

PART 3
Sexual Offences against Children

Rape and other offences against children under 13

12. Rape of a child under 13
13. Assault of a child under 13 by penetration
14. Sexual assault of a child under 13
15. Causing or inciting a child under 13 to engage in sexual activity

Sexual offences against children under 16

16. Sexual activity with a child
17. Causing or inciting a child to engage in sexual activity
18. Engaging in sexual activity in the presence of a child
19. Causing a child to watch a sexual act
20. Sexual offences against children committed by children or young persons
21. Arranging or facilitating commission of a sex offence against a child
22. Meeting a child following sexual grooming etc.

Offences against children under 18: abuse of position of trust

23. Abuse of position of trust: sexual activity with a child
24. Abuse of position of trust: causing or inciting a child to engage in sexual activity
25. Abuse of position of trust: sexual activity in the presence of a child
26. Abuse of position of trust: causing a child to watch a sexual act
27. Abuse of position of trust: acts done in England and Wales or Scotland
28. Positions of trust
29. Positions of trust: interpretation
30. Articles 23 to 26: exception for spouses and civil partners
31. Articles 23 to 26: sexual relationships which pre-date position of trust

Familial sex offences against children under 18

32. Sexual activity with a child family member
33. Inciting a child family member to engage in sexual activity
34. Family relationships
35. Articles 32 and 33: exception for spouses and civil partners
36. Articles 32 and 33: sexual relationships which pre-date family relationships

Abuse of children under 18 through prostitution and pornography

37. Paying for sexual services of a child
38. Causing or inciting child prostitution or pornography
39. Controlling a child prostitute or a child involved in pornography
40. Arranging or facilitating child prostitution or pornography
41. Articles 38 to 40: interpretation

Indecent photographs of children under 18

42. Indecent photographs of persons aged 16 or 17

PART 4

Sexual Offences against a Person with a Mental Disorder

Offences against persons with a mental disorder impeding choice

43. Sexual activity with a person with a mental disorder impeding choice
44. Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity
45. Engaging in sexual activity in the presence of a person with a mental disorder impeding choice
46. Causing a person, with a mental disorder impeding choice, to watch a sexual act

Inducements etc. to persons with a mental disorder

47. Inducement, threat or deception to procure sexual activity with a person with a mental disorder
48. Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
49. Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
50. Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

Care workers for persons with a mental disorder

51. Care workers: sexual activity with a person with a mental disorder
52. Care workers: causing or inciting sexual activity
53. Care workers: sexual activity in the presence of a person with a mental disorder
54. Care workers: causing a person with a mental disorder to watch a sexual act
55. Care workers: interpretation
56. Articles 51 to 54: exception for spouses and civil partners
57. Articles 51 to 54: sexual relationships which pre-date care relationships

PART 5

Prostitution

Soliciting and kerb crawling

58. Loitering or soliciting for purposes of prostitution
59. Kerb-crawling
60. Persistent soliciting
61. Articles 58 to 60: interpretation

Exploitation of prostitution

62. Causing or inciting prostitution for gain
63. Controlling prostitution for gain
64. Articles 62 and 63: interpretation
65. Keeping a brothel used for prostitution

PART 6
Miscellaneous Sexual Offences

Preparatory offences

- 66. Administering a substance with intent
- 67. Committing an offence with intent to commit a sexual offence
- 68. Trespass with intent to commit a sexual offence

Sex with an adult relative

- 69. Sex with an adult relative: penetration
- 70. Sex with an adult relative: consenting to penetration

Other offences

- 71. Exposure
- 72. Voyeurism
- 73. Voyeurism: interpretation
- 74. Intercourse with an animal
- 75. Sexual penetration of a corpse
- 76. Sexual activity in a public lavatory

Offences outside the United Kingdom

- 77. Offences outside the United Kingdom

PART 7
Supplementary and general

- 78. Exceptions to aiding, abetting and counselling
- 79. Orders
- 80. Amendments
- 81. Transitional provision
- 82. Repeals

-
- SCHEDULE 1 — Minor and consequential amendments
 - SCHEDULE 2 — Transitional Provisions and Savings
 - SCHEDULE 3 — Repeals

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now therefore, Her Majesty, in exercise of the powers conferred by section 85 of the Northern Ireland Act 1998 (c.47), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order and it is hereby ordered, as follows:—

PART 1

Introductory

Citation and commencement

1.—(1) This Order may be cited as the Sexual Offences (Northern Ireland) Order 2007.

(2) This Order shall come into operation in accordance with provision made by the Secretary of State by order.

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) Penetration is a continuing act from entry to withdrawal.

(4) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).

(5) “Image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.

(6) References to an image of a person include references to an image of an imaginary person.

(7) “Mental disorder” has the meaning given by Article 3 of the Mental Health (Northern Ireland) Order 1986 (NI 4).

(8) References to observation (however expressed) are to observation whether direct or by looking at an image.

(9) 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.

