



2022 CHAPTER 19

PART 1

Sexual offences

CHAPTER 1

Criminal conduct

Voyeurism: additional offences

1.—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended in accordance with subsections (2) and (3).

(2) After Article 71 (voyeurism) insert—

“Voyeurism: additional offences (genitals and buttocks)

71A.—(1) A person (A) commits an offence if—

- (a) A operates equipment beneath the clothing of another person (B),
- (b) A does so with the intention of enabling A or another person (C) to observe—
 - (i) B’s genitals or buttocks (whether exposed or covered with underwear), or
 - (ii) the underwear covering B’s genitals or buttocks,in circumstances where the genitals, buttocks or underwear would not otherwise be visible, and
- (c) either condition 1 or condition 2 is met.

(2) Condition 1 is that—

- (a) A operates the equipment with the intention of enabling the observation for the purpose of—
 - (i) obtaining sexual gratification (whether for A or C), or
 - (ii) humiliating, alarming or distressing B, and
- (b) A does so—
 - (i) without B's consent, and
 - (ii) without reasonably believing that B consents.
- (3) Condition 2 is that—
 - (a) A operates the equipment with the intention of enabling the observation—
 - (i) without B's consent, and
 - (ii) without reasonably believing that B consents,
 - (b) in so operating the equipment, A is reckless as to whether B is humiliated, alarmed or distressed, and
 - (c) B is humiliated, alarmed or distressed.
- (4) A person (A) commits an offence if—
 - (a) A records an image beneath the clothing of another person (B),
 - (b) the image is of—
 - (i) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (ii) the underwear covering B's genitals or buttocks,
 - in circumstances where the genitals, buttocks or underwear would not otherwise be visible, and
 - (c) either condition 3 or condition 4 is met.
- (5) Condition 3 is that—
 - (a) A records the image with the intention that A or another person (C) will look at it for the purpose of—
 - (i) obtaining sexual gratification (whether for A or C), or
 - (ii) humiliating, alarming or distressing B, and
 - (b) A does so—
 - (i) without B's consent, and
 - (ii) without reasonably believing that B consents.
- (6) Condition 4 is that—
 - (a) A records the image with the intention that A or another person will look at it,
 - (b) A does so—

- (i) without B's consent, and
 - (ii) without reasonably believing that B consents,
- (c) in so recording the image, A is reckless as to whether B is humiliated, alarmed or distressed, and
- (d) B is humiliated, alarmed or distressed.
- (7) Paragraph (8) applies where—
 - (a) B consents to the operation of equipment, or the recording of an image, for a particular purpose, and
 - (b) A operates the equipment, or records the image, for a different or additional purpose.
- (8) Where this paragraph applies, then for the purposes of paragraph (3)(a) or paragraph (6)(b) (as the case may be)—
 - (a) B is to be taken as having not consented to the operation of the equipment or the recording of the image, and
 - (b) A is to be taken as having had a reasonable belief as to B's consent only if A had a reasonable belief that B consented to the operation of the equipment, or the recording of the image, for the other purpose.
- (9) A person guilty of an offence under this Article is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

Voyeurism: additional offences (breasts)

- 71B.**—(1) A person (A) commits an offence if—
- (a) A operates equipment beneath or above the clothing of another person (B),
 - (b) A does so with the intention of enabling A or another person (C) to observe—
 - (i) B's breasts (whether exposed or covered with underwear), or
 - (ii) the underwear covering B's breasts,
 in circumstances where the breasts or underwear would not otherwise be visible, and
 - (c) either condition 1 or condition 2 is met.
- (2) Condition 1 is that—
- (a) A operates the equipment with the intention of enabling the observation for the purpose of—

