

Draft Order in Council laid before Parliament under section 84(4) of the Northern Ireland Act 1998, for approval by resolution of each House of Parliament. The draft Order is consequential on the draft Sexual Offences (Northern Ireland) Order 2008. It is proposed that both Orders will, if approved by Parliament, be presented for making at the same meeting of the Privy Council.

DRAFT STATUTORY INSTRUMENTS

2008 No.

NORTHERN IRELAND

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

Made - - - - *****

Coming into force in accordance with Article 2

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

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order in Council has been approved by resolution of each House of Parliament: Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 84(2) of the Northern Ireland Act 1998(1), by and with the advice of Her Privy Council, orders as follows:

PART 1

INTRODUCTORY

Title and extent

1.—(1) This Order may be cited as the Sexual Offences (Northern Ireland Consequential Amendments) Order 2008.

(2) This Article, and Articles 2, 13 and 14, extend to the whole of the United Kingdom.

(3) The remaining provisions of this Order extend to England and Wales and to Northern Ireland.

Commencement

2.—(1) Article 1, this Article and Article 9 come into force one week after the day on which this Order is made.

(2) Article 15 comes into force—

- (a) so far as relating to the repeal of paragraph 18(2) of Schedule 6 to the Sexual Offences Act 2003(2), on the day appointed for the coming into operation of paragraph 12(2) of Schedule 1 to the principal Order;
- (b) so far as relating to the repeal of paragraph 39 of Schedule 6 to that Act, on the day appointed for the coming into operation of paragraph 26(b) of Schedule 1 to the principal Order;
- (c) so far as relating to the repeal of paragraph 46(5)(a) of Schedule 6 to that Act, on the day appointed for the coming into operation of paragraph 29(3) of Schedule 1 to the principal Order;

(3) The remaining provisions of this Order come into force on the day appointed for the coming into operation of Article 78 of the principal Order.

(4) In this Article “the principal Order” means the Sexual Offences (Northern Ireland) Order 2008(3).

PART 2

SEXUAL OFFENCES ACT 2003

Amendment of the Sexual Offences Act 2003

3. The Sexual Offences Act 2003(4) is amended in accordance with the following provisions of this Part.

Section 15 (meeting a child following sexual grooming etc.)

- 4.—(1) Section 15 is amended as follows.
- (2) Omit subsection (2)(b)(ii).
- (3) In subsection (2)(b)(iii) omit “and Northern Ireland” and “or (ii)”.
- (4) Omit subsection (3).

Section 20 (abuse of position of trust: acts done in Scotland)

- 5.—(1) Section 20 is amended as follows.
- (2) Omit “or Northern Ireland”.
- (3) After “in Scotland” insert “or Northern Ireland”.

Section 21 (positions of trust)

- 6.—(1) Section 21 is amended as follows.

(2) 2003 c. 42.

(3) S.I. 2008/(NI).

(4) 2003 c. 42. Sections 15 and 72 were amended by the Criminal Justice and Immigration Act 2008 (c.). Section 142(2) was amended by paragraph 3 of Schedule 4 to the Violent Crime Reduction Act 2006 (c. 38). In Schedule 5, paragraph 171 was amended by the Sexual Offences Act 2003 (Amendment of Schedules 3 and 5) Order 2007 (S.I. 2007/296) and paragraph 171A was inserted by paragraph 59(3) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28).

- (2) In subsection (3)—
 - (a) in paragraph (a) omit “or Article 27(2) of the Children (Northern Ireland) Order 1995 (S.I.1995/755 (N.I. 2))”, and
 - (b) in paragraph (b) omit “or Article 75(1) of that Order”.
- (3) In subsection (4)—
 - (a) in paragraph (c) omit “residential care home or private hospital”,
 - (b) at the end of paragraph (d) insert “or”,
 - (c) omit the word “or” at the end of paragraph (e), and
 - (d) omit paragraph (f).
- (4) Omit subsection (6).
- (5) In subsection (8) omit paragraph (b) and the word “or” at the end of paragraph (a).
- (6) In subsection (9) omit “or under Article 4 of the Children (Northern Ireland) Order 1995”.
- (7) In subsection (10) omit paragraph (b) and the word “or” at the end of paragraph (a).
- (8) In subsection (12)(c) omit “or Article 60(1) of the Children (Northern Ireland) Order 1995”.

