

DRAFT STATUTORY INSTRUMENTS

**2008 No. (N.I. )**

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

BELFAST: THE STATIONERY OFFICE LTD

2008



*Draft Order in Council laid before Parliament under section 85 of the Northern Ireland Act 1998,  
for approval by resolution of each House of Parliament.*

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**2008 No. (N.I. )**

**NORTHERN IRELAND**

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

*Made - - - - 2008*

*Coming into operation in accordance with Article 1(2) and  
(3)*

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At the Court at Buckingham Palace, the \*\* day of \*\* 2008

Present,

The Queen's Most Excellent Majesty in Council

Whereas—

- (a) the Secretary of State, in accordance with subsection (4)(a) of section 85 of the Northern Ireland Act 1998 (c.47), laid before Parliament a document which contained a draft of this proposed Order;
- (b) the Secretary of State referred the document to the Northern Ireland Assembly for its consideration;
- (c) the period referred to in subsection (4)(c) of that section has ended; and
- (d) a draft of this Order has been approved by resolution of each House of Parliament:

Now therefore, Her Majesty, in exercise of the powers conferred by section 85 of the Northern Ireland Act 1998, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

## PART 1

### INTRODUCTORY

#### **Title and commencement**

- 1.—(1) This Order may be cited as the Sexual Offences (Northern Ireland) Order 2008.
- (2) The following provisions of this Order come into operation one week after the day on which this Order is made—
- (a) this Part;
  - (b) Article 80;
  - (c) Article 82.
- (3) The other provisions of this Order come into operation on such day or days as the Secretary of State may by order appoint.

#### **Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.
- (2) The following provisions of this Article apply for the purposes of this Order.
- (3) “Statutory provision” must be construed in accordance with section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).
- (4) “The 1995 Order” means the Children (Northern Ireland) Order 1995 (NI 2).
- (5) Penetration is a continuing act from entry to withdrawal.
- (6) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).
- (7) “Image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.
- (8) References to an image of a person include references to an image of an imaginary person.

(9) “Mental disorder” has the meaning given by Article 3 of the Mental Health (Northern Ireland) Order 1986 (NI 4).

(10) References to observation (however expressed) are to observation whether direct or by looking at an image.

(11) 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.

(12) “Vagina” includes vulva.

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

### **“Consent”**

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

### **“Sexual”**

4. For the purposes of this Order, except Article 75 (sexual activity in a public lavatory), 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.

## **PART 2**

### **NON-CONSENSUAL SEXUAL OFFENCES**

#### *Rape*

#### **Rape**

5.—(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) Articles 9 and 10 apply to an offence under this Article.

(4) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.

(5) Any reference to rape in a statutory provision shall be construed in accordance with paragraph (1).

(6) The common law offence of rape is abolished.



## *Assault*

### **Assault by penetration**

6.—(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.

(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) Articles 9 and 10 apply to an offence under this Article.

(4) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.

### **Sexual assault**

7.—(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) Articles 9 and 10 apply to an offence under this Article.

(4) 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 10 years.

## *Causing sexual activity without consent*

### **Causing a person to engage in sexual activity without consent**

8.—(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) Articles 9 and 10 apply to an offence under this Article.

(4) A person guilty of an offence under this Article, 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 paragraph (4) 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 10 years.

### **Evidential presumptions about consent**

9.—(1) If in proceedings for an offence to which this Article applies it is proved—

- (a) that the defendant did the relevant act,
- (b) that any of the circumstances specified in paragraph (2) existed, and
- (c) that the defendant knew that those circumstances existed,

the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) The circumstances are that—

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
- (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
- (f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(3) In paragraph (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.

### **Conclusive presumptions about consent**

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

- (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.

### Articles 9 and 10: relevant acts

11. In relation to an offence to which Articles 9 and 10 apply, references in those Articles to the relevant act and to the complainant are to be read as follows—

<i>Offence</i>	<i>Relevant Act</i>
An offence under Article 5 (rape)	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”).
An offence under Article 6 (assault by penetration)	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person (“the complainant”), where the penetration is sexual.
An offence under Article 7 (sexual assault)	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under Article 8 (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.

## PART 3

### SEXUAL OFFENCES AGAINST CHILDREN

#### *Rape and other offences against children under 13*

#### **Rape of a child under 13**

12.—(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 Article is liable, on conviction on indictment, to imprisonment for life.

#### *Assault*

#### **Assault of a child under 13 by penetration**

13.—(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 Article is liable, on conviction on indictment, to imprisonment for life.

#### **Sexual assault of a child under 13**

14.—(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 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.

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

- 15.**—(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 Article, 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 paragraph (2) 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.

*Sexual offences against children under 16*

**Sexual activity with a child**

- 16.**—(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 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 a term not exceeding 14 years.
- (3) Unless paragraph (2) 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.

### **Causing or inciting a child to engage in sexual activity**

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

- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual, and
- (c) either—
  - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
  - (ii) B is under 13.

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

### **Engaging in sexual activity in the presence of a child**

**18.—**(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 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 10 years.

### **Causing a child to watch a sexual act**

**19.—**(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 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 10 years.

### **Sexual offences against children committed by children or young persons**

**20.**—(1) A person under 18 commits an offence if he does anything which would be an offence under any of Articles 16 to 19 if he were aged 18.

- (2) 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.

### **Arranging or facilitating commission of a sex offence against a child**

**21.**—(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 Articles 16 to 20.

(2) A person does not commit an offence under this Article 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 to do, and
- (b) any offence within paragraph (1)(b) would be an offence against a child for whose protection he acts.

(3) For the purposes of paragraph (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 paragraph (1)(b) or the child's participation in it.

(4) 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.

### **Meeting a child following sexual grooming etc.**

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

- (a) A has met or communicated with another person (B) on at least two occasions, and subsequently—
  - (i) A intentionally meets B, or
  - (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 sub-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 paragraph (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 Order, or
    - (ii) an offence under any of sections 57 to 59 of the Sexual Offences Act 2003 (c.42), or
    - (iii) anything done outside Northern Ireland which is not an offence under paragraph (i) or (ii) but would be an offence within paragraph (i) or (ii) if done in Northern Ireland.
- (3) 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 10 years.

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

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

- 23.—(1) A person aged 18 or over (A) commits an offence if—
- (a) he intentionally touches another person (B),
  - (b) the touching is sexual,
  - (c) A is in a position of trust in relation to B,
  - (d) where 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
  - (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 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.

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

- 24.—**(1) A person aged 18 or over (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
  - (b) the activity is sexual,
  - (c) A is in a position of trust in relation to B,
  - (d) where 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
  - (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 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.

**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.

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

- 26.—**(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 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
  - (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 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.

### **Abuse of position of trust: acts done in England and Wales or Scotland**

27. Anything which, if done in Northern Ireland, would constitute an offence under any of Articles 23 to 26 also constitutes that offence if done in England and Wales or Scotland.

### **Positions of trust**

28.—(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) any of the following paragraphs applies, or
- (b) any condition specified in an order made by the Secretary of State is met.

(2) This paragraph applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under a statutory provision, and B is so detained in that institution.

(3) This paragraph applies if A looks after persons under 18 who are resident in a home or other place in which—

- (a) accommodation and maintenance are provided by an authority under Article 27(2) of the 1995 Order, or
- (b) accommodation is provided by a voluntary organisation under Article 75(1) of that Order, and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.

(4) This paragraph applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions—

- (a) a hospital,
- (b) an independent clinic,
- (c) a residential care home or private hospital,
- (d) a voluntary home or children's home, or
- (e) a residential family centre,

and B is accommodated and cared for in that institution.

(5) This paragraph applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This paragraph applies if A is appointed to be the guardian of B under Article 159 or 160 of the 1995 Order.

