



Northern
Ireland
Office

Criminal Justice Directorate

Explanatory
guidance to the
Sexual Offences
(Northern Ireland)
Order 2008

Foreword

by the Minister for Criminal Justice
Northern Ireland Office



The Sexual Offences (Northern Ireland) Order 2008 was approved by Parliament in June 2008 and the new law came into force on 2 February 2009.

This is the first major overhaul of sexual offences law in Northern Ireland.

Sexual crime, and the fear of sexual crime, has a profound and damaging effect on the lives of individuals and communities. A responsibility rests on the Government to protect everyone in society from such crimes.

The Order contains a number of important changes to the law. For example, it seeks to clarify issues surrounding consent in rape and sexual assault cases; it is intended to give children the greatest possible protection against sexual abuse; for the first time, it provides a specific set of offences to protect persons with a mental disorder; and it offers new offences of kerb crawling and soliciting for prostitution, tougher penalties for keeping a brothel and re-enactment of existing offences of causing and controlling prostitution.

The maximum penalties for offences have been reviewed to ensure they reflect the seriousness of the behaviour involved.

This guidance explains the purpose of each new offence, and provides information about how the offences are intended to operate in practice. However, as with any law, once Parliament has passed it, it is for the courts to interpret and apply it.

The purpose of the guidance is largely to provide some additional information to those who work with the law or who need to know more about it for other professional reasons. It is non-statutory and should not be regarded as authoritative legal advice. If there is any doubt as to the application or interpretation of the legislation, advice should be sought from a legal adviser. Those agencies which have to administer the law, or deal with those affected by it, will need to provide detailed guidance and training to their staff on the implications of this new legislation where appropriate.

None of the offences in the Order apply retrospectively. Offences which were committed prior to commencement of the Order will be prosecuted under the legislation in force at the time the offence was committed.

Where more than one offence is capable of being prosecuted, it is the responsibility of the Public Prosecution Service to decide which is appropriate.

A reference table of the offences and their penalties is provided at annex A.

This new framework of criminal law on sexual offences has been introduced to provide better protection for all against unacceptable sexual behaviour. It aims to improve protection for children, young people and other vulnerable groups against sexual abuse.



Paul Goggins MP
Minister of State

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1 Introduction

Article 2: Interpretation

Article 2 gives a number of definitions relevant to offences in the Order. Paragraph (5), which defines penetration, is needed so that where, for example, a person consents at the time of entry to penetration, but then withdraws his consent and the penetration continues, the person penetrating may be guilty of rape or assault by penetration.

“Touching” is defined at Article 2(11). It covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. This could include for example, where a person rubs up against someone’s private parts through the person’s clothes for sexual gratification. It also includes penetration. However, where there is sufficient evidence, forced penile penetration of the vagina, anus or mouth would normally be charged as “rape” and forced penetration of the vagina or anus with any other part of a person’s body or another object would normally be charged as “assault by penetration”.

Article 3: “Consent”

Article 3 introduces, for the first time in sexual offences law in Northern Ireland, a definition of consent. This definition is relevant to many Articles in the Order, in particular, the non-consensual offences of rape, sexual assault by penetration and sexual assault. Article 3 provides that a person consents if he/she agrees by choice, and has the freedom and capacity to make that choice. A person may not have the capacity to consent to sexual activity because, for instance, he/she has a mental disorder. A person may not have the freedom to consent because he/she is forced by, for example, violence or threat of violence, to engage in sexual activity.

Article 4: “Sexual”

Article 4 defines “sexual” for the purposes of the Order (with the exception of Article 75 which has a separate definition).

Paragraph (a) covers activity that a reasonable person would always consider to be sexual because of its nature, such as sexual intercourse. Paragraph (b) covers activity that the reasonable person would consider, because of its nature, may or may not be sexual, depending on the circumstances or the intentions of the person carrying it out, or both.

An example of activity which would fall under paragraph (b) might be digital penetration of a woman’s vagina. In many cases this would be sexual, but where digital penetration is performed by a doctor in his surgery, the circumstances would indicate that this act was being carried out for medical reasons. If, however, the digital penetration took place following a consultation by the patient for a chest complaint, the reasonable person would probably conclude that looking at the nature of the act, the circumstances in which it took place and what appears to be the purpose of the doctor, the act was sexual.

If, from looking at the nature of the activity, it would not appear to the reasonable person that the activity might be sexual, then it does not meet the criteria contained in either paragraph (a) or paragraph (b), even if a particular individual may obtain sexual gratification from carrying out the activity. This excludes from the scope of the Order rare situations where someone derives sexual gratification from an obscure fetish (for example removing a person’s shoes) that no reasonable person would consider to be sexual by nature.

2 Non-consensual sexual offences

Articles 5 to 8 deal with offences where the defendant engages in sexual activity with the complainant, without the complainant's consent.

For the purposes of the four main non-consensual offences, an offence is committed if the defendant does not reasonably believe that the complainant consents to the relevant sexual act. Whether a belief in consent is reasonable is to be determined having regard to all the circumstances, including any steps the defendant has taken to ascertain whether the complainant consents. It will be for the jury to decide whether any of the particular attributes of the defendant, such as extreme youth or disability, are relevant to their deliberations, subject to directions from the judge where necessary.

Articles 9 and 10, dealing with evidential and conclusive presumptions about consent and reasonable belief in consent apply to each of the four main non-consensual offences.

Rape

Article 5: Rape

Article 5 makes it an offence for a person (A) intentionally to penetrate with his penis the vagina, anus or mouth of another person (B) without that person's consent if A does not reasonably believe that B consents.

