
DRAFT STATUTORY INSTRUMENTS

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

Sexual activity with a person with a mental disorder impeding choice

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

- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) B is unable to refuse because of or for a reason related to a mental disorder, and
- (d) 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 the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, 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, 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 life.

(4) Unless paragraph (3) 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 person, with a mental disorder impeding choice, to engage in sexual activity

44.—(1) A person (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) B is unable to refuse because of or for a reason related to a mental disorder, and
- (d) 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 engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, 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, 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.
- (4) Unless paragraph (3) 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 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.

Causing a person, with a mental disorder impeding choice, to watch a sexual act

- 46.**—(1) A person (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) B is unable to refuse because of or for a reason related to a mental disorder, and
 - (d) 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 watching or looking (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.

Inducements etc. to persons with a mental disorder

Inducement, threat or deception to procure sexual activity with a person with a mental disorder

- 47.**—(1) A person (A) commits an offence if—
- (a) with the agreement of another person (B) he intentionally touches that person,
 - (b) the touching is sexual,
 - (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose,
 - (d) B has a mental disorder, and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder.
- (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 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.

Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception

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

- (a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity,
- (b) the activity is sexual,
- (c) B has a mental disorder, and
- (d) A knows or could reasonably be expected to know that B has a mental disorder.

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

Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

49.—(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 agrees to be present or in the place referred to in sub-paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
- (e) B has a mental disorder, and
- (f) A knows or could reasonably be expected to know that B has a mental disorder.

(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 person with a mental disorder to watch a sexual act by inducement, threat or deception

50.—(1) A person (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) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
 - (d) B has a mental disorder, and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder.
- (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.

Care workers for persons with a mental disorder

Care workers: sexual activity with a person with a mental disorder

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

- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within Article .

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) 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.

(4) Unless paragraph (3) 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.

Care workers: causing or inciting sexual activity

52.—(1) A person (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) B has a mental disorder,

- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within Article 55.

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

- (3) 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.

- (4) Unless paragraph (3) 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.

Care workers: sexual activity in the presence of a person with a mental disorder

- 53.**—(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 has a mental disorder,
 - (e) A knows or could reasonably be expected to know that B has a mental disorder, and
 - (f) A is involved in B's care in a way that falls within Article 55.

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

- (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 7 years.

Care workers: causing a person with a mental disorder to watch a sexual act

- 54.**—(1) A person (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) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within Article 55.

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(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 7 years.

Care workers: interpretation

55.—(1) For the purposes of Articles to 54, a person (A) is involved in the care of another person (B) in a way that falls within this Article if any of paragraphs (2) to (4) applies.

(2) This paragraph applies if—

- (a) B is accommodated and cared for in a residential care home, residential family centre, voluntary home or children's home, and
- (b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(3) This paragraph applies if B is a patient for whom services are provided—

- (a) by a Health and Social Services Board established under Article 16(1) of the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(NI 14\)](#),
- (b) by a Health and Social Services trust established under Article 10(1) of the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(NI 1\)](#),
- (c) by an independent medical agency,
- (d) in an independent clinic or independent hospital, or
- (e) in a private hospital,

and A has functions to perform for the Board, Trust or agency, or in the clinic or hospital, in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(4) This paragraph applies if A—

- (a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder, and
- (b) as such, has had or is likely to have regular face to face contact with B.

(5) In this Article—

“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;

“employment” means any employment, whether paid or unpaid and whether under a contract for service or apprenticeship, under a contract for services, or otherwise than under a contract;

“independent clinic”, “independent hospital” and “independent medical agency” have the meanings 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 \(c. 3\)](#);

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

Articles 51 to : exception for spouses and civil partners

56.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 51 to 54 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 51 to : sexual relationships which pre-date care relationships

57.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 51 to 54 against another person (B) is not an offence under that Article if, immediately before A became involved in B’s care in a way that falls within Article 55, 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 54 it is for the defendant to prove that such a relationship existed at that time.