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DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

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

**PART 4**

**SEXUAL OFFENCES AGAINST A PERSON WITH A MENTAL DISORDER**

*Offences against persons with a mental disorder impeding choice*

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

- 43.**—(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 Article, 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 paragraph (3) applies, 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 14 years.