of any developments, specific proposals may be brought forward at a later date.

QUESTION 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? If you disagree, please explain why.

11. Sexual offences against children: compliance with international standards

4.100 The Marshall Report recommended that the Department should ensure compliance with international standards by extending protection to children up to the age of 18, specifically the Child Abduction (Northern Ireland) Order 1985 (this is discussed separately under Issue 2 below) and the Sexual Offences (Northern Ireland) Order 2008 ('the 2008 Order'). 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.

4.101 The Department is aware of concerns regarding the current law in relation to the burden of proof for sexual offences against children. This issue has been addressed separately above.

4.102 These concerns have been considered particularly in relation to compliance with the Optional Protocol to the UN Convention on the Rights of the Child on

the sale of children, child prostitution and child pornography. The Optional Protocol requires that domestic law should protect all children under 18 from offences relating to child prostitution and child pornography.

4.103 The Department considers that the relevant provisions (Articles 37-40 of the 2008 Order) are compliant with the Optional Protocol because they apply to all children under the age of 18. The Department is not aware of any other areas of law relating to sexual offences against children where there could potentially be non-compliance with the Optional Protocol.

4.104 Alternatively, this recommendation may relate to concerns that some sexual offences only apply where a child is under the age of 16. These offences are contained in Articles 16-22 of the 2008 Order and, in essence, provide that sexual activity with a person under the age of 16 is unlawful, regardless of consent.

4.105 The effect of these provisions is that, although not explicitly expressed in such terms, the age of consent for sexual activity in Northern Ireland is 16.

4.106 The Department does not consider that there is a policy justification to raise the age of consent or that there would be widespread public support to do so. The current legal framework recognises the rights of young people aged 16 and 17 to engage in consensual sexual relationships, reflective of their increasing maturity and independence.

4.107 The law also provides for a number of categories of sexual offences which apply where a child is aged under 18 in situations where they are particularly vulnerable to abuse. These situations include child prostitution and pornography, abuse where the perpetrator is in a position of trust, and familial sexual offences.

4.108 The Department is of the view 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.

4.109 No gaps in the law have been identified in relation to this recommendation and therefore the Department does not propose any changes to the law.

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

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

4.110 The Marshall Report recommended that the Department should ensure compliance with international standards by extending protection to children up to the age of 18, specifically in relation to the Child Abduction (Northern Ireland) Order 1985 ('the 1985 Order').

4.111 The PSNI has indicated that it would support this recommendation because children aged 16 and 17 are still vulnerable to CSE and the extension of the child abduction offences would provide the PSNI with additional tools to protect these older children from abuse.

4.112 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. This is in contrast to Article 68 of the Children (Northern Ireland) Order 1995 ('the 1995 Order') which provides for the offence of abduction of a child in care which applies to children under the age of 18. This different treatment of children in care and children not in care has led to concerns that the law creates a 'gap' where children aged 16 and 17 years old who live at home, but who are vulnerable to CSE and abuse, are not protected from the offence of child abduction.

4.113 The Article 68 offence under the 1995 Order applies to children where they are in the care of the state and where the state is effectively in *loco parentis*. This offence includes all under 18s, reflecting the need to ensure more stringent controls on the state's care of these particularly vulnerable children up until the age of 18 when the state relinquishes this duty of care.

4.114 In general, it is important to consider this issue in light of the context of the wider legal rights of 16 and 17 year olds to live independently and make their own decisions about where they live, reflecting their increasing maturity and move towards adulthood. The law needs to strike the right balance between providing the necessary provisions to protect these older children from abuse and exploitation while also allowing for an increasing level of personal autonomy and choice appropriate to their age.

The Article 3 offence of abduction by parents

4.115 The Article 3 offence of abduction relates to situations where a parent takes or sends a child outside of the UK for a period of more than 28 days without appropriate consent. This offence is very unlikely to feature in cases involving CSE, where it would be highly unusual for the perpetrator to be a parent.

4.116 The Department is not aware of any specific concerns relating to the Article 3 offence and there does not appear to be any need to extend the scope of this offence to children aged 16 and 17.

4.117 Cases of this type would also fall under the 1980 Hague Convention, which provides for civil aspects of child abduction cases²⁰. In practice, the legal decision to return a child is a matter for the court in the country dealing with the Hague proceedings. This ceases to apply once a child turns 16 years old.

