



Sexual Offences Act 2003

2003 CHAPTER 42

PART 1

SEXUAL OFFENCES

Rape

1 Rape

- (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) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault

2 Assault by penetration

- (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.

Status: This is the original version (as it was originally enacted).

- (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) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

3 Sexual assault

- (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) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section 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

4 Causing a person to engage in sexual activity without consent

- (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) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section, 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 subsection (4) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Rape and other offences against children under 13

5 Rape of a child under 13

- (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 section is liable, on conviction on indictment, to imprisonment for life.

6 Assault of a child under 13 by penetration

- (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 section is liable, on conviction on indictment, to imprisonment for life.

7 Sexual assault of a child under 13

- (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 section 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.

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

- (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 section, if the activity caused or incited involved—

Status: This is the original version (as it was originally enacted).

- (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 subsection (2) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Child sex offences

9 Sexual activity with a child

- (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 section, 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 subsection (2) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

10 Causing or inciting a child to engage in sexual activity

- (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 section, 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 subsection (2) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

11 Engaging in sexual activity in the presence of a child

- (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 section 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.

12 Causing a child to watch a sexual act

- (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 section is liable—

Status: This is the original version (as it was originally enacted).

- (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.

13 Child sex offences committed by children or young persons

- (1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 to 12 if he were aged 18.
- (2) A person guilty of an offence under this section 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.

14 Arranging or facilitating commission of a child sex offence

- (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 sections 9 to 13.
- (2) A person does not commit an offence under this section 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 person to do, and
 - (b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts.
- (3) For the purposes of subsection (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 subsection (1)(b) or the child's participation in it.
- (4) A person guilty of an offence under this section 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.

15 Meeting a child following sexual grooming etc.

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

Status: This is the original version (as it was originally enacted).

- (a) having met or communicated with another person (B) on at least two earlier occasions, he—
 - (i) intentionally meets B, or
 - (ii) travels with the intention of meeting B in any part of the world,
 - (b) at the time, he intends to do anything to or in respect of B, during or after the meeting 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 subsection (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 Part,
 - (ii) an offence within any of paragraphs 61 to 92 of Schedule 3, or
 - (iii) anything done outside England and Wales and Northern Ireland which is not an offence within sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) if done in England and Wales.
- (3) In this section as it applies to Northern Ireland—
- (a) subsection (1) has effect with the substitution of “17” for “16” in both places;
 - (b) subsection (2)(b)(iii) has effect with the substitution of “sub-paragraph (ii) if done in Northern Ireland” for “sub-paragraph (i) if done in England and Wales”.
- (4) A person guilty of an offence under this section 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.

Abuse of position of trust

16 Abuse of position of trust: sexual activity with a child

- (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 subsection (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 subsection applies where A—

Status: This is the original version (as it was originally enacted).

- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(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 section 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 section—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(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 section 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.

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

- (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 subsection (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 subsection applies where A—
- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(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 section 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 section—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(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 section 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.

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

(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 subsection (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 subsection applies where A—

- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(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 section 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 section—

- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(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.

Status: This is the original version (as it was originally enacted).

- (5) A person guilty of an offence under this section 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.

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

- (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 subsection (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 subsection applies where A—
- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(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 section 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 section—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(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 section 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.

20 Abuse of position of trust: acts done in Scotland

Anything which, if done in England and Wales or Northern Ireland, would constitute an offence under any of sections 16 to 19 also constitutes that offence if done in Scotland.

21 Positions of trust

- (1) For the purposes of sections 16 to 19, a person (A) is in a position of trust in relation to another person (B) if—
 - (a) any of the following subsections applies, or
 - (b) any condition specified in an order made by the Secretary of State is met.
- (2) This subsection applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.
- (3) This subsection 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 section 23(2) of the Children Act 1989 (c. 41) or Article 27(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), or
 - (b) accommodation is provided by a voluntary organisation under section 59(1) of that Act or 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 subsection 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 care home, residential care home or private hospital,
 - (d) a community home, voluntary home or children's home,
 - (e) a home provided under section 82(5) of the Children Act 1989, or
 - (f) a residential family centre,and B is accommodated and cared for in that institution.
- (5) This subsection 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 subsection applies if A is appointed to be the guardian of B under Article 159 or 160 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (7) This subsection applies if A is engaged in the provision of services under, or pursuant to anything done under—
 - (a) sections 8 to 10 of the Employment and Training Act 1973 (c. 50), or
 - (b) section 114 of the Learning and Skills Act 2000 (c. 21),and, in that capacity, looks after B on an individual basis.
- (8) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means)—

Status: This is the original version (as it was originally enacted).

- (a) in the exercise of functions of a local authority under section 20 or 21 of the Children Act 1989 (c. 41), or
 - (b) in the exercise of functions of an authority under Article 21 or 23 of the Children (Northern Ireland) Order 1995.
- (9) This subsection applies if A, as a person who is to report to the court under section 7 of the Children Act 1989 or Article 4 of the Children (Northern Ireland) Order 1995 on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).
- (10) This subsection applies if A is a personal adviser appointed for B under—
- (a) section 23B(2) of, or paragraph 19C of Schedule 2 to, the Children Act 1989, or
 - (b) Article 34A(10) or 34C(2) of the Children (Northern Ireland) Order 1995,
- and, in that capacity, looks after B on an individual basis.
- (11) This subsection 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.
- (12) This subsection applies if A—
- (a) is an officer of the Service appointed for B under section 41(1) of the Children Act 1989,
 - (b) is appointed a children’s guardian of B under rule 6 or rule 18 of the Adoption Rules 1984 (S.I. 1984/265), or
 - (c) is appointed to be the guardian ad litem of B under rule 9.5 of the Family Proceedings Rules 1991 (S. I. 1991/1247) or under Article 60(1) of the Children (Northern Ireland) Order 1995,
- and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).
- (13) This subsection applies if—
- (a) B is subject to requirements imposed by or under an enactment 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.

22 Positions of trust: interpretation

- (1) The following provisions apply for the purposes of section 21.
- (2) Subject to subsection (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 section 21—

“authority”—

- (a) in relation to England and Wales, means a local authority;
- (b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));

“care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);

“care order” has—

- (a) in relation to England and Wales, the same meaning as in the Children Act 1989 (c. 41), and
- (b) in relation to Northern Ireland, the same meaning as in the Children (Northern Ireland) Order 1995;

“children’s home” has—

- (a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000, and
- (b) in relation to Northern Ireland, the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) (“the 2003 Order”) if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

“community home” has the meaning given by section 53 of the Children Act 1989;

“education supervision order” has—

- (a) in relation to England and Wales, the meaning given by section 36 of the Children Act 1989, and
- (b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995;

“hospital”—

- (a) in relation to England and Wales, means a hospital within the meaning given by section 128(1) of the National Health Service Act 1977 (c. 49), or any other establishment which is a hospital within the meaning given by section 2(3) of the Care Standards Act 2000 (c. 14);
- (b) in relation to Northern Ireland, means a hospital within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), or any other establishment which is a hospital within the meaning given by Article 2(2) of the 2003 Order;

“independent clinic” has—

- (a) in relation to England and Wales, the meaning given by section 2 of the Care Standards Act 2000;
- (b) in relation to Northern Ireland, 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 (S.I. 1986/595 (N.I. 4));

Status: This is the original version (as it was originally enacted).

“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—

- (a) in relation to England and Wales, the meaning given by section 31(11) of the Children Act 1989 (c. 41), and
- (b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2));

“voluntary home” has—

- (a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989, and
- (b) in relation to Northern Ireland, the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995.

23 Sections 16 to 19: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if at the time —
 - (a) B is 16 or over, and
 - (b) A and B are lawfully married.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were lawfully married at the time.

24 Sections 16 to 19: sexual relationships which pre-date position of trust

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.
- (2) Subsection (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 sections 16 to 19 it is for the defendant to prove that such a relationship existed at that time.

Familial child sex offences

25 Sexual activity with a child family member

- (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 section 27,
 - (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, 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 section 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 section it is proved that the relation of the defendant to the other person was of a description falling within section 27, 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 section, if aged 18 or over at the time of the offence, is liable—
 - (a) where subsection (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 subsection (4) applies, a person guilty of an offence under this section 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 subsection 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.

26 Inciting a child family member to engage in sexual activity

- (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 section 27,
 - (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, 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 section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that

Status: This is the original version (as it was originally enacted).

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 section it is proved that the relation of the defendant to the other person was of a description falling within section 27, 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 section, if he was aged 18 or over at the time of the offence, is liable—
- (a) where subsection (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 subsection (4) applies, a person guilty of an offence under this section 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 subsection 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.

27 Family relationships

- (1) The relation of one person (A) to another (B) is within this section if—
- (a) it is within any of subsections (2) to (4), or
 - (b) it would be within one of those subsections but for section 67 of the Adoption and Children Act 2002 (c. 38) (status conferred by adoption).
- (2) The relation of A to B is within this subsection 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 subsection 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 subsection 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 section—
- (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 section 23(2)(a) or 59(1)(a) of the Children Act 1989 (c. 41) (fostering for local authority or voluntary organisation), or
 - (ii) he fosters the child privately, within the meaning given by section 66(1)(b) of that Act;
 - (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.

28 Sections 25 and 26: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if at the time—
- (a) B is 16 or over, and
 - (b) A and B are lawfully married.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were lawfully married at the time.

