
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Sexual Offences (Northern Ireland) Order 2008

PART 3

SEXUAL OFFENCES AGAINST CHILDREN

Rape and other offences against children under 13

Rape of a child under 13

12.—(1) A person commits an offence if—

- (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and
- (b) the other person is under 13.

(2) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.

Assault

Assault of a child under 13 by penetration

13.—(1) A person commits an offence if—

- (a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else,
- (b) the penetration is sexual, and
- (c) the other person is under 13.

(2) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.

Sexual assault of a child under 13

14.—(1) A person commits an offence if—

- (a) he intentionally touches another person,
- (b) the touching is sexual, and
- (c) the other person is under 13.

(2) 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 14 years.

Causing or inciting a child under 13 to engage in sexual activity

15.—(1) A person commits an offence if—

- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual, and
- (c) B is under 13.

(2) A person guilty of an offence under this Article, if the activity caused or incited 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.

(3) Unless paragraph (2) 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 14 years.

Sexual offences against children under 16

Sexual activity with a child

16.—(1) A person aged 18 or over (A) commits an offence if—

- (a) he intentionally touches another person (B),
- (b) the touching is sexual, and
- (c) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 - (ii) B is under 13.

(2) A person guilty of an offence under this Article, if the touching involved—

- (a) penetration of B’s anus or vagina with a part of A’s body or anything else,
- (b) penetration of B’s mouth with A’s penis,
- (c) penetration of A’s anus or vagina with a part of B’s body, or
- (d) penetration of A’s mouth with B’s penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Unless paragraph (2) 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 14 years.

Causing or inciting a child to engage in sexual activity

17.—(1) A person aged 18 or over (A) commits an offence if—

- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual, and

- (c) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this Article, if the activity caused or incited 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 a term not exceeding 14 years.
- (3) Unless paragraph (2) 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 14 years.

Engaging in sexual activity in the presence of a child

- 18.**—(1) A person aged 18 or over (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, and
 - (d) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 - (ii) B is under 13.
- (2) 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 a child to watch a sexual act

- 19.**—(1) A person aged 18 or over (A) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
 - (b) the activity is sexual, and
 - (c) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 - (ii) B is under 13.
- (2) 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.

Sexual offences against children committed by children or young persons

20.—(1) A person under 18 commits an offence if he does anything which would be an offence under any of Articles 16 to 19 if he were aged 18.

- (2) 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 5 years.

Arranging or facilitating commission of a sex offence against a child

21.—(1) A person commits an offence if—

- (a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and
- (b) doing it will involve the commission of an offence under any of Articles to 20.

(2) A person does not commit an offence under this Article if—

- (a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another to do, and
- (b) any offence within paragraph (1)(b) would be an offence against a child for whose protection he acts.

(3) For the purposes of paragraph (2), a person acts for the protection of a child if he acts for the purpose of—

- (a) protecting the child from sexually transmitted infection,
- (b) protecting the physical safety of the child,
- (c) preventing the child from becoming pregnant, or
- (d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within paragraph (1)(b) or the child's participation in it.

(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 14 years.

Meeting a child following sexual grooming etc.

22.—(1) A person aged 18 or over (A) commits an offence if—

- (a) A has met or communicated with another person (B) on at least two occasions, and subsequently—
 - (i) A intentionally meets B, or
 - (ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or
 - (iii) B travels with the intention of meeting A in any part of the world,

- (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in sub-paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,
 - (c) B is under 16, and
 - (d) A does not reasonably believe that B is 16 or over.
- (2) In paragraph (1)—
- (a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;
 - (b) “relevant offence” means—
 - (i) an offence under this Order, or
 - (ii) an offence under any of sections 57 to 59 of the Sexual Offences Act 2003 (c. 42), or
 - (iii) anything done outside Northern Ireland which is not an offence under paragraph (i) or (ii) but would be an offence within paragraph (i) or (ii) if done in Northern Ireland.
- (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.

Offences against children under 18: abuse of position of trust

Abuse of position of trust: sexual activity with a child

- 23.**—(1) A person aged 18 or over (A) commits an offence if—
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) A is in a position of trust in relation to B,
 - (d) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This paragraph applies where A—
- (a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), (4) or (5), and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this Article—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), (4) or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

- (5) 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 5 years.