Section 22 (positions of trust: interpretation)

- 7. In section 22(5) omit the following provisions—
 - (a) paragraph (b) of the definition of “authority”;
 - (b) paragraph (b) of the definition of “care order”, and the word “and” at the end of paragraph (a);
 - (c) paragraph (b) of the definition of “children’s home”, and the word “and” at the end of paragraph (a);
 - (d) paragraph (b) of the definition of “education supervision order”, and the word “and” at the end of paragraph (a);
 - (e) paragraph (b) of the definition of “hospital”;
 - (f) paragraph (b) of the definition of “independent clinic”;
 - (g) the definitions of “private hospital”, “residential care home” and “residential family centre”;
 - (h) paragraph (b) of the definition of “supervision order”, and the word “and” at the end of paragraph (a);
 - (i) paragraph (b) of the definition of “voluntary home”, and the word “and” at the end of paragraph (a).

Section 47 (paying for sexual services of a child)

- 8. Omit section 47(7) (modification for Northern Ireland).

Section 60 (trafficking offences under sections 57 to 59: interpretation and jurisdiction)

- 9. In section 60(1), after paragraph (b) insert—
 - “(ba) an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008,”.

Section 72 (offences outside the United Kingdom)

10.—(1) Section 72 is amended as follows.

(2) In subsection (1)—

(a) omit “or Northern Ireland”, and

(b) for “that part of the United Kingdom” substitute “England and Wales”.

(3) In subsection (2)—

(a) omit “or Northern Ireland”, and

(b) for “that part of the United Kingdom” substitute “England and Wales”.

(4) In subsection (3)—

(a) omit “or Northern Ireland”, and

(b) for “that part of the United Kingdom” substitute “England and Wales”.

Section 142 (extent, saving etc.)

11. In section 142(2) (provisions which extend to Northern Ireland)—

(a) for paragraph (a) substitute—

“(a) sections 46 and 57 to 60C,”, and

(b) omit paragraph (b).

Schedule 2 (sexual offences to which section 72 applies)

12. In Schedule 2 omit—

(a) paragraph 2, and

(b) in paragraph 3 the words “or 2(1)”.

Schedule 3 (sexual offences for the purposes of Part 2)

13. In Schedule 3, after paragraph 92 insert—

92A. An offence under Article 5 or 6 of the Sexual Offences (Northern Ireland) Order 2008 (rape, assault by penetration).

92B. An offence under Article 7 of that Order (sexual assault) if—

(a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;

(b) in any other case—

(i) the victim was under 18, or

(ii) the offender, in respect of the offence or finding, is or has been—

(aa) sentenced to a term of imprisonment,

(bb) detained in a hospital, or

(cc) made the subject of a community sentence of at least 12 months.

92C. An offence under Article 8, 12 or 13 of that Order (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).

92D. An offence under Article 14 of that Order (sexual assault of a child under 13) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92E. An offence under any of Articles 15 to 19 of that Order (causing or inciting a child under 13 to engage in sexual activity, sexual offences against children committed by adults).

92F. An offence under Article 20 of that Order (sexual offences against children committed by children or young persons), if the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92G. An offence under Article 21 of that Order (arranging or facilitating the commission of a sexual offence against a child) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92H. An offence under Article 22 of that Order (meeting a child following sexual grooming etc).

92I. An offence under any of Articles 23 to 26 of that Order (abuse of a position of trust) if the offender, in respect of the offence, is or has been—

- (a) sentenced to a term of imprisonment,
- (b) detained in a hospital, or
- (c) made the subject of a community sentence of at least 12 months.

92J. An offence under Article 32 or 33 of that Order (familial sexual offences against children) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92K. An offence under Article 37 (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92L. An offence under Article 38 (causing or inciting child prostitution or pornography) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92M. An offence under Article 39 (controlling a child prostitute or a child involved in pornography) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92N. An offence under Article 40 (arranging or facilitating child prostitution or pornography) if the offender—

- (a) was 18 or over, or

- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92O. An offence under any of Articles 43 to 50 of that Order (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).

92P. An offence under any of Articles 51 to 54 of that Order (care workers for persons with mental disorder) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment,
 - (ii) detained in a hospital, or
 - (iii) made the subject of a community sentence of at least 12 months.

92Q. An offence under Article 65 of that Order (administering a substance with intent).

92R. An offence under Article 66 or 67 of that Order (committing an offence or trespassing, with intent to commit a sexual offence) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case—
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (aa) sentenced to a term of imprisonment,
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.