- (i) obtaining sexual gratification (whether for A or C), or
 - (ii) humiliating, alarming or distressing B, and
- (b) A does so—
 - (i) without B's consent, and
 - (ii) without reasonably believing that B consents.
- (3) Condition 2 is that—
 - (a) A operates the equipment with the intention of enabling the observation—
 - (i) without B's consent, and
 - (ii) without reasonably believing that B consents,
 - (b) in so operating the equipment, A is reckless as to whether B is humiliated, alarmed or distressed, and
 - (c) B is humiliated, alarmed or distressed.
- (4) A person (A) commits an offence if—
 - (a) A records an image beneath or above the clothing of another person (B),
 - (b) the image is of—
 - (i) B's breasts (whether exposed or covered with underwear), or
 - (ii) the underwear covering B's breasts,
 - in circumstances where the breasts or underwear would not otherwise be visible, and
 - (c) either condition 3 or condition 4 is met.
- (5) Condition 3 is that—
 - (a) A records the image with the intention that A or another person (C) will look at it for the purpose of—
 - (i) obtaining sexual gratification (whether for A or C), or
 - (ii) humiliating, alarming or distressing B, and
 - (b) A does so—
 - (i) without B's consent, and
 - (ii) without reasonably believing that B consents.
- (6) Condition 4 is that—
 - (a) A records the image with the intention that A or another person will look at it,
 - (b) A does so—
 - (i) without B's consent, and

- (ii) without reasonably believing that B consents,
 - (c) in so recording the image, A is reckless as to whether B is humiliated, alarmed or distressed, and
 - (d) B is humiliated, alarmed or distressed.
- (7) Paragraph (8) applies where—
 - (a) B consents to the operation of equipment, or the recording of an image, for a particular purpose, and
 - (b) A operates the equipment, or records the image, for a different or additional purpose.
- (8) Where this paragraph applies, then for the purposes of paragraph (3)(a) or paragraph (6)(b) (as the case may be)—
 - (a) B is to be taken as having not consented to the operation of the equipment or the recording of the image, and
 - (b) A is to be taken as having had a reasonable belief as to B's consent only if A had a reasonable belief that B consented to the operation of the equipment, or the recording of the image, for the other purpose.
- (9) A person guilty of an offence under this Article is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.”.
- (3) In Article 72 (voyeurism: interpretation), after paragraph (1) insert—

“(1A) For the purposes of Articles 71, 71A and 71B operating equipment includes (in the case of equipment that is capable of activation) enabling or securing its activation by another person without that person's knowledge.”.

Sending etc an unwanted sexual image

2. After Article 72 of the Sexual Offences (Northern Ireland) Order 2008 insert—

“Sending etc an unwanted sexual image

72A.—(1) A person (A) commits an offence if—

- (a) A intentionally sends or gives to another person (B) a sexual image,
- (b) A does so—
 - (i) without B's consent, and
 - (ii) without reasonably believing that B consents, and

- (c) either condition 1 or condition 2 is met.
- (2) Condition 1 is that A intends that B will look at the image and that doing so will cause humiliation, alarm or distress to B.
- (3) Condition 2 is that—
 - (a) A's purpose in sending or giving the image is to obtain sexual gratification, and
 - (b) A is reckless as to whether B is humiliated, alarmed or distressed.
- (4) For the purposes of this Article, a sexual image is a photograph or film of—
 - (a) any person engaging in a sexual activity, or
 - (b) any person's genitals.
- (5) In paragraph (4)—
 - “photograph” includes the negative as well as the positive version;
 - “film” means a moving image.
- (6) References to a photograph or film also include—
 - (a) an image, whether made by computer graphics or in any other way, which appears to be a photograph or film,
 - (b) a copy of a photograph, film or image within sub-paragraph (a), and
 - (c) data stored by any means which is capable of conversion into a photograph, film or image within sub-paragraph (a).
- (7) References to sending or giving such a photograph or film to another person include, in particular—
 - (a) sending it to another person by any means, electronically or otherwise,
 - (b) showing it to another person, and
 - (c) placing it for a particular person to find.
- (8) A person guilty of an offence under this Article is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.”.