(7) This paragraph applies if A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of functions of an authority under Article 21 or 23 of the 1995 Order.

(8) This paragraph applies if A, as a person who is to report to the court under Article 4 of the 1995 Order on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).

(9) This paragraph applies if A is a personal adviser appointed for B under Article 34A(10) or 34C(2) of the 1995 Order, and, in that capacity, looks after B on an individual basis.

(10) This paragraph 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.

(11) This paragraph applies if A is appointed to be the guardian ad litem of B under Article 60(1) of the 1995 Order, and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).

(12) This paragraph applies if—

- (a) B is subject to requirements imposed by or under a statutory provision 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.

### **Positions of trust: interpretation**

**29.—**(1) The following provisions apply for the purposes of Article 28.

(2) Subject to paragraph (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 Article 28—

“authority” has the meaning given by Article 2(2) of the 1995 Order;

“care order” has the same meaning as in the 1995 Order;

“children’s home” has the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9) (“the 2003 Order”) if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

“education supervision order” has the meaning given by Article 49(1) of the 1995 Order;

“hospital” means a hospital within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14), or any other establishment which is a hospital within the meaning given by Article 2(2) of the 2003 Order;

“independent clinic” has the meaning given by Article 2(2) of the 2003 Order;

“private hospital” has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (NI 4);

“residential care home” means an establishment which is a residential care home for the purposes of the 2003 Order;

“residential family centre” has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

“supervision order” has the meaning given by Article 49(1) of the 1995 Order;

“voluntary home” has the meaning given by Article 74(1) of the 1995 Order.

### **Articles 23 to 26: exception for spouses and civil partners**

**30.**—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 23 to 26 against another person (B) is not an offence under that Article if at the time—

- (a) B is 16 or over, and
- (b) A and B are lawfully married or civil partners of each other.

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

### **Articles 23 to 26: sexual relationships which pre-date position of trust**

**31.**—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 23 to 26 against another person (B) is not an offence under that Article if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Paragraph (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 Articles 23 to 26 it is for the defendant to prove that such a relationship existed at that time.

### *Familial sex offences against children under 18*

#### **Sexual activity with a child family member**

**32.**—(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 Article 34,
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that Article, 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 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.

(3) Where in proceedings for an offence under this Article it is proved that the relation of the defendant to the other person was of a description falling within Article 34, 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 Article, if aged 18 or over at the time of the offence, is liable—

- (a) where paragraph (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 paragraph (4) 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 5 years.
- (6) This paragraph 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.

**Inciting a child family member to engage in sexual activity**

**33.—**(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 Article 34,
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that Article, 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 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.

(3) Where in proceedings for an offence under this Article it is proved that the relation of the defendant to the other person was of a description falling within Article 34, 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 Article, if he was aged 18 or over at the time of the offence, is liable—

- (a) where paragraph (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 paragraph (4) 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 5 years.

(6) This paragraph 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.

## **Family relationships**

**34.—**(1) The relation of one person (A) to another (B) is within this Article if—

- (a) it is within any of paragraphs (2) to (4), or
- (b) it would be within one of those paragraphs but for Article 40 of the Adoption (Northern Ireland) Order 1987 (NI 22) (status conferred by adoption).

(2) The relation of A to B is within this paragraph 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 paragraph 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 paragraph if—

- (a) A and B live in the same household, and
- (b) A is regularly involved in caring for, training, supervising or being in sole charge of B.

(5) For the purposes of this Article—

- (a) “aunt” means the sister or half-sister of a person's parent, and “uncle” has a corresponding meaning;
- (b) “cousin” means the child of an aunt or uncle;
- (c) a person is a child's foster parent if—
  - (i) he is a person with whom the child has been placed under Article 27(2)(a) or 75(1)(a) of the 1995 Order (fostering), or
  - (ii) he fosters the child privately, within the meaning given by Article 106(1) of the 1995 Order;
- (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.

## **Articles 32 and 33: exception for spouses and civil partners**

**35.—**(1) Conduct by a person (A) which would otherwise be an offence under Article 32 or 33 against another person (B) is not an offence under that Article if at the time—

- (a) B is 16 or over, and
- (b) A and B are lawfully married or civil partners of each other.

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

## **Articles 32 and 33: sexual relationships which pre-date family relationships**

**36.—**(1) Conduct by a person (A) which would otherwise be an offence under Article 32 or 33 against another person (B) is not an offence under that Article if—

- (a) the relation of A to B is not within paragraph (2) of Article 34,

- (b) it would not be within that paragraph if Article 40 of the Adoption (Northern Ireland) Order 1987 (NI 22) did not apply, and
- (c) immediately before the relation of A to B first became such as to fall within Article 34, a sexual relationship existed between A and B.

(2) Paragraph (1) does not apply if at the time referred to in paragraph (1)(c) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under Article 32 or 33 it is for the defendant to prove the matters mentioned in paragraph (1)(a) to (c).

*Abuse of children under 18 through prostitution and pornography*

**Paying for sexual services of a child**

**37.—**(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 Article, “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 Article against a person under 13, where paragraph (6) applies, is liable on conviction on indictment to imprisonment for life.

(4) Unless paragraph (3) applies, a person guilty of an offence under this Article against a person under 16 is liable—

- (a) where paragraph (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 paragraph (3) or (4) 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 7 years.

(6) This paragraph 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.

**Causing or inciting child prostitution or pornography**

**38.—**(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 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.

**Controlling a child prostitute or a child involved in pornography**

- 39.**—(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 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.

**Arranging or facilitating child prostitution or pornography**

- 40.**—(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 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.

**Articles 38 to 40: interpretation**

**41.**—(1) For the purposes of Articles 38 to 40, 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 Articles “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 paragraph (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.



**Indecent photographs of persons aged 16 or 17**

**42.**—(1) The Protection of Children (Northern Ireland) Order 1978 (NI 17) (which makes provision about indecent photographs of persons under 16) is amended as follows.

(2) In Article 2(2) (interpretation), in the definition of “child”, for “sixteen” substitute “eighteen”.

(3) In Article 7(1) (evidence of person being a child at a material time) for “sixteen” substitute “eighteen”.

(4) In Article 3(1) (offences relating to indecent photographs of children) at the beginning insert “Subject to Articles 3A and 3B”.

(5) After Article 3A insert—

**“Marriage and other relationships**

**3B.**—(1) This Article applies where, in proceedings for an offence under Article 3(1)(a) of taking or making an indecent photograph of a child, or for an offence under Article 3(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 civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(2) Paragraphs (5) and (6) also apply where, in proceedings for an offence under Article 3(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 civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(3) This Article 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 Article 3(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 Article 3(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 Article 3(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.”

(6) The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (NI 17) (possession of indecent photograph of child) is amended as follows.

(7) In Article 15(1), at the beginning insert “Subject to Article 15A”.

(8) After Article 15 insert—

**“Marriage and other relationships**

**15A.**—(1) This Article applies where, in proceedings for an offence under Article 15(1) 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 civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(2) This Article also applies where, in proceedings for an offence under Article 15(1) 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 civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(3) This Article 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.”

## 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.

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

**44.**—(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 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 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 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.

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

**45.**—(1) A person (A) commits an offence if—

- (a) he intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, he engages in it—
  - (i) when another person (B) is present or is in a place from which A can be observed, and
  - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
- (d) B is unable to refuse because of or for a reason related to a mental disorder, and
- (e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

- (a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
- (b) he is unable to communicate such a choice to A.

- (3) A person guilty of an offence under this 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 10 years.

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

- 46.**—(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 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 10 years.

*Inducements etc. to persons with a mental disorder*

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

- 47.**—(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 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.
- (3) Unless paragraph (2) 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.

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

- 48.**—(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 Article, 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 paragraph (2) 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.