(10) “Vagina” includes vulva.

(11) 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 76 (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).

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.

Consent

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 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

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) having met or communicated with another person (B) on at least two earlier occasions, he—
 - (i) intentionally meets B, or

- (ii) travels with the intention of meeting B in any part of the world,
 - (b) at the time, he intends to do anything to or in respect of B, during or after the meeting 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.

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 Children (Northern Ireland) Order 1995 (NI 2), 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 Children (Northern Ireland) Order 1995.

(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 Children (Northern Ireland) Order 1995.

(8) This paragraph applies if A, as a person who is to report to the court under Article 4 of the Children (Northern Ireland) Order 1995 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 Children (Northern Ireland) Order 1995, 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 Children (Northern Ireland) Order 1995 (NI 2), 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 Children (Northern Ireland) Order 1995 (NI 2);

“care order” has the same meaning as in the Children (Northern Ireland) Order 1995;

“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 Children (Northern Ireland) Order 1995;

“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 Children (Northern Ireland) Order 1995;

“voluntary home” has the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995.

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

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 Children (Northern Ireland) Order 1995 (NI 2) (fostering), or
 - (ii) he fosters the child privately, within the meaning given by Article 106(1) of that 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 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—

- (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 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

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 3 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 reasonable 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, and
 - (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, and
 - (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, and
- (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, and
- (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 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 or 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 Children (Northern Ireland) Order 1995 (NI 2).

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

Soliciting and kerb crawling

Loitering or soliciting for purposes of prostitution

58.—(1) It shall be an offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution.

(2) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, 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.

(3) Any reference in this Article to a person loitering or soliciting for the purposes of prostitution is a reference to loitering or soliciting for the purposes of offering services as a prostitute.

Kerb-crawling

59.—(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 public place; or
- (b) in a street or 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.

(4) For the purposes of this Article “motor vehicle” has the same meaning as in the Road Traffic (Northern Ireland) Order 1995 (NI 18).

Persistent soliciting

60.—(1) A person commits an offence if in a street or 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.

Articles 58 to 60: interpretation

61.—(1) The following provisions apply for the purposes of Articles 58 to 60.

(2) In those Articles “prostitute” and “prostitution” have the meaning given by Article 41(2).

(3) For the purposes of those Articles conduct is persistent if it takes place on two or more occasions in any period of three months.

(4) For the purposes of those Articles—

- (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 sub-paragraph (a)), and any ground adjoining and open to a street, shall be treated as forming part of the street.

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.

Articles 62 and 63: interpretation

- 64.**—(1) In Articles 62 and 63 “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.
- (2) In those Articles “prostitute” and “prostitution” have the meaning given by Article 41(2).

Keeping a brothel used for prostitution

- 65.**—(1) It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).
- (2) In this Article “prostitution” has the meaning given by Article 41(2).
- (3) A person who commits an offence under this Article shall be liable—
- (a) on indictment to imprisonment for a term not exceeding seven years, or
 - (b) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

PART 6

Miscellaneous Sexual Offences

Preparatory offences

Administering a substance with intent

- 66.**—(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

- 67.**—(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 this Order (including an offence of aiding, abetting, counselling or procuring such an offence).
- (3) A person guilty of an offence under this Article is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, 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

- 68.**—(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 67;
 - “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—
- (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

- 69.**—(1) A person aged 16 or over 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) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
 - (b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.
- (4) 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.
- (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.

Sex with an adult relative: consenting to penetration

- 70.**—(1) A person aged 16 or over (A) 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) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
- (b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) 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.

(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.

Other offences

Exposure

71.—(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

72.—(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

73.—(1) For the purposes of Article 72 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 72, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

Intercourse with an animal

74.—(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

75.—(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

76.—(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.

Offences outside the United Kingdom

Offences outside the United Kingdom

77.—(1) Subject to paragraph (2), any act done by a person in a country or territory outside the United Kingdom which—

- (a) constituted an offence under the law in force in that country or territory, and
- (b) would constitute a sexual offence to which this Article applies if it had been done in Northern Ireland,

constitutes that sexual offence under the law of Northern Ireland.

(2) Proceedings by virtue of this Article may be brought only against a person who was on 1st September 1997, or has since become, a British citizen or resident in the United Kingdom.

(3) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this Article, however it is described in that law.

(4) Subject to paragraph (5), the condition in paragraph (1)(a) 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 his opinion met,
- (b) showing his grounds for that opinion, and
- (c) requiring the prosecution to prove that it is met.

(5) 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 (4).

(6) In the Crown Court the question whether the condition is met is to be decided by the judge alone.