4.118 Any extension of Article 3 to include children up to the age of 18 is likely to present jurisdictional and practical issues in enforcement for 16 and 17 year olds who have been abducted and taken abroad, as the foreign country may not recognise this as a case of abduction since the circumstances fall outside the Hague Convention.

4.119 The offences of kidnapping or unlawful imprisonment already cover situations where a child aged 16 or 17, to whom the existing abduction offence does not apply, is taken or detained without their consent. There are other tools to prevent children up to the age of 18 from being taken out of the country, such

²⁰ The Hague Convention regulates which country has jurisdiction in cases of child abduction, provides for the return of the child to the country where they are habitually resident and requires countries to cooperate with each other.

as Female Genital Mutilation protection orders and forced marriage protection orders, which may also be appropriate, depending on the individual circumstances of a case.

4.120 On balance, it does not appear necessary to extend the scope of the Article 3 child abduction offence to include 16 and 17 year olds and therefore the Department does not propose any changes to the law.

QUESTION 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? If you disagree, please explain why.

The Article 4 offence of abduction by others

4.121 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 so as to remove or keep the child from a person entitled to have lawful control of the child. Of the two abduction offences in the 1985 Order, this one is more likely to feature in cases of CSE.

4.122 The extension of this offence to include all children under 18 would provide police with an additional tool to protect older children in situations where they are still vulnerable to exploitation and abuse.

4.123 On the other hand, this could also potentially criminalise the partners of 16 and 17 year olds in an otherwise legal and consensual relationship. This could happen where, for example, a 16 or 17 year old is living with a partner (who could be another 16 or 17 year old themselves) and the parents of the child do not approve of the relationship. The parents could make a complaint to police that the partner had committed an offence under Article 4, in that the child was being 'detained' and kept away from their parents who are 'entitled to lawful control of the child'. Such a complaint could be made even where the child had

consented and chosen their living circumstances and where the parents had made a malicious complaint about the individual in question.

4.124 This 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, unless they are at risk of harm, or where the child is in a situation where they are particularly vulnerable, such as prostitution and pornography, or where the partner is in a position of trust.

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

4.126 On balance, there does not appear to be sufficient evidence to justify extending the protection offered by this offence to 16 and 17 year olds.

QUESTION 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? If you disagree, please explain why.

13. Recovery orders for children not in care

4.127 The Marshall Report recommended that the Department should consider introducing recovery orders under the Child Abduction (Northern Ireland) Order 1985 ('the 1985 Order') for children who are living at home or independently who have been abducted, along the lines of the current recovery order available for children in care.

4.128 Article 68 of the Children (Northern Ireland) Order 1995 ('the 1995 Order') defines an offence of 'abduction of children in care etc.' while Article 69 makes

provision for a recovery order (a court order) to provide police with specific powers to recover a child who has been abducted.

4.129 This recovery order only applies to children in care, under emergency protection orders or in police protection, and can be made where a court believes that a child under 18 has been taken away, kept away, has run away, or is staying away from a responsible person or is missing.

4.130 The child abduction offences under Articles 3 and 4 of the 1985 Order (child abduction by a parent and child abduction by a person other than a parent) relate only to children under the age of 16. There is no provision for a recovery order to be made in respect of these offences. There is no provision for equivalent recovery orders for children not in care in England and Wales. Similar powers to apply for an order to recover children in care exist under the Children Act 1989 in England and Wales.

4.131 The rationale for this proposal is that it would enhance existing police powers to deal with cases of child abduction. The powers currently available to police include:

- Article 65 of the 1995 Order, which allows a child under 18 to be taken into police protection where police believe the child is at risk of 'significant harm'. However, the definition of significant harm can create a high threshold that may not be met in circumstances such as party houses²¹ where a person under 16 has absconded willingly with an older person;
- Child Abduction Warning Notices which do not provide police with formal powers and may not remove the child from immediate danger, but can be used as an administrative tool to assist in future prosecutions; and
- Section 19 of the Police and Criminal Evidence (Northern Ireland) Order 1989 which allows police to enter premises to arrest an individual for an indictable offence. However, it is likely that a child has already come to

²¹ The party house scenario is described as involving the availability of drugs and alcohol, and exploitation of a young person by more than one other person. See Marshall, K. (2014) *Child Sexual Exploitation in Northern Ireland: the Report of the Independent Inquiry* at pp. 37-39

significant harm (since an indictable offence has been committed) by the time this threshold is met.