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

- 49.**—(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 sub-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 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 10 years.

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

- 50.**—(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 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 10 years.

*Care workers for persons with a mental disorder*

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

- 51.**—(1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
  - (b) the touching is sexual,
  - (c) B has a mental disorder,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
  - (e) A is involved in B's care in a way that falls within Article 55.
- (2) Where in proceedings for an offence under this Article 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 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 a term not exceeding 14 years.
- (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 10 years.

**Care workers: causing or inciting sexual activity**

- 52.**—(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 Article 55.
- (2) Where in proceedings for an offence under this Article 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 Article, if the activity caused or incited involved—
- (a) penetration of B's anus or vagina,
  - (b) penetration of B's mouth with a person's penis,
  - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
  - (d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

- (4) Unless 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 10 years.

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

**53.**—(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 Article 55.

(2) Where in proceedings for an offence under this Article 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 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 7 years.

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

**54.**—(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 Article 55.

(2) Where in proceedings for an offence under this Article 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 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 7 years.

### **Care workers: interpretation**

**55.**—(1) For the purposes of Articles 51 to 54, a person (A) is involved in the care of another person (B) in a way that falls within this Article if any of paragraphs (2) to (4) applies.

(2) This paragraph applies if—

- (a) B is accommodated and cared for in a residential care home, residential family centre, voluntary home or children's home, and
- (b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(3) This paragraph applies if B is a patient for whom services are provided—

- (a) by a Health and Social Services Board established under Article 16(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14),
- (b) by a Health and Social Services trust established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991 (NI 1),
- (c) by an independent medical agency,
- (d) in an independent clinic or independent hospital, or
- (e) in a private hospital,

and A has functions to perform for the Board, Trust or agency, or in the clinic or hospital, in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(4) This paragraph 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 Article—

“children's home” has the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9) (“the 2003 Order”) if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

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

“independent clinic”, “independent hospital” and “independent medical agency” have the meanings given by Article 2(2) of the 2003 Order;

“private hospital” has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (NI 4);

“residential care home” means an establishment which is a residential care home for the purposes of the 2003 Order;

“residential family centre” has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

“voluntary home” has the meaning given by Article 74(1) of the 1995 Order.



### **Articles 51 to 54: exception for spouses and civil partners**

**56.**—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 51 to 54 against another person (B) is not an offence under that Article if at the time—

- (a) B is 16 or over, and
- (b) A and B are lawfully married or civil partners of each other.

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

### **Articles 51 to 54: sexual relationships which pre-date care relationships**

**57.**—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 51 to 54 against another person (B) is not an offence under that Article if, immediately before A became involved in B's care in a way that falls within Article 55, a sexual relationship existed between A and B.

(2) Paragraph (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 Articles 51 to 54 it is for the defendant to prove that such a relationship existed at that time.

## **PART 5**

### **PROSTITUTION**

#### **Interpretation of this Part**

**58.**—(1) The following provisions apply for the purposes of this Part.

(2) “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 paragraph (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.

(4) “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.

(5) Conduct is persistent if it takes place on two or more occasions in any period of three months.

(6) “Motor vehicle” has the same meaning as in the Road Traffic (Northern Ireland) Order 1995 (NI 18).

(7) For the purposes of Articles 59 to 61—

- (a) “street” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and
- (b) the doorways and entrances of premises abutting on a street (as defined in sub-paragraph (a)), and any ground adjoining and open to a street, shall be treated as forming part of the street.

### **Loitering or soliciting for purposes of prostitution**

**59.**—(1) A person commits an offence if he persistently loiters or solicits in a street or other public place for the purpose of offering services as a prostitute.

- (2) A person guilty of an offence under this Article shall be liable on summary conviction—
- (a) to a fine not exceeding level 2 on the standard scale, or
  - (b) for an offence committed after a previous conviction, to a fine not exceeding level 3 on that scale.

### **Kerb-crawling**

**60.**—(1) A person (A) commits an offence if he solicits another person (or different persons) for the purpose of prostitution—

- (a) from a motor vehicle while it is in a street or other public place; or
- (b) in a street or other public place while in the immediate vicinity of a motor vehicle that he has just got out of or off,

persistently or in such manner or in such circumstances as to be likely to cause annoyance to the person (or any of the persons) solicited, or nuisance to other persons in the neighbourhood.

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

(3) Any reference in this Article to A soliciting another person for the purposes of prostitution is a reference to A soliciting that other person to provide services as a prostitute to A.

### **Persistent soliciting**

**61.**—(1) A person (A) commits an offence if in a street or other public place he persistently solicits another person (or different persons) for the purpose of prostitution.

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

(3) Any reference in this Article to A soliciting another person for the purposes of prostitution is a reference to A soliciting that other person to provide services as a prostitute to A.

### *Exploitation of prostitution*

### **Causing or inciting prostitution for gain**

**62.**—(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 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 7 years.

### **Controlling prostitution for gain**

**63.**—(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 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 7 years.

#### **Keeping a brothel used for prostitution**

**64.**—(1) A person commits an offence if he keeps, manages, or acts or assists in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

- (2) A person who commits an offence under this Article shall be 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.
- (3) A conviction under this Article shall be taken into account under section 3 of the Criminal Law Amendment Act (Northern Ireland) 1923 (c. 8), in the same way as a conviction under section 13 of the Criminal Law Amendment Act 1885 (c. 69).

## **PART 6**

### **MISCELLANEOUS SEXUAL OFFENCES**

#### *Preparatory offences*

#### **Administering a substance with intent**

**65.**—(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 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 10 years.

#### **Committing an offence with intent to commit a sexual offence**

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

- (2) In this Article “relevant sexual offence” means any offence under—
- (a) this Order, or
  - (b) section 57, 58 or 59 of the Sexual Offences Act 2003 (c. 42) (trafficking for sexual exploitation),

including an offence of aiding, abetting, counselling or procuring such an offence.

- (3) A person guilty of an offence under this Article—
- (a) where the offence is committed by kidnapping or false imprisonment, or
  - (b) where—
    - (i) the offence is committed by assault, and

(ii) the intended relevant sexual offence is an offence under Article 5 or 6,  
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 10 years.

### **Trespass with intent to commit a sexual offence**

**67.**—(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 Article—

“premises” includes a structure or part of a structure;

“relevant sexual offence” has the same meaning as in Article 66;

“structure” includes a tent, vehicle or vessel or other temporary or movable structure.

(3) A person guilty of an offence under this Article is liable on conviction on indictment, where the intended relevant sexual offence is an offence under Article 5 or 6, to imprisonment for a term not exceeding 14 years.

(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 10 years.

### *Sex with an adult relative*

### **Sex with an adult relative: penetration**

**68.**—(1) A person aged 16 or over (A), subject to paragraph (4), 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 paragraph (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 paragraph (2)—

- (a) “parent” includes an adoptive parent;
- (b) “child” includes an adopted child within the meaning of Part 5 of the Adoption (Northern Ireland) Order 1987 (NI 22);
- (c) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
- (d) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) Where paragraph (1) applies in a case where A is related to B as B’s child by virtue of paragraph (3)(b), A does not commit an offence under this Article unless A is 18 or over.

(5) Where in proceedings for an offence under this Article 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 be 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.

(6) 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.

### **Sex with an adult relative: consenting to penetration**

**69.—**(1) A person aged 16 or over (A), subject to paragraph (4), 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 paragraph (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 paragraph (2)—

- (a) "parent" includes an adoptive parent;
- (b) "child" includes an adopted child within the meaning of Part 5 of the Adoption (Northern Ireland) Order 1987 (NI 22);
- (c) "uncle" means the brother of a person's parent, and "aunt" has a corresponding meaning;
- (d) "nephew" means the child of a person's brother or sister, and "niece" has a corresponding meaning.