(7) The sexual offences to which this Article applies are—

- (a) an offence under any of Articles 12 to 22 (offences against children under 13 or under 16);
- (b) an offence under any of Articles 5 to 8, 23 to 40, 43 to 54 and 66 where the victim of the offence was under 16 at the time of the offence;
- (c) an offence under Article 67 or 68 where the intended offence was an offence against a person under 16;
- (d) an offence under—
 - (i) Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children), or

- (ii) Article 15 of the Criminal Justice (Evidence Etc.) (Northern Ireland) Order 1988 (indecent photographs of children),
in relation to a photograph or pseudo-photograph showing a child under 16.
- (8) A reference in paragraph (7) to an offence includes—
- (a) a reference to an attempt, conspiracy or incitement to commit that offence; and
 - (b) a reference to aiding and abetting, counselling or procuring the commission of that offence.

PART 7

Supplementary and general

Exceptions to aiding, abetting and counselling

78.—(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.

Orders

79.—(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(2)) 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.

Amendments

80. Schedule 1 (which contains minor and consequential amendments) shall have effect.

Transitional provision

81. Schedule 2 (which makes transitional provisions and savings) shall have effect.

Repeals

82. The statutory provisions listed in Schedule 3 are repealed to the extent set out in column 2 of that Schedule.

Name
Clerk of the Privy Council

SCHEDULE 1

Article 80

Minor and consequential amendments

Belfast Improvement Act 1845 (c. cxlii)

1. In section 167 of the Belfast Improvement Act 1845 omit the words “Every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of any inhabitant or passenger.”.

Town Police Clauses Act 1847 (c. 89)

2. In section 28 of the Town Police Clauses Act 1847 omit the words “Every common prostitute loitering and importuning passengers for the purpose of prostitution.”.

Towns Improvement (Ireland) Act 1854 (c. 103)

3. In section 72 of the Towns Improvement (Ireland) Act 1854 omit the words “Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution, or being otherwise offensive, shall be liable to a fine not exceeding level three on the standard scale”.

Offences Against the Person Act 1861 (c.100)

4. In the Offences Against the Person Act 1861 (c. 100), omit—

- (a) section 48 (rape);
- (b) section 52 (indecent assault on a female);
- (c) section 53 (fraudulent abduction of a girl with intent to carnally know her, etc.);
- (d) section 54 (forcible abduction of a woman with intent to carnally know her, etc.);
- (e) section 55 (abduction of a girl under sixteen).

Criminal Law Amendment Act 1885 (c.69)

5.—(1) The Criminal Law Amendment Act 1885 is amended as follows.

(2) Omit section 2 (procurement of a woman or girl under 21 to have a carnal connection with another, to become a prostitute etc.).

(3) Omit section 3 (procurement of a woman or girl under 21 by drugs or threats to have a carnal connection with another).

(4) Omit section 4 (carnal knowledge of a girl under 14 years of age).

(5) Omit section 5 (carnal knowledge of a girl under 17 years of age).

(6) Omit section 6 (permitting a girl under 17 to be on premises for the purpose of unlawful carnal knowledge).

(7) Omit section 7 (abduction of a girl under 18 with intent to have carnal knowledge).

(8) Omit section 8 (unlawful detention of a woman or girl against her will with intent to have carnal knowledge, or in a brothel).

Punishment of Incest Act 1908 (c.45)

- 6.**—(1) The Punishment of Incest Act 1908 is amended as follows.
- (2) Omit section 1 (incest by males).
 - (3) Omit section 2 (incest by females).

Visiting Forces Act 1952 (c. 67)

- 7.**—(1) The Visiting Forces Act 1952 is amended as follows.
- (2) In paragraph 1 of the Schedule (offences referred to in section 3 of that Act)—
 - (a) omit paragraph (za) (offences of rape and buggery under the law of Northern Ireland);
 - (b) omit sub-paragraph (b)(iv);
 - (c) in sub-paragraph (b), after paragraph (xiii) insert—
 - “(xiv) the Sexual Offences (Northern Ireland) Order 2007.”

Attempted Rape, etc., Act (Northern Ireland) 1960 (c. 3)

- 8.** In the Attempted Rape, etc., Act (Northern Ireland) 1960, omit section 2 (assault with intent to commit rape).

Children and Young Persons Act (Northern Ireland) 1968 (c. 34)

- 9.**—(1) The Children and Young Persons Act (Northern Ireland) 1968 is amended as follows.
- (2) Omit section 21 (causing seduction of girl under 17).
 - (3) Omit section 22 (indecent conduct towards a child).
 - (4) In Schedule 1 (offences against children and young persons with respect to which special provisions of that Act apply)—
 - (a) in the entry relating to the Offences Against the Person Act 1861—
 - (i) omit the words “or 55”, and
 - (ii) for “42, 43 or 55” substitute “42 or 43”;
 - (b) omit the entry relating to the Punishment of Incest Act 1908;
 - (c) in the entry relating to the Children and Young Persons Act (Northern Ireland) 1968 itself, omit the words “21, 22”.
 - (d) omit the entry relating to the Mental Health (Northern Ireland) Order 1986;
 - (e) in the entry relating to attempts to commit an offence against a child or young person, omit the words “the Punishment of Incest Act 1908 or Article 122 or 123 of the Mental Health (Northern Ireland) Order 1986”;
 - (f) omit the entry relating to the Criminal Justice (Northern Ireland) Order 1980;
 - (g) omit the entry relating to the Criminal Justice (Northern Ireland) Order 2003;
 - (h) in the entry relating to the Sexual Offences Act 2003, for “15 to 19, 47 to 59, 66 and 67” substitute “57 to 59”; and
 - (i) at the end insert—
 - “Any offence against a child or young person under the Sexual Offences (Northern Ireland) Order 2007 or any attempt to commit such an offence”.