4.132 While the Department recognises these limitations in relation to the existing police powers to intervene where a child may have been abducted, it is not clear that a recovery order would necessarily be an appropriate tool in relation to children who are not in care.

4.133 It is important to recognise the difference between state responsibilities and parental care. Recovery orders are needed in respect of children in care to ensure that the state can discharge its duty of care to these children until the age of 18, in circumstances which are very different from ordinary parental responsibility.

4.134 It is also necessary to consider the elements of the existing recovery order for children in care and how it might work in practice if it were to be available in respect of children who are not in care.

4.135 One issue is whether it would be appropriate for a recovery order to be available in respect of both Article 3 and Article 4 child abduction offences. The Article 3 offence of parental child abduction is not a feature of CSE cases in Northern Ireland and the current arrangements under the Hague Convention 1980²² to recover children who are victims of the Article 3 offence are considered to be adequate. In addition, there are likely to be issues enforcing such a Recovery Order in foreign jurisdictions.

4.136 There does not appear to be any clear need for a recovery order for children not in care in relation to the Article 3 offence of child abduction.

4.137 The Article 4 offence of child abduction, where a child is abducted by a person other than their parents, is more likely to feature in cases of CSE. It is necessary to consider how a recovery order might apply in situations covered by the Article 4 offence, including issues such as who would be able to apply to the court for such an order and how any associated costs would be met.

²² The Hague Convention 1980, *inter alia*, regulates which country has jurisdiction in cases of international child abduction, provides for the return of the child to the country where they are habitually resident and requires countries to cooperate with each other in abduction cases.

- 4.138 At present, an application to the courts for a recovery order for a child in care is made by a representative of a statutory body such as a police officer or social worker. It would seem sensible that applications for recovery orders for children not in care could also be made by PSNI and social services, as these agencies would likely be involved where a child is at risk.
- 4.139 However, there is a risk that the use of recovery orders for children not in care could be open to abuse through malicious or vexatious applications where there is no real risk of harm to a child. This could happen where a parent makes a malicious report of child abduction or where the PSNI or social services are asked to seek a recovery order in circumstances where there are other ways for parents to intervene and make sure that a child is safe and where police or court intervention is unnecessary.
- 4.140 Making recovery orders available in respect of all children could therefore result in unnecessary increased costs and inappropriate use of police, social services and court time.
- 4.141 There may also be difficulties in how recovery orders could be enforced in the rest of the UK, particularly given that these are not currently used in relation to children not in care in the other jurisdictions. The Department does not have the means to make these enforceable in other jurisdictions and to do so would require separate legislation in England and Wales, and in Scotland, or UK wide legislation. The effectiveness of such orders would clearly be significantly reduced if they could not be enforced in the other jurisdictions.
- 4.142 On balance, the Department is not of the view that a recovery order would be an appropriate tool for children who are not in care. While there is a rationale for the existing recovery orders for children in the care of the state, the evidence does not appear to indicate a clear need in relation to children who are not in care.
- 4.143 There are also a number of practical concerns in relation to how such a recovery order for children not in care would work in practice, the possibility of misuse and the legal enforceability of such orders.

QUESTION 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? If you disagree, please explain why.

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

4.144 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 purposes of CSE. These would be similar to powers recently made available in England and Wales under Sections 116-118 of the Anti-Social Behaviour, Crime and Policing Act 2014.

4.145 The powers available in England and Wales include provision that police can issue a notice in writing to the owner, manager etc. of a hotel or similar establishment to require that person to provide the name and address of any guests staying at that establishment, where the police reasonably believe that the premises has been or will be used for the purposes of CSE. A person who has been issued with a notice can appeal against it to a Magistrate's Court. It would also provide that a person who, without reasonable excuse, fails to comply with a notice or provides incorrect information would commit an offence, punishable by a fine.