(4) Where paragraph (1) applies in a case where A is related to B as B's child by virtue of paragraph (3)(b), A does not commit an offence under this Article unless A is 18 or over.

(5) Where in proceedings for an offence under this Article 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 be 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.

(6) 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.

### *Other offences*

### **Exposure**

**70.—**(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 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**

**71.—**(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, and
- (b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act, and
- (c) he knows that B does not consent to his recording the act with that intention.

(4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under paragraph (1).

(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 2 years.

### **Voyeurism: interpretation**

**72.—**(1) For the purposes of Article 71 a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and—

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear,
- (b) the person is using a lavatory, or
- (c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) In Article 71, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

### **Intercourse with an animal**

**73.—**(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) he 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 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.

### **Sexual penetration of a corpse**

**74.**—(1) A person commits an offence if—

- (a) he intentionally performs an act of penetration with his penis,
- (b) what is penetrated is a part of the body of a dead person, and
- (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 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.

### **Sexual activity in a public lavatory**

**75.**—(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 Article, 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 Article 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.

## **PART 7**

### **SUPPLEMENTARY AND GENERAL**

#### **Offences outside the United Kingdom**

**76.**—(1) If—

- (a) a United Kingdom national does an act in a country outside the United Kingdom, and
- (b) the act, if done in Northern Ireland, would constitute a sexual offence to which this Article applies,

that United Kingdom national is guilty in Northern Ireland of that sexual offence.

(2) If—

- (a) a United Kingdom national does an act in a country outside the United Kingdom, and
- (b) the act constitutes an offence under the law in force in that country, and
- (c) the act, if done in Northern Ireland, would constitute a sexual offence to which this Article applies,

that United Kingdom national is guilty in Northern Ireland of that sexual offence.

(3) If—

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

- (b) the act constituted an offence under the law in force in that country,
- (c) the act, if done in Northern Ireland, would have constituted a sexual offence to which this Article applies, and
- (d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in Northern Ireland for that sexual offence as if that person had done the act in Northern Ireland.

(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 paragraphs (2) and (3), however it is described in that law.

(6) The condition in paragraph (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 paragraph (6).

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

(9) In this Article—

“country” includes “territory”;

“rules of court” means—

- (i) in relation to proceedings in a magistrates' court, magistrates' court rules;
- (ii) in relation to proceedings in the Crown Court, Crown Court rules;

“United Kingdom national” means an individual who is—

- (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (ii) a person who under the British Nationality Act 1981 is a British subject; or
- (iii) a British protected person within the meaning of that Act;

“United Kingdom resident” means an individual who is resident in the United Kingdom.

(10) The sexual offences to which this Article applies are—

- (a) an offence under any provision of Part 3 (sexual offences against children);
- (b) an offence under any provision of Part 2 or 4 where the victim of the offence was under 18 at the time of the offence;
- (c) an offence under Article 65 where the victim of the offence was under 18 at the time of the offence;
- (d) an offence under Article 66 or 67 where the intended offence was an offence against a person under 18;
- (e) an offence under—
  - (i) Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (NI 17) (indecent photographs of children), or
  - (ii) Article 15 of the Criminal Justice (Evidence Etc.) (Northern Ireland) Order 1988 (NI 17) (possession of indecent photograph of child).

(11) A reference in paragraph (10) to an offence includes—

- (a) a reference to an attempt or conspiracy to commit that offence; and



- (b) a reference to aiding and abetting, counselling or procuring the commission of that offence.

(12) A reference in paragraph (10) to an offence (“offence A”) includes a reference to an offence under Part 2 of the Serious Crime Act 2007 (c. 27) in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed.

### **Exceptions to aiding, abetting and counselling**

**77.—**(1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this Article 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 Article applies to—

- (a) an offence under any of Articles 12 to 14 (offences against children under 13);
- (b) an offence under Article 16 (sexual activity with a child);
- (c) an offence under Article 20 which would be an offence under Article 16 if the offender were aged 18;
- (d) an offence under any of Articles 23, 32, 43, 47 and 51 (sexual activity) against a person under 16;

(3) This Article does not affect any other statutory provision or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Order.

### **Amendments of the Sexual Offences Act 2003**

**78.** The following provisions of the Sexual Offences Act 2003 (c. 42) cease to have effect—

- (a) section 15 (meeting a child following sexual grooming etc.);
- (b) sections 16 to 24 (abuse of position of trust);
- (c) sections 47 to 51 (abuse of children through prostitution and pornography);
- (d) sections 52 to 54 (exploitation of prostitution);
- (e) sections 66 to 72 (other sexual offences, including offences outside the United Kingdom);
- (f) sections 78 and 79 (interpretation of Part 1 of that Act).

### **Amendment of the Criminal Law Act (Northern Ireland) 1967**

**79.—**(1) The Criminal Law Act (Northern Ireland) 1967 (c. 18) is amended as follows.

(2) In section 4(1A) (which defines “relevant offence” for the purposes of the offence under section 4(1) of assisting an offender and the offence under section 5(1) of concealing an offence) after paragraph (b) insert—

“but in section 5(1) “relevant offence” does not include an offence under Article 20 of the Sexual Offences (Northern Ireland) Order 2008.”

### **Orders**

**80.—**(1) Any power to make orders conferred by this Order on the Secretary of State is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (NI 12).

(2) Orders under this Order (except an order under Article 1(3)) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(3) Orders made by the Secretary of State under this Order may contain—

- (a) any incidental, supplementary or consequential provision, and
- (b) any transitory, transitional or saving provisions,

which the Secretary of State considers necessary or expedient.

### **Minor and consequential amendments**

**81.** Schedule 1 (which contains minor and consequential amendments) shall have effect.

### **Supplementary, consequential, transitional and transitory provision**

**82.—**(1) Schedule 2 (which makes transitory and transitional provision) shall have effect.

(2) The Secretary of State may by order make—

- (a) any supplementary, incidental or consequential provision, and
- (b) any transitory, transitional or saving provision,

which the Secretary of State considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Order.

(3) An order under paragraph (2) may, in particular—

- (a) provide for any provision of this Order which comes into operation before another such provision has come into operation to have effect, until that other provision has come into operation, with such modifications as are specified in the order; and
- (b) amend or repeal any statutory provision passed or made before the making of this Order.

(4) Nothing in this Article limits the power by virtue of Article 80 to include transitory, transitional or saving provision in an order under Article 1(3).

(5) The amendments that may be made under paragraph (3)(b) are in addition to those made by any other provision of this Order.

### **Repeals**

**83.** The statutory provisions listed in Schedule 3 are repealed to the extent set out in column 2 of that Schedule.

Clerk of the Privy Council

## **SCHEDULES**

### **SCHEDULE 1**

Article 81

#### **Minor and consequential amendments**

*Belfast Improvement Act 1845 (c. cxlii)*

**1.—**(1) Section 167 of the Belfast Improvement Act 1845 is amended as follows.

(2) Omit the words “Every person who shall wilfully and indecently expose his person:”.

(3) Omit the words “Every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of any inhabitant or passenger:”.

*Town Police Clauses Act 1847 (c. 89)*

2.—(1) Section 28 of the Town Police Clauses Act 1847 is amended as follows.

(2) Omit the words “Every common prostitute loitering and importuning passengers for the purpose of prostitution:”.

(3) Omit the words “Every person who wilfully and indecently exposes his person:”.

*Towns Improvement (Ireland) Act 1854 (c. 103)*

3.—(1) Section 72 of the Towns Improvement (Ireland) Act 1854 is amended as follows.

(2) Omit the words from “and any constable” to “(that is to say)”.

(3) Omit the words “Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution, or being otherwise offensive, shall be liable to a fine not exceeding level three on the standard scale”.

