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STATUTORY INSTRUMENTS

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**2008 No. 1769**

**The Sexual Offences (Northern Ireland) Order 2008**

**PART 3**

**SEXUAL OFFENCES AGAINST CHILDREN**

*Offences against children under 18: abuse of position of trust*

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

**25.**—(1) A person aged 18 or over (A) commits an offence if—

- (a) he intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, he engages in it—
  - (i) when another person (B) is present or is in a place from which A can be observed, and
  - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
- (d) A is in a position of trust in relation to B,
- (e) where paragraph (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 paragraph applies where A—

- (a) is in a position of trust in relation to B by virtue of circumstances within Article 28(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 Article 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 Article—

- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within Article 28(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 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 5 years.