STATUTORY INSTRUMENTS

2008 No. 1769

The Sexual Offences (Northern Ireland) Order 2008

PART 3

SEXUAL OFFENCES AGAINST CHILDREN

Offences against children under 18: abuse of position of trust

Abuse of position of trust: sexual activity with a child

23.—(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally touches another person (B),

(b) the touching is sexual,

(c) A is in a position of trust in relation to B,

(d) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This paragraph applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this Article—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Abuse of position of trust: causing or inciting a child to engage in sexual activity

24.—(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally causes or incites another person (B) to engage in an activity,

(b) the activity is sexual,

(c) A is in a position of trust in relation to B,

(d) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This paragraph applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this Article—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Abuse of position of trust: sexual activity in the presence of a child

25.—(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, he engages in it—

(i) when another person (B) is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) A is in a position of trust in relation to B,

(e) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(f) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This paragraph applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this Article—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Abuse of position of trust: causing a child to watch a sexual act

26.—(1) A person aged 18 or over (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) A is in a position of trust in relation to B,

(d) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This paragraph applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this Article—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), (4) or (5), and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Abuse of position of trust: acts done in England and Wales or Scotland

27. Anything which, if done in Northern Ireland, would constitute an offence under any of Articles 23 to 26 also constitutes that offence if done in England and Wales or Scotland.

Positions of trust

28.—(1) For the purposes of Articles 23 to 26 a person (A) is in a position of trust in relation to another person (B) if—

(a) any of the following paragraphs applies, or

(b) any condition specified in an order made by the Secretary of State is met.

(2) This paragraph applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under a statutory provision, and B is so detained in that institution.

(3) This paragraph applies if A looks after persons under 18 who are resident in a home or other place in which—

(a) accommodation and maintenance are provided by an authority under Article 27(2) of the 1995 Order, or

(b) accommodation is provided by a voluntary organisation under Article 75(1) of that Order,

and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.

(4) This paragraph applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions—

(a) a hospital,

(b) an independent clinic,

(c) a residential care home or private hospital,

(d) a voluntary home or children's home, or

(e) a residential family centre,

and B is accommodated and cared for in that institution.

(5) This paragraph applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This paragraph applies if A is appointed to be the guardian of B under Article 159 or 160 of the 1995 Order.

(7) This paragraph applies if A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of functions of an authority under Article 21 or 23 of the 1995 Order.

(8) This paragraph applies if A, as a person who is to report to the court under Article 4 of the 1995 Order on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).

(9) This paragraph applies if A is a personal adviser appointed for B under Article 34A(10) or 34C(2) of the 1995 Order, and, in that capacity, looks after B on an individual basis.

(10) This paragraph applies if—

(a) B is subject to a care order, a supervision order or an education supervision order, and

(b) in the exercise of functions conferred by virtue of the order on an authorised person or the authority designated by the order, A looks after B on an individual basis.

(11) This paragraph applies if A is appointed to be the guardian ad litem of B under Article 60(1) of the 1995 Order, and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).

(12) This paragraph applies if—

(a) B is subject to requirements imposed by or under a statutory provision on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and

(b) A looks after B on an individual basis in pursuance of the requirements.

Positions of trust: interpretation

29.—(1) The following provisions apply for the purposes of Article 28.

(2) Subject to paragraph (3), a person looks after persons under 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual basis if—

(a) A is regularly involved in caring for, training or supervising B, and

(b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution if—

(a) he is registered or otherwise enrolled as a pupil or student at the institution, or

(b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

(5) In Article 28—

"authority" has the meaning given by Article 2(2) of the 1995 Order;

"care order" has the same meaning as in the 1995 Order;

"children's home" has the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9) ("the 2003 Order") if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

"education supervision order" has the meaning given by Article 49(1) of the 1995 Order;

"hospital" means a hospital within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14), or any other establishment which is a hospital within the meaning given by Article 2(2) of the 2003 Order;

"independent clinic" has the meaning given by Article 2(2) of the 2003 Order;

"private hospital" has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (NI 4);

"residential care home" means an establishment which is a residential care home for the purposes of the 2003 Order;

"residential family centre" has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

"supervision order" has the meaning given by Article 49(1) of the 1995 Order;

"voluntary home" has the meaning given by Article 74(1) of the 1995 Order.

Articles 23 to 26: exception for spouses and civil partners

30.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 23 to 26 against another person (B) is not an offence under that Article if at the time—

(a) B is 16 or over, and

(b) A and B are lawfully married or civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other.

Articles 23 to 26: sexual relationships which pre-date position of trust

31.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 23 to 26 against another person (B) is not an offence under that Article if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Paragraph (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of Articles 23 to 26 it is for the defendant to prove that such a relationship existed at that time.