

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

Abuse of children under 18 through prostitution and pornography

Article 36: Articles 32 and 33: sexual relationships which pre-date family relationships

7.84. This Article provides A with a defence to the offences under Articles 32 and 33 if he can prove that his sexual relationship with the child pre-dated the start of the familial relationship as defined in Article 34. Thus, for example, where two divorced people meet because their respective 16 and 17 year old children are engaged in a sexual relationship and the parents decide to marry, if all four persons were to move into the same household the criminal law would not interfere in the ongoing sexual relationship between the children, even though they would otherwise have been brought within the scope of the offence. This defence is not available where A and the child are related as set out in Article 34(2) (whether by blood or adoption). The effect of *paragraph (2)* is to limit this to the situation where the sexual relationship was lawful so it would not cover for example a relationship with a child of under 16.

Article 37: Paying for sexual services of a child

7.85. *Article 37* makes it an offence for any person (A) intentionally to obtain for himself the sexual services of a child (B) aged under 18, where those services have been paid for or where payment has been promised. The offence covers the situation where A pays for the services or promises payment either directly to B or to a third party (C) (for example where C is B's pimp) or where A knows that another person (D) has paid for the services or promised such payment. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over.) However, where B is under 13, A will commit the offence regardless of any reasonable belief he may have about B's age. *Paragraph (2)* defines payment widely. It covers not only a payment of money but any financial advantage. This includes the discharge of an obligation to pay (for example, B owes A a debt for a car but A agrees to waive the debt if B provides him with sexual services) and the provision of goods or services gratuitously or at a discount (for example, where A provides drugs to B at no or reduced cost on condition that B provides sexual services to A).

Article 38: Causing or inciting child prostitution or pornography

- 7.86. **Article 38** makes it an offence for a person (A) intentionally to cause or incite a child under 18 (B) into prostitution or involvement in pornography anywhere in the world. The offence is aimed at persons who recruit into prostitution or pornography (whether on a one-off basis or longer term) those who are not involved or not currently involved in it. This could be where A makes a living from the prostitution of others and encourages new recruits to work for him or another (whether those recruits do actually then engage in prostitution or not). It could also cover the situation where A and B live together and A compels B to become involved in pornography, for example in order to pay their rent, or for any other reason. Unlike the prostitution offence at Article 62, there is no requirement that the causing or inciting of a child prostitute must be done for gain. The prostitution or pornography can take place, or be intended to take place, in any part of the world. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over.) However, where B is under 13, A will commit the offence regardless of any reasonable belief he may have about B's age. The terms "pornography" and "prostitute" are defined in Article 41.

Article 39: Controlling a child prostitute or a child involved in pornography

- 7.87. **Article 39** makes it an offence for a person (A) intentionally to control any of the activities of a child (B) that relate to the child's prostitution or involvement in pornography in any part of the world. The offence is committed even if B's activities in relation to prostitution or pornography are controlled for part of the time by another person. An example of the behaviour that might be caught by this offence is where A requires or directs B to charge a certain price or to use a particular hotel for her sexual services or to pose for a certain photographer and B complies with this request or direction. The prostitution or pornography can take place in any part of the world. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over.) However, where B is under 13, A will commit the offence regardless of any belief he may have about B's age. The terms "pornography" and "prostitution" are defined in Article 41.

Article 40: Arranging or facilitating child prostitution or pornography

- 7.88. **Article 40** makes it an offence for a person (A) to arrange or facilitate the involvement of a child (B) in prostitution or pornography in any part of the world. This offence would cover for example, delivering B to a place where he will be used to make pornography or making arrangements for B's prostitution to take place in a particular room. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over.) However, where B is under 13, A will commit the offence regardless of any reasonable belief he may have about B's age. The terms "pornography" and "prostitution" are defined in Article 41.

Article 41: Articles 38 to 40: Interpretation

- 7.89. **Article 41** defines the terms "pornography", "prostitute", "prostitution" and "payment" as used in Article 38 to 40.