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DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

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

**PART 2**

**NON-CONSENSUAL SEXUAL OFFENCES**

*Rape*

**Rape**

- 5.—(1) A person (A) commits an offence if—
- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
  - (b) B does not consent to the penetration, and
  - (c) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Articles 9 and 10 apply to an offence under this Article.
- (4) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.
- (5) Any reference to rape in a statutory provision shall be construed in accordance with paragraph (1).
- (6) The common law offence of rape is abolished.

*Assault*

**Assault by penetration**

- 6.—(1) A person (A) commits an offence if—
- (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,
  - (b) the penetration is sexual,
  - (c) B does not consent to the penetration, and
  - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Articles 9 and 10 apply to an offence under this Article.
- (4) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.

## **Sexual assault**

- 7.—(1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
  - (b) the touching is sexual,
  - (c) B does not consent to the touching, and
  - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Articles 9 and 10 apply to an offence under this Article.
- (4) 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.

### *Causing sexual activity without consent*

## **Causing a person to engage in sexual activity without consent**

- 8.—(1) A person (A) commits an offence if—
- (a) he intentionally causes another person (B) to engage in an activity,
  - (b) the activity is sexual,
  - (c) B does not consent to engaging in the activity, and
  - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Articles 9 and 10 apply to an offence under this Article.
- (4) A person guilty of an offence under this Article, if the activity caused involved—
- (a) penetration of B's anus or vagina,
  - (b) penetration of B's mouth with a person's penis,
  - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
  - (d) penetration of a person's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for life.
- (5) Unless paragraph (4) applies, 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.

## **Evidential presumptions about consent**

- 9.—(1) If in proceedings for an offence to which this Article applies it is proved—
- (a) that the defendant did the relevant act,
  - (b) that any of the circumstances specified in paragraph (2) existed, and

(c) that the defendant knew that those circumstances existed, the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) The circumstances are that—

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
- (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of the complainant’s physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
- (f) any person had administered to or caused to be taken by the complainant, without the complainant’s consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(3) In paragraph (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

### **Conclusive presumptions about consent**

**10.**—(1) If in proceedings for an offence to which this Article applies it is proved that the defendant did the relevant act and that any of the circumstances specified in paragraph (2) existed, it is to be conclusively presumed—

- (a) that the complainant did not consent to the relevant act, and
- (b) that the defendant did not believe that the complainant consented to the relevant act.

(2) The circumstances are—

- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;
- (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

### **Articles 9 and : relevant acts**

**11.** In relation to an offence to which Articles 9 and apply, references in those Articles to the relevant act and to the complainant are to be read as follows—

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<i>Offence</i>	<i>Relevant Act</i>
An offence under Article (rape)	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”).

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<i>Offence</i>	<i>Relevant Act</i>
An offence under Article 6 (assault by penetration)	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person (“the complainant”), where the penetration is sexual.
An offence under Article 7 (sexual assault)	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under Article 8 (causing a person to engage in sexual activity without consent)	The defendant intentionally causing another person (“the complainant”) to engage in an activity, where the activity is sexual.