Sexual Offences Act 2003

2003 CHAPTER 42

PART 1 E+W+N.I.

SEXUAL OFFENCES

Rape

1 Rape E+W

(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 E+W

(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Status: *Point in time view as at 25/11/2012.*
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(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 E+W

(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 E+W

(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—

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(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 E+W

(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 E+W

(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 E+W

(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 E+W

(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—

(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 E+W

(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 E+W

(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.

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(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 E+W

(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 E+W

(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—

(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 E+W

(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 E+W

(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. E+W+N.I.

[F1(1) A person aged 18 or over (A) commits an offence if—

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[F2(a) A has met or communicated with another person (B) on at least two occasions and subsequently—

(i) A intentionally meets B,

(ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or

(iii) B travels with the intention of meeting A in any part of the world,

(b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,**]**

(c) B is under 16, and

(d) A does not reasonably believe that B is 16 or over.

(2) In 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) F3. . . . . .

(iii) anything done outside England and Wales F4. . . which is not an offence within sub-paragraph (i) F4. . . but would be an offence within sub-paragraph (i) if done in England and Wales.

(3) F5. . . . . .

(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.**]**

Textual Amendments

F1 S. 15 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(a), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

F2 S. 15(1)(a)(b) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(7), **Sch. 15 para. 1**; S.I. 2008/1586, **art. 2**, Sch. 1 para. 35 (subject to Sch. 2)

F3 S. 15(2)(b)(ii) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **4(2)**; S.I. 2008/510, **art. 2**

F4 Words in s. 15(2)(b)(iii) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **4(3)**; S.I. 2008/510, **art. 2**

F5 S. 15(3) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **4(4)**; S.I. 2008/510, **art. 2**

Abuse of position of trust

16 Abuse of position of trust: sexual activity with a child E+W+N.I.

[F6(1) A person aged 18 or over (A) commits an offence if—

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(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—
(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.**]**

Textual Amendments

F6 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

17 Abuse of position of trust: causing or inciting a child to engage in sexual activity E+W+N.I.

[[F7](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,

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(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.**]**

Textual Amendments

F7 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

18 Abuse of position of trust: sexual activity in the presence of a child E+W+N.I.

[F8(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,

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(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.

(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.**]**

Textual Amendments

F8 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

19 Abuse of position of trust: causing a child to watch a sexual act E+W+N.I.

[F9(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—

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(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.**]**

Textual Amendments

F9 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

20 Abuse of position of trust: acts done in Scotland E+W+N.I.

[F10Anything which, if done in England and Wales F11. . . , would constitute an offence under any of sections 16 to 19 also constitutes that offence if done in Scotland **[**F12or Northern Ireland**]**.**]**

Textual Amendments

F10 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

F11 Words in s. 20 omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **5(2)**; S.R. 2008/510, **art. 2**

F12 Words in s. 20 inserted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **5(3)**; S.R. 2008/510, **art. 2**

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21 Positions of trust E+W+N.I.

[F13(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 **[**F14in accordance with section 22C(6)**]** of the Children Act 1989 (c. 41) F15. . . , or

(b) accommodation is provided by a voluntary organisation under section 59(1) of that Act F16. . . ,

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) **[**F17in Wales,**]** an independent clinic,

(c) a care home, F18. . .

(d) a community home, voluntary home or children's home, **[**F19or**]**

(e) a home provided under section 82(5) of the Children Act 1989, F20. . .

(f) F21. . . . . .

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) F22. . . . . .

(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

[F23(b) section 68, 70(1)(b) or 74 of the Education and Skills Act 2008,**]**

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)—

(a) in the exercise of functions of a local authority under section 20 or 21 of the Children Act 1989 (c. 41), F24. . .

(b) F24. . . . . .

(9) This subsection applies if A, as a person who is to report to the court under section 7 of the Children Act 1989 F25. . . on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).

Status: *Point in time view as at 25/11/2012.*
Changes to legislation: *Sexual Offences Act 2003, Part 1 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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, F26 . . .

(b) F26 . . . . . .