4.146 Additional police powers to request information on guests at hotels could be a useful tool to help the PSNI stop and disrupt CSE, since perpetrators of CSE may use hotel type accommodation to groom and abuse children. The introduction of such powers may also help to raise awareness of CSE among those working in the hotel industry and encourage good practices such as checking the identity of guests.

4.147 There is a risk that the effectiveness of such powers may be reduced in circumstances where perpetrators seek to conceal their identity by checking in

under a false name or paying with cash where the hotel does not require proof of identity or a credit card to guarantee a booking.

4.148 However, on balance, these powers are likely to provide useful additional tools for police to disrupt CSE. The Department has not identified any adverse consequences that would result from introducing these new powers.

4.149 On this basis the Department proposes the introduction of new powers along the lines of the powers available in England and Wales.

QUESTION 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? If you disagree, please explain why.

Section 5: Summary and next steps

Summary

5.1 In summary, the Department welcomes all views and suggestions in relation to the following issues and proposals:

1. Legislative references to ‘child prostitution’ and ‘child pornography’

The consultation seeks views on a proposal that legislative references to child prostitution and child pornography should be changed to ‘sexual exploitation of a child’ to ensure that the law clearly recognises children as victims rather than participants in their abuse, reflecting current best practice.

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

The consultation seeks views on a proposal to amend the law to make sure that it is clear that child sexual exploitation offences include images that are live streamed as well as recorded.

3. Adequacy of the existing grooming offences

The consultation seeks views on the adequacy of the existing grooming offences. The consultation proposes no changes to the law on the basis that recent additions and changes to the grooming offences have already addressed the concerns in relation to the adequacy of the offences.

4. Defence of ‘reasonable belief’ in relation to sexual offences against children

The consultation seeks views on the issue of reversing the burden of proof in relation to sexual offences defined by the age of the child. The consultation proposes a change to the law so that it would be for the defence to prove reasonable belief, if they wished to rely on this defence, rather than the current position where it is for the prosecution to disprove reasonable belief. The consultation also proposes a number of exceptions where this defence could not be used, designed to prevent people who are a known and repeated risk to children from using such a defence to avoid liability.

5. Abuse of trust offences

The consultation seeks views on the scope of the existing abuse of trust offences and whether or not these should be extended to include sports coaches and other people working with children. The consultation proposes no changes to the law on the basis that there is insufficient evidence to support a change to the law and that the original policy rationale for these offences (to provide additional protection for 16 and 17 year olds in circumstances of state care) remains valid.

6. Indecent 'self' images of children under 18

The consultation seeks views on whether or not the law should be changed to allow children under 18 to take and share indecent images of themselves (relates to activity known as 'sexting'). The consultation proposes no changes to the law on the grounds that there are legitimate child protection reasons to maintain the current offence, and there is no evidence that children under 18 are being unnecessarily criminalised for sharing indecent images of themselves.

7. Using online anonymity to harass

The consultation seeks views on whether or not new provisions should be introduced to address situations where individuals use online anonymity to harass others. The consultation proposes no changes to the law on the grounds that the existing law and sentencing guidelines in relation to harassment are considered appropriate.

8. Adults masquerading as children online

The consultation seeks views on whether or not a new offence should be created to deal with situations where adults masquerade as children online. The consultation proposes no changes to the law on the basis that existing grooming offences already cover situations where children are harmed or may come to harm as a result of the adult's behaviour.

9. Up-skirting

The consultation seeks views on a proposal to change the law to criminalise ‘up-skirting’, where an individual covertly takes or records images of a person’s genitals underneath their clothing.

10. Child sex dolls

The consultation seeks views on potential gaps in the law in relation to the possession and manufacturing of ‘child sex dolls’. The consultation proposes no changes to the law at present, but that this issue should be kept under review and be informed by ongoing work across the UK on this issue.

11. Sexual offences against children: compliance with international standards

The consultation seeks views on the extent to which the law on sexual offences against children complies with international human rights standards. The consultation proposes no changes to the law on the basis that the law is compliant with the relevant EU and international instruments.

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

The consultation seeks views on whether or not the scope of child abduction offences should be extended to include all children under 18. The consultation proposes no changes to the law on the basis that the current law strikes a good balance between protecting children from abuse while also respecting the rights of older children (aged 16 and 17) to live independently and engage in consensual relationships.