92S. An offence under Article 68 or 69 of that Order (sex with an adult relative) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

92T. An offence under Article 70 of that Order (exposure) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (aa) sentenced to a term of imprisonment,
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.

92U. An offence under Article 71 of that Order (voyeurism) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;

- (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (aa) sentenced to a term of imprisonment,
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.

92V. An offence under Article 73 or 74 of that Order (intercourse with an animal, penetration of a corpse) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.”

Schedule 5 (other offences for the purposes of Part 2)

14. In Schedule 5 (other offences for the purposes of Part 2)—

- (a) in paragraph 171 omit the words “51 to 53 or”; and
- (b) after paragraph 171A insert—

“**171B.** An offence under Article 62 (causing or inciting prostitution for gain) or 63 (controlling prostitution for gain) of the Sexual Offences (Northern Ireland) Order 2008.”

Schedule 6 (minor and consequential amendments)

15. In Schedule 6 (minor and consequential amendments) omit paragraphs 18(2), 39 and 46(5) (a).

PART 3

AMENDMENTS OF OTHER ACTS

Amendment of the Criminal Justice and Public Order Act 1994

16.—(1) The Criminal Justice and Public Order Act 1994(5) is amended as follows.

(2) In section 25(2)(d) omit “or Northern Ireland”.

(3) In section 25(d)—

(a) after paragraph (m) insert—

“(ma) an offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2008 (rape);

(mb) an offence under Article 6 of that Order (assault by penetration);

(mc) an offence under Article 8 of that Order (causing a person to engage in sexual activity without consent) where the activity caused involved penetration within paragraph (4)(a) to (d) of that Article;

(5) 1994 c. 33. Section 25 was amended by paragraph 32 of Schedule 6 to the Sexual Offences Act 2003 (c. 42).

- (md) an offence under Article 12 of that Order (rape of a child under 13);
 - (me) an offence under Article 13 of that Order (assault of a child under 13 by penetration);
 - (mf) an offence under Article 15 of that Order (causing or inciting a child under 13 to engage in sexual activity) where an activity involving penetration within paragraph (2)(a) to (d) of that Article was caused;
 - (mg) an offence under Article 43 of that Order (sexual activity with a person with a mental disorder impeding choice) where the touching involved penetration within paragraph (3)(a) to (d) of that Article;
 - (mh) an offence under Article 44 of that Order (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity) where an activity involving penetration within paragraph (3)(a) to (d) of that Article was caused;”;
- and
- (b) in paragraph (n) for “(m)” substitute “(mh)”.

Amendment of the Criminal Justice Act 2003

17. In Part 3 of Schedule 15A to the Criminal Justice Act 2003⁽⁶⁾ (offences under the law of Northern Ireland) after paragraph 49 insert—

“**49A.** An offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2008 (rape).

49B. An offence under Article 6 of that Order (assault by penetration).

49C. An offence under Article 8 of that Order (causing a person to engage in sexual activity without consent) if the offender was liable on conviction on indictment to imprisonment for life.

49D. An offence under Article 12 of that Order (rape of a child under 13).

49E. An offence under Article 13 of that Order (assault of a child under 13 by penetration).

49F. An offence under Article 15 of that Order (causing or inciting a child under 13 to engage in sexual activity) if the offender was liable on conviction on indictment to imprisonment for life.

49G. An offence under Article 37 of that Order (paying for sexual services of a child) if the offender was liable on conviction on indictment to imprisonment for life.

49H. An offence under Article 43 of that Order (sexual activity with a person with a mental disorder impeding choice) if the offender was liable on conviction on indictment to imprisonment for life.

49I. An offence under Article 44 of that Order (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity) if the offender was liable on conviction on indictment to imprisonment for life.

49J. An offence under Article 47 of that Order (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender was liable on conviction on indictment to imprisonment for life.

(6) 2003 c. 44. Schedule 15A was inserted by the Criminal Justice and Immigration Act 2008 (c.).

49K. An offence under Article 48 of that Order (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception) if the offender was liable on conviction on indictment to imprisonment for life.

49L. An offence under Article 66 of that Order (committing an offence with intent to commit a sexual offence) if the offender was liable on conviction on indictment to imprisonment for life.”

Transitional provision: the Criminal Justice Act 2003

18.—(1) The amendment made by this Article has effect only until the repeal of Schedule 17 to the Criminal Justice Act 2003(7) comes fully into force.