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 **[**F27or Welsh family proceedings officer (within the meaning given by section 35 of the Children Act 2004)**]** 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), F28...

(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) F29. . . , **[**F30or**]**

[F31(d) is appointed to be the children's guardian of B under rule 59 of the Family Procedure (Adoption) Rules 2005 (S.I. 2005/2795) or rule 16.3(1)(ii) or rule 16.4 of the Family Procedure Rules 2010 (S.I. 2010/2955),**]**

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.**]**

Textual Amendments

F13 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

F14 Words in s. 21(3)(a) substituted (E.W.) (1.4.2011 for E., 6.4.2016 for W.) by Children and Young Persons Act 2008 (c. 23), ss. 8(2), 44(4), **Sch. 1 para. 15**; S.I. 2010/2981, **art. 4(a)**; S.I. 2016/452, art. 2(b)

F15 Words in s. 21(3)(a) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(2)(a)**; S.R. 2008/510, **art. 2**

F16 Words in s. 21(3)(b) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(2)(b)**; S.R. 2008/510, **art. 2**

F17 Words in s. 21(4)(b) inserted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 13(2)**

F18 Words in s. 21(4)(c) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(3)(a)**; S.R. 2008/510, **art. 2**

F19 Word in s. 21(4)(d) inserted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(3)(b)**; S.R. 2008/510, **art. 2**

F20 Word in s. 21(4)(e) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(3)(c)**; S.R. 2008/510, **art. 2**

F21 S. 21(4)(f) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(3)(d)**; S.R. 2008/510, **art. 2**

F22 S. 21(6) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(4)**; S.R. 2008/510, **art. 2**

F23 S. 21(7)(b) substituted (26.1.2009) by Education and Skills Act 2008 (c. 25), ss. 169(1), 173(4), **Sch. 1 para. 81**; S.I. 2008/3077, **art. 4(g)**

F24 S. 21(8)(b) and preceding word omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(5)**; S.R. 2008/510, **art. 2**

F25 Words in s. 21(9) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(6)**; S.R. 2008/510, **art. 2**

F26 S. 21(10)(b) and preceding word omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(7)**; S.R. 2008/510, **art. 2**

F27 Words in s. 21(12)(a) inserted (E.W.) (1.4.2005) by Children Act 2004 (c. 31), ss. 40, 67, **Sch. 3 para. 18**; S.I. 2005/700, **art. 2(2)**

F28 Word in s. 21(12)(b) omitted (6.4.2011) by virtue of The Family Procedure (Modification of Enactments) Order 2011 (S.I. 2011/1045), **art. 15(a)**

F29 Words in s. 21(12)(c) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **6(8)**; S.R. 2008/510, **art. 2**

F30 Word in s. 21(12)(c) inserted (6.4.2011) by The Family Procedure (Modification of Enactments) Order 2011 (S.I. 2011/1045), **art. 15(b)**

F31 S. 21(12)(d) inserted (6.4.2011) by The Family Procedure (Modification of Enactments) Order 2011 (S.I. 2011/1045), **art. 15(c)**

22 Positions of trust: interpretation E+W+N.I.

[F32(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) F33. . . . . .

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

"care order" has—

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(a) in relation to England and Wales, the same meaning as in the Children Act 1989 (c. 41); [F34]. . .

(b) [F34]. . . . . .

"children's home" has—

(a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000; [F35]. . .

(b) [F35]. . . . . .

"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; [F36]. . .

(b) [F36]. . . . . .

[[F37]"hospital" means—

(a) a hospital as defined by section 275 of the National Health Service Act 2006, or section 206 of the National Health Service (Wales) Act 2006; or

(b) any other establishment—

(i) in England, in which any of the services listed in subsection (6) are provided; and

(ii) in Wales, which is a hospital within the meaning given by section 2(3) of the Care Standards Act 2000;**]**

"independent clinic" has—

(a) [F38]. . . the meaning given by section 2 of the Care Standards Act 2000;

(b) [F39]. . . . . .

[F40]. . . . . .

[F40]. . . . . .

[F40]. . . . . .