The Article redefines the physical act of rape by including penile penetration of the mouth. The offence also covers surgically reconstructed genitalia, for example as a result of gender reassignment surgery.

Rape and rape of a child under 13 are the only offences in the Order which can only be committed by a man, because they relate to penile penetration.

This Article, which abolishes the common law offence of rape, requires that the defendant does not have a "reasonable belief" in consent, rather than that he does not have an "honest belief" in consent.

The offence is triable on indictment only and has a maximum penalty of life imprisonment.

Assault

Article 6: Assault by penetration

Article 6 makes it an offence for a person (A) intentionally to penetrate the vagina or anus of another person (B). The offence is committed where the penetration is by a part of A's body (for example, a finger) or anything else (for example, a bottle or vibrator); the penetration is sexual; and B does not consent to the penetration and A does not reasonably believe that B consents.

"Sexual" is defined in Article 4.

The requirement that the penetration is sexual means that practitioners who conduct intimate searches and medical procedures without a sexual motive are excluded from the offence.

It is not necessary for the victim to know, or explain what they were penetrated with. This means that the offence can be used in cases where, for example, the victim is a child, or a person with a learning disability, or a person who was blindfolded at the time of the alleged incident, and where the evidence is not clear enough to justify a prosecution for rape.

The offence is triable on indictment only and has a maximum penalty of life imprisonment.

Article 7: Sexual assault

Article 7 makes it an offence for a person (A) intentionally to touch sexually another person (B) without that person's consent, if he does not reasonably believe that B consents.

"Sexual" is defined in Article 4.

"Touching" is defined at Article 2(11). It covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. This could include for example, where a person rubs up against someone's private parts through the person's clothes for sexual gratification. It also includes penetration. However, where there is sufficient evidence, forced penile penetration of the vagina, anus or mouth would normally be charged as "rape" and forced penetration of the vagina or anus with any other part of a person's body or another object would normally be charged as "assault by penetration".

The offence is triable summarily or on indictment and has a maximum penalty of 10 years imprisonment.

Causing sexual activity without consent**Article 8: Causing a person to engage in sexual activity without consent**

Article 8 makes it an offence for a person (A) intentionally to cause another person (B) to engage in sexual activity without that person's consent, if he does not reasonably believe that B consents.

"Sexual" is defined in Article 4.

This offence covers a range of circumstances. A may cause B to engage in sexual activity with A. An example of this would be where a woman compels a man to penetrate her. A could also force B to carry out a sexual act on B, for example, where an abuser makes his victim engage in masturbation involving only the victim. The offence also applies where A forces B to engage in sexual activity with another person, whether

that third party is a willing participant or another victim. An example of the former would be where a man forces a woman to give oral sex to a fellow abuser, and of the latter, where a man forces two non-consenting women to touch one another in a sexual way.

The maximum penalty for the offence is staggered to allow for sentences to reflect the gravity of the crime. Where the offence does not include sexual penetration (of or by the victim) the offence is triable summarily or on indictment and has a maximum penalty of 10 years imprisonment (the same as the maximum penalty for a non-penetrative sexual assault). Where sexual penetration (by the penis or anything else) is involved, the offence is triable on indictment only and a maximum penalty of life imprisonment applies.

Article 9: Evidential presumptions about consent

Article 9 applies an evidential presumption on the issue of consent, and reasonable belief in consent, to Articles 5 to 8. This means that where the prosecution is able to prove that the defendant did a relevant act (as defined in Article 11), that the circumstances described in paragraph (2) existed, and that the defendant knew that those circumstances existed, the complainant will be presumed not to have consented to the relevant act and the defendant will also be presumed not to have reasonably believed that the complainant consented.

The circumstances in paragraph (2) are that at the time of the relevant act, or immediately beforehand, any person was using violence against the complainant or against another person, or causing the complainant to fear that immediate violence would be used against him/her, or against another person; that the complainant was, and the defendant was not, unlawfully detained, for example, locked in a room by the defendant; that the complainant was asleep or unconscious; that because of a physical disability, e.g. he/she is unable to speak, the complainant would not have been able to communicate to the defendant at the time of the act whether or not he/she consented; and that any person had administered to, or caused to

be taken by the complainant, without the complainant's consent, a substance which was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the act.

In order for this presumption not to apply, the defendant will need to satisfy the judge from the evidence that there is a real issue about consent and about his reasonable belief in consent that is worth putting to the jury. This places an evidential burden on the defendant. The evidence relied on may be, for example, evidence that the defendant himself gives in the witness box, or evidence given on his behalf by a defence witness, or evidence given by the complainant during cross-examination.

If the judge is satisfied that there is sufficient evidence to justify putting the issue of consent to the jury, then the issues will have to be proved by the prosecution in the normal way, i.e. beyond reasonable doubt. If the judge does not think the evidence relied upon by the defendant meets this threshold, he will direct the jury to find the defendant guilty, assuming the jury is sure that the defendant did the relevant act, that the circumstances in paragraph (2) applied and that the defendant knew this.

What constitutes a 'real issue about consent' is a matter for the judge.

Article 10: Conclusive presumptions about consent

Article 10 provides that where the prosecution proves that the defendant did the relevant act (as defined at Article 11) and that the complainant did not consent to that act and that either of the circumstances in paragraph (2) existed, it shall be conclusively presumed that (a) the complainant did not consent to the relevant act and (b) the defendant did not believe that the complainant consented to the relevant act. Thus the defendant will be convicted.

