

SCHEDULES

SCHEDULE 2

Transitional and Transitory Provisions

Continuity of sexual offences law

- 1.—(1) This paragraph applies where, in any proceedings—
- (a) a person (“the defendant”) is charged in respect of the same conduct both with an offence under this Order and with an offence specified in paragraph (2) (“the pre-commencement offence”);
 - (b) the only thing preventing the defendant from being found guilty of the offence under this Order is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was after the coming into force of the provision of this Order providing for the offence; and
 - (c) the only thing preventing the defendant from being found guilty of the pre-commencement offence is the fact that it has not been proved beyond a reasonable doubt that that time was before the coming into force of the repeal of the statutory provision providing for the offence.
- (2) The offences referred to in paragraph (1)(a) are—
- (a) an offence under section 167 of the [Belfast Improvement Act 1845 \(c. cxlii\)](#) (loitering for the purposes of prostitution);
 - (b) an offence under section 28 of the Town Police Clauses Act [1847 \(c. 89\)](#) (indecent exposure);
 - (c) an offence under section 72 of the [Towns Improvement \(Ireland\) Act 1854 \(c. 103\)](#) (loitering for the purposes of prostitution);
 - (d) an offence under section 52, 53, 54 or 55 of the Offences Against the Person Act [1861 \(c. 100\)](#) (indecent assault and abduction);
 - (e) an offence under any of the following sections of the Criminal Law Amendment Act [1885 \(c. 69\)](#)—
 - (i) section 2 (procurement of a woman or girl under 21);
 - (ii) section 3 (procuring defilement of a woman);
 - (iii) section 4 (unlawful carnal knowledge of a girl under 14);
 - (iv) section 5 (unlawful carnal knowledge of a girl under 17);
 - (v) section 6 (permitting a girl under 17 to be on premises for the purpose of unlawful carnal knowledge);
 - (vi) section 7 (abduction of girl with intent to have carnal knowledge);
 - (vii) section 8 (unlawful detention with intent to have carnal knowledge);
 - (f) an offence under section 1 or 2 of the Punishment of Incest Act [1908 \(c. 45\)](#);

- (g) an offence under section 2 of the Attempted Rape, etc., Act (Northern Ireland) 1960 (c. 3) (assault with intent to commit rape);
- (h) an offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (indecent conduct towards a child);
- (i) an offence under section 9(1)(a) of the Theft Act (Northern Ireland) 1969 (c. 16) where the intended offence was rape;
- (j) an offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (NI 6) (inciting girl under sixteen to have incestuous intercourse);
- (k) an offence under Article 122 or 123 of the Mental Health (Northern Ireland) Order 1986 (NI 4) (protection of woman suffering from severe mental handicap, and protection of patients);
- (l) an offence under Article 19, 20 or 21 of the Criminal Justice (Northern Ireland) Order 2003 (NI 13) (buggery, assault with intent to commit buggery, indecent assault on a male);
- (m) an offence under any of the following provisions of the Sexual Offences Act 2003 (c. 42)—
 - (i) section 15 (meeting a child following sexual grooming etc.);
 - (ii) sections 16 to 19 (abuse of position of trust);
 - (iii) sections 47 to 50 (abuse of children through prostitution and pornography);
 - (iv) section 66 (exposure);
 - (v) section 67 (voyeurism);
 - (vi) section 69 (intercourse with an animal);
 - (vii) section 70 (sexual penetration of a corpse);
 - (viii) section 71 (sexual activity in a public lavatory);
 - (ix) section 72 (offences outside the United Kingdom).

(3) For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was—

- (a) if the maximum penalty for the pre-commencement offence is less than the maximum penalty for the offence under this Order, a time before the coming into force of the repeal of the statutory provision providing for the pre-commencement offence; and
- (b) in any other case, a time after the coming into force of the provision providing for the offence under this Order.

(4) In sub-paragraph (3) the reference, in relation an offence, to the maximum penalty is a reference to the maximum penalty by way of imprisonment or other detention that could be imposed on the defendant on conviction of the offence in the proceedings in question.

(5) A reference in this paragraph to an offence under this Order or to an offence specified in sub-paragraph (2) includes a reference to—

- (a) inciting the commission of that offence;
- (b) conspiracy to commit that offence; and
- (c) attempting to commit that offence;

and, in relation to an offence falling within paragraphs (a) to (c), a reference in this paragraph to the provision providing for the offence so falling has effect as a reference to the provision providing for the offence under this Order or, as the case may be, for the offence so specified.

(6) This paragraph applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of the offence under this Order or the pre-commencement offence before the commencement of this Schedule.