"supervision order" has—

(a) in relation to England and Wales, the meaning given by section 31(11) of the Children Act 1989 (c. 41);[F41]. . .

(b) [F41]. . . . . .

"voluntary home" has—

(a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989. [F42]. . .

(b) [F42]. . . . . .

[[F43](6) The services referred to in paragraph (b)(i) of the definition of "hospital" are as follows—

(a) medical treatment under anaesthesia or intravenously administered sedation;

(b) dental treatment under general anaesthesia;

(c) obstetric services and, in connection with childbirth, medical services;

(d) termination of pregnancies;

(e) cosmetic surgery, other than—

(i) ear and body piercing;

(ii) tattooing;

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(iii) the subcutaneous injection of a substance or substances into the skin for cosmetic purposes; or

(iv) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current.**]]**

Textual Amendments

F32 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

F33 S. 22(5): paragraph (b) of the definition of "authority" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(a)**; S.R. 2008/510, **art. 2**

F34 S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "care order" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(b)**; S.R. 2008/510, **art. 2**

F35 S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "children's home" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(c)**; S.R. 2008/510, **art. 2**

F36 S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "education supervision order" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(d)**; S.R. 2008/510, **art. 2**

F37 S. 22(5): definition of "hospital" substituted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 13(3)(a)(i)**

F38 S. 22(5): words in definition of "independent clinic" omitted (1.10.2010) by virtue of The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 13(3)(a)(ii)**

F39 S. 22(5): paragraph (b) of the definition of "independent clinic" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(f)**; S.R. 2008/510, **art. 2**

F40 S. 22(5): definitions of "private hospital", "residential care home" and "residential family centre" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(g)**; S.R. 2008/510, **art. 2**

F41 S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "supervision order" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(h)**; S.R. 2008/510, **art. 2**

F42 S. 22(5): paragraph (b) and word in paragraph (a) of the definition of "voluntary home" omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **7(i)**; S.R. 2008/510, **art. 2**

F43 S. 22(6) added (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/81), **art. 13(3)(b)**

23 Sections 16 to 19: [F44exception for spouses and civil partners] E+W+N.I.

[F45(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 **[**F46or civil partners of each other**]**.

(2) In proceedings for such an offence it is for the defendant to prove that A and B **[**F47were at the time lawfully married or civil partners of each other**]**.**]**

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Textual Amendments

F44 S. 23: words in heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 173(4)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F45 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

F46 Words in s. 23(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 173(2)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F47 Words in s. 23(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 173(3)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

24 Sections 16 to 19: sexual relationships which pre-date position of trust E+W +N.I.

[F48(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.**]**

Textual Amendments

F48 Ss. 16-24 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(b), **Sch. 3** (with Sch. 2 par. 1); S.R. 2008/510, **art. 2**

Familial child sex offences

25 Sexual activity with a child family member E+W

(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 E+W

(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 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

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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 E+W

(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 **[**[F49]section 39 of the Adoption Act 1976 or**]** 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

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(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

[F50(i) he is a person with whom the child has been placed under section 22C of the Children Act 1989 in a placement falling within subsection (6)(a) or (b) of that section (placement with local authority foster parent),

(ia) he is a person with whom the child has been placed under section 59(1)(a) of that Act (placement by voluntary organisation),**]**

(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.

Textual Amendments

F49 Words in s. 27(1)(b) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 3**

F50 S. 27(5)(c)(i)(ia) substituted for s. 27(5)(c)(i) (1.4.2011 for E. and otherwise prosp.) by Children and Young Persons Act 2008 (c. 23), ss. 8(2), 44(4), **Sch. 1 para. 16**; S.I. 2010/2981, **art. 4(a)**

28 Sections 25 and 26: [F51exception for spouses and civil partners] E+W

(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 **[**F52or civil partners of each other**]**.

(2) In proceedings for such an offence it is for the defendant to prove that A and B **[**F53were at the time lawfully married or civil partners of each other**]**.

Textual Amendments

F51 S. 28: words in heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 174(4)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F52 Words in s. 28(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 174(2)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F53 Words in s. 28(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 174(3)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

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

(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 **[**F54section 39 of the Adoption Act 1976 or**]** 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).