The circumstances in paragraph (2) are that (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act; and that (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant. An example of (a) might be where someone inserts an object into a woman's vagina for his own sexual gratification, having falsely explained that this is a necessary medical procedure. An example of (b) would be where a person impersonates someone's spouse in a dark room or a sibling pretends to be his twin in order to have intercourse with his twin's sexual partner. For (b) to apply, it is not necessary for the person impersonated to be someone who has previously engaged in sexual activity with the complainant. For example, a man could impersonate his twin brother in order to engage in sexual activity with a woman whom he knows would be willing to engage in sexual activity with his brother.

Article 11: Article 9 and 10: relevant acts

Article 11 defines the relevant acts to which the provisions in Articles 9 and 10 apply. These are acts which constitute offences under Article 5 (rape), Article 6 (assault by penetration) Article 7 (sexual assault) and Article 8 (causing a person to engage in sexual activity without consent).

3 Sexual offences against children

Rape and other offences against children under 13

Articles 12 to 15 apply the main non-consensual offences to children under 13.

For the purposes of the under 13 offences, whether the child consented to the relevant act is irrelevant. A child under 13 does not, under any circumstances, have the legal capacity to consent to any form of sexual activity.

Article 12: Rape of a child under 13

Article 12 makes it an offence for a person intentionally to penetrate with his penis the vagina, anus or mouth of a child under the age of 13.

This Article, like the corresponding adult offence, redefines the physical act of rape by including penile penetration of the mouth. It is also made clear that the offence covers surgically reconstructed genitalia, for example as a result of gender reassignment surgery.

Rape and rape of a child under 13 are the only offences in the Order which can only be committed by a man, because they relate to penile penetration.

The offence is triable on indictment only and has a maximum penalty of life imprisonment.

Assault

Article 13: Assault of a child under 13 by penetration

Article 13 makes it an offence for a person intentionally to penetrate sexually the vagina or anus of a child under the age of 13 with a part of his body, such as a finger, or with anything else, such as a bottle or other object.

“Sexual” is defined in Article 4.

The requirement that the penetration is sexual means that practitioners who conduct intimate searches and medical procedures without a sexual motive are excluded from the offence.

It is not necessary for the victim to know, or explain what they were penetrated with. This means that the offence can be used in cases where the child does not possess the knowledge to identify the nature of what he/she is being penetrated by or for example, where the child is blindfolded at the time of the alleged incident and where the evidence is not clear enough to justify a prosecution rape.

The offence is triable on indictment only and has a maximum penalty of life imprisonment.

Article 14: Sexual assault of a child under 13

Article 14 makes it an offence for a person to touch sexually a child under the age of 13.

“Sexual” is defined in Article 4.

“Touching” is defined at Article 2(11). It covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. This could include for example, where a person rubs up against the child’s private parts through the child’s clothes for sexual gratification. It also includes penetration. However, where there is sufficient evidence, forced penile penetration of the vagina, anus or mouth would normally be charged as “rape of a child under 13” and forced penetration of the vagina or anus with any other part of a person’s body or another object would normally be charged as “assault of a child under 13 by penetration”.

The offence is triable summarily or on indictment and has a maximum penalty of 14 years imprisonment.

Article 15: Causing or inciting a child under 13 to engage in sexual activity

Article 15 makes it an offence for a person intentionally to cause or incite a child under the age of 13 to engage in sexual activity.

“Sexual” is defined in Article 4.

The offence covers cases where the adult makes the child engage in sexual activity, for example sexual intercourse, with the adult himself and where he makes the child engage in such activity with a third party, whether that third party is a willing participant or another victim. The offence also covers cases where the adult makes the child carry out a sexual act, such as masturbation or stripping.

Examples of an adult causing or inciting a child to engage in sexual activity could be promising a reward, persuading the child that it is perfectly acceptable behaviour that other children engage in all the time and he/she would be abnormal not to agree, or saying that it was necessary to check the child's body for - bruises/lice etc., or to try on clothes.

The offence can be charged where the adult incites the child to take part in sexual activity, even where the activity itself does not take place, for example because a parent intervenes.

The offence is triable summarily or on indictment and has a maximum penalty of 14 years imprisonment.

Sexual offences against children under 16

Articles 16 to 22 relate to sexual offences against children under 16.

For the purposes of the offences at Articles 16 to 20 whether or not the child consents to the sexual activity is immaterial. The fact that a child gives ostensible consent to sexual activity is only relevant inasmuch as it may absolve the defendant of a non-consensual offence such as rape or indecent assault where the child is over 13. A child under 13 is unable to give

legal consent and therefore the defendant's belief in consent will not be relevant. The purpose of the offences is to provide a means of prosecuting a person who secures the consent of a child through pressure but stops short of coercion so that a non-consensual offence cannot be proved.

The offences at Articles 16 to 20 apply to children under 16. It is for the prosecution to prove that the child is under 16. In cases where the defendant claims to have believed that the child was 16 or over, this will absolve him of the offence unless the prosecution can prove that he held no such belief or that his belief was not reasonably held. Where the prosecution proves that the child is under 13, the defendant will not be entitled to raise any issues about a mistaken belief in age.

Article 16: Sexual activity with a child

Article 16 makes it an offence for a person aged 18 or over to intentionally engage in sexual touching of a child under 16.

“Sexual” is defined in Article 4.

“Touching” is defined at Article 2(11). It covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. It includes penetration.