Criminal Justice (Northern Ireland) Order 1980 (NI 6)

- 10.** In the Criminal Justice (Northern Ireland) Order 1980, omit Article 9 (inciting girl under sixteen to have incestuous intercourse).

Magistrates' Courts (Northern Ireland) Order 1981 (NI 26)

11. In Schedule 2 to the Magistrates' Courts (Northern Ireland) Order 1981 (indictable offences which may be dealt with summarily upon consent of the accused)—

- (a) omit paragraph 5(a)(vii) (offence under section 52 of the Offences Against the Person Act 1861);
- (b) omit paragraph 10 (offences under the Criminal Law Amendment Act 1885);
- (c) omit paragraph 23 (offence under Article 21 of the Criminal Justice (Northern Ireland) Order 2003).

Mental Health (Northern Ireland) Order 1986 (NI 4)

12. In the Mental Health (Northern Ireland) Order 1986, omit—

- (a) Article 122 (protection of woman suffering from severe mental handicap), and
- (b) Article 123 (protection of patients).

Adoption (Northern Ireland) Order 1987 (NI 22)

13. In Article 47(1) of the Adoption (Northern Ireland) Order 1987 (status conferred by adoption not to apply for the purposes of certain enactments) for “sections 1 to 3 of the Punishment of Incest Act 1908” substitute “Articles 69 and 70 of the Sexual Offences (Northern Ireland) Order 2007 (sex with an adult relative)”.

Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)

14.—(1) Schedule 2 to the Police and Criminal Evidence (Northern Ireland) Order 1989 is amended as follows.

- (2) Omit the entry relating to the Belfast Improvement Act 1845 (c. cxlii).
- (3) Omit Note 1.

Treatment of Offenders (Northern Ireland) Order 1989 (NI 15)

15. In the Treatment of Offenders (Northern Ireland) Order 1989, omit Article 12(1) to (3).

Health and Personal Social Services (Northern Ireland) Order 1994 (NI 2)

16. In Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (amendments)—

- (a) in the entry relating to Articles 121(1) and 123(1)(a)(ii) of the Mental Health (Northern Ireland) Order 1986, omit the words “and 123(1)(a)(ii)”, and
- (b) omit the entry relating to Article 123(1)(b)(ii) of that Order.

Children (Northern Ireland) Order 1995 (NI 2)

17.—(1) The Children (Northern Ireland) Order 1995 is amended as follows.

(2) In Schedule 9 (amendments)—

- (a) omit paragraphs 1 and 2 (which amend the Offences Against the Person Act 1861);
- (b) omit paragraph 3 (which amends the Criminal Law Amendment Act 1885);
- (c) omit paragraph 19 (which amends the Children and Young Persons Act (Northern Ireland) 1968);
- (d) omit paragraph 136 (which amends the Mental Health (Northern Ireland) Order 1986).

Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9)

18. In Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998, in paragraph 1 (definition of “sexual offence”) for the words from “means” to the end substitute “any provision of the Sexual Offences (Northern Ireland) Order 2007”.

Criminal Evidence (Northern Ireland) Order 1999 (NI 8)

19. In Article 3(1) of the Criminal Evidence (Northern Ireland) Order 1999 (meaning of “sexual offence”) for sub-paragraphs (a) to (ga) substitute—

- “(a) any offence under any provision of the Sexual Offences (Northern Ireland) Order 2007;
- (b) burglary with intent to rape.”

Criminal Justice and Court Services Act 2000 (c. 43)

20. In the Criminal Justice and Court Services Act 2000, omit section 40 (which amended section 22 of the Children and Young Persons Act (Northern Ireland) 1968).

Proceeds of Crime Act 2002 (c. 29)

21.—(1) Schedule 5 to the Proceeds of Crime Act 2002 (lifestyle offences: Northern Ireland) is amended as follows.

(2) In paragraph 8 for sub-paragraph (1A) substitute—

“(1A) An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2007—

- (a) Article 38 (causing or inciting child prostitution or pornography);
- (b) Article 39 (controlling a child prostitute or a child involved in pornography);
- (c) Article 40 (arranging or facilitating child prostitution or pornography);
- (d) Article 62 (causing or inciting prostitution for gain);
- (e) Article 63 (controlling prostitution for gain).”

