

These notes refer to the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c.19) which received Royal Assent on 27 April 2022

Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

EXPLANATORY NOTES

SCHEDULES

Schedule 1: Consequential amendments: voyeurism (additional offences) and sending etc an unwanted sexual image.

Schedule 1 contains amendments consequential to provisions in sections 1 and 2 to bring the new offences of up-skirting, down-blousing and sending an unwanted sexual image within the scope of the:

- Police and Criminal Evidence (Northern Ireland) Order 1989 – questioning and treatment of persons by police: meaning of ‘qualifying offence’;
- Sexual Offences (Amendment) Act 1992 – offences under the law of Northern Ireland to which the Act applies;
- Industrial Tribunals (Northern Ireland) Order 1996 – power to provide for restrictions of publicity in certain cases;
- Sexual Offences Act 2003 – notification requirements, but only in so far as where the offence is committed for the purpose of sexual gratification; and
- Criminal Justice (Northern Ireland) Order 2008 – specified sexual offences

Schedule 2: Miscellaneous amendments as to sexual offences

Part 1: Amendment of references to certain forms of child sexual abuse

Part 1 of Schedule 2 makes amendments to the 2008 Order to remove the terms ‘prostitution’ and ‘pornography’ relating to child victims and to widen the scope of the three offences beyond recording of images so as to capture live streaming and other transmission of the images.

It removes the terms from the various headings and text of Articles 37 to 41, substituting them with “to offer or provide sexual services to a third person in return for payment” and “the recording or streaming or transmission of an indecent image of a child” respectively.

Part 2: Amendments relating to the offence of engaging in sexual communication with a child

Part 2 amends Article 76(10)(a) of the Sexual Offences (Northern Ireland) Order 2008 which relates to offences committed outside the United Kingdom, to bring Article 22A (sexual communication with a child) within scope of extra territorial jurisdiction arrangements available for certain offences within the 2008 Order.

The reference to Article 22A is omitted from Article 76(10)(a) of the 2008 Order; consequential amendment is required to section 90(3) of the Justice Act (Northern Ireland) 2015. Adjustment is also required to the ordering of the list of sexual offences for notification requirement provision contained for this offence within Schedule 3 to the Sexual Offences Act 2003; in consequence of that section 90(4) of the 2015 Act is also omitted.

Part 3: Amendment relating to the offence of paying for the sexual services of a person

Part 3 comprises a simple amendment to Article 64A of the 2008 Order to clarify an ambiguity in the elements which constitute the offence under that provision.

Schedule 3: Offence of breach of anonymity: providers of information society services

This Schedule sets out protections for certain online service providers from legal responsibility for illegal publication where the online service providers are a mere conduit for the relevant information, caching the information or hosting the information.

Schedule 4: Offence of non-fatal strangulation or asphyxiation: Consequential Amendments

Schedule 4 makes amendments to other enactments consequential on the new offence of non-fatal strangulation or asphyxiation, adding it to lists of offences of violence, which are prescribed for other purposes, including:

- calculating the timescales for retention of forensic data;
- the application of notification orders, SOPOs, foreign travel orders, risk of sexual harm orders etc.;
- the imposition of extended custodial sentences;
- allowing the court or jury to draw inferences from the defendant's failure to give evidence or refusal to answer a question when charged with strangulation causing or allowing a child or vulnerable adult to die or suffer serious harm; and
- ensuring that battery of a child cannot be justified on the ground that it constituted reasonable punishment.