It is expected that where the child is under 13, one of the under 13 offences, e.g. rape of a child under 13, rather than the offence of sexual activity with a child, would normally be charged. These offences have higher penalties to reflect the fact that a child under 13 is particularly young and cannot legally consent to sexual activity. However, occasionally the offence might be used where the child is under 13. An example would be where a person was charged with the offence of sexual activity with a child, all parties believing the child to be 13 or over, and it then became known in the course of the trial that the child was actually under 13. The extension of the offence to under 13s means that the trial could continue with the original charge when necessary.

Decisions about whether to prosecute someone with this offence will be made by the Public Prosecution Service (PPS) in accordance with the Test for Prosecution and principles set out in the Code for Prosecutors. The code is available on the PPS website at <http://www.ppsni.gov.uk>. In deciding whether it is in the public interest to prosecute this offence, where there is enough evidence to provide a reasonable prospect of conviction, prosecutors may take into consideration factors which include the age and emotional maturity of the parties, whether they entered into the sexual relationship willingly, any coercion or corruption by a person, the relationship between the parties and whether there was any existence of a duty of care or breach of trust. The discretion of the PPS not to prosecute where it is not in the public interest would be particularly relevant where the two parties were close in age, for instance an 18 year old and a 15 year old, and had engaged in mutually agreed sexual activity.

The offence may be tried summarily or on indictment and has a maximum penalty of fourteen years imprisonment.

Article 17: Causing or inciting a child to engage in sexual activity

Article 17 makes it an offence for a person aged 18 or over, intentionally to cause or incite a child aged under 16 to engage in sexual activity.

“Sexual” is defined in Article 4.

The offence covers cases where the adult makes the child engage in sexual activity, for example sexual intercourse, with the adult himself and where he makes the child engage in such activity with a third party, whether that third party is a willing participant or another victim. The offence also covers cases where the adult makes the child carry out a sexual act, such as masturbation or stripping.

Examples of an adult causing or inciting a child to engage in sexual activity could be promising a reward,

persuading the child that it is perfectly acceptable behaviour that other children engage in all the time and he/she would be abnormal not to agree, or saying that it was necessary to check the child's body for - bruises/lice etc., or to try on clothes. It is not intended to cover health professionals, or anyone else providing sex education, advice or contraception to children.

The offence can be charged where the adult incites the child to take part in sexual activity, even where the activity itself does not take place, for example because a parent intervenes.

Where the child is under 13, it is expected that the adult would normally be charged with the offence of causing or inciting a child under 13 to engage in sexual activity at Article 8. However, occasionally the offence at Article 17 might be used where the child is under 13. An example would be where a person was charged with causing or inciting a child to engage in sexual activity, all parties believing the child to be 13 or over, and it then became known in the course of the trial that the child was actually under 13. The extension of Article 17 to under 13s means that the trial could continue with the original charge where necessary.

Where the offence involves penetration, it is triable only on indictment. In all other cases, the offence may be tried summarily, or on indictment. The offence has a maximum penalty of fourteen years imprisonment.

Article 18: Engaging in sexual activity in the presence of a child

Article 18 makes it an offence for a person (A) aged 18 or over intentionally to engage in sexual activity when a child under 16 (B) is present or in a place from which (A) can be observed, for the purposes of obtaining sexual gratification from the presence of (B).

“Sexual” is defined in Article 4.

The offence is committed if A knows or believes that B is aware that he is engaging in the activity, or intends that B should be aware of this, and carries out the

activity for the purposes of obtaining sexual gratification from the presence of B. The activity may take place in the physical presence and sight of B. However, the offence also covers situations such as A masturbating himself in the presence of B to whom he is describing what he is doing, perhaps because B is covering his face; or A performing a sexual act in a place where he knows that he can be seen by B, for example via a webcam. The offence does not require B to witness the activity. The offence would therefore still be committed if, for example, A intended B to witness the activity, and believed that B was witnessing the activity, but B left the position from which A could be observed, unbeknownst to A.

The offence is intended to cover the situation where someone seeks sexual gratification not from the sexual act itself but rather from the fact that he is performing that act in the presence or intended presence of a child. The motive of sexual gratification is a necessary safeguard intended to avoid capturing those who engage in sexual activity in front of a child for a legitimate reason. For example, a teacher who sexually kisses his partner just outside the school gates, could be deemed to be engaging in sexual activity intentionally in front of a child and might otherwise be caught by the offence.

The offence may be tried summarily or on indictment and has a maximum penalty of ten years imprisonment.

Article 19: Causing a child to watch a sexual act

Article 19 makes it an offence for a person aged 18 or over to intentionally cause a child aged under 16, for the purposes of his own sexual gratification, to watch a third person engaging in sexual activity, or to look at an image of a person engaging in a sexual act. The act can be live or recorded, and there is no need for the child to be in close physical proximity to the sexual act. Examples of this offence would be where a person, for the purposes of his own sexual gratification, enables a child to watch two people have sex, either in the physical presence of the activity or remotely, for instance via a webcam; or where someone invites a

child to watch a pornographic film or sends a child indecent images over the internet.

The offence does not require any element of coercion, though it may be a factor in some cases. The offence is committed even where the child apparently consents to watching a sexual act.

In order for an offence to be committed, the adult must act for his own sexual gratification. This ensures that, adults showing children sex education material, either in a school or other setting, will not be liable for this offence.

“Sexual” is defined in Article 4.

The term “image” means a moving or still image and includes an image produced by any means and, where the context permits, a three dimensional image.

The offence may be tried summarily or on indictment and has a maximum penalty of ten years imprisonment.