Criminal Justice (Northern Ireland) Order 2003 (NI 13)

22. In the Criminal Justice (Northern Ireland) Order 2003—

- (a) omit Article 18 (rape);
- (b) omit Article 19 (buggery);
- (c) omit Article 20 (assault with intent to commit buggery);
- (d) omit Article 21 (indecent assault on a male);
- (e) in Schedule 1, omit paragraphs 4, 6(c) and 9.

Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 4)

23.—(1) Schedule 1 to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 is amended as follows.

(2) In paragraph 1 (meaning of “offence against a child”) for sub-paragraph (o) substitute—

“(o) any offence under any provision of Part 3 of the Sexual Offences (Northern Ireland) Order 2007”.

Sexual Offences Act 2003 (c.42)

24.—(1) The Sexual Offences Act 2003 is amended as follows.

(2) Sections 15 to 24, 47 to 54 and 66 to 72 shall cease to have effect in Northern Ireland.

- (3) In section 20 (abuse of position: acts done in Scotland)—
- (a) omit the words “or Northern Ireland”;
 - (b) at the end of the section, after “Scotland” insert “or Northern Ireland”; and
 - (c) in the title of the section, after “Scotland” insert “and Northern Ireland”.
- (4) In section 47 (paying for sexual services of a child) omit subsection (7) (modification for Northern Ireland).
- (5) In section 142(2) (provisions which extend to Northern Ireland), for paragraph (a) substitute—
- “(a) sections 46 and 57 to 60C”.
- (6) In Schedule 2 (sexual offences to which section 72 applies) omit paragraph 2 and, in paragraph 3 the words “or 2(1)”.
- (7) In Schedule 3 (sexual offences for the purposes of Part 2 of that Act) after paragraph 92 insert—
- “92A. An offence under Article 5 or 6 of the Sexual Offences (Northern Ireland) Order 2007 (rape, assault by penetration).
- 92B. An offence under Article 7 of that Order (sexual assault) if—
- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
 - (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (aa) sentenced to a term of imprisonment,
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.
- 92C. An offence under any of Articles 8 to 13 of that Order (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).
- 92D. An offence under Article 14 of that Order (sexual assault of a child under 13) if the offender—
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 92E. An offence under any of Articles 15 to 19 of that Order (causing or inciting a child under 13 to engage in sexual activity, sexual offences against children committed by adults).
- 92F. An offence under Article 20 of that Order (sexual offences against children committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 92G. An offence under Article 21 of that Order (arranging or facilitating the commission of a sexual offence against a child) if the offender—
- (a) was 18 or over, or
 - (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 92H. An offence under Article 22 of that Order (meeting a child following sexual grooming etc).

92I. An offence under any of Articles 23 to 26 of that Order (abuse of a position of trust) if the offender, in respect of the offence, is or has been—

- (a) sentenced to a term of imprisonment,
- (b) detained in a hospital, or
- (c) made the subject of a community sentence of at least 12 months.

92J. An offence under Article 32 or 33 of that Order (familial sexual offences against children) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92K. An offence under Article 37 (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92L. An offence under Article 38 (causing or inciting child prostitution or pornography) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92M. An offence under Article 39 (controlling a child prostitute or a child involved in pornography) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92N. An offence under Article 40 (arranging or facilitating child prostitution or pornography) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

92O. An offence under any of Articles 43 to 50 of that Order (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).

92P. An offence under any of Articles 51 to 54 of that Order (care workers for persons with mental disorder) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment,
 - (ii) detained in a hospital, or
 - (iii) made the subject of a community sentence of at least 12 months.

92Q. An offence under Article 66 of that Order (administering a substance with intent).

92R. An offence under Article 67 or 68 of that Order (committing an offence or trespassing, with intent to commit a sexual offence) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;

- (b) in any other case—
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (aa) sentenced to a term of imprisonment,
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.

92S. An offence under Article 69 or 70 of that Order (sex with an adult relative) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

92T. An offence under Article 71 of that Order (exposure) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (aa) sentenced to a term of imprisonment,
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.

92U. An offence under Article 72 of that Order (voyeurism) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (aa) sentenced to a term of imprisonment,
 - (bb) detained in a hospital, or
 - (cc) made the subject of a community sentence of at least 12 months.

92V. An offence under Article 74 or 75 of that Order (intercourse with an animal, penetration of a corpse) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.”

(8) In Schedule 5 (other offences for the purposes of Part 2)—

- (a) in paragraph 171 omit the words “51 to 53 or”; and
- (b) after paragraph 171 insert—

“172. An offence under Article 62 (causing or inciting prostitution for gain) or 63 (controlling prostitution for gain) of the Sexual Offences (Northern Ireland) Order 2007.”

(9) In Schedule 6 (amendments), omit paragraphs 18 and 46(5)(a).

Criminal Justice Act 2003 (c. 44)

25.—(1) The Criminal Justice Act 2003 is amended as follows.