Textual Amendments

F54 Words in s. 29(1)(b) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 4**

Offences against persons with a mental disorder impeding choice

30 Sexual activity with a person with a mental disorder impeding choice E+W

(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 E+W

(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 E+W

(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,

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(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 E+W

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

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) B is unable to refuse because of or for a reason related to a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

(a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or

(b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this 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 E+W

(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 E+W

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

(a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity,

(b) the activity is sexual,

(c) B has a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this 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.

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

(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.

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

(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 E+W

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

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(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 E+W

(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,

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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 E+W

(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.

(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 E+W

(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.

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(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 E+W

(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.

[F55(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;

(b) in an independent hospital; or

(c) in Wales, in an independent clinic,

and A has functions to perform for the body or agency or in the hospital or clinic in the course of employment which have brought A or are likely to bring A 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;

[F56"independent clinic" has the meaning given by section 2 of the Care Standards Act 2000;

"independent hospital"—

(a) in England, means—

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(i) a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; or

(ii) any other establishment in which any of the services listed in section 22(6) are provided and which is not a health service hospital as so defined; and

(b) in Wales, has the meaning given by section 2 of the Care Standards Act 2000;

"independent medical agency" means an undertaking (not being an independent hospital, or in Wales an independent clinic) which consists of or includes the provision of services by medical practitioners;**]**

"National Health Service body" means—

(a) a **[**F57Local Health Board**]** ,

(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.

[F58(6) In subsection (5), in the definition of "independent medical agency", "undertaking" includes any business or profession and—

(a) in relation to a public or local authority, includes the exercise of any functions of that authority; and

(b) in relation to any other body of persons, whether corporate or unincorporate, includes any of the activities of that body.**]**

Textual Amendments

F55 S. 42(3) substituted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 13(4)(a)**

F56 S. 42(5): definitions of "independent clinic", "independent hospital" and "independent medical emergency" substituted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 13(4)(b)**

F57 S. 42(5): words in definition of "National Health Service body" substituted (1.4.2007) by The References to Health Authorities Order 2007 (S.I. 2007/961), art. 3, **Sch. para. 33**

F58 S. 42(6) added (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 13(4)(c)**

43 Sections 38 to 41: [F59exception for spouses and civil partners] E+W

(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 **[**F60or civil partners of each other**]**.

(2) In proceedings for such an offence it is for the defendant to prove that A and B **[**F61were at the time lawfully married or civil partners of each other**]**.

Status: *Point in time view as at 25/11/2012.*
Changes to legislation: *Sexual Offences Act 2003, Part 1 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F59 S. 43: words in heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 175(4)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F60 Words in s. 43(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 175(2)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

F61 Words in s. 43(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 175(3)**; S.I. 2005/3175, **art. 2(1)(2)**, Sch. 1 (subject to art. 2(3)-(5))

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

(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.

Indecent photographs of children

45 Indecent photographs of persons aged 16 or 17 E+W

(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.

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(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. E+W+N.I.

(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."

(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."

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Abuse of children through prostitution and pornography

47 Paying for sexual services of a child E+W+N.I.

[[F62](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;

(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) [F63]. . . . . .**]**

Textual Amendments

F62 Ss. 47-51 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(c), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

Status: *Point in time view as at 25/11/2012.*
Changes to legislation: *Sexual Offences Act 2003, Part 1 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F63 S. 47(7) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **8**; S.R. 2008/510, **art. 2**

48 Causing or inciting child prostitution or pornography E+W+N.I.

[F64(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.**]**

Textual Amendments

F64 Ss. 47-51 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(c), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

49 Controlling a child prostitute or a child involved in pornography E+W+N.I.

[F65(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.**]**

Textual Amendments

F65 Ss. 47-51 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(c), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

50 Arranging or facilitating child prostitution or pornography E+W+N.I.

Status: *Point in time view as at 25/11/2012.*
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[F66(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.**]**

Textual Amendments

F66 Ss. 47-51 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(c), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

51 Sections 48 to 50: interpretation E+W+N.I.

[F67(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.**]**

Textual Amendments

F67 Ss. 47-51 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(c), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

[**F68Prostitution**]

Textual Amendments

F68 Heading "becomes "Prostitution"" (1.4.2010) by virtue of Policing and Crime Act 2009 (c. 26), ss. {19}, 116(1); S.I. 2010/507, **art. 5(f)** (with transitional and savings provision in art. 6)

Status: *Point in time view as at 25/11/2012.*
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[F69 51A Soliciting E+W+N.I.