Abuse of position of trust: causing or inciting a child to engage in sexual activity

- 24.**—(1) A person aged 18 or over (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) A is in a position of trust in relation to B,
 - (d) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This paragraph applies where A—
- (a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), or (5), and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this Article—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), (4) or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

- (5) 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 5 years.

Abuse of position of trust: sexual activity in the presence of a child

- 25.**—(1) A person aged 18 or over (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) A is in a position of trust in relation to B,
 - (e) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (f) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This paragraph applies where A—
- (a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), (4) or (5), and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this Article—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), (4) or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,
- it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (5) 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 5 years.

Abuse of position of trust: causing a child to watch a sexual act

- 26.**—(1) A person aged 18 or over (A) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity or to look at an image of any person engaging in an activity,
 - (b) the activity is sexual,
 - (c) A is in a position of trust in relation to B,
 - (d) where paragraph (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This paragraph applies where A—

- (a) is in a position of trust in relation to B by virtue of circumstances within Article 28(2), (3), (4) or (5), and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this Article—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(2), (3), or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,
- it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (5) 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 5 years.

Abuse of position of trust: acts done in England and Wales or Scotland

27. Anything which, if done in Northern Ireland, would constitute an offence under any of Articles 23 to 26 also constitutes that offence if done in England and Wales or Scotland.

Positions of trust

- 28.—(1) For the purposes of Articles to 26 a person (A) is in a position of trust in relation to another person (B) if—
- (a) any of the following paragraphs applies, or
 - (b) any condition specified in an order made by the Secretary of State is met.
- (2) This paragraph applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under a statutory provision, and B is so detained in that institution.
- (3) This paragraph applies if A looks after persons under 18 who are resident in a home or other place in which—
- (a) accommodation and maintenance are provided by an authority under Article 27(2) of the 1995 Order, or
 - (b) accommodation is provided by a voluntary organisation under Article 75(1) of that Order, and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.
- (4) This paragraph applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions—
- (a) a hospital,
 - (b) an independent clinic,
 - (c) a residential care home or private hospital,
 - (d) a voluntary home or children’s home, or
 - (e) a residential family centre,

and B is accommodated and cared for in that institution.

(5) This paragraph applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This paragraph applies if A is appointed to be the guardian of B under Article 159 or 160 of the 1995 Order.

(7) This paragraph applies if A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of functions of an authority under Article 21 or 23 of the 1995 Order.

(8) This paragraph applies if A, as a person who is to report to the court under Article 4 of the 1995 Order on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).

(9) This paragraph applies if A is a personal adviser appointed for B under Article 34A(10) or 34C(2) of the 1995 Order, and, in that capacity, looks after B on an individual basis.

(10) This paragraph applies if—

- (a) B is subject to a care order, a supervision order or an education supervision order, and
- (b) in the exercise of functions conferred by virtue of the order on an authorised person or the authority designated by the order, A looks after B on an individual basis.

(11) This paragraph applies if A is appointed to be the guardian ad litem of B under Article 60(1) of the 1995 Order, and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).

(12) This paragraph applies if—

- (a) B is subject to requirements imposed by or under a statutory provision on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and
- (b) A looks after B on an individual basis in pursuance of the requirements.

Positions of trust: interpretation

29.—(1) The following provisions apply for the purposes of Article .

(2) Subject to paragraph (3), a person looks after persons under 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual basis if—

- (a) A is regularly involved in caring for, training or supervising B, and
- (b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution if—

- (a) he is registered or otherwise enrolled as a pupil or student at the institution, or
- (b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

(5) In Article —

“authority” has the meaning given by Article 2(2) of the 1995 Order;

“care order” has the same meaning as in the 1995 Order;

“children’s home” has the meaning that would be given by Article 9 of the [Health and Personal Social Services \(Quality, Improvement and Regulation\) \(Northern Ireland\) Order 2003 \(NI 9\)](#)

(“the 2003 Order”) if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

“education supervision order” has the meaning given by Article 49(1) of the 1995 Order;

“hospital” means a hospital within the meaning given by Article 2(2) of the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(NI 14\)](#), or any other establishment which is a hospital within the meaning given by Article 2(2) of the 2003 Order;

“independent clinic” has the meaning given by Article 2(2) of the 2003 Order;

“private hospital” has the meaning given by Article 90(2) of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);

“residential care home” means an establishment which is a residential care home for the purposes of the 2003 Order;

“residential family centre” has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

“supervision order” has the meaning given by Article 49(1) of the 1995 Order;

“voluntary home” has the meaning given by Article 74(1) of the 1995 Order.