(4) Omit the words “Every person who wilfully and indecently exposes his person, or who commits any act contrary to public decency, shall be liable to a fine not exceeding level three on the standard scale:”.

*Offences Against the Person Act 1861 (c. 100)*

4. In the Offences Against the Person Act 1861, omit—

- (a) section 48 (rape);
- (b) section 52 (indecent assault on a female);
- (c) section 53 (fraudulent abduction of a girl with intent to carnally know her, etc.);
- (d) section 54 (forcible abduction of a woman with intent to carnally know her, etc.);
- (e) section 55 (abduction of a girl under sixteen).

*Criminal Law Amendment Act 1885 (c. 69)*

5. In the Criminal Law Amendment Act 1885 omit—

- (a) section 2 (procurement of a woman or girl under 21 to have a carnal connection with another, to become a prostitute etc.);
- (b) section 3 (procurement of a woman or girl under 21 by drugs or threats to have a carnal connection with another);
- (c) section 4 (carnal knowledge of a girl under 14 years of age);
- (d) section 5 (carnal knowledge of a girl under 17 years of age);
- (e) section 6 (permitting a girl under 17 to be on premises for the purpose of unlawful carnal knowledge);
- (f) section 7 (abduction of a girl under 18 with intent to have carnal knowledge);
- (g) section 8 (unlawful detention of a woman or girl against her will with intent to have carnal knowledge, or in a brothel);
- (h) section 13(1) (keeping, managing, acting or assisting in the management of a brothel).

*Punishment of Incest Act 1908 (c. 45)*

6. In the Punishment of Incest Act 1908 omit—

- (a) section 1 (incest by males);
- (b) section 2 (incest by females).

*Criminal Law Amendment Act (Northern Ireland) 1923 (c. 8)*

**7.—**(1) The Criminal Law Amendment Act (Northern Ireland) 1923 is amended as follows.

(2) Omit section 2.

*Criminal Law and Prevention of Crime (Amendment) Act (Northern Ireland) 1930 (c. 3)*

**8.—**(1) The Criminal Law and Prevention of Crime (Amendment) Act (Northern Ireland) 1930 is amended as follows.

(2) Omit section 1.

*Age of Marriage Act (Northern Ireland) 1951 (c. 25)*

**9.** In the Age of Marriage Act (Northern Ireland) 1951, omit section 1(2).

*Visiting Forces Act 1952 (c. 67)*

**10.—**(1) The Visiting Forces Act 1952 is amended as follows.

(2) In paragraph 1 of the Schedule (offences referred to in section 3 of that Act)—

- (a) omit sub-paragraph (za) (offences of rape and buggery under the law of Northern Ireland);
- (b) omit sub-paragraph (b)(iv);
- (c) in sub-paragraph (b), after paragraph (xiii) insert—  
“(xiv) the Sexual Offences (Northern Ireland) Order 2008.”

*Attempted Rape, etc., Act (Northern Ireland) 1960 (c. 3)*

**11.** In the Attempted Rape, etc., Act (Northern Ireland) 1960, omit section 2 (assault with intent to commit rape).

*Children and Young Persons Act (Northern Ireland) 1968 (c. 34)*

**12.—**(1) The Children and Young Persons Act (Northern Ireland) 1968 is amended as follows.

(2) Omit section 21 (causing seduction of girl under 17).

(3) Omit section 22 (indecent conduct towards a child).

(4) In Schedule 1 (offences against children and young persons with respect to which special provisions of that Act apply)—

- (a) in the entry for the Offences Against the Person Act 1861—
  - (i) omit the words “or 55”, and
  - (ii) for “42, 43 or 55” substitute “42 or 43”;
- (b) omit the entry for the Punishment of Incest Act 1908;
- (c) in the entry for the Children and Young Persons Act (Northern Ireland) 1968 itself, omit the words “21, 22”;
- (d) omit the entry for the Mental Health (Northern Ireland) Order 1986;
- (e) in the entry relating to attempts to commit an offence against a child or young person, omit the words “the Punishment of Incest Act 1908 or Article 122 or 123 of the Mental Health (Northern Ireland) Order 1986”;
- (f) omit the entry for the Criminal Justice (Northern Ireland) Order 1980;
- (g) omit the entry for the Criminal Justice (Northern Ireland) Order 2003;
- (h) in the entry for the Sexual Offences Act 2003, for “15 to 19, 47 to 59, 66 and 67” substitute “57 to 59”; and

- (i) at the end insert—

“Any offence against a child or young person under the Sexual Offences (Northern Ireland) Order 2008 or any attempt to commit such an offence”.

*Theft Act (Northern Ireland) 1969 (c. 16)*

**13.**—(1) The Theft Act (Northern Ireland) 1969 is amended as follows.

- (2) In section 9(2) omit the words “or raping any person therein”.

*Criminal Justice (Northern Ireland) Order 1980 (NI 6)*

**14.** In the Criminal Justice (Northern Ireland) Order 1980, omit Article 9 (inciting girl under sixteen to have incestuous intercourse).

*Magistrates’ Courts (Northern Ireland) Order 1981 (NI 26)*

**15.** In Schedule 2 to the Magistrates’ Courts (Northern Ireland) Order 1981 (indictable offences which may be dealt with summarily upon consent of the accused)—

- (a) omit paragraph 5(a)(vii) (offence under section 52 of the Offences Against the Person Act 1861);
- (b) omit paragraph 10 (offences under the Criminal Law Amendment Act 1885);
- (c) omit paragraph 23 (offence under Article 21 of the Criminal Justice (Northern Ireland) Order 2003).

*Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (NI 13)*

**16.**—(1) The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 is amended as follows.

- (2) Omit Article 5(3).

*Mental Health (Northern Ireland) Order 1986 (NI 4)*

**17.** In the Mental Health (Northern Ireland) Order 1986, omit—

- (a) Article 122 (protection of woman suffering from severe mental handicap), and
- (b) Article 123 (protection of patients).

*Criminal Justice (Northern Ireland) Order 1986 (NI 15)*

**18.** In the Criminal Justice (Northern Ireland) Order 1986, omit paragraph 7 of Schedule 1.

*Adoption (Northern Ireland) Order 1987 (NI 22)*

**19.** In Article 47(1) of the Adoption (Northern Ireland) Order 1987 (status conferred by adoption not to apply for the purposes of certain enactments) for “sections 1 to 3 of the Punishment of Incest Act 1908” substitute “Articles 68 and 69 of the Sexual Offences (Northern Ireland) Order 2008 (sex with an adult relative); but nothing in this paragraph is to be read as preventing the application of Article 40 for the purposes of Article 68(3)(a) or (b) or 69(3)(a) or (b) of that Order”.

*Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)*

**20.**—(1) Schedule 2 to the Police and Criminal Evidence (Northern Ireland) Order 1989 is amended as follows.

- (2) Omit the entry relating to the Belfast Improvement Act 1845 (c. cxlii).
- (3) Omit the entry relating to the Towns Improvement (Ireland) Act 1854 (c. 103).

- (4) Omit Notes 1 and 2.

*Treatment of Offenders (Northern Ireland) Order 1989 (NI 15)*

- 21.** In the Treatment of Offenders (Northern Ireland) Order 1989, omit Article 12(1) to (3).

*Sexual Offences (Amendment) Act 1992 (c. 34)*

- 22.**—(1) The Sexual Offences (Amendment) Act 1992 is amended as follows.
- (2) In section 2(3) (offences against the law of Northern Ireland to which the Act applies)—
- (a) after paragraph (ha) insert—
- “(hb) any offence under—
- (i) any provision of Part 2, 3 or 4, or
- (ii) Article 65, 66, 67, 70, 71, or 74,
- of the Sexual Offences (Northern Ireland) Order 2008;”, and
- (b) in paragraph (i) for “(ha)” substitute “(hb)”.