Article 20: Sexual offences against children committed by children or young persons

Article 20 makes it an offence for a person aged under 18 to do anything that would be an offence under Articles 16 to 19 if he or she were aged 18 or over. The purpose of this Article is to provide a lower penalty of 5 years where the offender is aged under 18.

Depending on the nature of the offence he or she may be charged with sexual activity with a child, causing or inciting a child to engage in sexual activity, engaging in sexual activity in the presence of a child or causing a child to watch a sexual act.

“Sexual” is defined at Article 4.

It is illegal for a person of any age, including a person under the age of 16, to engage a young person under 16 in any form of sexual activity. However, it is not intended that young people should be the subject of criminal investigation where the sexual activity was entirely mutually agreed and non-exploitative. The way in which the law will be interpreted applies equally to males and females, whatever their sexual orientation.

The offence may be tried summarily or on indictment and has a maximum penalty of five years imprisonment.

⁴Separate guidance has been issued by the Department of Health, Social Services and Public Safety to inform practitioners and professionals about the implications of the law on child protection procedures. Attention is also drawn to the Regional Area Child Protection Policy and Procedures.

Prosecution decisions will be made in accordance with the principles set out in the Code for Prosecutors and is available on the Public Prosecution Service's (PPS) website at <http://www.ppsni.gov.uk>.

The overriding public concern must be to protect children and it was not Parliament's intention to punish children unnecessarily or for the criminal law to intervene where it is wholly inappropriate. When Parliament considered this matter for the Sexual Offences Act 2003, Lord Falconer, the then Secretary of State for Constitutional Affairs, said:

"Our overriding concern is to protect children, not to punish them unnecessarily. Where sexual relationships between minors are not abusive, prosecuting either or both children is highly unlikely to be in the public interest. Nor would it be in the best interests of the child . . ."

A difficulty in pursuing this approach in the Northern Ireland context was the continuing existence of section 5 of the Criminal Law Act 1967, which places a duty on everyone to report to the police information they may have about the commission of a relevant offence, that is, one with a maximum sentence of at least 5 years. This would mean that everyone would be under a duty to report to the police evidence of sexual activity taking place involving a young person under 16, even where the activity falls within the parameters set out above. As a result, Article 79 of the Order amends "relevant offence" for section 5(1) of the Criminal Law Act (Northern Ireland) 1967 to exclude, from the duty to report information about the commission of a relevant offence, an offence under Article 20. This exclusion does not apply to information about offences against children under 13, as set out in Articles 12 to 15.

It is important to note that the Sexual Offences (Northern Ireland) Order 2008 does not change the principles or the decision making process in deciding whether or not to prosecute youths for sexual offences. In any case where there is sufficient evidence of a sexual offence committed by a child to justify instituting proceedings, the public interest must be considered with care before any prosecution is commenced.

It is essential that before any decision is made on whether or not to prosecute, prosecutors have as much information as possible from sources, such as the police, probation, Youth Justice Agency and any practitioners/professionals assisting those agencies, about the defendant's home circumstances and the circumstances surrounding the alleged offence, as well as any information known about the victim. It may also be important to obtain the views of the victim and where appropriate the views of the victim's family in the decision.

In deciding whether it is in the public interest to prosecute careful regard should be given to all the circumstances of the case including the factors set out below. The weight to be attached to a particular factor will vary depending on the circumstances of each case. The factors include but are not limited to:

- The age and understanding of the offender. This may include whether the offender has been subjected to any exploitation, coercion, threat, deception, grooming or manipulation by another which has led him or her to commit the offence;
- The relevant ages of the parties, i.e. the same or no significant disparity in age;
- Whether the complainant entered into sexual activity willingly, i.e. did the complainant understand the nature of his or her actions and that (s)he was able to communicate his or her willingness freely;
- Parity between the parties in regard to sexual, physical, emotional and educational development;

⁴DHSSPS guidance can be accessed at: http://www.dhsspsni.gov.uk/index/hss/child_care/child_protection/child_protection_guidance.htm

- The relationship between the parties, its nature and duration and whether this represents a genuine transitory phase of adolescent development;
- Whether there is any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship;
- The nature of the activity e.g. penetrative or non-penetrative activity;
- What is in the best interests and welfare of the complainant; and
- What is in the best interests and welfare of the defendant.

However, responsibility for such decisions rests with the PPS, and will need to be considered on a case-by case basis. It is important that information is shared by all agencies/practitioners to enable the PPS to make informed decisions.

Article 21: Arranging or facilitating commission of a sex offence against a child

Article 21 makes it an offence for a person intentionally to arrange or facilitate any action which he intends to do, intends another person to do or believes that another person will do, in any part of the world, which will involve an offence being committed against a child under any of Articles 16 to 20.

An example of the first two limbs of the offence is where an adult approaches an agency requesting the agency to procure a child for the purpose of sexual activity with either himself or a friend. Arrangements might be made over the internet or by telephone but can also result from personal contact between one person who wants to find a child to abuse and another person who is in contact with a child or children.

An example of the third limb of the offence is where the adult (A) intentionally drives another person (B) to meet a child with whom he knows B is going to engage in sexual activity. A may not intend B to have sexual activity with the child, but he believes that he will do so if he meets that child. Another example might be

where one person offers a bedroom in his house to friends or associates for the purposes of having sex with a particular child or children.

The offence is committed whether or not the offence takes place. For example, a prosecution could still be considered where the police, acting on intelligence in order to safeguard a child, apprehend the offender before a substantive sexual offence has been committed. Similarly, a prosecution could be considered where a person had arranged the procuring of a child, but where the child was not delivered, or where a person had given permission for his premises to be used for sexual activity with a child, but circumstances prevented the activity from taking place. Where the police set up a “sting” operation and an offender contacts them believing they are offenders who can procure him a child for sexual abuse, but no real child is actually involved, an attempt at the Article 21 offence might be prosecuted.