Amendments consequential on sections 1 and 2

3. Schedule 1 contains amendments consequential on the insertions made by sections 1(2) and 2.

Sexual grooming: pretending to be a child

4.—(1) After Article 22A of the Sexual Offences (Northern Ireland) Order 2008 insert—

“Communicating with a person with a view to grooming a particular child

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

- (a) A communicates with another person (B),
- (b) at the time of the communication, A intentionally presents himself or herself to B, to a group of persons that includes B or to the public at large as being under 18,
- (c) A’s intention in communicating with B is to establish or participate in an exchange of communications with a particular person whom A has in mind (C) with a view to subsequently committing a relevant offence against C, and
- (d) C is under 16 and A does not reasonably believe that C is 16 or over.

(2) B and C may be the same person.

(3) If—

- (a) A communicates with a group of persons, and
- (b) the group contains a person to whom A intentionally presents himself or herself as being under 18,

A is to be regarded as communicating with that person.

Communicating with a group with a view to grooming a particular child

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

- (a) A communicates with a group of persons,
- (b) at the time of the communication, A intentionally presents himself or herself to the group or to the public at large as being under 18,
- (c) A’s intention in communicating with the group is to establish or participate in an exchange of communications with a particular person whom A has in mind (B) with a view to subsequently committing a relevant offence against B, and
- (d) B is under 16 and A does not reasonably believe that B is 16 or over.

Communicating with a person with a view to grooming any child

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

- (a) A communicates with another person (B),

- (b) at the time of the communication, A intentionally presents himself or herself to B, to a group of persons that includes B or to the public at large as being under 18, and
- (c) A's intention in communicating with B is to establish or participate in an exchange of communications with a person or persons aged under 16 with a view to subsequently committing a relevant offence against such a person; but without having a particular person in mind at the time of the communication.

(2) If—

- (a) A communicates with a group of persons, and
- (b) the group contains a person to whom A intentionally presents himself or herself as being under 18,

A is to be regarded as communicating with that person.

Communicating with a group with a view to grooming any child

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

- (a) A communicates with a group of persons,
- (b) at the time of the communication, A intentionally presents himself or herself to the group or to the public at large as being under 18, and
- (c) A's intention in communicating with the group is to establish or participate in an exchange of communications with a person or persons aged under 16 with a view to subsequently committing a relevant offence against such a person; but without having a particular person in mind at the time of the communication.

Communication with a view to grooming: interpretation

22F. For the purposes of Articles 22B to 22E—

- (a) A presents himself or herself to a person (or persons) as being under 18 if a reasonable person would consider that, in all the circumstances, A presents himself or herself to that person (or those persons) as being under 18;
- (b) “relevant offence” means—
 - (i) an offence under this Order,
 - (ii) an offence under section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation), or

- (iii) anything done outside Northern Ireland which is not an offence under sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) or (ii) if done in Northern Ireland.

Communication with a view to grooming: sentencing

22G. A person guilty of an offence under any of Articles 22B to 22E 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.”.

(2) In Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of notification requirements), after paragraph 92IA (as inserted by Schedule 2) insert—

“**92IB.** An offence under Article 22B of that Order (communicating with a person with a view to grooming a particular child).

92IC. An offence under Article 22C of that Order (communicating with a group with a view to grooming a particular child).

92ID. An offence under Article 22D of that Order (communicating with a person with a view to grooming any child).

92IE. An offence under Article 22E of that Order (communicating with a group with a view to grooming any child).”.

(3) In Part 2 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (specified sexual offences), in paragraph 14A, after the entry relating to Article 22A of the Sexual Offences (Northern Ireland) Order 2008 insert—

“Article 22B (communicating with a person with a view to grooming a particular child),

Article 22C (communicating with a group with a view to grooming a particular child),

Article 22D (communicating with a person with a view to grooming any child),

Article 22E (communicating with a group with a view to grooming any child).”.

Abuse of position of trust: relevant positions

5.—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.

(2) In Article 2 (interpretation), after paragraph (4) insert—

“(4A) “The Department” means the Department of Justice.”.

(3) In Article 28 (positions of trust), in paragraph (1)(b), for “an order made by the Secretary of State” substitute “regulations made by the Department”.