(2) In Schedule 5 (qualifying offences for the purposes of Part 10: list of offences for Northern Ireland) for paragraphs 35 to 38 substitute—

“Sexual Offences

Rape

35. An offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2007.

Attempted rape

36. An offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit an offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2007.

Assault by penetration

36A. An offence under Article 6 of the Sexual Offences (Northern Ireland) Order 2007.

Causing a person to engage in sexual activity without consent

36B. An offence under Article 8 of the Sexual Offences (Northern Ireland) Order 2007 where it is alleged that the activity caused involved penetration within paragraph (4)(a) to (d) of that Article.

Rape of a child under thirteen

36C. An offence under Article 12 of the Sexual Offences (Northern Ireland) Order 2007.

Attempted rape of a child under thirteen

36D. An offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit an offence under Article 12 of the Sexual Offences (Northern Ireland) Order 2007.

Assault of child under thirteen by penetration

36E. An offence under Article 13 of the Sexual Offences (Northern Ireland) Order 2007.

Causing a child under thirteen to engage in sexual activity by penetration

36F. An offence under Article 15 of the Sexual Offences (Northern Ireland) Order 2007 where it is alleged that an activity involving penetration within paragraph (2)(a) to (d) of that Article was caused.

Sexual activity with a person with a mental disorder impeding choice

36G. An offence under Article 43 of the Sexual Offences (Northern Ireland) Order 2007 where it is alleged that the touching involved penetration within paragraph (3)(a) to (d) of that Article.

Causing a person with a mental disorder impeding choice to engage in sexual activity

36H. An offence under Article 44 of the Sexual Offences (Northern Ireland) Order 2007 where it is alleged that an activity involving penetration within paragraph (3)(a) to (d) of that Article was caused.”

(3) In Schedule 17 (Northern Ireland offences specified for the purposes of section 229(4) of that Act, which relates to detention in cases of significant risk of serious harm to members of the public), in Part 2 (sexual offences) at the end insert—

“111. An offence under Article 5 of the Sexual Offences (Northern Ireland) Order 2007 (rape).

112. An offence under Article 6 of that Order (assault by penetration).

113. An offence under Article 7 of that Order (sexual assault).

114. An offence under Article 8 of that Order (causing a person to engage in sexual activity without consent).

115. An offence under Article 12 of that Order (rape of a child under 13).

116. An offence under Article 13 of that Order (assault of a child under 13 by penetration).

117. An offence under Article 14 of that Order (sexual assault of a child under 13).

118. An offence under Article 15 of that Order (causing or inciting a child under 13 to engage in sexual activity).

119. An offence under Article 16 of that Order (sexual activity with a child).

120. An offence under Article 17 of that Order (causing or inciting a child to engage in sexual activity).

121. An offence under Article 18 of that Order (engaging in sexual activity in the presence of a child).

122. An offence under Article 19 of that Order (causing a child to watch a sexual act)

123. An offence under Article 20 of that Order (sexual offences against children committed by children or young persons).

124. An offence under Article 21 of that Order (arranging or facilitating commission of a sexual offence against a child).

125. An offence under Article 22 of that Order (meeting child following sexual grooming etc.).

126. An offence under Article 23 of that Order (abuse of position of trust: sexual activity with a child).

127. An offence under Article 24 of that Order (abuse of position of trust: causing or inciting a child to engage in sexual activity).

128. An offence under Article 25 of that Order (abuse of position of trust: sexual activity in the presence of a child).

129. An offence under Article 26 of that Order (abuse of position of trust: causing a child to watch a sexual act).

130. An offence under Article 32 of that Order (sexual activity with a child family member).

131. An offence under Article 33 of that Order (inciting a child family member to engage in sexual activity).

132. An offence under Article 37 of that Order (paying for sexual services of a child).
133. An offence under Article 38 of that Order (causing or inciting child prostitution or pornography).
134. An offence under Article 39 of that Order (controlling a child prostitute or a child involved in pornography).
135. An offence under Article 40 of that Order (arranging or facilitating child prostitution or pornography).
136. An offence under Article 43 of that Order (sexual activity with a person with a mental disorder impeding choice).
137. An offence under Article 44 of that Order (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity).
138. An offence under Article 45 of that Order (engaging in sexual activity in the presence of a person with a mental disorder impeding choice).
139. An offence under Article 46 of that Order (causing a person, with a mental disorder impeding choice, to watch a sexual act).
140. An offence under Article 47 of that Order (inducement, threat or deception to procure sexual activity with a person with a mental disorder).
141. An offence under Article 48 of that Order (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception).
142. An offence under Article 49 of that Order (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder).
143. An offence under Article 50 of that Order (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception).
144. An offence under Article 51 of that Order (care workers: sexual activity with a person with a mental disorder).
145. An offence under Article 52 of that Order (care workers: causing or inciting sexual activity).
146. An offence under Article 53 of that Order (care workers: sexual activity in the presence of a person with a mental disorder).
147. An offence under Article 54 of that Order (care workers: sexual activity in the presence of a person with a mental disorder).
148. An offence under Article 62 of that Order (causing or inciting prostitution for gain).
149. An offence under Article 63 of that Order (controlling prostitution for gain).
150. An offence under Article 71 of that Order (exposure).
151. An offence under Article 72 of that Order (voyeurism).
152. An offence under Article 74 of that Order (intercourse with an animal).
153. An offence under Article 75 of that Order (sexual penetration of a corpse).”

