

SEXUAL OFFENCES (NORTHERN IRELAND) ORDER 2008

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

EXPLANATORY MEMORANDUM

7.

POLICY BACKGROUND

The Provisions

Part 6 – Miscellaneous sexual offences

Preparatory offences

Article 65: Administering a substance with intent

- 7.130. [Article 65](#) makes it an offence for a person (A) intentionally to administer a substance or to cause any substance to be taken by another person (B) where A knows that B does not consent to taking that substance and where A intends to stupefy or overpower B so that any person can engage in sexual activity involving B.
- 7.131. The offence is intended to cover use of so-called "date rape drugs" administered without the victim's knowledge or consent, but would also cover the use of any other substance with the relevant intention. It would cover A 'spiking' B's drinks with alcohol where B did not know he was consuming alcohol, but it would not cover A encouraging B to get drunk so that A could have sex with B, where B knew that he was consuming alcohol.
- 7.132. The substance may be administered to B in any way, for example, in a drink (as in the example given above), by injection or by covering B's face with a cloth impregnated with the substance.
- 7.133. The offence applies both where A himself administers the substance to B, and where A causes the substance to be taken by B, for example where A persuades a friend (C) to administer a substance to B, so that A can have sex with B, because C knows B socially and can more easily slip the substance into B's drink than A can.
- 7.134. However, the intended sexual activity need not involve A. In the example given above it could be intended that C or any other person would have sex with B.
- 7.135. The term "sexual", used in this Article in the phrase "sexual activity", is defined in Article 4. The sexual activity in this offence could involve A having sexual intercourse with or masturbating B; could involve A causing B to commit a sexual act upon himself (for example, masturbation); or could involve B and a third party engaging in sexual activity together, regardless of whether the third party had administered the substance.
- 7.136. The offence would be made out where A administers the substance or causes B to take it (with the relevant intent) regardless of whether any sexual activity took place, for example because a friend of B saw what was happening and intervened to protect B.

Article 66: Committing an offence with intent to commit a sexual offence

7.137. **Article 66** makes it an offence for a person (A) intentionally to commit any criminal offence with intent to commit any relevant sexual offence as defined in *paragraph (2)*. This offence is intended to capture the situation where A commits a criminal offence but does so with the intention of committing a subsequent sexual offence, regardless of whether or not the substantive sexual offence is committed. It would apply, for example, where A kidnaps B so that he can rape him but is caught by the police before committing the rape. It would also apply where A detained B in his flat with this intention, or assaulted B to subdue him so that he could more easily rape him. If A does commit the intended offence, he could be charged with the substantive sexual offence in addition to this offence. The offence has a maximum life sentence for circumstances where there is an assault with the intent to commit rape or sexual assault by penetration.

Article 67: Trespass with intent to commit a sexual offence

7.138. **Article 67** makes it an offence for A to intend to commit a "relevant sexual offence" (defined at *paragraph (2)* of Article 66) whilst he is on any premises where he is a trespasser, either knowing, or being reckless as to whether, he is trespassing. A person is a trespasser if he is on any premises without the owner's or occupier's consent, or other lawful excuse. This offence is intended to capture, for example, the situation where a person (A) enters a building owned by B, or goes into B's garden or garage without B's consent, and he intends to commit a sexual offence against the occupier. The offence applies regardless of whether or not the substantive sexual offence is committed. A will commit the offence if he has the intent to commit a relevant sexual offence at any time while he is a trespasser. The intent is likely to be inferred from what the defendant says or does to the intended victim (if there is one) or from items in possession of the defendant at the time he commits the trespass (for example, condoms, pornographic images, rope etc.). A separate offence is needed to cover trespass (as opposed to relying on Article 66) because trespass is a civil tort and not a criminal offence. The offence has a maximum sentence of 14 years for circumstances where there is an intent to commit rape or sexual assault by penetration.

Sex with an adult relative

Article 68: Sex with an adult relative: penetration

Article 69: Sex with an adult relative: consenting to penetration

7.139. **Article 68** makes it an offence for a person (A) aged 16 or over intentionally to penetrate sexually a relative (B) who is aged 18 or over if he knows or could reasonably have been expected to know that B is his relative. **Article 69** makes it an offence for a person (A) aged 16 or over to consent to being penetrated sexually by a relative (B) aged 18 or over if he knows or could reasonably have been expected to know that B is his relative. For either offence to be committed the penetration must be "sexual", as defined at Article 4. This requirement ensures that penetration for some other purpose, for example where one sibling helps another to insert a pessary for medical reasons, is not caught by this offence. *Paragraph (2)* of each Article defines "relative" for the purposes of each offence. *Paragraph (3)* of each section includes adoptive relatives in each offence.