29 Sections 25 and 26: sexual relationships which pre-date family relationships

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if—
- (a) the relation of A to B is not within subsection (2) of section 27,
 - (b) it would not be within that subsection if section 67 of the Adoption and Children Act 2002 (c. 38) did not apply, and
 - (c) immediately before the relation of A to B first became such as to fall within section 27, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between A and B would have been unlawful.
- (3) In proceedings for an offence under section 25 or 26 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

Status: This is the original version (as it was originally enacted).

Offences against persons with a mental disorder impeding choice

30 Sexual activity with a person with a mental disorder impeding choice

- (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 section, 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 subsection (3) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

31 Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

- (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 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 section, 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 subsection (3) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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

- (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 section 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.

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

- (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,

Status: This is the original version (as it was originally enacted).

- (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 section 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

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

- (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 section, 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 subsection (2) applies, a person guilty of an offence under this section 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.

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

- (1) A person (A) commits an offence if—

Status: This is the original version (as it was originally enacted).

- (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 section, 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 subsection (2) applies, a person guilty of an offence under this section 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.

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

- (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 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 section 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.

Status: This is the original version (as it was originally enacted).

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

- (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 section 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

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

- (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 section 42.
- (2) Where in proceedings for an offence under this section 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 section, 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 subsection (3) applies, a person guilty of an offence under this section 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.

39 Care workers: causing or inciting sexual activity

- (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 section 42.
- (2) Where in proceedings for an offence under this section 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 section, 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 subsection (3) applies, a person guilty of an offence under this section 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.

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

- (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 section 42.

Status: This is the original version (as it was originally enacted).

- (2) Where in proceedings for an offence under this section 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 section 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.

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

- (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 section 42.
- (2) Where in proceedings for an offence under this section 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 section 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.

42 Care workers: interpretation

- (1) For the purposes of sections 38 to 41, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.
- (2) This subsection applies if—
 - (a) B is accommodated and cared for in a care home, community home, 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 subsection applies if B is a patient for whom services are provided—
 - (a) by a National Health Service body or an independent medical agency, or
 - (b) in an independent clinic or an independent hospital,

and A has functions to perform for the body 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 subsection 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 section—

“care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);

“children's home” has the meaning given by section 1 of that Act;

“community home” has the meaning given by section 53 of the Children Act 1989 (c. 41);

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

“independent clinic”, “independent hospital” and “independent medical agency” have the meaning given by section 2 of the Care Standards Act 2000;

“National Health Service body” means—

- (a) a Health Authority,
- (b) a National Health Service trust,
- (c) a Primary Care Trust, or
- (d) a Special Health Authority;

“voluntary home” has the meaning given by section 60(3) of the Children Act 1989.

43 Sections 38 to 41: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if at the time—
- (a) B is 16 or over, and
 - (b) A and B are lawfully married.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were lawfully married at the time.

44 Sections 38 to 41: sexual relationships which pre-date care relationships

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if, immediately before A became involved in B's care in a way that falls within section 42, a sexual relationship existed between A and B.
- (2) Subsection (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 sections 38 to 41 it is for the defendant to prove that such a relationship existed at that time.

Status: This is the original version (as it was originally enacted).

Indecent photographs of children

45 Indecent photographs of persons aged 16 or 17

- (1) The Protection of Children Act 1978 (c. 37) (which makes provision about indecent photographs of persons under 16) is amended as follows.
- (2) In section 2(3) (evidence) and section 7(6) (meaning of “child”), for “16” substitute “18”.
- (3) After section 1 insert—

“1A Marriage and other relationships

- (1) This section applies where, in proceedings for an offence under section 1(1) (a) of taking or making an indecent photograph of a child, or for an offence under section 1(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
 - (b) lived together as partners in an enduring family relationship.
- (2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 1(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
 - (b) lived together as partners in an enduring family relationship.
- (3) This section 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 section 1(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 section 1(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 section 1(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.”

- (4) After section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child) insert—

“160A Marriage and other relationships

- (1) This section applies where, in proceedings for an offence under section 160 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
 - (b) lived together as partners in an enduring family relationship.
- (2) This section also applies where, in proceedings for an offence under section 160 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
 - (b) lived together as partners in an enduring family relationship.
- (3) This section 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.”

46 Criminal proceedings, investigations etc.

- (1) After section 1A of the Protection of Children Act 1978 (c. 37) insert—

“1B Exception for criminal proceedings, investigations etc.

- (1) In proceedings for an offence under section 1(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—
- (a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
 - (b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or
 - (c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.
- (2) In this section “GCHQ” has the same meaning as in the Intelligence Services Act 1994.”

Status: This is the original version (as it was originally enacted).

- (2) After Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) insert—

“3A. Exception for criminal proceedings, investigations etc.

- (1) In proceedings for an offence under Article 3(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—
- (a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
 - (b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or
 - (c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.
- (2) In this Article “GCHQ” has the same meaning as in the Intelligence Services Act 1994.”

Abuse of children through prostitution and pornography

47 Paying for sexual services of a child

- (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 section, “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 section against a person under 13, where subsection (6) applies, is liable on conviction on indictment to imprisonment for life.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section against a person under 16 is liable—
- (a) where subsection (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;

Status: This is the original version (as it was originally enacted).

- (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (3) or (4) applies, a person guilty of an offence under this section 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 subsection 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.
- (7) In the application of this section to Northern Ireland, subsection (4) has effect with the substitution of “17” for “16”.

48 Causing or inciting child prostitution or pornography

- (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 section 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.

49 Controlling a child prostitute or a child involved in pornography

- (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 section 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.

50 Arranging or facilitating child prostitution or pornography

- (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 section 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.

51 Sections 48 to 50: interpretation

- (1) For the purposes of sections 48 to 50, 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 sections “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 subsection (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.

*Exploitation of prostitution***52 Causing or inciting prostitution for gain**

- (1) A person commits an offence if—
 - (a) he intentionally causes or incites another person to become a prostitute in any part of the world, and
 - (b) he does so for or in the expectation of gain for himself or a third person.
- (2) A person guilty of an offence under this section 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.

53 Controlling prostitution for gain

- (1) A person commits an offence if—
 - (a) he intentionally controls any of the activities of another person relating to that person’s prostitution in any part of the world, and

- (b) he does so for or in the expectation of gain for himself or a third person.
- (2) A person guilty of an offence under this section 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.

54 Sections 52 and 53: interpretation

- (1) In sections 52 and 53, “gain” means—
- (a) 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; or
 - (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.
- (2) In those sections “prostitute” and “prostitution” have the meaning given by section 51(2).

Amendments relating to prostitution

55 Penalties for keeping a brothel used for prostitution

- (1) The Sexual Offences Act 1956 (c. 69) is amended as follows.
- (2) After section 33 insert—

“33A Keeping a brothel used for prostitution

- (1) It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).
- (2) In this section “prostitution” has the meaning given by section 51(2) of the Sexual Offences Act 2003.”
- (3) In Schedule 2 (mode of prosecution, punishment etc.), after paragraph 33 insert (as a paragraph with no entry in the fourth column)—

“33A	Keeping a brothel used for prostitution (section 33A).	(i) on indictment	Seven years
		(ii) summarily	Six months, or the statutory maximum, or both.”

56 Extension of gender-specific prostitution offences

Schedule 1 (extension of gender-specific prostitution offences) has effect.

Trafficking

57 Trafficking into the UK for sexual exploitation

- (1) A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either—
 - (a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section 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.

58 Trafficking within the UK for sexual exploitation

- (1) A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—
 - (a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section 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.

59 Trafficking out of the UK for sexual exploitation

- (1) A person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either—
 - (a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he believes that another person is likely to do something to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section 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.

60 Sections 57 to 59: interpretation and jurisdiction

- (1) In sections 57 to 59, “relevant offence” means—
 - (a) an offence under this Part,
 - (b) an offence under section 1(1)(a) of the Protection of Children Act 1978 (c. 37),
 - (c) an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
 - (d) an offence under Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)), or
 - (e) anything done outside England and Wales and Northern Ireland which is not an offence within any of paragraphs (a) to (d) but would be if done in England and Wales or Northern Ireland.
- (2) Sections 57 to 59 apply to anything done—
 - (a) in the United Kingdom, or
 - (b) outside the United Kingdom, by a body incorporated under the law of a part of the United Kingdom or by an individual to whom subsection (3) applies.
- (3) This subsection applies to—
 - (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British National (Overseas),
 - (d) a British Overseas citizen,
 - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61),
 - (f) a British protected person within the meaning given by section 50(1) of that Act.

Preparatory offences

61 Administering a substance with intent

- (1) A person commits an offence if he intentionally administers a substance to, or causes a substance to be taken by, another person (B)—
 - (a) knowing that B does not consent, and
 - (b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.
- (2) A person guilty of an offence under this section 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.

62 Committing an offence with intent to commit a sexual offence

- (1) A person commits an offence under this section if he commits any offence with the intention of committing a relevant sexual offence.

Status: This is the original version (as it was originally enacted).

- (2) In this section, “relevant sexual offence” means any offence under this Part (including an offence of aiding, abetting, counselling or procuring such an offence).
- (3) A person guilty of an offence under this section is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section 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.

63 Trespass with intent to commit a sexual offence

- (1) A person commits an offence if—
 - (a) he is a trespasser on any premises,
 - (b) he intends to commit a relevant sexual offence on the premises, and
 - (c) he knows that, or is reckless as to whether, he is a trespasser.
- (2) In this section—
 - “premises” includes a structure or part of a structure;
 - “relevant sexual offence” has the same meaning as in section 62;
 - “structure” includes a tent, vehicle or vessel or other temporary or movable structure.
- (3) A person guilty of an offence under this section 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.

Sex with an adult relative

64 Sex with an adult relative: penetration

- (1) A person aged 16 or over (A) commits an offence if—
 - (a) he intentionally penetrates another person’s vagina or anus with a part of his body or anything else, or penetrates another person’s mouth with his penis,
 - (b) the penetration is sexual,
 - (c) the other person (B) is aged 18 or over,
 - (d) A is related to B in a way mentioned in subsection (2), and
 - (e) A knows or could reasonably be expected to know that he is related to B in that way.
- (2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.
- (3) In subsection (2)—

- (a) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
 - (b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.
- (4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.
- (5) A person guilty of an offence under this section 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 2 years.

65 Sex with an adult relative: consenting to penetration

- (1) A person aged 16 or over (A) commits an offence if—
- (a) another person (B) penetrates A’s vagina or anus with a part of B’s body or anything else, or penetrates A’s mouth with B’s penis,
 - (b) A consents to the penetration,
 - (c) the penetration is sexual,
 - (d) B is aged 18 or over,
 - (e) A is related to B in a way mentioned in subsection (2), and
 - (f) A knows or could reasonably be expected to know that he is related to B in that way.
- (2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.
- (3) In subsection (2)—
- (a) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
 - (b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.
- (4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.
- (5) A person guilty of an offence under this section 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 2 years.

Other offences

66 Exposure

- (1) A person commits an offence if—
 - (a) he intentionally exposes his genitals, and
 - (b) he intends that someone will see them and be caused alarm or distress.
- (2) A person guilty of an offence under this section 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 2 years.

67 Voyeurism

- (1) A person commits an offence if—
 - (a) for the purpose of obtaining sexual gratification, he observes another person doing a private act, and
 - (b) he knows that the other person does not consent to being observed for his sexual gratification.
- (2) A person commits an offence if—
 - (a) he operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person (B) doing a private act, and
 - (b) he knows that B does not consent to his operating equipment with that intention.
- (3) A person commits an offence if—
 - (a) he records another person (B) doing a private act,
 - (b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act, and
 - (c) he knows that B does not consent to his recording the act with that intention.
- (4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection (1).
- (5) A person guilty of an offence under this section 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 2 years.

68 Voyeurism: interpretation

- (1) For the purposes of section 67, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and—
 - (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear,

- (b) the person is using a lavatory, or
 - (c) the person is doing a sexual act that is not of a kind ordinarily done in public.
- (2) In section 67, “structure” includes a tent, vehicle or vessel or other temporary or movable structure.

69 Intercourse with an animal

- (1) A person commits an offence if—
- (a) he intentionally performs an act of penetration with his penis,
 - (b) what is penetrated is the vagina or anus of a living animal, and
 - (c) he knows that, or is reckless as to whether, that is what is penetrated.
- (2) A person (A) commits an offence if—
- (a) A intentionally causes, or allows, A’s vagina or anus to be penetrated,
 - (b) the penetration is by the penis of a living animal, and
 - (c) A knows that, or is reckless as to whether, that is what A is being penetrated by.
- (3) A person guilty of an offence under this section 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 2 years.

70 Sexual penetration of a corpse

- (1) A person commits an offence if—
- (a) he intentionally performs an act of penetration with a part of his body or anything else,
 - (b) what is penetrated is a part of the body of a dead person,
 - (c) he knows that, or is reckless as to whether, that is what is penetrated, and
 - (d) the penetration is sexual.
- (2) A person guilty of an offence under this section 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 2 years.

71 Sexual activity in a public lavatory

- (1) A person commits an offence if—
- (a) he is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise,
 - (b) he intentionally engages in an activity, and,
 - (c) the activity is sexual.
- (2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider it to be sexual.

Status: This is the original version (as it was originally enacted).

- (3) A person guilty of an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

Offences outside the United Kingdom

72 Offences outside the United Kingdom

- (1) Subject to subsection (2), any act done by a person in a country or territory outside the United Kingdom which—
- (a) constituted an offence under the law in force in that country or territory, and
 - (b) would constitute a sexual offence to which this section applies if it had been done in England and Wales or in Northern Ireland,
- constitutes that sexual offence under the law of that part of the United Kingdom.
- (2) Proceedings by virtue of this section may be brought only against a person who was on 1st September 1997, or has since become, a British citizen or resident in the United Kingdom.
- (3) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this section, however it is described in that law.
- (4) Subject to subsection (5), the condition in subsection (1)(a) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice—
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion met,
 - (b) showing his grounds for that opinion, and
 - (c) requiring the prosecution to prove that it is met.
- (5) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (4).
- (6) In the Crown Court the question whether the condition is met is to be decided by the judge alone.
- (7) Schedule 2 lists the sexual offences to which this section applies.

Supplementary and general

73 Exceptions to aiding, abetting and counselling

- (1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies 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 or the child's participation in it.

- (2) This section applies to—
- (a) an offence under any of sections 5 to 7 (offences against children under 13);
 - (b) an offence under section 9 (sexual activity with a child);
 - (c) an offence under section 13 which would be an offence under section 9 if the offender were aged 18;
 - (d) an offence under any of sections 16, 25, 30, 34 and 38 (sexual activity) against a person under 16.
- (3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

74 “Consent”

For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

75 Evidential presumptions about consent

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

76 Conclusive presumptions about consent

- (1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (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 that—
- (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.

77 Sections 75 and 76: relevant acts

In relation to an offence to which sections 75 and 76 apply, references in those sections to the relevant act and to the complainant are to be read as follows—

<i>Offence</i>	<i>Relevant Act</i>
An offence under section 1 (rape).	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”).
An offence under section 2 (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 section 3 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under section 4 (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.

78 “Sexual”

For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that—

- (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

79 Part 1: general interpretation

- (1) The following apply for the purposes of this Part.

- (2) Penetration is a continuing act from entry to withdrawal.
- (3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).
- (4) “Image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.
- (5) References to an image of a person include references to an image of an imaginary person.
- (6) “Mental disorder” has the meaning given by section 1 of the Mental Health Act 1983 (c. 20).
- (7) References to observation (however expressed) are to observation whether direct or by looking at an image.
- (8) Touching includes touching—
 - (a) with any part of the body,
 - (b) with anything else,
 - (c) through anything,and in particular includes touching amounting to penetration.
- (9) “Vagina” includes vulva.
- (10) In relation to an animal, references to the vagina or anus include references to any similar part.

PART 2

NOTIFICATION AND ORDERS

Notification requirements

80 Persons becoming subject to notification requirements

- (1) A person is subject to the notification requirements of this Part for the period set out in section 82 (“the notification period”) if—
 - (a) he is convicted of an offence listed in Schedule 3;
 - (b) he is found not guilty of such an offence by reason of insanity;
 - (c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or
 - (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.
- (2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a “relevant offender”.

Status: This is the original version (as it was originally enacted).

81 Persons formerly subject to Part 1 of the Sex Offenders Act 1997

- (1) A person is, from the commencement of this Part until the end of the notification period, subject to the notification requirements of this Part if, before the commencement of this Part—
 - (a) he was convicted of an offence listed in Schedule 3;
 - (b) he was found not guilty of such an offence by reason of insanity;
 - (c) he was found to be under a disability and to have done the act charged against him in respect of such an offence; or
 - (d) in England and Wales or Northern Ireland, he was cautioned in respect of such an offence.
- (2) Subsection (1) does not apply if the notification period ended before the commencement of this Part.
- (3) Subsection (1)(a) does not apply to a conviction before 1st September 1997 unless, at the beginning of that day, the person—
 - (a) had not been dealt with in respect of the offence;
 - (b) was serving a sentence of imprisonment or a term of service detention, or was subject to a community order, in respect of the offence;
 - (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence; or
 - (d) was detained in a hospital or was subject to a guardianship order, following the conviction.
- (4) Paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 1st September 1997 unless, at the beginning of that day, the person—
 - (a) had not been dealt with in respect of the finding; or
 - (b) was detained in a hospital, following the finding.
- (5) Subsection (1)(d) does not apply to a caution given before 1st September 1997.
- (6) A person who would have been within subsection (3)(b) or (d) or (4)(b) but for the fact that at the beginning of 1st September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision.
- (7) Where, immediately before the commencement of this Part, an order under a provision within subsection (8) was in force in respect of a person, the person is subject to the notification requirements of this Part from that commencement until the order is discharged or otherwise ceases to have effect.
- (8) The provisions are—
 - (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
 - (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales);
 - (c) section 2A of the Crime and Disorder Act 1998 (interim orders made in England and Wales);
 - (d) section 20 of the Crime and Disorder Act 1998 (sex offender orders and interim orders made in Scotland);
 - (e) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland);

Status: This is the original version (as it was originally enacted).

- (f) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

82 The notification period

- (1) The notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him.

TABLE

<i>Description of relevant offender</i>	<i>Notification period</i>
A person who, in respect of the offence, is or has been sentenced to imprisonment for life or for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence, has been made the subject of an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (order for lifelong restriction)	An indefinite period beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 80(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, a probation order, is made in respect of the offence	The period of conditional discharge or, in Scotland, the probation period
A person of any other description	5 years beginning with the relevant date

- (2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.
- (3) Subsection (4) applies where a relevant offender within section 80(1)(a) or 81(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3—

Status: This is the original version (as it was originally enacted).

- (a) to consecutive terms of imprisonment; or
 - (b) to terms of imprisonment which are partly concurrent.
- (4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which —
- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
 - (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.
- (5) Where a relevant offender the subject of a finding within section 80(1)(c) or 81(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.
- (6) In this Part, “relevant date” means—
- (a) in the case of a person within section 80(1)(a) or 81(1)(a), the date of the conviction;
 - (b) in the case of a person within section 80(1)(b) or (c) or 81(1)(b) or (c), the date of the finding;
 - (c) in the case of a person within section 80(1)(d) or 81(1)(d), the date of the caution;
 - (d) in the case of a person within section 81(7), the date which, for the purposes of Part 1 of the Sex Offenders Act 1997 (c. 51), was the relevant date in relation to that person.

83 Notification requirements: initial notification

- (1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5).
- (2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 80(1) if—
- (a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
 - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
 - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- (3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 81(1) or an order within section 81(7) if the offender complied with section 2(1) of the Sex Offenders Act 1997 in respect of the conviction, finding, caution or order.
- (4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if—
- (a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),

Status: This is the original version (as it was originally enacted).

- (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
 - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- (5) The information is—
- (a) the relevant offender’s date of birth;
 - (b) his national insurance number;
 - (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
 - (d) his home address on the relevant date;
 - (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;
 - (f) his home address on the date on which notification is given;
 - (g) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays.
- (6) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is—
- (a) remanded in or committed to custody by an order of a court;
 - (b) serving a sentence of imprisonment or a term of service detention;
 - (c) detained in a hospital; or
 - (d) outside the United Kingdom.
- (7) In this Part, “home address” means, in relation to any person—
- (a) the address of his sole or main residence in the United Kingdom, or
 - (b) where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.

84 Notification requirements: changes

- (1) A relevant offender must, within the period of 3 days beginning with—
- (a) his using a name which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
 - (b) any change of his home address,
 - (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997, or
 - (d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,
- notify to the police that name, the new home address, the address of those premises or (as the case may be) the fact that he has been released, and (in addition) the information set out in section 83(5).
- (2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

Status: This is the original version (as it was originally enacted).

- (3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).
- (4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—
 - (a) the notification does not affect the duty imposed by subsection (1), and
 - (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.
- (5) Section 83(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 83(1).
- (6) In this section, “qualifying period” means—
 - (a) a period of 7 days, or
 - (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

85 Notification requirements: periodic notification

- (1) A relevant offender must, within the period of one year after each event within subsection (2), notify to the police the information set out in section 83(5), unless within that period he has given a notification under section 84(1).
- (2) The events are—
 - (a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);
 - (b) any notification given by the relevant offender under section 83(1) or 84(1); and
 - (c) any notification given by him under subsection (1).
- (3) Where the period referred to in subsection (1) would (apart from this subsection) end whilst subsection (4) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (4) first ceases to apply to him.
- (4) This subsection applies to the relevant offender if he is—
 - (a) remanded in or committed to custody by an order of a court,
 - (b) serving a sentence of imprisonment or a term of service detention,
 - (c) detained in a hospital, or
 - (d) outside the United Kingdom.

86 Notification requirements: travel outside the United Kingdom

- (1) The Secretary of State may by regulations make provision requiring relevant offenders who leave the United Kingdom, or any description of such offenders—
 - (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);

- (b) if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).
- (2) A notification under this subsection must disclose—
 - (a) the date on which the offender will leave the United Kingdom;
 - (b) the country (or, if there is more than one, the first country) to which he will travel and his point of arrival (determined in accordance with the regulations) in that country;
 - (c) any other information prescribed by the regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom.
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom.
- (4) Regulations under subsection (1) may make different provision for different categories of person.

87 Method of notification and related matters

- (1) A person gives a notification under section 83(1), 84(1) or 85(1) by—
 - (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and
 - (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- (2) A person giving a notification under section 84(1)—
 - (a) in relation to a prospective change of home address, or
 - (b) in relation to premises referred to in subsection (1)(c) of that section,may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address.
- (3) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.
- (4) Where a notification is given under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1) (b), allow the officer or person to—
 - (a) take his fingerprints,
 - (b) photograph any part of him, or
 - (c) do both these things.
- (5) The power in subsection (4) is exercisable for the purpose of verifying the identity of the relevant offender.
- (6) Regulations under subsection (1) may make different provision for different categories of person.

88 Section 87: interpretation

- (1) Subsections (2) to (4) apply for the purposes of section 87.

Status: This is the original version (as it was originally enacted).

- (2) “Photograph” includes any process by means of which an image may be produced.
- (3) “Local police area” means, in relation to a person—
- (a) the police area in which his home address is situated;
 - (b) in the absence of a home address, the police area in which the home address last notified is situated;
 - (c) in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person in a way mentioned in subsection (4) is situated.
- (4) The ways are—
- (a) dealing with a person in respect of an offence listed in Schedule 3 or a finding in relation to such an offence;
 - (b) dealing with a person in respect of an offence under section 128 or a finding in relation to such an offence;
 - (c) making, in respect of a person, a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order;
 - (d) making, in respect of a person, an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales or Scotland) or Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland);
- and in paragraphs (a) and (b), “finding” in relation to an offence means a finding of not guilty of the offence by reason of insanity or a finding that the person was under a disability and did the act or omission charged against him in respect of the offence.
- (5) Subsection (3) applies as if Northern Ireland were a police area.

89 Young offenders: parental directions

- (1) Where a person within the first column of the following Table (“the young offender”) is under 18 (or, in Scotland, 16) when he is before the court referred to in the second column of the Table opposite the description that applies to him, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for (or, in Scotland, parental responsibilities in relation to) the young offender.

TABLE

<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 80(1) (a) to (c) or 81(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 129(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order

<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender who is the defendant to an application under subsection (4) (or, in Scotland, the subject of an application under subsection (5))	The court which hears the application

- (2) Where this subsection applies—
- (a) the obligations that would (apart from this subsection) be imposed by or under sections 83 to 86 on the young offender are to be treated instead as obligations on the parent, and
 - (b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given.
- (3) A direction under subsection (1) takes immediate effect and applies—
- (a) until the young offender attains the age of 18 (or, where a court in Scotland gives the direction, 16); or
 - (b) for such shorter period as the court may, at the time the direction is given, direct.
- (4) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”)—
- (a) who resides in his police area, or who the chief officer believes is in or is intending to come to his police area, and
 - (b) who the chief officer believes is under 18.
- (5) In Scotland, a chief constable may, by summary application to any sheriff within whose sheriffdom lies any part of the area of his police force, apply for a direction under subsection (1) in respect of a relevant offender (“the subject”)—
- (a) who resides in that area, or who the chief constable believes is in or is intending to come to that area, and
 - (b) who the chief constable believes is under 16.

90 Parental directions: variations, renewals and discharges

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 89(1).
- (2) The persons are—
- (a) the young offender;
 - (b) the parent;
 - (c) the chief officer of police for the area in which the young offender resides;
 - (d) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;
 - (e) in Scotland, where the appropriate court is a civil court—
 - (i) the chief constable of the police force within the area of which the young offender resides;
 - (ii) a chief constable who believes that the young offender is in, or is intending to come to, the area of his police force,and in any other case, the prosecutor;

Status: This is the original version (as it was originally enacted).

- (f) where the direction was made on an application under section 89(4), the chief officer of police who made the application;
 - (g) where the direction was made on an application under section 89(5), the chief constable who made the application.
- (3) An application under subsection (1) may be made—
- (a) where the appropriate court is the Crown Court (or in Scotland a criminal court), in accordance with rules of court;
 - (b) in any other case, by complaint (or, in Scotland, by summary application).
- (4) On the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.
- (5) In this section, the “appropriate court” means—
- (a) where the Court of Appeal made the order, the Crown Court;
 - (b) in any other case, the court that made the direction under section 89(1).

91 Offences relating to notification

- (1) A person commits an offence if he—
- (a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), 87(4) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or
 - (b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.
- (2) A person guilty of an offence under this section 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.
- (3) A person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.
- (4) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

92 Certificates for purposes of Part 2

- (1) Subsection (2) applies where on any date a person is—
- (a) convicted of an offence listed in Schedule 3;
 - (b) found not guilty of such an offence by reason of insanity; or
 - (c) found to be under a disability and to have done the act charged against him in respect of such an offence.

- (2) If the court by or before which the person is so convicted or found—
- (a) states in open court—
 - (i) that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him, and
 - (ii) that the offence in question is an offence listed in Schedule 3, and
 - (b) certifies those facts, whether at the time or subsequently, the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.
- (3) Subsection (4) applies where on any date a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 3.
- (4) If the constable—
- (a) informs the person that he has been cautioned on that date and that the offence in question is an offence listed in Schedule 3, and
 - (b) certifies those facts, whether at the time or subsequently, in such form as the Secretary of State may by order prescribe, the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.

93 Abolished homosexual offences

Schedule 4 (procedure for ending notification requirements for abolished homosexual offences) has effect.

Information for verification

94 Part 2: supply of information to Secretary of State etc. for verification

- (1) This section applies to information notified to the police under—
- (a) section 83, 84 or 85, or
 - (b) section 2(1) to (3) of the Sex Offenders Act 1997 (c. 51).
- (2) A person within subsection (3) may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—
- (a) the Secretary of State,
 - (b) a Northern Ireland Department, or
 - (c) a person providing services to the Secretary of State or a Northern Ireland Department in connection with a relevant function,
- for use for the purpose of verifying the information.
- (3) The persons are—
- (a) a chief officer of police (in Scotland, a chief constable),
 - (b) the Police Information Technology Organisation,
 - (c) the Director General of the National Criminal Intelligence Service,
 - (d) the Director General of the National Crime Squad.

Status: This is the original version (as it was originally enacted).

- (4) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to—
- (a) checking its accuracy by comparing it with information held—
 - (i) where the person is the Secretary of State or a Northern Ireland Department, by him or it in connection with the exercise of a relevant function, or
 - (ii) where the person is within subsection (2)(c), by that person in connection with the provision of services referred to there, and
 - (b) compiling a report of that comparison.
- (5) Subject to subsection (6), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).
- (6) This section does not authorise the doing of anything that contravenes the Data Protection Act 1998 (c. 29).
- (7) This section does not affect any power existing apart from this section to supply information.
- (8) In this section—
- “Northern Ireland Department” means the Department for Employment and Learning, the Department of the Environment or the Department for Social Development;
- “relevant function” means—
- (a) a function relating to social security, child support, employment or training,
 - (b) a function relating to passports,
 - (c) a function under Part 3 of the Road Traffic Act 1988 (c. 52) or Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

95 Part 2: supply of information by Secretary of State etc.

- (1) A report compiled under section 94 may be supplied by—
- (a) the Secretary of State,
 - (b) a Northern Ireland Department, or
 - (c) a person within section 94(2)(c),
- to a person within subsection (2).
- (2) The persons are—
- (a) a chief officer of police (in Scotland, a chief constable),
 - (b) the Director General of the National Criminal Intelligence Service,
 - (c) the Director General of the National Crime Squad.
- (3) Such a report may contain any information held—
- (a) by the Secretary of State or a Northern Ireland Department in connection with the exercise of a relevant function, or
 - (b) by a person within section 94(2)(c) in connection with the provision of services referred to there.

- (4) Where such a report contains information within subsection (3), the person within subsection (2) to whom it is supplied—
- (a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Part, and
 - (b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.
- (5) Subsections (5) to (8) of section 94 apply in relation to this section as they apply in relation to section 94.

Information about release or transfer

96 Information about release or transfer

- (1) This section applies to a relevant offender who is serving a sentence of imprisonment or a term of service detention, or is detained in a hospital.
- (2) The Secretary of State may by regulations make provision requiring notice to be given by the person who is responsible for that offender to persons prescribed by the regulations, of any occasion when the offender is released or a different person becomes responsible for him.
- (3) The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender.

Notification orders

97 Notification orders: applications and grounds

- (1) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for an order under this section (a "notification order") in respect of a person ("the defendant") if—
- (a) it appears to him that the following three conditions are met with respect to the defendant, and
 - (b) the defendant resides in his police area or the chief officer believes that the defendant is in, or is intending to come to, his police area.
- (2) The first condition is that under the law in force in a country outside the United Kingdom—
- (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
 - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
 - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
 - (d) he has been cautioned in respect of a relevant offence.

Status: This is the original version (as it was originally enacted).

- (3) The second condition is that—
- (a) the first condition is met because of a conviction, finding or caution which occurred on or after 1st September 1997,
 - (b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it, or
 - (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date the person was, in respect of the offence or finding, subject under the law in force in the country concerned to detention, supervision or any other disposal equivalent to any of those mentioned in section 81(3) (read with sections 81(6) and 131).
- (4) The third condition is that the period set out in section 82 (as modified by subsections (2) and (3) of section 98) in respect of the relevant offence has not expired.
- (5) If on the application it is proved that the conditions in subsections (2) to (4) are met, the court must make a notification order.
- (6) In this section and section 98, “relevant offence” has the meaning given by section 99.

98 Notification orders: effect

- (1) Where a notification order is made—
- (a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below, and
 - (b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 82.
- (2) The “relevant date” means—
- (a) in the case of a person within section 97(2)(a), the date of the conviction;
 - (b) in the case of a person within section 97(2)(b) or (c), the date of the finding;
 - (c) in the case of a person within section 97(2)(d), the date of the caution.
- (3) In section 82—
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 80 are to be read as references to the defendant;
 - (b) the reference in the Table to section 80(1)(d) is to be read as a reference to section 97(2)(d);
 - (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made;
 - (d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.
- (4) In sections 83 and 85, references to the commencement of this Part are to be read as references to the date of service of the notification order.

99 Sections 97 and 98: relevant offences

- (1) “Relevant offence” in sections 97 and 98 means an act which—

- (a) constituted an offence under the law in force in the country concerned, and
 - (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) if it had been done in any part of the United Kingdom.
- (2) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.
- (3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
 - (b) showing his grounds for that opinion, and
 - (c) requiring the applicant to prove that the condition is met.
- (4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

100 Interim notification orders

- (1) This section applies where an application for a notification order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim notification order”)—
- (a) may be made in the complaint containing the main application, or
 - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim notification order.
- (4) Such an order—
- (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) While such an order has effect—
- (a) the defendant is subject to the notification requirements of this Part;
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (6).
- (6) The “relevant date” means the date of service of the order.
- (7) The applicant or the defendant may by complaint apply to the court that made the interim notification order for the order to be varied, renewed or discharged.

101 Notification orders and interim notification orders: appeals

A defendant may appeal to the Crown Court against the making of a notification order or interim notification order.

Status: This is the original version (as it was originally enacted).

**102 Appeals in relation to notification orders and interim notification orders:
Scotland**

In Scotland—

- (a) an interlocutor granting or refusing a notification order or interim notification order is an appealable interlocutor; and
- (b) where an appeal is taken against an interlocutor so granting such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

103 Sections 97 to 100: Scotland

- (1) Sections 97 to 100 apply to Scotland with the following modifications—
 - (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
 - (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
 - (c) an application for a notification order or interim notification order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant’s police force (references to “the court” being construed accordingly).
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.
- (3) The clerk of the court by which, by virtue of that subsection, a notification order or interim notification order is made, varied, renewed or discharged shall cause a copy of, as the case may be—
 - (a) the order as so made, varied or renewed; or
 - (b) the interlocutor by which discharge is effected,
 to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

Sexual offences prevention orders

104 Sexual offences prevention orders: applications and grounds

- (1) A court may make an order under this section in respect of a person (“the defendant”) where any of subsections (2) to (4) applies to the defendant and—
 - (a) where subsection (4) applies, it is satisfied that the defendant’s behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
 - (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5.

- (3) This subsection applies to the defendant where the court deals with him in respect of a finding—
- (a) that he is not guilty of an offence listed in Schedule 3 or 5 by reason of insanity, or
 - (b) that he is under a disability and has done the act charged against him in respect of such an offence.
- (4) This subsection applies to the defendant where—
- (a) an application under subsection (5) has been made to the court in respect of him, and
 - (b) on the application, it is proved that he is a qualifying offender.
- (5) A chief officer of police may by complaint to a magistrates' court apply for an order under this section in respect of a person who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that—
- (a) the person is a qualifying offender, and
 - (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (6) An application under subsection (5) may be made to any magistrates' court whose commission area includes—
- (a) any part of the applicant's police area, or
 - (b) any place where it is alleged that the person acted in a way mentioned in subsection (5)(b).

105 SOPOs: further provision as respects Scotland

- (1) A chief constable may apply for an order under this section in respect of a person who he believes is in, or is intending to come to, the area of his police force if it appears to the chief constable that—
- (a) the person has been convicted of, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him in respect of—
 - (i) an offence listed in paragraph 60 of Schedule 3; or
 - (ii) before the commencement of this Part, an offence in Scotland other than is mentioned in paragraphs 36 to 59 of that Schedule if the chief constable considers that had the conviction or finding been after such commencement it is likely that a determination such as is mentioned in paragraph 60 would have been made in relation to the offence; and
 - (b) the person has since the conviction or finding acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made by summary application to a sheriff within whose sheriffdom lies—
- (a) any part of the area of the applicant's police force; or
 - (b) any place where it is alleged that the person acted in a way mentioned in subsection (1)(b).
- (3) The sheriff may make the order where satisfied—

Status: This is the original version (as it was originally enacted).

- (a) that the person’s behaviour since the conviction or finding makes it necessary to make such an order, for the purposes of protecting the public or any particular members of the public from serious sexual harm from the person; and
 - (b) where the application is by virtue of subsection (1)(a)(ii), that there was a significant sexual aspect to the person’s behaviour in committing the offence.
- (4) Subsection (3) of section 106 applies for the purposes of this section as it applies for the purposes of section 104 and subsections (2) and (3) of section 112 apply in relation to a summary application made by virtue of subsection (1) as they apply in relation to one made by virtue of subsection (1)(g) of that section.

106 Section 104: supplemental

- (1) In this Part, “sexual offences prevention order” means an order under section 104 or 105.
- (2) Subsections (3) to (8) apply for the purposes of section 104.
- (3) “Protecting the public or any particular members of the public from serious sexual harm from the defendant” means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3.
- (4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part.
- (5) “Qualifying offender” means a person within subsection (6) or (7).
- (6) A person is within this subsection if, whether before or after the commencement of this Part, he—
 - (a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5,
 - (b) has been found not guilty of such an offence by reason of insanity,
 - (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
 - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.
- (7) A person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
 - (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
 - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
 - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
 - (d) he has been cautioned in respect of a relevant offence.
- (8) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (6) or (7).

- (9) In subsection (7), “relevant offence” means an act which—
- (a) constituted an offence under the law in force in the country concerned, and
 - (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5 if it had been done in any part of the United Kingdom.
- (10) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (9), however it is described in that law.
- (11) Subject to subsection (12), on an application under section 104(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
 - (b) showing his grounds for that opinion, and
 - (c) requiring the applicant to prove that the condition is met.
- (12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11).