(4) After Article 29 insert—

“Positions of trust: further categories

29A.—(1) For the purposes of Articles 23 to 26, a person (A) is in a position of trust in relation to another person (B) if—

- (a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion, and
- (b) A knows that A coaches, teaches, trains, supervises or instructs B, on a regular basis, in that sport or religion.

(2) In paragraph (1)—

“sport” includes—

- (a) any game in which physical skill is the predominant factor,
- (b) any form of physical recreation which is also engaged in for purposes of competition or display,

“religion” includes—

- (a) a religion which involves belief in more than one god,
- (b) a religion which does not involve belief in a god.

(3) Paragraph (1) does not apply where A is in a position of trust in relation to B by virtue of circumstances within Article 28.

(4) The Department may by regulations amend paragraphs (1) and (2) so as to add or remove an activity in which a person may be coached, taught, trained, supervised or instructed.”.

(5) In Article 80—

- (a) the heading becomes “Orders and regulations”,
- (b) after paragraph (3) insert—

“(4) Regulations under Article 28(1)(b) or 29A(4) may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

(5) Regulations under this Order may include any incidental, supplementary, consequential, transitory, transitional or saving provision which the Department considers necessary or expedient.”.

(6) The Department of Justice must annually review Article 29A(1) and (2) of the Sexual Offences (Northern Ireland) Order 2008 so as to inform the Department on whether the power in Article 29A(4) of that Order should be exercised.

Private sexual images: threatening to disclose

6.—(1) The Justice Act (Northern Ireland) 2016 is amended as follows.

(2) In section 51 (disclosing private sexual photographs and films with intent to cause distress)—

(a) for subsection (1) substitute—

“(1) A person commits an offence if—

- (a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual (“the relevant individual”) appears,
- (b) by so doing, the person intends to cause distress to that individual, and
- (c) the disclosure is, or would be, made without the consent of that individual.”

(b) in subsection (2)—

(i) after “disclose” insert “, or threaten to disclose,”

(ii) for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”,

(c) in subsection (4), after “disclosure” insert “, or threat to disclose,”

(d) in subsection (5), in each place, for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”,

(e) after subsection (7) insert—

“(7A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove—

- (a) that the photograph or film referred to in the threat exists, or
- (b) if it does exist, that it is in fact a private sexual photograph or film.”

(f) for subsection (8) substitute—

“(8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.”

(3) In section 53 (meaning of “private” and “sexual”), in subsection (5), for “the person mentioned in section 51(1)(a) and (b)” substitute “the relevant individual (within the meaning of section 51)”.

(4) In Schedule 4 (private sexual photographs etc: providers of information society services)—

(a) in paragraph 3(1), after “sub-paragraph (2)” insert “, (2A)”,

(b) in paragraph 3(2), after “if” insert “, in the case of information which consists of or includes a private sexual photograph or film,”,

(c) after paragraph 3(2) insert—

“(2A) This sub-paragraph is satisfied if, in the case of information which consists of or includes a threat to disclose a private sexual photograph or film, the service provider had no actual knowledge when the information was provided—

(a) that it consisted of or included a threat to disclose a private sexual photograph or film in which another individual appears,

(b) that the threat was made with the intention of causing distress to that individual, or

(c) that the disclosure would be made without the consent of that individual.”,

(d) in paragraph 4(2), for “section 51” substitute “section 52”,

(e) for paragraph 4(3) substitute—

“(3) “Information society service” means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).”.

Miscellaneous amendments as to sexual offences

7. In Schedule 2—

(a) Part 1 contains provision which—

(i) amends references in the Sexual Offences (Northern Ireland) Order 2008 to certain forms of child sexual abuse, and

(ii) extends offences that relate to the recording of indecent images to the streaming or other transmission of such images;

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

- (b) Part 2 makes minor amendments relating to the offence of engaging in sexual communication with a child; and
- (c) Part 3 makes a minor amendment relating to the offence of paying (whether by money or otherwise) for the sexual services of a person.