13. Recovery orders for children not in care

The consultation seeks views on the use of recovery orders (currently used by police to ‘recover’ children in care who have been abducted) in respect of children who are not in care. The consultation proposes that recovery orders should not be introduced for children who are not in care, on the basis 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, distinct from normal parental responsibility.

14. Police powers

The consultation seeks views on additional police powers to request information on guests in hotel type accommodation where it is suspected that the accommodation has been or will be used for CSE. The consultation proposes the introduction of such powers as a useful additional tool for police to help disrupt CSE.

Next steps

- 5.2 The Department will consider all responses to this consultation and publish a summary of those responses on the Department's website. This consultation will ensure that all of your views are taken into account in the development of refined policy and draft legislative proposals, to be considered by Ministers once the Executive and Assembly are restored.

- 5.3 Any proposed changes to the law will be subject to the decisions of an incoming Justice Minister. As they would require primary legislation, any such changes cannot be taken forward in the absence of the Executive and the Assembly.

Annex A: Report of the Independent Inquiry on Child Sexual Exploitation in Northern Ireland 2014 ('the Marshall Report') – status of Key Recommendations

| Recommendation | | Lead | Status |
|-----------------------|--|-------------|------------------|
| K1 | In response to the reality of CSE identified in this report, the Department of Health, Social Services and Public Safety (DOH) should direct the Public Health Agency to undertake a public health campaign on CSE-related issues. This should complement the work undertaken by SBNI. | SBNI | Completed |
| K2 | The inquiry encourages the PSNI to pursue its commitment to strengthening relationships with communities and with young people as a priority in the context of the current climate of austerity. | PSNI | Completed |
| K3 | The DOH in conjunction with DOJ should develop guidance for parents and carers, including foster carers and residential workers, on how best to capture information and/or evidence when a child returns from a period of being missing or is otherwise considered to be at risk of CSE. | HSCB | Completed |
| K4 | SBNI's developing plan for data collection should include a commitment to collation and analysis of the data in a way that will facilitate a strategic response to CSE. | SBNI | Completed |
| K5 | The DOH should explore the benefits of amending or adding to standards for inspection of children's homes to ensure that they: a) promote a culture conducive to respect for the best interests of the child; and b) take account of the specific needs of separated and trafficked children and those affected by CSE. The DOH should | DOH | Completed |

| Recommendation | Lead | Status |
|--|-------------|---|
| issue a circular and associated guidance stating how these issues should be taken forward. | | |
| K6 The DOH, along with the HSC Board and HSC Trusts, should consider how “safe spaces” could be developed for children and young people at risk of, subject to, or recovering from CSE. This development should take account of models of best practice and the views of young people, and should respect international human rights standards. | DOH | Ongoing VOYPIC’s report, ‘Safe as Houses’ was presented to the Child Protection Senior Official’s Group in January 2019. The findings of this report will be considered in conjunction with the findings of the evaluation which the SBNI has commissioned, which will consider the strategic and operational responses to CSE by member agencies of the SBNI and will take account of the views of young people. |
| K7 The Northern Ireland Assembly, through the Office of the First Minister and Deputy First Minister, should re-affirm its commitment to strategic, long-term and sustained funding of services for prevention and early intervention. | TEO | Completed |
| K8 The Department of Education should conduct a review of youth services that takes account of the views of young people and aims to ensure that such provision is attractive and appropriate. | DE | Completed |
| K9 The DOJ should establish an inter-agency forum drawn from across the criminal justice sector and third sector stakeholders to examine how changes to the criminal justice system can achieve more successful | DOJ | Ongoing In March 2016, the Department held a workshop involving a wide range of |

