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STATUTORY INSTRUMENTS

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**2008 No. 1769**

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

**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.