Articles 23 to : exception for spouses and civil partners

30.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles to against another person (B) is not an offence under that Article if at the time—

- (a) B is 16 or over, and
- (b) A and B are lawfully married or civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other.

Articles 23 to 26: sexual relationships which pre-date position of trust

31.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 23 to 26 against another person (B) is not an offence under that Article if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Paragraph (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of Articles to 26 it is for the defendant to prove that such a relationship existed at that time.

Familial sex offences against children under 18

Sexual activity with a child family member

32.—(1) A person (A) commits an offence if—

- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) the relation of A to B is within Article 34,
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that Article, and
- (e) either—

- (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
- (ii) B is under 13.

(2) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this Article it is proved that the relation of the defendant to the other person was of a description falling within Article 34, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person guilty of an offence under this Article, if aged 18 or over at the time of the offence, is liable—

- (a) where paragraph (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;
 - (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (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 5 years.
- (6) This paragraph applies where the touching involved—
- (a) penetration of B's anus or vagina with a part of A's body or anything else,
 - (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body, or
 - (d) penetration of A's mouth with B's penis.

Inciting a child family member to engage in sexual activity

33.—(1) A person (A) commits an offence if—

- (a) he intentionally incites another person (B) to touch, or allow himself to be touched by, A,
- (b) the touching is sexual,
- (c) the relation of A to B is within Article ,
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that Article, and
- (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.

(2) Where in proceedings for an offence under this Article it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this Article it is proved that the relation of the defendant to the other person was of a description falling within Article , it is to be taken that the

defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person guilty of an offence under this Article, if he was aged 18 or over at the time of the offence, is liable—

- (a) where paragraph (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;
 - (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (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 5 years.
- (6) This paragraph applies where the touching to which the incitement related involved—
- (a) penetration of B's anus or vagina with a part of A's body or anything else,
 - (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body, or
 - (d) penetration of A's mouth with B's penis.

Family relationships

34.—(1) The relation of one person (A) to another (B) is within this Article if—

- (a) it is within any of paragraphs (2) to (4), or
 - (b) it would be within one of those paragraphs but for Article 40 of the [Adoption \(Northern Ireland\) Order 1987 \(NI 22\)](#) (status conferred by adoption).
- (2) The relation of A to B is within this paragraph if—
- (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or
 - (b) A is or has been B's foster parent.
- (3) The relation of A to B is within this paragraph if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and—
- (a) one of them is or has been the other's step-parent,
 - (b) A and B are cousins,
 - (c) one of them is or has been the other's stepbrother or stepsister, or
 - (d) the parent or present or former foster parent of one of them is or has been the other's foster parent.
- (4) The relation of A to B is within this paragraph if—
- (a) A and B live in the same household, and
 - (b) A is regularly involved in caring for, training, supervising or being in sole charge of B.
- (5) For the purposes of this Article—

- (a) “aunt” means the sister or half-sister of a person’s parent, and “uncle” has a corresponding meaning;
- (b) “cousin” means the child of an aunt or uncle;
- (c) a person is a child’s foster parent if—
 - (i) he is a person with whom the child has been placed under Article 27(2)(a) or 75(1)(a) of the 1995 Order (fostering), or
 - (ii) he fosters the child privately, within the meaning given by Article 106(1) of the 1995 Order;
- (d) a person is another’s partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
- (e) “step-parent” includes a parent’s partner and “stepbrother” and “stepsister” include the child of a parent’s partner.

Articles 32 and 33: exception for spouses and civil partners

35.—(1) Conduct by a person (A) which would otherwise be an offence under Article 32 or 33 against another person (B) is not an offence under that Article if at the time—

- (a) B is 16 or over, and
- (b) A and B are lawfully married or civil partners of each other.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other.