107 SOPOs: effect

- (1) A sexual offences prevention order—
- (a) prohibits the defendant from doing anything described in the order, and
 - (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.
- (2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (3) Where—
- (a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,
- the defendant remains subject to the notification requirements.
- (4) Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order—
- (a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect, and
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (5).
- (5) The “relevant date” is the date of service of the order.
- (6) Where a court makes a sexual offences prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

Status: This is the original version (as it was originally enacted).

(7) Section 106(3) applies for the purposes of this section and section 108.

108 SOPOs: variations, renewals and discharges

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual offences prevention order.
- (2) The persons are—
 - (a) the defendant;
 - (b) the chief officer of police for the area in which the defendant resides;
 - (c) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area;
 - (d) where the order was made on an application under section 104(5), the chief officer of police who made the application.
- (3) An application under subsection (1) may be made—
 - (a) where the appropriate court is the Crown Court, in accordance with rules of court;
 - (b) in any other case, by complaint.
- (4) Subject to subsections (5) and (6), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual offences prevention order, that the court considers appropriate.
- (5) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and—
 - (a) where the application is made by a chief officer of police, that chief officer, or
 - (b) in any other case, the chief officer of police for the area in which the defendant resides.
- (7) In this section “the appropriate court” means—
 - (a) where the Crown Court or the Court of Appeal made the sexual offences prevention order, the Crown Court;
 - (b) where a magistrates' court made the order, that court, a magistrates' court for the area in which the defendant resides or, where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of the chief officer's police area;
 - (c) where a youth court made the order, that court, a youth court for the area in which the defendant resides or, where the application is made by a chief officer of police, any youth court whose commission area includes any part of the chief officer's police area.
- (8) This section applies to orders under—
 - (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders),

- (b) section 2 or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales or Scotland), and
 - (c) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland),
- as it applies to sexual offences prevention orders.

109 Interim SOPOs

- (1) This section applies where an application under section 104(5) or 105(1) (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim sexual offences prevention order”)—
 - (a) may be made by the complaint by which the main application is made, or
 - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim sexual offences prevention order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order—
 - (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) Section 107(3) to (5) apply to an interim sexual offences prevention order as if references to an order were references to such an order, and with the omission of “as renewed from time to time” in both places.
- (6) The applicant or the defendant may by complaint apply to the court that made the interim sexual offences prevention order for the order to be varied, renewed or discharged.
- (7) Subsection (6) applies to orders under—
 - (a) section 2A or 20(4)(a) of the Crime and Disorder Act 1998 (c. 37) (interim orders made in England and Wales or Scotland), and
 - (b) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (interim orders made in Northern Ireland),as it applies to interim sexual offences prevention orders.

110 SOPOs and interim SOPOs: appeals

- (1) A defendant may appeal against the making of a sexual offences prevention order—
 - (a) where section 104(2) applied to him, as if the order were a sentence passed on him for the offence;
 - (b) where section 104(3) (but not section 104(2)) applied to him, as if he had been convicted of the offence and the order were a sentence passed on him for that offence;
 - (c) where the order was made on an application under section 104(5), to the Crown Court.

Status: This is the original version (as it was originally enacted).

- (2) A defendant may appeal to the Crown Court against the making of an interim sexual offences prevention order.
- (3) A defendant may appeal against the making of an order under section 108, or the refusal to make such an order—
 - (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
 - (b) in any other case, to the Crown Court.
- (4) On an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (5) Any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 108(7) or 109(7) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

111 Appeals in relation to SOPOs and interim SOPOs: Scotland

In Scotland—

- (a) an interlocutor granting, refusing, varying, renewing or discharging a sexual offences prevention order or interim sexual offences prevention order is an appealable interlocutor; and
- (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

112 Sections 104 and 106 to 109: Scotland

- (1) Sections 104 and 106 to 109 apply to Scotland with the following modifications—
 - (a) subsections (1)(b), (2) and (3) of section 104 shall be disregarded;
 - (b) an application under subsection (5) of section 104 shall not be competent in respect of a person who is a qualifying offender by virtue only of a conviction or finding which relates to any offence listed at paragraphs 64 to 111 of Schedule 5;
 - (c) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
 - (d) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
 - (e) an application for a sexual offences prevention order or interim sexual offences prevention order is made by summary application to any sheriff within whose sheriffdom lies—
 - (i) any part of the area of the applicant's police force; or
 - (ii) any place where it is alleged that the person in respect of whom the order is sought or has effect acted in a way mentioned in subsection (5)(b) of section 104,
 (references to “the court” being construed accordingly);

- (f) an application for the variation, renewal or discharge of either such order is made by summary application to the sheriff who made the order or to a sheriff—
 - (i) within whose sheriffdom the person subject to the order resides; or
 - (ii) where the application is made by a chief constable, within whose sheriffdom lies any part of the area of the applicant’s police force,(references to “the court” being construed accordingly).
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(e) or (f) above.
- (3) The clerk of the court by which, by virtue of that subsection, a sexual offences prevention order or interim sexual offences prevention order is made, varied, renewed or discharged shall cause a copy of, as the case may be—
 - (a) the order as so made, varied or renewed; or
 - (b) the interlocutor by which discharge is effected,to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

113 Offence: breach of SOPO or interim SOPO

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
 - (a) a sexual offences prevention order;
 - (b) an interim sexual offences prevention order;
 - (c) an order under section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
 - (d) an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales and in Scotland);
 - (e) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland).
- (2) A person guilty of an offence under this section 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.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge or, in Scotland, a probation order.

Status: This is the original version (as it was originally enacted).

Foreign travel orders

114 Foreign travel orders: applications and grounds

- (1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a “foreign travel order”) in respect of a person (“the defendant”) who resides in his police area or who the chief officer believes is in or is intending to come to his police area if it appears to the chief officer that—
 - (a) the defendant is a qualifying offender, and
 - (b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made to any magistrates' court whose commission area includes any part of the applicant's police area.
- (3) On the application, the court may make a foreign travel order if it is satisfied that—
 - (a) the defendant is a qualifying offender, and
 - (b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

115 Section 114: interpretation

- (1) Subsections (2) to (5) apply for the purposes of section 114.
- (2) “Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom” means protecting persons under 16 generally or any particular person under 16 from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.
- (3) Acts and behaviour include those occurring before the commencement of this Part.
- (4) “Qualifying offender” has the meaning given by section 116.
- (5) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 116.
- (6) In this section and section 116 as they apply to Northern Ireland, references to persons, or to a person, under 16 are to be read as references to persons, or to a person, under 17.

116 Section 114: qualifying offenders

- (1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he—
 - (a) has been convicted of an offence within subsection (2),
 - (b) has been found not guilty of such an offence by reason of insanity,
 - (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
 - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

- (2) The offences are—
- (a) an offence within any of paragraphs 13 to 15, 44 to 46, 77, 78 and 82 of Schedule 3;
 - (b) an offence within paragraph 31 of that Schedule, if the intended offence was an offence against a person under 16;
 - (c) an offence within paragraph 93 of that Schedule, if—
 - (i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule;
 - (ii) the corresponding civil offence is an offence within paragraph 31 of that Schedule, and the intended offence was an offence against a person under 16; or
 - (iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 30 and 32 to 35 of that Schedule, and the victim of the offence was under 16 at the time of the offence.
 - (d) an offence within any other paragraph of that Schedule, if the victim of the offence was under 16 at the time of the offence.
- (3) A person is also a qualifying offender for the purposes of section 114 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
- (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
 - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
 - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
 - (d) he has been cautioned in respect of a relevant offence.
- (4) In subsection (3), “relevant offence” means an act which—
- (a) constituted an offence under the law in force in the country concerned, and
 - (b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom.
- (5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.
- (6) Subject to subsection (7), on an application under section 114 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
 - (b) showing his grounds for that opinion, and
 - (c) requiring the applicant to prove that the condition is met.
- (7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

Status: This is the original version (as it was originally enacted).

117 Foreign travel orders: effect

- (1) A foreign travel order has effect for a fixed period of not more than 6 months, specified in the order.
- (2) The order prohibits the defendant from doing whichever of the following is specified in the order—
 - (a) travelling to any country outside the United Kingdom named or described in the order,
 - (b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
 - (c) travelling to any country outside the United Kingdom.
- (3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.
- (4) If at any time while an order (as renewed from time to time) has effect a defendant is not a relevant offender, the order causes him to be subject to the requirements imposed by regulations made under section 86(1) (and for these purposes the defendant is to be treated as if he were a relevant offender).
- (5) Where a court makes a foreign travel order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.
- (6) Section 115(2) applies for the purposes of this section and section 118.

118 Foreign travel orders: variations, renewals and discharges

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a foreign travel order.
- (2) The persons are—
 - (a) the defendant;
 - (b) the chief officer of police on whose application the foreign travel order was made;
 - (c) the chief officer of police for the area in which the defendant resides;
 - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.
- (3) Subject to subsection (4), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the foreign travel order, that the court considers appropriate.
- (4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (5) In this section “the appropriate court” means—
 - (a) the court which made the foreign travel order;

- (b) a magistrates' court for the area in which the defendant resides; or
- (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

119 Foreign travel orders: appeals

- (1) A defendant may appeal to the Crown Court—
 - (a) against the making of a foreign travel order;
 - (b) against the making of an order under section 118, or the refusal to make such an order.
- (2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order made by the Crown Court on an appeal under subsection (1)(a) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 118(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

120 Appeals in relation to foreign travel orders: Scotland

In Scotland—

- (a) an interlocutor granting, refusing, varying, renewing or discharging a foreign travel order is an appealable interlocutor; and
- (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

121 Sections 114 to 118: Scotland

- (1) Sections 114 to 118 apply to Scotland with the following modifications—
 - (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
 - (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
 - (c) an application for a foreign travel order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to "the court" being construed accordingly);
 - (d) for paragraphs (a) to (c) of section 118(5) there is substituted—
 - “(a) the sheriff who made the foreign travel order; or
 - (b) where the application is made by a chief constable, a sheriff whose sheriffdom includes any part of the area of the applicant's police force.”
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.
- (3) The clerk of the court by which, by virtue of that subsection, a foreign travel order is made, varied, renewed or discharged shall cause a copy of, as the case may be—

Status: This is the original version (as it was originally enacted).

