
STATUTORY INSTRUMENTS

2008 No. 1769

The Sexual Offences (Northern Ireland) Order 2008

PART 3

SEXUAL OFFENCES AGAINST CHILDREN

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).

Changes to legislation:

There are currently no known outstanding effects for the The Sexual Offences (Northern Ireland) Order 2008, Cross Heading: Familial sex offences against children under 18.