7.140. The effect of *paragraph (4)* of each section is that, unless A shows from the evidence that there is an arguable case as to whether or not he knew or could reasonably have been expected to know that B is his relative, it is presumed that he did know or could reasonably have been expected to know it.

Other offences

Article 70: Exposure

- 7.141. **Article 70** makes it an offence for a person intentionally to expose his genitals where he intends that someone will see them and be caused alarm or distress. It is not necessary for A's genitals to have been seen by anyone or for anyone to have been alarmed or distressed. For example, if a person exposes his genitals to some passers-by, he may (depending on his state of mind) commit the offence regardless of whether they actually see his genitals or whether they have been alarmed or distressed by seeing them.

Article 71: Voyeurism

- 7.142. **Article 71** makes it an offence, under *paragraph (1)* for a person, (A), to observe, for the purpose of his own sexual gratification, another person doing a private act, for instance by looking through a window or peephole at someone having sexual intercourse, where A knows the person observed does not consent to being looked at for this purpose.
- 7.143. *Paragraph (2)* covers a person (A) operating equipment with the intention of enabling another person, for his sexual gratification, to observe a third person (B), doing a private act, where A knows that B does not consent to being so viewed. This would cover, for example, a landlord (A) operating a webcam to allow people on the internet for their sexual gratification to view live images of his tenant (B) getting undressed, if A knew that B did not consent to this.
- 7.144. *Paragraph (3)* covers a person (A) recording another person (B) doing a private act with the intention of looking at the recording for his own sexual gratification, or intending other people to look, for their sexual gratification, at the recording, and where he knows that B does not consent to the recording of that act with that intention. This would therefore cover the person (A) who secretly films someone (B) masturbating in B's bedroom to show to others for their sexual gratification. Proof that the intention was the sexual gratification of others could be derived from, for example, the fact that the image was posted on a pornographic website, or in a pornographic magazine. A will be caught by the offence whether or not those looking at the image know that the person filmed did not consent to being filmed with that intention.
- 7.145. *Paragraph (4)* would cover someone who, for example, drilled a spy-hole or installed a two-way mirror in a house with the intention of spying on someone for sexual gratification or allowing others to do so. A would be caught even if the peephole or mirror was discovered before it was used.

Article 72: Voyeurism: interpretation

- 7.146. **Article 72** defines "private act" and "structure" for the purposes of Article 71.

Article 73: Intercourse with an animal

- 7.147. **Article 73** makes it an offence for a man intentionally to penetrate the vagina or anus of a living animal with his penis where he knows or is reckless as to whether that is what he is penetrating. The reference to vagina or anus in this context is further explained at *paragraph (13)* of Article 2. *Paragraph (2)* makes it an offence for a person intentionally to cause or allow her vagina or his or her anus to be penetrated by the penis of a living animal where he or she knows or is reckless as to whether that is what is doing the penetrating. This offence is related solely to penile penetration in relation to animals and does not replace existing legislation covering cruelty to animals.

Article 74: Sexual penetration of a corpse

- 7.148. **Article 74** makes it an offence for a person (A) intentionally to penetrate any part of the body of a dead person (B) with his penis, any other body part (for example his

*This Explanatory Memorandum refers to the Sexual
Offences (Northern Ireland) Order 2008No. 1769 (N.I. 2)*

finger), or any other object, where that penetration is sexual. The offence is committed when A knows or is reckless as to whether he is penetrating any part of a dead body. This is intended to cover when A knows he is penetrating a dead body, for example in a mortuary, or where A is reckless as to whether B is alive or dead. It will not cover situations where A penetrates B fully believing B to be alive, but in fact B is dead, or where B unexpectedly dies during intercourse. The penetration must be sexual. A definition of sexual is given in Article 4. This is to exclude legitimate penetration of corpses, for example that which occurs during an autopsy.

Article 75: Sexual activity in a public lavatory

- 7.149. **Article 75** makes it an offence intentionally to engage in sexual activities in a public lavatory. *Paragraph (1)(a)* defines a public lavatory. The term "sexual" for the purposes of this clause is defined in *paragraph (2)*. A definition distinct from that in Article 4 is used in Article 75 so as to include only sexual activities that a reasonable person would take to be sexual without knowledge of the purpose of the person carrying out the activity.