- (a) the order as so made, varied or renewed; or
 - (b) the interlocutor by which discharge is effected,
- to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

122 Offence: breach of foreign travel order

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.
- (2) A person guilty of an offence under this section 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.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge (or, in Scotland, a probation order).

Risk of sexual harm orders

123 Risk of sexual harm orders: applications, grounds and effect

- (1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a "risk of sexual harm order") in respect of a person aged 18 or over ("the defendant") who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that—
 - (a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and
 - (b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made to any magistrates' court whose commission area includes—
 - (a) any part of the applicant's police area, or
 - (b) any place where it is alleged that the defendant acted in a way mentioned in subsection (1)(a).
- (3) The acts are—
 - (a) engaging in sexual activity involving a child or in the presence of a child;
 - (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
 - (c) giving a child anything that relates to sexual activity or contains a reference to such activity;
 - (d) communicating with a child, where any part of the communication is sexual.
- (4) On the application, the court may make a risk of sexual harm order if it is satisfied that—

- (a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and
 - (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.
- (5) Such an order—
- (a) prohibits the defendant from doing anything described in the order;
 - (b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.
- (6) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.
- (7) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

124 Section 123: interpretation

- (1) Subsections (2) to (7) apply for the purposes of section 123.
- (2) “Protecting children generally or any child from harm from the defendant” means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 123(3).
- (3) “Child” means a person under 16.
- (4) “Image” means an image produced by any means, whether of a real or imaginary subject.
- (5) “Sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider to be sexual.
- (6) A communication is sexual if—
- (a) any part of it relates to sexual activity, or
 - (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider that any part of the communication is sexual.
- (7) An image is sexual if—
- (a) any part of it relates to sexual activity, or
 - (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider that any part of the image is sexual.
- (8) In this section, as it applies to Northern Ireland, subsection (3) has effect with the substitution of “17” for “16”.

125 RSHOs: variations, renewals and discharges

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a risk of sexual harm order.
- (2) The persons are—
- (a) the defendant;

Status: This is the original version (as it was originally enacted).

- (b) the chief officer of police on whose application the risk of sexual harm order was made;
 - (c) the chief officer of police for the area in which the defendant resides;
 - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.
- (3) Subject to subsections (4) and (5), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the risk of sexual harm order, that the court considers appropriate.
- (4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and—
- (a) where the application is made by a chief officer of police, that chief officer, or
 - (b) in any other case, the chief officer of police for the area in which the defendant resides.
- (6) Section 124(2) applies for the purposes of this section.
- (7) In this section “the appropriate court” means—
- (a) the court which made the risk of sexual harm order;
 - (b) a magistrates' court for the area in which the defendant resides; or
 - (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

126 Interim RSHOs

- (1) This section applies where an application for a risk of sexual harm order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim risk of sexual harm order”) —
- (a) may be made by the complaint by which the main application is made, or
 - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim risk of sexual harm order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order—
- (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) The applicant or the defendant may by complaint apply to the court that made the interim risk of sexual harm order for the order to be varied, renewed or discharged.

127 RSHOs and interim RSHOs: appeals

- (1) A defendant may appeal to the Crown Court—
 - (a) against the making of a risk of sexual harm order;
 - (b) against the making of an interim risk of sexual harm order; or
 - (c) against the making of an order under section 125, or the refusal to make such an order.
- (2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order made by the Crown Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 125(7) or 126(5) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

128 Offence: breach of RSHO or interim RSHO

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
 - (a) a risk of sexual harm order; or
 - (b) an interim risk of sexual harm order.
- (2) A person guilty of an offence under this section 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.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge.

129 Effect of conviction etc. of an offence under section 128

- (1) This section applies to a person (“the defendant”) who—
 - (a) is convicted of an offence under section 128;
 - (b) is found not guilty of such an offence by reason of insanity;
 - (c) is found to be under a disability and to have done the act charged against him in respect of such an offence; or
 - (d) is cautioned in respect of such an offence.
- (2) Where —
 - (a) a defendant was a relevant offender immediately before this section applied to him, and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect,the defendant remains subject to the notification requirements.

Status: This is the original version (as it was originally enacted).

- (3) Where the defendant was not a relevant offender immediately before this section applied to him—
- (a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to him until the relevant order (as renewed from time to time) ceases to have effect, and
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (4).
- (4) The “relevant date” is the date on which this section first applies to the defendant.
- (5) In this section “relevant order” means—
- (a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a risk of sexual harm order, that order;
 - (b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim risk of sexual harm order, any risk of sexual harm order made on the hearing of the application to which the interim risk of sexual harm order relates or, if no such order is made, the interim risk of sexual harm order.

Power to amend Schedules 3 and 5

130 Power to amend Schedules 3 and 5

- (1) The Secretary of State may by order amend Schedule 3 or 5.
- (2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.
- (3) For the purposes of sections 106 and 116, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.
- (4) An amendment is within this subsection if it—
 - (a) adds an offence,
 - (b) removes a threshold relating to an offence, or
 - (c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

General

131 Young offenders: application

This Part applies to—

- (a) a period of detention which a person is liable to serve under a detention and training order, or a secure training order,
- (b) a period for which a person is ordered to be detained in residential accommodation under section 44(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
- (c) a period of training in a training school, or of custody in a remand centre, which a person is liable to undergo or serve by virtue of an order under

Status: This is the original version (as it was originally enacted).

section 74(1)(a) or (e) of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)),

- (d) a period for which a person is ordered to be detained in a juvenile justice centre under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
- (e) a period for which a person is ordered to be kept in secure accommodation under Article 44A of the Order referred to in paragraph (d),
- (f) a sentence of detention in a young offender institution, a young offenders institution or a young offenders centre,
- (g) a sentence under a custodial order within the meaning of section 71AA of, or paragraph 10(1) of Schedule 5A to, the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43AA of, or paragraph 10(1) of Schedule 4A to, the Naval Discipline Act 1957 (c. 53),
- (h) a sentence of detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 208 of the Criminal Procedure (Scotland) Act 1995 or Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998,
- (i) a sentence of custody for life under section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),
- (j) a sentence of detention, or custody for life, under section 71A of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43A of the Naval Discipline Act 1957 (c. 53),

as it applies to an equivalent sentence of imprisonment; and references in this Part to prison or imprisonment are to be interpreted accordingly.

132 Offences with thresholds

- (1) This section applies to an offence which in Schedule 3 is listed subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (where a relevant finding has been made in respect of him) in respect of the finding (a “sentencing condition”).
- (2) Where an offence is listed if either a sentencing condition or a condition of another description is met, this section applies only to the offence as listed subject to the sentencing condition.
- (3) For the purposes of this Part (including in particular section 82(6))—
 - (a) a person is to be regarded as convicted of an offence to which this section applies, or
 - (b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,at the time when the sentencing condition is met.
- (4) In the following subsections, references to a foreign offence are references to an act which—
 - (a) constituted an offence under the law in force in a country outside the United Kingdom (“the relevant foreign law”), and
 - (b) would have constituted an offence to which this section applies (but not an offence, listed in Schedule 3, to which this section does not apply) if it had been done in any part of the United Kingdom.

Status: This is the original version (as it was originally enacted).

- (5) In relation to a foreign offence, references to the corresponding UK offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.
- (6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.
- (7) Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.
- (8) Where (by virtue of an order under section 130 or otherwise) an offence is listed in Schedule 5 subject to a sentencing condition, this section applies to that offence as if references to Schedule 3 were references to Schedule 5.
- (9) In this section, “relevant finding”, in relation to an offence, means—
- (a) a finding that a person is not guilty of the offence by reason of insanity, or
 - (b) a finding that a person is under a disability and did the act charged against him in respect of the offence.

133 Part 2: general interpretation

- (1) In this Part—
- “admitted to a hospital” means admitted to a hospital under—
- (a) section 37 of the Mental Health Act 1983 (c. 20), section 57(2)(a) or 58 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Article 44 or 50A(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));
 - (b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25); or
 - (c) regulations under subsection (3) of section 116B of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 63B of the Naval Discipline Act 1957 (c. 53);
- “cautioned” means—
- (a) cautioned by a police officer after the person concerned has admitted the offence, or
 - (b) reprimanded or warned within the meaning given by section 65 of the Crime and Disorder Act 1998 (c. 37),
- and “caution” is to be interpreted accordingly;
- “community order” means—
- (a) a community order within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
 - (b) a probation order or community service order under the Criminal Procedure (Scotland) Act 1995 or a supervised attendance order made in pursuance of section 235 of that Act;

Status: This is the original version (as it was originally enacted).