*Health and Personal Social Services (Northern Ireland) Order 1994 (NI 2)*

- 23.** In Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (amendments)—
- (a) in the entry relating to Articles 121(1) and 123(1)(a)(ii) of the Mental Health (Northern Ireland) Order 1986, omit the words “and 123(1)(a)(ii)”, and
- (b) omit the entry relating to Article 123(1)(b)(ii) of that Order.

*Sexual Offences (Conspiracy and Incitement) Act 1996 (c. 29)*

- 24.**—(1) Paragraph 2 of the Schedule to the Sexual Offences (Conspiracy and Incitement) Act 1996 is amended as follows.
- (2) In sub-paragraph (1)—
- (a) omit paragraphs (a) to (c), and
- (b) for paragraph (d) substitute—
- “(d) an offence under any of Articles 5 to 19, 21 and 22 to 33 of the Sexual Offences (Northern Ireland) Order 2008.”
- (3) In sub-paragraph (2) for “In sub-paragraph (1), paragraphs (a), (b) and (c)(ii) do” substitute “Sub-paragraph (1)(d) does”.

*Industrial Tribunals (Northern Ireland) Order 1996 (NI 18)*

- 25.** In Article 13(5)(b) of the Industrial Tribunals (Northern Ireland) Order 1996, in the definition of “sexual offence”, after paragraph (vii) insert—
- “(viii) any provision of Part 2, 3 or 4 of the Sexual Offences (Northern Ireland) Order 2008, or Article 65, 66, 67, 70, 71 or 74 of that Order;”.

*Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9)*

- 26.** In paragraph 1 of Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (definition of “sexual offence”)—
- (a) omit the words “the common law offence of rape or”;
- (b) omit sub-paragraphs (a) to (g) and (i) to (m); and
- (c) at the end insert—
- “(n) any provision of the Sexual Offences (Northern Ireland) Order 2008.”

*Criminal Evidence (Northern Ireland) Order 1999 (NI 8)*

**27.**—(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) In Article 3(1) (meaning of “sexual offence”)—

- (a) omit sub-paragraphs (a) to (gg);
- (b) in sub-paragraph (ga) omit “15 to 21, 47 to 53,” and “66, 67, and 70 to 72”; and
- (c) after sub-paragraph (ga) insert—

“(h) any offence under any provision of the Sexual Offences (Northern Ireland) Order 2008.”

(3) In Article 23(3)(cc) omit “15 to 21, 47 to 53,” and “66 to 72”.

*Criminal Justice and Court Services Act 2000 (c. 43)*

**28.** In the Criminal Justice and Court Services Act 2000, omit section 40 (which amended sections 22 and 180 of the Children and Young Persons Act (Northern Ireland) 1968).

*Proceeds of Crime Act 2002 (c. 29)*

**29.**—(1) Paragraph 8 of Schedule 5 to the Proceeds of Crime Act 2002 (lifestyle offences: Northern Ireland) is amended as follows.

(2) In sub-paragraph (1), omit paragraphs (a) to (c).

(3) For sub-paragraph (1A) substitute—

“(1A) An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008—

- (a) Article 21 (arranging or facilitating commission of a sex offence against a child);
- (b) Article 38 (causing or inciting child prostitution or pornography);
- (c) Article 39 (controlling a child prostitute or a child involved in pornography);
- (d) Article 40 (arranging or facilitating child prostitution or pornography);
- (e) Article 62 (causing or inciting prostitution for gain);
- (f) Article 63 (controlling prostitution for gain).”

(4) Omit sub-paragraph (6).

*Criminal Justice Act 2003 (c. 44)*

**30.** The Criminal Justice Act 2003 is amended as follows.

**31.**—(1) Part 2 of Schedule 5 (qualifying offences for the purposes of Part 10: list of offences for Northern Ireland) is amended as follows.

(2) After paragraph 35 insert—

“35A. An offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2008.”

(3) After paragraph 36 insert—

“36A. An offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit an offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2008.”

(4) After paragraph 38 insert—

*“Assault by penetration*

38A. An offence under Article 6 of the Sexual Offences (Northern Ireland) Order 2008.

*Causing a person to engage in sexual activity without consent*

38B. An offence under Article 8 of the Sexual Offences (Northern Ireland) Order 2008 where it is alleged that the activity caused involved penetration within paragraph (4)(a) to (d) of that Article.

*Rape of a child under thirteen*

38C. An offence under Article 12 of the Sexual Offences (Northern Ireland) Order 2008.

*Attempted rape of a child under thirteen*

38D. An offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit an offence under Article 12 of the Sexual Offences (Northern Ireland) Order 2008.

*Assault of child under thirteen by penetration*

38E. An offence under Article 13 of the Sexual Offences (Northern Ireland) Order 2008.

*Causing a child under thirteen to engage in sexual activity by penetration*

38F. An offence under Article 15 of the Sexual Offences (Northern Ireland) Order 2008 where it is alleged that an activity involving penetration within paragraph (2)(a) to (d) of that Article was caused.

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

38G. An offence under Article 43 of the Sexual Offences (Northern Ireland) Order 2008 where it is alleged that the touching involved penetration within paragraph (3)(a) to (d) of that Article.

*Causing a person with a mental disorder impeding choice to engage in sexual activity*

38H. An offence under Article 44 of the Sexual Offences (Northern Ireland) Order 2008 where it is alleged that an activity involving penetration within paragraph (3)(a) to (d) of that Article was caused.”

*Criminal Justice (Northern Ireland) Order 2003 (NI 13)*

32. In the Criminal Justice (Northern Ireland) Order 2003—

- (a) omit Article 18 (rape);
- (b) omit Article 19 (buggery);
- (c) omit Article 20 (assault with intent to commit buggery);
- (d) omit Article 21 (indecent assault on a male);
- (e) omit Article 22 (which amends the Children and Young Persons Act (Northern Ireland) 1968;
- (f) in Schedule 1 (amendments), omit paragraphs 4, 6(c), 7, 9 and 22.

*Criminal Justice (Northern Ireland) Order 2004 (NI 9)*

33.—(1) Schedule 4 to the Criminal Justice (Northern Ireland) Order 2004 (qualifying offences for the purposes of the prosecution’s right of appeal in evidentiary rulings) is amended as follows.

(2) After paragraph 7 insert—

“7A. An offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2008 (rape).”



(3) After paragraph 10 insert—

“10A. An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008—

Article 6 (assault by penetration);

Article 12 (rape of a child under 13);

Article 13 (assault of a child under 13 by penetration).”

*Firearms (Northern Ireland) Order 2004 (NI 3)*

**34.**—(1) Schedule 4 to the Firearms (Northern Ireland) Order 2004 is amended as follows.

(2) For paragraph 1 substitute—

“1. Any offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008—

Article 5 (rape);

Article 6 (assault by penetration);

Article 12 (rape of a child under 13);

Article 13 (assault of a child under 13 by penetration).”

(3) In paragraph 2 omit the entry relating to sections 53 to 55 of the Offences Against the Person Act 1861.

