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STATUTORY INSTRUMENTS

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**2008 No. 1769**

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

**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 children under 18***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 subparagraph (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.

*Judith Simpson*  
Clerk of the Privy Council