(1) It is an offence for a person in a street or public place to solicit another (B) for the purpose of obtaining B's sexual services as a prostitute.

(2) The reference to a person in a street or public place includes a person in a vehicle in a street or public place.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section "street" has the meaning given by section 1(4) of the Street Offences Act 1959.**]**

Textual Amendments

F69 S. 51A inserted (1.4.2010) by Policing and Crime Act 2009, {ss. 19}, 116(1); S.I. 2010/507, **art. 5(f)** (with art. 6)

52 Causing or inciting prostitution for gain E+W+N.I.

[F70(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.**]**

Textual Amendments

F70 Ss. 52-54 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(d), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

53 Controlling prostitution for gain E+W+N.I.

[F71(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.**]**

Status: *Point in time view as at 25/11/2012.*
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Textual Amendments

F71 Ss. 52-54 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(d), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

[F72 53A Paying for sexual services of a prostitute subjected to force etc. E+W+N.I.

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

(a) A makes or promises payment for the sexual services of a prostitute (B),

(b) a third person (C) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and

(c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

(2) The following are irrelevant—

(a) where in the world the sexual services are to be provided and whether those services are provided,

(b) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

(3) C engages in exploitative conduct if—

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or

(b) C practises any form of deception.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.**]**

Textual Amendments

F72 S. 53A inserted (1.4.2010) by Policing and Crime Act 2009, {ss. 14}, 116(1); S.I. 2010/507, **art. 5(a)** (subject to art. 6)

54 [F73 Sections 51A to 53A]: interpretation E+W+N.I.

[F74(1) In **[**F75sections 52, 53 and 53A**]**, "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 **[**F76sections 51A, 52, 53 and 53A**]**"prostitute" and "prostitution" have the meaning given by section 51(2).

[F77(3) In section 53A "payment" has the meaning given by section 51(3).**]]**

Status: *Point in time view as at 25/11/2012.*
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Textual Amendments

F73 S. 54 heading: words substituted (1.4.2010) by Policing and Crime Act 2009, ss. 112(1), 116(1), {Sch. 7 para. 24(d)}; S.I. 2010/507, **art. 5(v)** (with transitional and savings provision in art. 6)

F74 Ss. 52-54 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(d), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

F75 Words in s. 54(1) substituted (1.4.2010) by Policing and Crime Act 2009, ss. 112(1), 116(1), {Sch. 7 para. 24(a)}; S.I. 2010/507, **art. 5(v)** (subject to art. 6)

F76 Words in s. 54(2) substituted (1.4.2010) by Policing and Crime Act 2009, ss. 112(1), 116(1), {Sch. 7 para. 24(b)}; S.I. 2010/507, **art. 5(v)** (subject to art. 6)

F77 S. 54(3) inserted (1.4.2010) by Policing and Crime Act 2009, ss. 112(1), 116(1), {Sch. 7 para. 24(c)}; S.I. 2010/507, **art. 5(v)** (subject to art. 6)

Amendments relating to prostitution

55 Penalties for keeping a brothel used for prostitution E+W

(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 (ii) summarily	Seven years Six months, or the statutory maximum, or both."

56 Extension of gender-specific prostitution offences E+W

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

Trafficking

57 Trafficking into the UK for sexual exploitation E+W+N.I.

(1) A person commits an offence if he intentionally arranges or facilitates the arrival in **[**[F78], or the entry into,**]** the United Kingdom of another person (B) and either—

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(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.