(c) a community order within the meaning of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)), a probation order under section 1 of the Probation Act (Northern Ireland) 1950 (c. 7 (N.I.)) or a community service order under Article 7 of the Treatment of Offenders (Northern Ireland) Order 1976 (S.I. 1976/226 (N.I. 40)); or

(d) a community supervision order;

“community supervision order” means an order under paragraph 4 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957;

“country” includes territory;

“detained in a hospital” means detained in a hospital under—

(a) Part 3 of the Mental Health Act 1983, section 71 of the Mental Health (Scotland) Act 1984 (c. 36), Part 6 of the Criminal Procedure (Scotland) Act 1995 or Part III of the Mental Health (Northern Ireland) Order 1986;

(b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991; or

(c) regulations under subsection (3) of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957;

“guardianship order” means a guardianship order under section 37 of the Mental Health Act 1983 (c. 20), section 58 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Article 44 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

“home address” has the meaning given by section 83(7);

“interim notification order” has the meaning given by section 100(2);

“interim risk of sexual harm order” has the meaning given by section 126(2);

“interim sexual offences prevention order” has the meaning given by section 109(2);

“local police area” has the meaning given by section 88(3);

“local probation board” has the same meaning as in the Criminal Justice and Court Services Act 2000 (c. 43);

“notification order” has the meaning given by section 97(1);

“notification period” has the meaning given by section 80(1);

“order for conditional discharge” has the meaning given by each of the following—

(a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

(b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24));

(c) paragraph 2(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18);

(d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);

(e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957 (c. 53);

“parental responsibility” has the same meaning as in the Children Act 1989 (c. 41) or the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2)), and “parental responsibilities” has the same meaning as in Part 1 of the Children (Scotland) Act 1995 (c. 36);

Status: This is the original version (as it was originally enacted).

“the period of conditional discharge” has the meaning given by each of the following—

- (a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996;
- (c) paragraph 2(1) of Schedule 5A to the Army Act 1955;
- (d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955;
- (e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957;

“probation order” has the meaning given by section 228(1) of the Criminal Procedure (Scotland) Act 1995;

“probation period” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995;

“relevant date” has the meaning given by section 82(6) (save in the circumstances mentioned in sections 98, 100, 107, 109 and 129);

“relevant offender” has the meaning given by section 80(2);

“restriction order” means—

- (a) an order under section 41 of the Mental Health Act 1983, section 57(2) (b) or 59 of the Criminal Procedure (Scotland) Act 1995 or Article 47(1) of the Mental Health (Northern Ireland) Order 1986;
- (b) a direction under paragraph 2(1)(b) of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) or Article 50A(3)(b) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)); or
- (c) a direction under subsection (2) of section 116B of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 63B of the Naval Discipline Act 1957 (c. 53);

“risk of sexual harm order” has the meaning given by section 123(1);

“sexual offences prevention order” has the meaning given by section 106(1);

“supervision” means supervision in pursuance of an order made for the purpose or, in the case of a person released from prison on licence, in pursuance of a condition contained in his licence;

“term of service detention” means a term of detention awarded under section 71(1)(e) of the Army Act 1955 or the Air Force Act 1955 or section 43(1)(e) of the Naval Discipline Act 1957.

- (2) Where under section 141 different days are appointed for the commencement of different provisions of this Part, a reference in any such provision to the commencement of this Part is to be read (subject to section 98(4)) as a reference to the commencement of that provision.

134 Conditional discharges and probation orders

- (1) The following provisions do not apply for the purposes of this Part to a conviction for an offence in respect of which an order for conditional discharge or, in Scotland, a probation order is made—
 - (a) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conviction with absolute or conditional discharge deemed not to be a conviction);

- (b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conviction with absolute or conditional discharge deemed not to be a conviction);
 - (c) section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (conviction with probation order or absolute discharge deemed not to be a conviction);
 - (d) paragraph 5(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53) (conviction with absolute or conditional discharge or community supervision order deemed not to be a conviction).
- (2) Subsection (1) applies only to convictions after the commencement of this Part.
- (3) The provisions listed in subsection (1)(d) do not apply for the purposes of this Part to a conviction for an offence in respect of which a community supervision order is or has (before or after the commencement of this Part) been made.

135 Interpretation: mentally disordered offenders

- (1) In this Part, a reference to a conviction includes a reference to a finding of a court in summary proceedings, where the court makes an order under an enactment within subsection (2), that the accused did the act charged; and similar references are to be interpreted accordingly.
- (2) The enactments are—
- (a) section 37(3) of the Mental Health Act 1983 (c. 20);
 - (b) section 58(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46);
 - (c) Article 44(4) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).
- (3) In this Part, a reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence includes a reference to his being or having been found—
- (a) unfit to be tried for the offence;
 - (b) to be insane so that his trial for the offence cannot or could not proceed; or
 - (c) unfit to be tried and to have done the act charged against him in respect of the offence.
- (4) In section 133—
- (a) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and the reference to a direction under paragraph 2(1)(b) of that Schedule, include respectively—
 - (i) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity) Act 1964 (c. 84); and
 - (ii) a reference to a restriction order treated as made by paragraph 2(1) of that Schedule;
 - (b) a reference to admission or detention under any provision of Part 6 of the Criminal Procedure (Scotland) Act 1995, and the reference to an order under section 57(2)(b) or 59 of that Act, include respectively—
 - (i) a reference to admission or detention under section 174(3) or 376(2) of the Criminal Procedure (Scotland) Act 1975 (c. 21); and

Status: This is the original version (as it was originally enacted).

- (ii) a reference to a restriction order made under section 178(1) or 379(1) of that Act;
- (c) a reference to admission or detention under regulations made under subsection (3), and the reference to a direction under subsection (2), of section 116B of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 63B of the Naval Discipline Act 1957 (c. 53) include respectively—
 - (i) a reference to admission or detention, and
 - (ii) a reference to a direction, under section 46 of the Mental Health Act 1983, section 69 of the Mental Health (Scotland) Act 1984 (c. 36) or Article 52 of the Mental Health (Northern Ireland) Order 1986.

136 Part 2: Northern Ireland

- (1) This Part applies to Northern Ireland with the following modifications.
- (2) References to a chief officer of police are to be read as references to the Chief Constable of the Police Service of Northern Ireland.
- (3) References to police areas are to be read as references to Northern Ireland.
- (4) References to a complaint are to be read as references to a complaint under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) to a court of summary jurisdiction.
- (5) Subject to subsection (6), references to a magistrates' court are to be read as references to a court of summary jurisdiction.
- (6) References to a magistrates' court for the area in which the defendant resides are to be read as references to a court of summary jurisdiction for the petty sessions district which includes the area where the defendant resides.
- (7) References to a youth court for the area in which the defendant resides are to be read as references to a youth court for the petty sessions district which includes the area where the defendant resides.
- (8) References in sections 101, 110(1), (2), (3)(b), (4) and (5), 119 and 127 to the Crown Court are to be read as references to a county court.
- (9) Any direction of the county court made under section 89(1) on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (appeals in other cases) (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 90, to be treated as if it were made by the court from which the appeal was brought and not by the county court.
- (10) Any order of the county court made on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 108, to be treated as if it were an order of the court from which the appeal was brought and not an order of the county court.

PART 3

GENERAL

137 Service courts

- (1) In this Act—
 - (a) a reference to a court order or a conviction or finding includes a reference to an order of or a conviction or finding by a service court,
 - (b) a reference to an offence includes a reference to an offence triable by a service court,
 - (c) “proceedings” includes proceedings before a service court, and
 - (d) a reference to proceedings for an offence under this Act includes a reference to proceedings for the offence under section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 42 of the Naval Discipline Act 1957 (c. 53) for which the offence under this Act is the corresponding civil offence.
- (2) In sections 92 and 104(1), “court” includes a service court.
- (3) Where the court making a sexual offences prevention order is a service court—
 - (a) sections 104(1)(a) and (4) to (6), 105, 109, 111 and 112 do not apply,
 - (b) in section 108, “the appropriate court” means the Crown Court in England and Wales, and
 - (c) in section 110(3)(a), the references to the Crown Court and Court of Appeal are references to the Crown Court and Court of Appeal in England and Wales.
- (4) In this section “service court” means a court-martial or Standing Civilian Court.

138 Orders and regulations

- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under section 21, 86 or 130 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Any other statutory instrument, except one containing an order under section 141, is to be subject to annulment in pursuance of a resolution of either House of Parliament.

139 Minor and consequential amendments

Schedule 6 contains minor and consequential amendments.

140 Repeals and revocations

The provisions listed in Schedule 7 are repealed or revoked to the extent specified.

141 Commencement

- (1) This Act, except this section and sections 138, 142 and 143, comes into force in accordance with provision made by the Secretary of State by order.
- (2) An order under subsection (1) may—
 - (a) make different provision for different purposes;
 - (b) include supplementary, incidental, saving or transitional provisions.

142 Extent, saving etc.

- (1) Subject to section 137 and to subsections (2) to (4), this Act extends to England and Wales only.
- (2) The following provisions also extend to Northern Ireland—
 - (a) sections 15 to 24, 46 to 54, 57 to 60, 66 to 72, 78 and 79,
 - (b) Schedule 2,
 - (c) Part 2, and
 - (d) sections 138, 141, 143 and this section.
- (3) The following provisions also extend to Scotland—
 - (a) Part 2 except sections 93 and 123 to 129 and Schedule 4, and
 - (b) sections 138, 141, 143 and this section.
- (4) Unless otherwise provided, any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.
- (5) Section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) continues to have effect despite the repeal by this Act of section 8 of the Sex Offenders Act 1997 (c. 51).
- (6) For the purposes of the Scotland Act 1998 (c. 46), this Act is to be taken to be a pre-commencement enactment.

143 Short title

This Act may be cited as the Sexual Offences Act 2003.