Criminal Justice (Northern Ireland) Order 2004 (NI 9)

26.—(1) Schedule 4 to the Criminal Justice (Northern Ireland) Order 2004 (qualifying offences for the purposes of the prosecution’s right of appeal in evidentiary rulings) is amended as follows.

(2) For paragraphs 7 to 10 substitute—

“7A. An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2007—

Article 5 (rape);

Article 6 (assault by penetration);

Article 12 (rape of a child under 13);

Article 13 (assault of a child under 13 by penetration).”

Firearms (Northern Ireland) Order 2004 (NI 3)

27.—(1) Schedule 4 to the Firearms (Northern Ireland) Order 2004 is amended as follows.

(2) For paragraph 1 substitute—

“1. Any offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2007—

Article 5 (rape);

Article 6 (assault by penetration);

Article 12 (rape of a child under 13);

Article 13 (assault of a child under 13 by penetration).”

(3) In paragraph 2 omit the entry relating to sections 53 to 55 of the Offences Against the Person Act 1861.

Violent Crime Reduction Act 2006 (c. 38)

28. In Schedule 4 to the Violent Crime Reduction Act 2006 (which makes amendments about forfeiture and detention of vehicles to the Sexual Offences Act 2003) omit paragraph 4.

SCHEDULE 2

Article 81

Transitional Provisions and Savings

1. This paragraph applies where, in any proceedings—

- (a) a person (“the defendant”) is charged in respect of the same conduct both with an offence under this Order and with an offence specified in paragraph (2) (“the pre-commencement offence”);
- (b) the only thing preventing the defendant from being found guilty of the offence under this Order is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was after the coming into force of the provision of this Order providing for the offence; and
- (c) the only thing preventing the defendant from being found guilty of the pre-commencement offence is the fact that it has not been proved beyond a reasonable doubt that that time was before the coming into force of the repeal of the statutory provision providing for the offence.

(2) The offences referred to in paragraph (1)(a) are—

- (a) an offence under section 167 of the Belfast Improvement Act 1845 (c. cxlii) (loitering for the purposes of prostitution);
- (b) an offence under section 28 of the Town Police Clauses Act 1847 (c.89) (indecent exposure);
- (c) an offence under section 72 of the Towns Improvement (Ireland) Act 1854 (c. 103) (loitering for the purposes of prostitution);
- (d) an offence under section 52, 53, 54 or 55 of the Offences Against the Person Act 1861 (c. 100) (indecent assault and abduction);

- (e) an offence under any of the following sections of the Criminal Law Amendment Act 1885 (c. 69)—
 - (i) section 2 (procurement of a woman or girl under 21);
 - (ii) section 3 (procuring defilement of a woman);
 - (iii) section 4 (unlawful carnal knowledge of a girl under 14);
 - (iv) section 5 (unlawful carnal knowledge of a girl under 17);
 - (v) section 6 (permitting a girl under 17 to be on premises for the purpose of unlawful carnal knowledge);
 - (vi) section 7 (abduction of girl with intent to have carnal knowledge);
 - (vii) section 8 (unlawful detention with intent to have carnal knowledge);
- (f) an offence under section 1 or 2 of the Punishment of Incest Act 1908 (c. 45);
- (g) an offence under section 2 of the Attempted Rape, etc., Act (Northern Ireland) 1960 (c. 3) (assault with intent to commit rape);
- (h) an offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (indecent conduct towards a child);
- (i) an offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (NI 6) (inciting girl under sixteen to have incestuous intercourse);
- (j) an offence under Article 122 or 123 of the Mental Health (Northern Ireland) Order 1986 (NI 4) (protection of woman suffering from severe mental handicap, and protection of patients);
- (k) an offence under Article 19, 20 or 21 of the Criminal Justice (Northern Ireland) Order 2003 (NI 13) (buggery, assault with intent to commit buggery, indecent assault on a male).

(3) For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was—

- (a) if the maximum penalty for the pre-commencement offence is less than the maximum penalty for the offence under this Order, a time before the coming into force of the repeal of the statutory provision providing for the pre-commencement offence; and
- (b) in any other case, a time after the coming into force of the provision providing for the offence under this Order.

(4) In sub-paragraph (3) the reference, in relation an offence, to the maximum penalty is a reference to the maximum penalty by way of imprisonment or other detention that could be imposed on the defendant on conviction of the offence in the proceedings in question.