Textual Amendments

F78 Words in s. 57(1) inserted (31.1.2008) by UK Borders Act 2007 (c. 30), **ss. 31(3)**, 59; S.I. 2008/99, **art. 2(l)**

58 Trafficking within the UK for sexual exploitation E+W+N.I.

(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 E+W+N.I.

(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.

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60 Sections 57 to 59: interpretation and jurisdiction E+W+N.I.

(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),

[F79(ba) an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008,**]**

(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.

[F80(2) Sections 57 to 59 apply to anything done whether inside or outside the United Kingdom.**]**

Textual Amendments

F79 S. 60(1)(ba) inserted (16.7.2008) by The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 1, 2(1), **9**

F80 S. 60(2) substituted (31.1.2008) for s. 60(2)(3) by UK Borders Act 2007 (c. 30), **ss. 31(4)**, 59; S.I. 2008/99, **art. 2(l)**

[F81 60A Forfeiture of land vehicle, ship or aircraft E+W+N.I.

(1) This section applies if a person is convicted on indictment of an offence under sections 57 to 59.

(2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person—

(a) owned the vehicle at the time the offence was committed;

(b) was at that time a director, secretary or manager of a company which owned the vehicle;

(c) was at that time in possession of the vehicle under a hire-purchase agreement;

(d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or

(e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

(a) owned the ship or aircraft at the time the offence was committed;

(b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;

(c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;

(d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;

(e) was at that time a charterer of the ship or aircraft; or

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(f) committed the offence while acting as captain of the ship or aircraft.

(4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—

(a) in the case of a ship, if subsection (5) or (6) applies;

(b) in the case of an aircraft, if subsection (5) or (7) applies.

(5) This subsection applies where a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under sections 57 to 59.

(6) This subsection applies where a ship's gross tonnage is less than 500 tons.

(7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

(8) Where a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless the person has been given an opportunity to make representations.

Textual Amendments

F81 Ss. 60A-60C inserted (E.W.N.I.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 54, 66(2), **Sch. 4 para. 2**; S.I. 2007/74, **art. 2(b)**

60B Detention of land vehicle, ship or aircraft E+W+N.I.

(1) If a person has been arrested for an offence under sections 57 to 59, a constable or a senior immigration officer may detain a relevant vehicle, ship or aircraft—

(a) until a decision is taken as to whether or not to charge the arrested person with that offence;

(b) if the arrested person has been charged, until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or

(c) if he has been charged and convicted, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A vehicle, ship or aircraft is a relevant vehicle, ship or aircraft, in relation to an arrested person if it is a land vehicle, ship or aircraft which the constable or officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 60A.

(3) A person (other than the arrested person) may apply to the court for the release of a land vehicle, ship or aircraft on the grounds that—

(a) he owns the vehicle, ship or aircraft;

(b) he was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or

(c) he is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the vehicle, ship or aircraft on condition that it is made available to the court if—

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 60A.

(5) In this section, "court" means—

(a) in relation to England and Wales—

(i) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard, a magistrates' court;

(ii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings;

(b) in relation to Northern Ireland—

(i) if the arrested person has not been charged, a magistrates' court for the county court division in which he was arrested;

(ii) if he has been charged but proceedings for the offence have not begun to be heard, a magistrates' court for the county court division in which he was charged;

(iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.

(6) In this section, "senior immigration officer" means an immigration officer (appointed or employed as such under the Immigration Act 1971) not below the rank of chief immigration officer.

Textual Amendments

F81 Ss. 60A-60C inserted (E.W.N.I.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 54, 66(2), **Sch. 4 para. 2**; S.I. 2007/74, **art. 2(b)**

60C Sections 60A and 60B: interpretation E+W+N.I.

(1) In this section and sections 60A and 60B, unless the contrary intention appears—

"aircraft" includes hovercraft;

"captain" means master (of a ship) or commander (of an aircraft);

"land vehicle" means any vehicle other than a ship or aircraft;

"ship" includes every description of vessel used in navigation.

