SEXUAL OFFENCES (NORTHERN IRELAND) ORDER 2008

S.I. 2008 No. 1769 (N.I. 2)

EXPLANATORY MEMORANDUM

7.

POLICY BACKGROUND

The Provisions

Part 3 – Sexual offences against children

Familial sex offences against children under 18

Article 32: Sexual activity with a child family member

7.75. Article 32 makes it an offence for a person (A) intentionally to touch a family member (as defined in Article 34) aged under 18, where the touching is sexual. The meaning of touching is explained at Article 2(11). It covers all forms of physical contact including sexual intercourse. The definition of sexual is at Article 4. Additional elements of the offence are that A must know, or be in a position where he could reasonably be expected to know, that the child is his family member and that, except where the child is under 13, he does not reasonably believe that the child is 18 or over.

7.76. So if, for example, A has never met the child before, and so does not know, and could not reasonably be expected to know, that she is his sister, and reasonably believes she is over 18, he will not commit this offence by engaging in sexual activity with her, even though she is in fact his sister, and only 14.

7.77. In relation to both these last two elements of the offence A is under an evidential burden (*paragraphs (2) and (3)*). This means that unless A shows from the evidence that there is an arguable case about these issues, it is presumed that he did not reasonably believe the child to be 18 or over, and that he knew or could reasonably have been expected to know that the child was his family member. Whether or not the child consented to the touching is irrelevant.