The activity can be arranged or facilitated to take place anywhere in the world. The arranging or facilitating must take place in the UK. An example would be where a person resident in Northern Ireland uses the internet to arrange for a child to be provided for sexual activity with himself or a friend on a forthcoming visit to Thailand.

Paragraph (2) of Article 14 provides that those who act with the purpose of protecting a child from sexually transmitted infection, protecting the physical safety of a child, preventing a child from becoming pregnant, or promoting the child's emotional well-being by the giving of advice, will not commit this offence. An example would be where a health worker believes that a person is having sex with a child under 16. He advises that it is unlawful to have sex with children under 16 but supplies him with condoms because he believes that the person will otherwise have sex with the child without protection. The exception does not just apply to health workers, but to anyone who acts for the purposes of protecting a child, for example, teachers, social workers, carers, youth workers and professionals in the

voluntary sector. This exception applies so long as the person does not act to cause or encourage the sexual activity to take place or for the purpose of sexual gratification.

The offence may be tried summarily or on indictment and has a maximum penalty of fourteen years imprisonment.

Article 22: Meeting a child following sexual grooming etc.

Article 22 makes it an offence for a person aged 18 or over to meet intentionally, or to travel, or arrange for the child to travel, with the intention of meeting, a child under the age of 16 in any part of the world, if he has met or communicated with that child on at least two prior occasions, and intends to commit a “relevant offence” against that child either at the time of the meeting or on a subsequent occasion.

The Article is intended to cover situations where an adult establishes contact with a child and gains the child’s trust so that he can arrange to meet the child for the purpose of committing a “relevant offence” against the child. The contact with the child may take place through communications on the Internet, but equally, it could for example, be through meetings, letters, text messages or telephone conversations. The police may become aware of the contact between the offender and the child by a number of means, for example, reporting by the child, or by concerned parents/teachers.

“Relevant offences” are offences under this Order, trafficking into, within or outside of the UK for sexual exploitation offences in contained in sections 57 to 59 of the Sexual Offences Act 2003, and those offences which are committed outside of Northern Ireland which would be an offence, under this Order or sections 57 to 59 of the Sexual Offences Act 2003, if committed in Northern Ireland.

An offence is not committed if the adult reasonably believes the child to be 16 or over. In cases where the

defendant claims to have reasonably believed that the child was 16 or over, it is for the prosecution to prove that he held no such belief or that his belief was not reasonably held.

The initial communications between the adult and child may have a sexually explicit content, for example, conversations about sexual acts he would like the child to engage in or sending the child indecent images. However, this need not be the case. Prior communications could for example, involve an adult giving a child music lessons or running a youth club the child attends, an adult serving sweets to a child in a sweet shop, or meeting incidentally through a friend.

It is for prosecutors to prove the intent of the adult to engage in unlawful sexual behaviour with the child on the occasion of the meeting or on a subsequent occasion. Proof could be derived from the communications between the adult and the child before the meeting, for example, from conversations about the nature of the sexual activity that is planned. Such evidence might be obtained by examining the contents of e-mails or letters which have been sent or received, or from the transcripts of chat room conversations which might have been logged either on an individual’s computer or on the computer of an internet service provider. Evidence may also be drawn from other circumstances, such as the adult travelling to the meeting with ropes, condoms and lubricants.

The intended “relevant offence” does not have to take place for the offence to be committed. It is sufficient for either party to travel to meet with the intent by the adult to commit a “relevant offence” against the child. The adult might intend to commit the “relevant offence” on that occasion, or on a future occasion. An example of the latter would be where a person communicates with the child over the internet, expressing his intention that they engage in sexual activity. He then arranges to meet the child for the first time in a public place, with the intention of meeting her again at a later date in private, at which point he plans to have sex with her. In

this example an Article 15 offence would have been committed at the point at which either party sets out for the first meeting.

In some cases, it is possible that the defendant could set out to meet the child with the intention of committing a “relevant offence” but then change his mind before the meeting takes place. The offence would still be committed because it hangs upon the intention at the point at which either party sets out to meet. However, it would be for the court to decide what weight to give any evidence of change in intention.

Either the meeting or at least part of the travel to the meeting must take place in Northern Ireland. However, the adult’s previous meetings or communications with the child can have taken place anywhere in the world and it would also be possible for the person to intend to engage in sexual activity with a child in another jurisdiction.

In some cases it might be appropriate to consider prosecution of a person with an attempt to commit the offence rather than the offence itself. For example, where an undercover policeman takes the place of the child at the meeting in a covert operation, the defendant could be charged with attempting to commit the offence, assuming the necessary intent could be proved. The attempted offence has the same penalty as the offence itself.

The initial communications between the adult and child may have taken place before the commencement of this Order, provided that either party does not set out to meet with the intention by the adult of committing a relevant offence until after commencement of the Order.

The offence may be tried summarily or on indictment and has a maximum penalty of ten years imprisonment.