(5) A reference in this paragraph to an offence under this Order or to an offence specified in sub-paragraph (2) includes a reference to—

- (a) inciting the commission of that offence;
- (b) conspiracy to commit that offence; and
- (c) attempting to commit that offence;

and, in relation to an offence falling within paragraphs (a) to (c), a reference in this paragraph to the provision providing for the offence so falling has effect as a reference to the provision providing for the offence under this Order or, as the case may be, for the offence so specified.

(6) This paragraph applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of the offence under this Order or the pre-commencement offence before the commencement of this Schedule.

2.—(1) Where this Order repeals a statutory provision providing for an offence, any reference to that offence in Schedule 17 to the Criminal Justice Act 2003 shall (notwithstanding anything in Schedule 1 to this Order) continue to have effect for the purposes of determining whether a person convicted of that offence before the date on which the repeal of the statutory provision providing

for the offence comes into force had been convicted of a “relevant offence” as defined in section 229 of that Act.

(2) Where this Order repeals a statutory provision providing for an offence, any reference to that offence in Schedule 5 to the Criminal Justice Act 2003 shall (notwithstanding anything in Schedule 1 to this Order) continue to have effect for the purposes of determining whether a person acquitted of that offence before the date on which the repeal of the statutory provision providing for the offence comes into force is acquitted of a “qualifying offence” as defined in section 75 of that Act.

SCHEDULE 3

Article 82

Repeals

<i>Reference</i>	<i>Extent of repeal</i>
Belfast Improvement Act 1845 (c. cxlii)	In section 167 the words “Every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of any inhabitant or passenger:”.
Town Police Clauses Act 1847 (c. 89)	In section 28 the words “Every common prostitute loitering and importuning passengers for the purpose of prostitution:”
Towns Improvement (Ireland) Act 1854 (c.103)	In section 72, the words “Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution, or being otherwise offensive, shall be liable to a fine not exceeding level three on the standard scale”.
Offences Against the Person Act 1861 (c.100)	Sections 48 and 52 to 55.
Criminal Law Amendment Act 1885 (c. 69)	Sections 2 to 8.
Punishment of Incest Act 1908 (c.45)	Sections 1 and 2.
Visiting Forces Act 1952 (c.67)	In the Schedule, paragraph 1(za) and (b)(iv).
Attempted Rape, etc. Act (Northern Ireland) 1960 (c.3)	Section 2.
Children and Young Persons Act (Northern Ireland) 1968 (c.34)	Omit sections 21 and 22. In Schedule 1— (a) in the entry relating to the Offences Against the Person Act 1861, the words “or 55”; (b) the entry relating to the Punishment of Incest Act 1908; (c) in the entry relating to the Children and Young Persons Act (Northern Ireland) 1968 itself, the words “21, 22”; (d) the entry relating to the Mental Health (Northern Ireland) Order 1986; (e) in the entry relating to attempts to commit an offence against a child or young person, the words “the Punishment of Incest Act 1908 or Article 122 or 123 of the Mental Health

	(Northern Ireland) Order 1986”;
	(f) the entry relating to the Criminal Justice (Northern Ireland) Order 1980;
	omit the entry relating to the Criminal Justice (Northern Ireland) Order 2003;
Criminal Justice (Northern Ireland) Order 1980 (NI 6)	Article 9.
Magistrates’ Courts (Northern Ireland) Order 1981 (NI 26)	In Schedule 2, paragraphs 5(a)(vii), 10 and 23.
Mental Health (Northern Ireland) Order 1986 (NI 4)	Articles 122 and 123.
Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)	In Schedule 2, the entry relating to the Belfast Improvement Act 1845, and Note 1.
Treatment of Offenders (Northern Ireland) Order 1989 (NI 15)	Article 12(1) to (3).
Health and Personal Social Services (Northern Ireland) Order 1994 (NI 2)	In Schedule 1— (a) in the entry relating to Articles 121(1) and 123(1)(a)(ii) of the Mental Health (Northern Ireland) Order 1986, the words “and 123(1)(a)(ii)”, and (b) the entry relating to Article 123(1)(b)(ii) of that Order.
Children (Northern Ireland) Order 1995 (NI 2)	In Schedule 9, paragraphs 1, 2, 3, 19 and 136.
Criminal Justice and Court Services Act 2000 (c. 43)	Section 40.
Sexual Offences Act 2003 (c. 42)	Sections 15 to 24, 47 to 54, 66 to 72. In section 20 the words “or Northern Ireland”. Section 47(7). In Schedule 2, paragraph 2 and, in paragraph 3 the words “or 2(1)”. In Schedule 5, in paragraph 171 the words “51 to 53 or”. In Schedule 6, paragraphs 18 and 46(5)(a).
Criminal Justice (Northern Ireland) Order 2003 (N.I. 13)	Articles 18, 19, 20 and 21.
Violent Crime Reduction Act 2006 (c. 38)	In Schedule 1, paragraph 4, 6(c) and 9. In Schedule 4, paragraph 4.