| Recommendation | | Lead | Status |
|-----------------------|---|-------------|--|
| | prosecutions of the perpetrators of CSE. This must be informed by the experiences and needs of child victims. | | <p>practitioners from the Criminal Justice and Health sectors as well as community and voluntary sector organisations that provide support to child victims.</p> <p>Following the workshop, and subsequent workshop report, a response paper and action plan to address the outstanding issues has been prepared by the Department's Marshall Delivery Group and is due for publication.</p> |
| K10 | The DOH should ensure that the forthcoming, planned review of SBNI should consider streamlining joint working arrangements to make them more realistic, efficient and effective. | DOH | Completed |
| K11 | The DOH should ensure that there are clear reporting pathways 24 hours a day, seven days a week, for reporting concerns about children and young people, including CSE, with appropriate feedback provided to the individual or agency making the report. | HSCB | Completed |
| K12 | The protocol for sharing information amongst agencies being developed by SBNI should be concluded as a matter of priority. | SBNI | <p>Ongoing</p> <p>The SBNI has developed an information sharing agreement. This will be published to coincide with the publication of the revision to the Department of Health's guidance, HSS CC 3/96 - Sharing to safeguard -</p> |

| Recommendation | | Lead | Status |
|----------------|--|-------------|---|
| | | | Information sharing about individuals who may pose a risk to children, which is expected to be published for consultation in early Spring 2019. |
| K13 | SBNI and its member agencies should seek to ensure that there is delivery of professional training, both multi-agency and profession-specific, and that this is based upon a clear, agreed and shared definition of CSE. | SBNI | Completed |
| K14 | <p>The DOJ should lead on a project to examine legislative issues highlighted in this report and bring forward proposals for change. These include:</p> <ul style="list-style-type: none"> a) Ensuring compliance with international standards by extending protection to children up to the age of 18, specifically, the Child Abduction (Northern Ireland) Order 1985 and the Sexual Offences (Northern Ireland) Order 2008. b) Providing for a recovery order under the Child Abduction (Northern Ireland) Order 1985, on the model of that in Article 69 of the Children (Northern Ireland) Order 1995. c) Replacing all references to child “prostitution” with “child sexual exploitation”. d) Extending the offence of “grooming” to include “enticing”. e) Reversing the rebuttable presumption | DOJ | <p>Ongoing</p> <p>These issues are addressed as part of this consultation paper on the law on child sexual exploitation.</p> |

| | Recommendation | Lead | Status |
|------------|--|-------------|---|
| | <p>in the Sexual Offences (Northern Ireland) Order 2008 in relation to “reasonable belief” as regards the age of the a child.</p> <p>f) Whether recent legislation in England and Wales relating to hotels, guest houses and bed and breakfast accommodation would be helpful in addressing CSE in Northern Ireland. These are contained in the Anti-Social Behaviour, Crime and Policing Act 2014.</p> | | |
| K15 | <p>The DOH should lead the development of a regional strategy to prevent, identify, disrupt and tackle CSE. It should involve DOJ and DE and should: a) be informed by the experiences and views of children, parents and carers; b) recognise parents and carers as partners in preventing and tackling CSE, unless there are strong indications that they are involved or complicit; c) recognise the support and training needs of frontline workers in all agencies in relation to CSE; d) reflect the particular role of schools in raising awareness and identifying concerns about CSE; e) acknowledge the role of health workers in early intervention, prevention and in reporting CSE, which should be made more explicit in policies, guidance and training; f) recognise agencies operating in the voluntary (non-statutory) sector as equal and valued partners; g) equip communities with the information, support and confidence to identify and report concerns about CSE; h) link into and build upon, existing work in relation to child trafficking as well as strategies tackling known vulnerabilities for CSE, such as alcohol, drugs (including legal highs),</p> | DOH | <p>Ongoing</p> <p>The SBNI has commissioned an evaluation of CSE which will be carried out in 2019. This will evaluate the strategic and operational response to CSE by SBNI member agencies, taking account of the findings of the Marshall Inquiry and SBNI Thematic review. Once completed, the evaluation will be used to inform decision-making in relation to a future CSE strategy.</p> |

| | Recommendation | Lead | Status |
|------------|--|-------------|------------------|
| | sexual health and domestic violence; i) explore the potential contribution to this issue of strengthening a statutory duty to co-operate among stakeholder agencies; and j) establish a process for promoting and monitoring the implementation of the recommendations of this report. | | |
| K16 | The HSC Board should adopt a strategic approach to the provision of support services for those who have been subject to CSE, to ensure equality of access. This should build on current, good practice examples. | HSCB | Completed |
| K17 | The HSC Board should ensure that accessible and appropriate support services are made available for adults who were abused as children. | HSCB | Completed |