The offence of meeting a child following sexual grooming etc. is complemented by the civil Risk of Sexual Harm Order (RSHO) provided for by Articles 123 to 129 of the Sexual Offences Act 2003. Whereas the

grooming offence requires the adult or child to travel to meet or meet with the adult intending to commit a sexual offence against the child, the RSHO requires only that the adult has engaged in sexually explicit conduct or communication towards a child on at least two occasions. However, unlike the offence, the content of the communication must be sexually explicit for an order to be obtained. The court can make an order containing restrictions on the defendant’s behaviour where it believes it necessary to do so to protect the child, or other children, from harm caused by the defendant engaging in further such sexually explicit conduct or communication. For further information on RSHOs please see the Guidance on Part 2 of the Sexual Offences Act 2003 which is available on the Northern Ireland Office website at:

http://www.nio.gov.uk/northern_ireland_guidance_on_part2_of_the_sexual_offences_act_2003.pdf

Offences against children under 18: abuse of position of trust

Article 23: Abuse of position of trust: sexual activity with a child

Article 24: Abuse of position of trust: causing or inciting a child to engage in sexual activity

Article 25: Abuse of position of trust: sexual activity in the presence of a child

Article 26: Abuse of position of trust: causing a child to watch a sexual act

These Articles provide that it is an offence for a person aged 18 or over intentionally to behave in certain sexual ways in relation to a child aged under 18, where the adult is in a position of trust in respect of the child. The prohibited behaviour in each of the Articles is identical to that prohibited by the child sex offences in Articles 16, 17, 18 and 19 respectively, except that for the abuse of position of trust offences, the child may be 16 or 17.

Roles which constitute a position of trust are set out in Article 28. Positions of trust include, for example, employment in a residential home or detention centre or in an educational establishment.

The offence covers all children under 18, however it is principally designed to protect young people aged 16 and 17 who, even though they are over the age of consent for sexual activity, are considered to be vulnerable to sexual abuse and exploitation from particular classes of persons who hold a position of trust or authority in relation to them. Where the child is under 13 we would expect the PPS to consider prosecuting for one of the specific “under 13” offences which carry higher penalties. Where the child is aged between 13 and 15, it would normally be more appropriate for the offence of “sexual activity with a child” at Article 16 to be considered, as this carries a heavier maximum penalty of 14 years in recognition of the fact that the child is below the legal age of consent. The decision as to which offence should be prosecuted rests with the PPS and will be decided on the facts of each individual case.

The abuse of trust offence will not be made out where the defendant reasonably believed that the child was 18 or over, unless the child was under 13 in which case any belief the defendant had in the child’s age is irrelevant. Where the prosecution is able to establish that the complainant was under 18, the defendant will be taken not to have reasonably believed that the complainant was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it. If sufficient evidence is adduced to raise such an issue, it will be for the prosecution to prove in the normal way that the defendant did not believe, or did not hold a reasonable belief that the child was under 18.

An example of where this offence, rather than “sexual activity with a child” might be charged would be where it seems quite likely that the person in a position of trust reasonably believed a 15 year old child to be 16 or over, but is less probable that he or she reasonably believed the child to be 18 or over.

It is central to the offence that the prosecution is required to prove that the defendant was in a position of trust in relation to the child (in one of the categories set out at Article 28). In those cases where the

relationship of trust exists within an institution and would not necessarily involve the adult looking after the child on an individual basis, the prosecution must prove that the defendant knew that he was in a position of trust in relation to the child or could reasonably have been expected to know this. Where the prosecution is able to establish that the adult was in a position of trust in relation to the complainant, the defendant will be taken to have known or to have been reasonably expected to know of the circumstances by virtue of which he was in that 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. An example of where a person might not reasonably be expected to know that he is in a position of trust in relation to a particular child would be where a teacher meets in a bar, and subsequently has sex with, a sixth-form student who he is not aware attends the school at which he teaches.

Article 27: Abuse of position of trust: acts done in England and Wales or Scotland

Article 27 provides that any act that would, if done in Northern Ireland, constitute an offence under Articles 23 to 26 of this Order, also constitutes an offence under those Articles if carried out in England, Wales or Scotland.

Article 28: Positions of trust

The following are positions of trust for the purposes of Articles 23 to 26 (A is the adult in a position of trust and B is the person under 18).

- A works in an institution looking after under 18s who are detained by virtue of a court order or under an enactment, and B is detained in the institution (A does not have to have direct contact with B), e.g. secure training centre or a young offenders institution (paragraph 2);
- A looks after persons under 18 who are resident in a home or other place maintained by a Health and Social Services Board or in accommodation provided by a voluntary organisation under relevant statutory provisions and B is accommodated and maintained in that place (paragraph 3);

- A looks after persons under 18 accommodated in a hospital, an independent clinic, care home, residential care home, private hospital, community home, voluntary home, children's home or a residential family centre, and the child in question is accommodated in that institution (paragraph 4);
- A looks after persons under 18 who are in education at an educational establishment and the child in question receives education at that establishment. Someone receives "education at an educational institution" if he/she is registered or enrolled there as a pupil or student or is educated there by arrangement with the educational establishment at which he/she is registered or enrolled (paragraph 5);
- A is appointed to be the guardian of B (paragraph 6);
- A regularly has unsupervised contact with B, face to face or by other means in the exercise of functions of a Health and Social Services Board in providing accommodation to B because he/she is in need, or because he/she is under police protection, detention or on remand (paragraph 7);
- A is a person who regularly reports to the court on matters of welfare of B, and has regular unsupervised contact with B (paragraph 8);
- A looks after B on an individual basis (as defined in Article 29(3)) as a personal adviser appointed under the Children (NI) Order 1995. Such advisers generally provide help and support to children aged 16-17 who have been in Health and Social Services Board care (paragraph 9);
- B is subject to a care order, supervision order or an education supervision order and A looks after B in an official capacity on a regular basis in a capacity set out by the order (paragraph 10);
- A is the guardian of a person under 18 as set out in Article 60(1) of the Children (NI) Order 1995 (paragraph 11); and
- A looks after B on an individual basis, after his release from detention under conditions or in pursuance of requirements imposed by or under a statutory provision or imposed by a court order made in criminal proceedings. This includes adults who supervise children under bail supervision, a community sentence (for example a probation order, combination order, community service order, supervision order, youth conferencing order or an attendance centre order) and children under conditions following release from detention resulting from a criminal conviction (e.g. those released on licence from a young offenders centre). This would include those released on licence from a Juvenile Justice Centre or someone providing counselling or drug rehabilitation services to the child pursuant to the terms of a court order (paragraph 12).