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

36.—(1) Conduct by a person (A) which would otherwise be an offence under Article or 33 against another person (B) is not an offence under that Article if—

- (a) the relation of A to B is not within paragraph (2) of Article 34,
- (b) it would not be within that paragraph if Article 40 of the [Adoption \(Northern Ireland\) Order 1987 \(NI 22\)](#) did not apply, and
- (c) immediately before the relation of A to B first became such as to fall within Article 34, a sexual relationship existed between A and B.

(2) Paragraph (1) does not apply if at the time referred to in paragraph (1)(c) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under Article 32 or 33 it is for the defendant to prove the matters mentioned in paragraph (1)(a) to (c).

Abuse of children under 18 through prostitution and pornography

Paying for sexual services of a child

37.—(1) A person (A) commits an offence if—

- (a) he intentionally obtains for himself the sexual services of another person (B).
- (b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and
- (c) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) In this Article, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) A person guilty of an offence under this Article against a person under 13, where paragraph (6) applies, is liable on conviction on indictment to imprisonment for life.

(4) Unless paragraph (3) applies, a person guilty of an offence under this Article against a person under 16 is liable—

(a) where paragraph (6) applies, on conviction on indictment, to imprisonment for a term not exceeding 14 years;

(b) in any other case—

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(5) Unless paragraph (3) or (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 7 years.

(6) This paragraph applies where the offence involved—

(a) penetration of B’s anus or vagina with a part of A’s body or anything else,

(b) penetration of B’s mouth with A’s penis,

(c) penetration of A’s anus or vagina with a part of B’s body or by B with anything else, or

(d) penetration of A’s mouth with B’s penis.

Causing or inciting child prostitution or pornography

38.—(1) A person (A) commits an offence if—

(a) he intentionally causes or incites another person (B) to become a prostitute, or to be involved in pornography, in any part of the world, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) 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 14 years.

Controlling a child prostitute or a child involved in pornography

39.—(1) A person (A) commits an offence if—

(a) he intentionally controls any of the activities of another person (B) relating to B’s prostitution or involvement in pornography in any part of the world, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

- (ii) B is under 13.
- (2) 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 14 years.

Arranging or facilitating child prostitution or pornography

- 40.**—(1) A person (A) commits an offence if—
- (a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person (B), and
 - (b) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) 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 14 years.

Articles 38 to : interpretation

41.—(1) For the purposes of Articles to 40, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.

(2) In those Articles “prostitute” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.

(3) In paragraph (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Indecent photographs of children under 18

Indecent photographs of persons aged 16 or 17

42.—(1) The [Protection of Children \(Northern Ireland\) Order 1978 \(NI 17\)](#) (which makes provision about indecent photographs of persons under 16) is amended as follows.

(2) In Article 2(2) (interpretation), in the definition of “child”, for “sixteen” substitute “eighteen”.

(3) In Article 7(1) (evidence of person being a child at a material time) for “sixteen” substitute “eighteen”.

(4) In Article 3(1) (offences relating to indecent photographs of children) at the beginning insert “Subject to Articles 3A and 3B”.

(5) After Article 3A insert—

“Marriage and other relationships

3B.—(1) This Article applies where, in proceedings for an offence under Article 3(1)(a) of taking or making an indecent photograph of a child, or for an offence under Article 3(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—

- (a) were married or civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(2) Paragraphs (5) and (6) also apply where, in proceedings for an offence under Article 3(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—

- (a) were married or civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(3) This Article applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) In the case of an offence under Article 3(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.

(5) In the case of an offence under Article 3(1)(b), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.

(6) In the case of an offence under Article 3(1)(c), if sufficient evidence is adduced to raise an issue both—

- (a) as to whether the child consented to the photograph being in the defendant’s possession, or as to whether the defendant reasonably believed that the child so consented, and
- (b) as to whether the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child,

the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child.”

(6) The [Criminal Justice \(Evidence, Etc.\) \(Northern Ireland\) Order 1988 \(NI 17\)](#) (possession of indecent photograph of child) is amended as follows.

(7) In Article 15(1), at the beginning insert “Subject to Article 15A”.

(8) After Article 15 insert—

“Marriage and other relationships

15A.—(1) This Article applies where, in proceedings for an offence under Article 15(1) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—

- (a) were married or civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(2) This Article also applies where, in proceedings for an offence under Article 15(1) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—

- (a) were married or civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(3) This Article applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented."