

# SEXUAL OFFENCES (NORTHERN IRELAND) ORDER 2008

S.I. 2008 No. 1769 (N.I. 2)

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## EXPLANATORY MEMORANDUM

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### POLICY BACKGROUND

#### *The Provisions*

#### **Part 3 – Sexual offences against children**

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

#### *Article 29: Positions of trust: interpretation*

- 7.60. [Article 28](#) defines "position of trust" for the purposes of the offences in Articles 23, 24, 25 and 26. *Paragraph (1)(b)* of Article 28 also provides a power for the Secretary of State to specify further conditions that will constitute a position of trust. The power is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (Article 80(1)).
- 7.61. The conditions in *paragraphs (2) to (5)* use the term "looks after". This term is defined, in broad terms, at *paragraph (2)* of Article 29.
- 7.62. *Paragraph (2)* applies where the child is detained following conviction for a criminal offence, for example in a secure training centre or a young offenders' institution.
- 7.63. *Paragraph (3)* applies to a wide range of settings in which young people are accommodated, including foster care; residential care (accommodation provided by a Health and Social Services Board); and semi-independent accommodation.
- 7.64. *Paragraph (4)* covers places where young people with medical conditions, physical or learning disabilities, mental illness or behavioural problems might be accommodated and includes NHS, private and voluntary accommodation.
- 7.65. *Paragraph (5)* covers the situation where the child is receiving education in an educational institution. This concept is further explained at *paragraph (4)* of Article 29. The effect of that paragraph is that where the child is registered at a college but receives education at another college with which the former has arrangements, A will still be in a position of trust in relation to the child if A works at the former college.
- 7.66. *Paragraph (6)* covers children's guardians appointed under Article 159 or 160 of the Children (Northern Ireland) Order 1995.
- 7.67. *Paragraph (7)* covers those who have unsupervised contact with children in the context of their duties under Article 21 or 23 of the Children (Northern Ireland) Order 1995. Such persons arrange accommodation for children who, for whatever reason, are not being looked after by those who have parental responsibility for them, and check that

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their welfare is being looked after once such accommodation has been found. They include Health and Social Services Board staff such as social workers and family assistance staff who visit the accommodation in which a child has been placed in order to oversee the child's welfare.

- 7.68. *Paragraph (8)* covers persons who have unsupervised contact with children by virtue of their appointment as child reporters under Article 4 of the Children (Northern Ireland) Order 1995. These persons present reports for the court relating to children's welfare.
- 7.69. *Paragraph (9)* covers personal advisers who look after children on an individual basis (as defined at Article 29(3)) having been appointed under the Children (Northern Ireland) Order 1995. Such personal advisers generally provide help and support to children aged 16-17 who have been in Health and Social Services Board care.
- 7.70. *Paragraph (10)* covers persons who supervise children pursuant to a care order, supervision order or educational supervision order under various provisions in the Children (Northern Ireland) Order 1995 and, in that capacity, look after children on an individual basis (again, as defined at Article 29(3)).
- 7.71. *Paragraph (11)* covers a range of persons who, in the course of their duties, regularly have unsupervised contact with children. These are persons appointed to act as children's guardians ad litem under Article 60(1) of the Children (Northern Ireland) Order 1995.
- 7.72. *Paragraph (12)* includes adults who supervise children under bail supervision, a community sentence (for example a probation order, combination order, community service order, supervision order, attendance centre order) and children under conditions following release from detention resulting from a criminal conviction (e.g. those released on licence from a young offenders institution). This would include those released on licence from a Juvenile Justice Centre or someone providing counselling or drug rehabilitation services to the child pursuant to the terms of a court order.