*Criminal Justice (Northern Ireland) Order 2008 (NI 1)*

**35.**—(1) The Criminal Justice (Northern Ireland) Order 2008 is amended as follows.

(2) In Schedule 1 (serious offences) after paragraph 31 insert—

*“The Sexual Offences (Northern Ireland) Order 2008 (NI 1)*

**31A.** An offence under—

Article 5 (rape),

Article 6 (assault by penetration),

Article 7 (sexual assault),

Article 8 (causing a person to engage in sexual activity without consent),

Article 12 (rape of a child under 13),

Article 13 (assault of a child under 13 by penetration),

Article 14 (sexual assault of a child under 13),

Article 15 (causing or inciting a child under 13 to engage in sexual activity),

Article 16 (sexual activity with a child),

Article 17 (causing or inciting a child to engage in sexual activity),

Article 18 (engaging in sexual activity in the presence of a child),

Article 19 (causing a child to watch a sexual act),

Article 21 (arranging or facilitating commission of a sexual offence against a child),

Article 22 (meeting a child following sexual grooming etc.),

Article 32 (sexual activity with a child family member) where paragraph (4) of that Article applies,

Article 33 (inciting a child family member to engage in sexual activity) where paragraph (4) of that Article applies,

Article 37 (paying for sexual services of a child) where paragraph (3) or (4) of that Article applies,

Article 38 (causing or inciting child prostitution or pornography),  
Article 39 (controlling a child prostitute or a child involved in pornography),  
Article 40 (arranging or facilitating child prostitution or pornography),  
Article 43 (sexual activity with a person with a mental disorder impeding choice),  
Article 44 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity),  
Article 45 (engaging in sexual activity in the presence of a person with a mental disorder impeding choice),  
Article 46 (causing a person, with a mental disorder impeding choice, to watch a sexual act),  
Article 47 (inducement, threat or deception to procure sexual activity with a person with a mental disorder),  
Article 48 (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception),  
Article 49 (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder),  
Article 50 (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception),  
Article 51 (care workers: sexual activity with a person with a mental disorder),  
Article 52 (care workers: causing or inciting sexual activity),  
Article 62 (causing or inciting prostitution for gain),  
Article 63 (controlling prostitution for gain),  
Article 65 (administering a substance with intent),  
Article 66 (committing an offence with intent to commit a sexual offence),  
Article 67 (trespass with intent to commit a sexual offence).”

(3) In Part 2 of Schedule 2 (specified sexual offences) after paragraph 14 insert—

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

**14A.** An offence under—

Article 5 (rape),  
Article 6 (assault by penetration),  
Article 7 (sexual assault),  
Article 8 (causing a person to engage in sexual activity without consent),  
Article 12 (rape of a child under 13),  
Article 13 (assault of a child under 13 by penetration),  
Article 14 (sexual assault of a child under 13),  
Article 15 (causing or inciting a child under 13 to engage in sexual activity),  
Article 16 (sexual activity with a child),  
Article 17 (causing or inciting a child to engage in sexual activity),  
Article 18 (engaging in sexual activity in the presence of a child),  
Article 19 (causing a child to watch a sexual act),  
Article 20 (sexual offences against children committed by children or young persons),  
Article 21 (arranging or facilitating commission of a sexual offence against a child),  
Article 22 (meeting a child following sexual grooming etc.),  
Article 23 (abuse of position of trust: sexual activity with a child),

Article 24 (abuse of position of trust: causing or inciting a child to engage in sexual activity),

Article 25 (abuse of position of trust: sexual activity in the presence of a child),

Article 26 (abuse of position of trust: causing a child to watch a sexual act),

Article 32 (sexual activity with a child family member),

Article 33 (inciting a child family member to engage in sexual activity),

Article 37 (paying for sexual services of a child),

Article 38 (causing or inciting child prostitution or pornography),

Article 39 (controlling a child prostitute or a child involved in pornography),

Article 40 (arranging or facilitating child prostitution or pornography),

Article 43 (sexual activity with a person with a mental disorder impeding choice),

Article 44 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity),

Article 45 (engaging in sexual activity in the presence of a person with a mental disorder impeding choice),

Article 46 (causing a person, with a mental disorder impeding choice, to watch a sexual act),

Article 47 (inducement, threat or deception to procure sexual activity with a person with a mental disorder),

Article 48 (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception),

Article 49 (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder),

Article 50 (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception),

Article 51 (care workers: sexual activity with a person with a mental disorder),

Article 52 (care workers: causing or inciting sexual activity),

Article 53 (care workers: sexual activity in the presence of a person with a mental disorder),

Article 54 (care workers: causing a person with a mental disorder to watch a sexual act),

Article 62 (causing or inciting prostitution for gain),

Article 63 (controlling prostitution for gain),

Article 65 (administering a substance with intent),

Article 66 (committing an offence with intent to commit a sexual offence),

Article 67 (trespass with intent to commit a sexual offence),

Article 71 (exposure),

Article 72 (voyeurism),

Article 74 (intercourse with an animal),

Article 75 (sexual penetration of a corpse).”

## Transitional and Transitory Provisions

*Continuity of sexual offences law*

1.—(1) This paragraph applies where, in any proceedings—

- (a) a person (“the defendant”) is charged in respect of the same conduct both with an offence under this Order and with an offence specified in paragraph (2) (“the pre-commencement offence”);
- (b) the only thing preventing the defendant from being found guilty of the offence under this Order is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was after the coming into force of the provision of this Order providing for the offence; and
- (c) the only thing preventing the defendant from being found guilty of the pre-commencement offence is the fact that it has not been proved beyond a reasonable doubt that that time was before the coming into force of the repeal of the statutory provision providing for the offence.

(2) The offences referred to in paragraph (1)(a) are—

- (a) an offence under section 167 of the Belfast Improvement Act 1845 (c. cxlii) (loitering for the purposes of prostitution);
- (b) an offence under section 28 of the Town Police Clauses Act 1847 (c.89) (indecent exposure);
- (c) an offence under section 72 of the Towns Improvement (Ireland) Act 1854 (c. 103) (loitering for the purposes of prostitution);
- (d) an offence under section 52, 53, 54 or 55 of the Offences Against the Person Act 1861 (c. 100) (indecent assault and abduction);
- (e) an offence under any of the following sections of the Criminal Law Amendment Act 1885 (c. 69)—
  - (i) section 2 (procurement of a woman or girl under 21);
  - (ii) section 3 (procuring defilement of a woman);
  - (iii) section 4 (unlawful carnal knowledge of a girl under 14);
  - (iv) section 5 (unlawful carnal knowledge of a girl under 17);
  - (v) section 6 (permitting a girl under 17 to be on premises for the purpose of unlawful carnal knowledge);
  - (vi) section 7 (abduction of girl with intent to have carnal knowledge);
  - (vii) section 8 (unlawful detention with intent to have carnal knowledge);
- (f) an offence under section 1 or 2 of the Punishment of Incest Act 1908 (c. 45);
- (g) an offence under section 2 of the Attempted Rape, etc., Act (Northern Ireland) 1960 (c. 3) (assault with intent to commit rape);
- (h) an offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (indecent conduct towards a child);
- (i) an offence under section 9(1)(a) of the Theft Act (Northern Ireland) 1969 (c. 16) where the intended offence was rape;
- (j) an offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (NI 6) (inciting girl under sixteen to have incestuous intercourse);
- (k) an offence under Article 122 or 123 of the Mental Health (Northern Ireland) Order 1986 (NI 4) (protection of woman suffering from severe mental handicap, and protection of patients);

- (l) an offence under Article 19, 20 or 21 of the Criminal Justice (Northern Ireland) Order 2003 (NI 13) (buggery, assault with intent to commit buggery, indecent assault on a male);
- (m) an offence under any of the following provisions of the Sexual Offences Act 2003 (c. 42)—
  - (i) section 15 (meeting a child following sexual grooming etc.);
  - (ii) sections 16 to 19 (abuse of position of trust);
  - (iii) sections 47 to 50 (abuse of children through prostitution and pornography);
  - (iv) section 66 (exposure);
  - (v) section 67 (voyeurism);
  - (vi) section 69 (intercourse with an animal);
  - (vii) section 70 (sexual penetration of a corpse);
  - (viii) section 71 (sexual activity in a public lavatory);
  - (ix) section 72 (offences outside the United Kingdom).