(2) In sections 60A and 60B, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.**]**

Textual Amendments

F81 Ss. 60A-60C inserted (E.W.N.I.) (12.2.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 54, 66(2), **Sch. 4 para. 2**; S.I. 2007/74, **art. 2(b)**

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Preparatory offences

61 Administering a substance with intent E+W

(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 E+W

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

(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 E+W

(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;

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(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 E+W

(1) A person aged 16 or over (A) **[**F82(subject to subsection (3A))**]** 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)—

[F83(za) "parent" includes an adoptive parent;

(zb) "child" includes an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002;**]**

(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.

[F84(3A) Where subsection (1) applies in a case where A is related to B as B's child by virtue of subsection (3)(zb), A does not commit an offence under this section unless A is 18 or over.**]**

(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.

[F85(6) Nothing in—

(a) section 47 of the Adoption Act 1976 (which disapplies the status provisions in section 39 of that Act for the purposes of this section in relation to adoptions before 30 December 2005), or

(b) section 74 of the Adoption and Children Act 2002 (which disapplies the status provisions in section 67 of that Act for those purposes in relation to adoptions on or after that date),

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is to be read as preventing the application of section 39 of the Adoption Act 1976 or section 67 of the Adoption and Children Act 2002 for the purposes of subsection (3)(za) and (zb) above.**]**

Textual Amendments

F82 Words in s. 64(1) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 5(2)**

F83 S. 64(2)(za)(zb) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 5(3)**

F84 S. 64(3A) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 5(4)**

F85 S. 64(6) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 5(5)**

Modifications etc. (not altering text)

C1 S. 64 modified (6.4.2010) by The Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (S.I. 2010/985), **reg. 5**, Sch. 4

65 Sex with an adult relative: consenting to penetration E+W

(1) A person aged 16 or over (A) **[**F86(subject to subsection (3A))**]** 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)—

[F87(za) "parent" includes an adoptive parent;

(zb) "child" includes an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002;**]**

(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.

[F88(3A) Where subsection (1) applies in a case where A is related to B as B's child by virtue of subsection (3)(zb), A does not commit an offence under this section unless A is 18 or over.**]**

(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

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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.

[F89(6) Nothing in—

(a) section 47 of the Adoption Act 1976 (which disapplies the status provisions in section 39 of that Act for the purposes of this section in relation to adoptions before 30 December 2005), or

(b) section 74 of the Adoption and Children Act 2002 (which disapplies the status provisions in section 67 of that Act for those purposes in relation to adoptions on or after that date),

is to be read as preventing the application of section 39 of the Adoption Act 1976 or section 67 of the Adoption and Children Act 2002 for the purposes of subsection (3)(za) and (zb) above.**]**

Textual Amendments

F86 Words in s. 65(1) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 6(2)**

F87 S. 65(3)(za)(zb) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 6(3)**

F88 S. 65(3A) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 6(4)**

F89 S. 65(6) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 73, 153(2)(e), **Sch. 15 para. 6(5)**

Modifications etc. (not altering text)

C2 S. 65 modified (6.4.2010) by The Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (S.I. 2010/985), **reg. 5**, Sch. 4

Other offences

66 Exposure E+W+N.I.

[F90(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.**]**

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Textual Amendments

F90 Ss. 66-72 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(e), **Sch. 3**; (with Sch. 2 para. 1) S.R. 2008/510, **art. 2**

67 Voyeurism E+W+N.I.

[F91(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 instals 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.**]**

Textual Amendments

F91 Ss. 66-72 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(e), **Sch. 3**; (with Sch. 2 para. 1) S.R. 2008/510, **art. 2**

68 Voyeurism: interpretation E+W+N.I.

[F92(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

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(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.**]**

Textual Amendments

F92 Ss. 66-72 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(e), **Sch. 3**; (with Sch. 2 para. 1) S.R. 2008/510, **art. 2**

69 Intercourse with an animal E+W+N.I.

[F93(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.**]**

Textual Amendments

F93 Ss. 66-72 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(e), **Sch. 3**; (with Sch. 2 para. 1) S.R. 2008/510, **art. 2**

70 Sexual penetration of a corpse E+W+N.I.

[F94(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.**]**

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Textual Amendments

F94 Ss. 66-72 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(e), **Sch. 3**; (with Sch. 2 para. 1) S.R. 2008/510, **art. 2**

71 Sexual activity in a public lavatory E+W+N.I.

[F95(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.

