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DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

**The Sexual Offences (Northern Ireland) Order 2008**

**PART 4**

**SEXUAL OFFENCES AGAINST A PERSON WITH A MENTAL DISORDER**

*Offences against persons with a mental disorder impeding choice*

**Engaging in sexual activity in the presence of a person with a mental disorder impeding choice**

- 45.**—(1) A person (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) B is unable to refuse because of or for a reason related to a mental disorder, and
  - (e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if—
- (a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
  - (b) he is unable to communicate such a choice to A.
- (3) 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 10 years.