(3) For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was—

- (a) if the maximum penalty for the pre-commencement offence is less than the maximum penalty for the offence under this Order, a time before the coming into force of the repeal of the statutory provision providing for the pre-commencement offence; and
- (b) in any other case, a time after the coming into force of the provision providing for the offence under this Order.

(4) In sub-paragraph (3) the reference, in relation an offence, to the maximum penalty is a reference to the maximum penalty by way of imprisonment or other detention that could be imposed on the defendant on conviction of the offence in the proceedings in question.

(5) A reference in this paragraph to an offence under this Order or to an offence specified in sub-paragraph (2) includes a reference to—

- (a) inciting the commission of that offence;
- (b) conspiracy to commit that offence; and
- (c) attempting to commit that offence;

and, in relation to an offence falling within paragraphs (a) to (c), a reference in this paragraph to the provision providing for the offence so falling has effect as a reference to the provision providing for the offence under this Order or, as the case may be, for the offence so specified.

(6) This paragraph applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of the offence under this Order or the pre-commencement offence before the commencement of this Schedule.

*Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 4)*

2.—(1) Until Article 60 of, and Schedule 8 to, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (NI 11) (repeals) come fully into force in relation to Schedule 1 to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“the 2003 Order”), Schedule 1 to the 2003 Order (meaning of “offence against a child”) shall have effect with the following modifications.

(2) For the purposes of paragraph 1, the offences mentioned in Article 22(1)(a) include any offence under any provision of Part 3 of this Order.

(3) For the purposes of paragraph 2, the offences mentioned in Article 22(1)(b) include any offence under any provision of Part 2, Part 4 or Article 65 of this Order.

(4) A person falls within paragraph 3 if he commits an offence under Article 66 or 67 of this Order where—

- (a) the intended offence was an offence under any provision of Part 3 of this Order, or
- (b) the intended offence was an offence under any provision of Part 2, Part 4 or Article 65 of this Order, and the intended victim was a child (within the meaning of the 2003 Order).

## SCHEDULE 3

Article 83

### Repeals

Short Title	Extent of repeal
The Belfast Improvement Act 1845 (c. cxlii)	In section 167— (a) the words “Every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of any inhabitant or passenger:” and (b) the words “Every person who shall wilfully and indecently expose his person”.
The Town Police Clauses Act 1847 (c. 89)	In section 28— (a) the words “Every common prostitute loitering and importuning passengers for the purpose of prostitution:”, and (b) the words “Every person who wilfully and indecently exposes his person:”.
The Towns Improvement (Ireland) Act 1854 (c.103)	In section 72— (a) the words from “and any constable” to “(that is to say)”, (b) the words “Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution, or being otherwise offensive, shall be liable to a fine not exceeding level three on the standard scale:”, and (c) the words “Every person who wilfully and indecently exposes his person, or who commits any act contrary to public decency, shall be liable to a fine not exceeding level three on the standard scale”.
The Offences Against the Person Act 1861 (c.100)	Sections 48 and 52 to 55.
The Criminal Law Amendment Act 1885 (c. 69)	Sections 2 to 8. Section 13(1).
The Punishment of Incest Act 1908 (c.45)	Sections 1 and 2.
The Criminal Law Amendment Act (Northern Ireland) 1923 (c. 8)	Section 2.

The Criminal Law and Prevention of Crime (Amendment) Act (Northern Ireland) 1930 (c. 3)	Section 1.
The Children and Young Persons Act (Northern Ireland) 1950 (c. 5)	Section 13(2). In section 13(3), the words “the said sections five and six, in”.
The Age of Marriage Act (Northern Ireland) 1951 (c. 25)	Section 1(2).
The Visiting Forces Act 1952 (c.67)	In the Schedule, paragraph 1(za) and (b)(iv).
The Attempted Rape, etc., Act (Northern Ireland) 1960 (c.3)	Section 2.
The Children and Young Persons Act (Northern Ireland) 1968 (c.34)	Sections 21 and 22. In Schedule 1— (a) in the entry relating to the Offences Against the Person Act 1861, the words “or 55”; (b) the entry relating to the Punishment of Incest Act 1908; (c) in the entry relating to the Children and Young Persons Act (Northern Ireland) 1968 itself, the words “21, 22”; (d) the entry relating to the Mental Health (Northern Ireland) Order 1986; (e) in the entry relating to attempts to commit an offence against a child or young person, the words “the Punishment of Incest Act 1908 or Article 122 or 123 of the Mental Health (Northern Ireland) Order 1986”; (f) the entry relating to the Criminal Justice (Northern Ireland) Order 1980; (g) the entry relating to the Criminal Justice (Northern Ireland) Order 2003.
The Theft Act (Northern Ireland) 1969 (c. 16)	In section 9(2) the words “or raping any person therein”.
The Criminal Justice (Northern Ireland) Order 1980 (NI 6)	Article 9.
The Magistrates’ Courts (Northern Ireland) Order 1981 (NI 26)	In Schedule 2, paragraphs 5(a)(vii), 10 and 23.
The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (NI 13)	Article 5(3).
The Mental Health (Northern Ireland) Order 1986 (NI 4)	Articles 122 and 123.
The Criminal Justice (Northern Ireland) 1986 (NI 15)	In Schedule 1, paragraph 7.

The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)	In Schedule 2— (a) the entry relating to the Belfast Improvement Act 1845, (b) the entry relating to the Towns Improvement (Ireland) Act 1854, and (c) Notes 1 and 2.
The Treatment of Offenders (Northern Ireland) Order 1989 (NI 15)	Article 12(1) to (3).
The Health and Personal Social Services (Northern Ireland) Order 1994 (NI 2)	In Schedule 1— (a) in the entry relating to Articles 121(1) and 123(1)(a)(ii) of the Mental Health (Northern Ireland) Order 1986, the words “and 123(1)(a)(ii)”, and (b) the entry relating to Article 123(1)(b)(ii) of that Order.
The Children (Northern Ireland) Order 1995 (NI 2)	In Schedule 9, paragraphs 1, 2, 3, 19 and 136.
The Sexual Offences (Conspiracy and Incitement) Act 1996 (c. 29)	In the Schedule, paragraph 2(1)(a) to (c).
The Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9)	In Schedule 1, in paragraph 1, sub-paragraphs (a) to (g) and (i) to (m), and the words “the common law offence of rape or”.
The Criminal Evidence (Northern Ireland) Order 1999 (NI 8)	In Article 3(1), sub-paragraphs (a) to (gg).
The Criminal Justice and Court Services Act 2000 (c. 43)	Section 40.
The Proceeds of Crime Act 2002 (c. 29)	In Schedule 5, paragraph 8(1)(a) to (c) and (6).
The Sexual Offences Act 2003 (c. 42)	Sections 15 to 24, 47 to 54, 66 to 72, 78 and 79.
The Criminal Justice (Northern Ireland) Order 2003 (NI 13)	Articles 18, 19, 20, 21 and 22. In Schedule 1, paragraphs 4, 6(c), 7, 9 and 22.
The Firearms (Northern Ireland) Order 2004 (NI 3)	In Schedule 4, in paragraph 2, the entry relating to sections 53 to 55 of the Offences Against the Person Act 1861.
The Violent Crime Reduction Act 2006 (c. 38)	In Schedule 4, paragraph 3.



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision about sexual offences.

Part 2 makes provision for the offences of rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent.

Part 3 makes provision about sexual offences against children. Part 4 makes provision about sexual offences against a person with a mental disorder. Part 5 makes provision about prostitution. Part 6 makes provision about other sexual offences.

The Order abolishes the common law offence of rape, and repeals various provisions, including provisions of Part 1 of the Sexual Offences Act 2003, which are superseded by the offences created by the Order.

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