(2) In Schedule 17 to the Criminal Justice Act 2003 (Northern Ireland offences specified for the purposes of section 229(4) of that Act, which relates to detention in cases of significant risk of serious harm to members of the public), in Part 2 (sexual offences) at the end insert—

- “**111.** An offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2008 (rape).
- 112.** An offence under Article 6 of that Order (assault by penetration).
- 113.** An offence under Article 7 of that Order (sexual assault).
- 114.** An offence under Article 8 of that Order (causing a person to engage in sexual activity without consent).
- 115.** An offence under Article 12 of that Order (rape of a child under 13).
- 116.** An offence under Article 13 of that Order (assault of a child under 13 by penetration).
- 117.** An offence under Article 14 of that Order (sexual assault of a child under 13).
- 118.** An offence under Article 15 of that Order (causing or inciting a child under 13 to engage in sexual activity).
- 119.** An offence under Article 16 of that Order (sexual activity with a child).
- 120.** An offence under Article 17 of that Order (causing or inciting a child to engage in sexual activity).
- 121.** An offence under Article 18 of that Order (engaging in sexual activity in the presence of a child).
- 122.** An offence under Article 19 of that Order (causing a child to watch a sexual act).
- 123.** An offence under Article 20 of that Order (sexual offences against children committed by children or young persons).
- 124.** An offence under Article 21 of that Order (arranging or facilitating commission of a sexual offence against a child).
- 125.** An offence under Article 22 of that Order (meeting child following sexual grooming etc.).
- 126.** An offence under Article 23 of that Order (abuse of position of trust: sexual activity with a child).
- 127.** An offence under Article 24 of that Order (abuse of position of trust: causing or inciting a child to engage in sexual activity).
- 128.** An offence under Article 25 of that Order (abuse of position of trust: sexual activity in the presence of a child).

(7) 2003 c. 44. Schedule 17 was repealed by the Criminal Justice and Immigration Act 2008 (c.).

- 129.** An offence under Article 26 of that Order (abuse of position of trust: causing a child to watch a sexual act).
- 130.** An offence under Article 32 of that Order (sexual activity with a child family member).
- 131.** An offence under Article 33 of that Order (inciting a child family member to engage in sexual activity).
- 132.** An offence under Article 37 of that Order (paying for sexual services of a child).
- 133.** An offence under Article 38 of that Order (causing or inciting child prostitution or pornography).
- 134.** An offence under Article 39 of that Order (controlling a child prostitute or a child involved in pornography).
- 135.** An offence under Article 40 of that Order (arranging or facilitating child prostitution or pornography).
- 136.** An offence under Article 43 of that Order (sexual activity with a person with a mental disorder impeding choice).
- 137.** An offence under Article 44 of that Order (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity).
- 138.** An offence under Article 45 of that Order (engaging in sexual activity in the presence of a person with a mental disorder impeding choice).
- 139.** An offence under Article 46 of that Order (causing a person, with a mental disorder impeding choice, to watch a sexual act).
- 140.** An offence under Article 47 of that Order (inducement, threat or deception to procure sexual activity with a person with a mental disorder).
- 141.** An offence under Article 48 of that Order (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception).
- 142.** An offence under Article 49 of that Order (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder).
- 143.** An offence under Article 50 of that Order (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception).
- 144.** An offence under Article 51 of that Order (care workers: sexual activity with a person with a mental disorder).
- 145.** An offence under Article 52 of that Order (care workers: causing or inciting sexual activity).
- 146.** An offence under Article 53 of that Order (care workers: sexual activity in the presence of a person with a mental disorder).
- 147.** An offence under Article 54 of that Order (care workers: causing a person with a mental disorder to watch a sexual act).
- 148.** An offence under Article 62 of that Order (causing or inciting prostitution for gain).
- 149.** An offence under Article 63 of that Order (controlling prostitution for gain).
- 150.** An offence under Article 64 of that Order (administering a substance with intent).
- 151.** An offence under Article 65 of that Order (committing an offence with intent to commit a sexual offence).
- 152.** An offence under Article 66 of that Order (trespass with intent to commit a sexual offence).

- 153. An offence under Article 70 of that Order (exposure).
- 154. An offence under Article 71 of that Order (voyeurism).
- 155. An offence under Article 73 of that Order (intercourse with an animal).
- 156. An offence under Article 74 of that Order (sexual penetration of a corpse).”

Clerk of the Privy Council

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 1779

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the law of the United Kingdom which are consequential on the Sexual Offences (Northern Ireland) Order 2008.