(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.**]**

Textual Amendments

F95 Ss. 66-72 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(e), **Sch. 3**; (with Sch. 2 para. 1) S.R. 2008/510, **art. 2**

Offences outside the United Kingdom

[F96**72** Offences outside the United Kingdom E+W+N.I.

[F97(1) If—

(a) a United Kingdom national does an act in a country outside the United Kingdom, and

(b) the act, if done in England and Wales F98. . . , would constitute a sexual offence to which this section applies,

the United Kingdom national is guilty in **[**F99England and Wales**]** of that sexual offence.

(2) If—

(a) a United Kingdom resident does an act in a country outside the United Kingdom,

(b) the act constitutes an offence under the law in force in that country, and

(c) the act, if done in England and Wales F100. . . , would constitute a sexual offence to which this section applies,

the United Kingdom resident is guilty in **[**F101England and Wales**]** of that sexual offence.

(3) If—

(a) a person does an act in a country outside the United Kingdom at a time when the person was not a United Kingdom national or a United Kingdom resident,

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(b) the act constituted an offence under the law in force in that country,

(c) the act, if done in England and Wales [F102]. . . , would have constituted a sexual offence to which this section applies, and

(d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in **[**[F103]England and Wales**]** for that sexual offence as if the person had done the act there.

(4) The person meets the residence or nationality condition at the relevant time if the person is a United Kingdom national or a United Kingdom resident at the time when the proceedings are brought.

(5) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) 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 the defendant's opinion met,

(b) showing the grounds for that opinion, and

(c) requiring the prosecution to prove that it is met.

(7) But 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 (6).

(8) In the Crown Court the question whether the condition is met is to be decided by the judge alone.

(9) In this section—

"country" includes territory;

"United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 is a British subject; or

(c) a British protected person within the meaning of that Act;

"United Kingdom resident" means an individual who is resident in the United Kingdom.

(10) Schedule 2 lists the sexual offences to which this section applies.**]]**

Textual Amendments

F96 S. 72 substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 72(1)**, 153(7); S.I. 2008/1586, **art. 2**, Sch. 1 para. 34 (subject to Sch. 2)

F97 Ss. 66-72 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(e), **Sch. 3** (with Sch. 2 para. 1); S.R. 2008/510, **art. 2**

F98 Words in s. 72(1) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **10(2)(a)**; S.R. 2008/510, **art. 2**

F99 Words in s. 72(1) substituted (2.2.2009) by The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **10(2)(b)**; S.R. 2008/510, **art. 2**

F100 Words in s. 72(2) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **10(3)(a)**; S.R. 2008/510, **art. 2**

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F101 Words in s. 72(2) substituted (2.2.2009) by The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **10(3)(b)**; S.R. 2008/510, **art. 2**

F102 Words in s. 72(3) omitted (2.2.2009) by virtue of The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **10(4)(a)**; S.R. 2008/510, **art. 2**

F103 Words in s. 72(3) substituted (2.2.2009) by The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), arts. 2(3), **10(4)(b)**; S.R. 2008/510, **art. 2**

Supplementary and general

73 Exceptions to aiding, abetting and counselling E+W+N.I.

(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" E+W+N.I.

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 E+W+N.I.

(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—

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(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 E+W+N.I.

(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 E+W+N.I.

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—

Offence	*Relevant Act*
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

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	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" E+W+N.I.

[[F104]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.**]**

Textual Amendments

F104 Ss. 78,79 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(f), **Sch. 3**; S.R. 2008/510, **art. 2**

79 Part 1: general interpretation E+W+N.I.

[[F105](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.

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(9) "Vagina" includes vulva.

(10) In relation to an animal, references to the vagina or anus include references to any similar part.**]**

Textual Amendments

F105 Ss. 78,79 repealed (N.I.) (2.2.2009) by The Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1, 78(f), **Sch. 3**; S.R. 2008/510, **art. 2**

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