Paragraph 1(b) provides that an adult aged 18 or over is in a position of trust in relation to a person under 18 in any other conditions that may be specified at any time in an order made by the Secretary of State. Such regulations would be made by affirmative resolution.

Article 29: Positions of trust: interpretation

"Looks after" is defined in paragraph (2) as "regularly involved in caring for, training, supervising or being in sole charge of" the other person. "Looks after on an individual basis" is defined in paragraph (3) as "regularly involved in caring for, training, supervising" the other person, in circumstances where he regularly has unsupervised contact with that person alone. The contact can be in person, or by any other means, such as on the telephone or over the internet.

Paragraph (4) provides that someone receives education at an educational institution if he/she is registered or enrolled there as a pupil or student or is educated there by arrangement with the educational establishment at which he/she is registered or enrolled.

Paragraph (5) sets out, in relation to Article 28 the meaning of the terms "authority", "care order", "children's home", "educational supervision order", "hospital", "independent clinic", "private hospital", "residential care home", "residential family centre", "supervision order" and "voluntary home". These are all terms used in describing the institutions at which a young person might reside and if so, will be protected by this offence from adults looking after young persons there.

Article 30: Articles 23 to 26: exception for spouses and civil partners

Article 30 provides that where a person is lawfully married to or is a civil partner of a person aged 16 or 17 at the time of engaging in activity that would amount to an abuse of trust offence under Articles 23 to 26 he shall not be guilty of that offence. It is for the defendant to prove that they were legally married or civil partners at the time.

Article 31: Articles 23 to 26: sexual relationships which pre-date position of trust

Article 31 provides that a person shall not be liable for an abuse of trust offence under clauses 23 to 26 where a lawful sexual relationship existed between the parties immediately before the position of trust arose. An example of this might be where a 17 year old girl goes to stay in a hospital where her adult boyfriend, with whom she is in a sexual relationship, is a nurse. The requirement that the sexual relationship be lawful means that the defence would not, for example, apply to a 20 year old teacher who had an existing sexual relationship with a 14 year old girl before moving to teach at the girl's school. It is for the defendant to prove that the lawful sexual relationship existed prior to the position of trust arising.

Familial sex offences against children under 18

Articles 32 to 36 cover sexual offences committed against children by family members.

Article 32: Sexual activity with a child family member

Article 32 makes it an offence for a person (A) intentionally to touch a family member (as defined at Article 34) aged under 18, where the touching is sexual.

Whether or not the child consented to the activity is irrelevant. The fact that a child aged 13 or over gives ostensible consent to sexual activity is only relevant inasmuch as it may absolve the defendant of a non-consensual offence such as rape or sexual assault.

The definition of touching is explained at Article 2(11) and covers all forms of physical contact, including sexual intercourse. "Sexual" is defined at Article 4.

In order for the offence to apply, A must know, or be in a position where he could reasonably be expected to know, that the child is his family member. Where the prosecution is able to prove that a relationship exists between the parties that falls within the description in Article 34, the defendant will be taken to have known or to have reasonably been expected to know that the relationship existed unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably be expected to know it. An example of where this evidential burden might be met is where the defendant did not know the child was related as the other parent had kept the birth of the child secret.

It is a requirement for the offence that, except where the child is under 13, the defendant must not reasonably believe the child to be 18 or over. Where the prosecution is able to prove that the complainant was under 18, the defendant will be taken not to have reasonably believed that the complainant was over 18 unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it. This is because

where a familial relationship exists (and the defendant knows this), the adult will normally have had some contact (often, regular contact) with the child before the sexual activity takes place. He can therefore be more reasonably expected to be aware of the child's age.

Liability for this offence is not restricted to those over 18 as there may be cases where the abuser is another child for example, a 17 year old cousin could engage his 13 year old cousin in sexual activity. However, there are differing maximum penalties for adults and children. Where the defendant is aged 18 or over at the time of the sexual activity, the maximum penalty is 14 years imprisonment. Where the defendant is aged under 18 at the time of the sexual activity, the offence has a maximum penalty of 5 years imprisonment.

It is for the PPS to determine whether criminal proceedings are in the public interest. Factors to be considered when making such a decision might include, but are not limited to, whether the activity was mutually agreed, and the difference in ages between the two parties. Where the touching involves penetration of either A or B's vagina, anus or mouth, the offence is triable on indictment only. In all other circumstances the offence may be tried summarily or on indictment.

Article 33: Inciting a child family member to engage in sexual activity

Article 33 makes it an offence for a person (A) intentionally to incite a child family member (B) (as defined at Article 34) aged under 18 either to touch A or to allow him/herself to be touched by A, where the touching is sexual. It is not necessary for the activity to take place for the offence to be committed.

An example of this offence would be where A encourages B to masturbate A or cajoles B into agreeing to have sex with him. If the activity was prevented from taking place, for example, because someone else walked into the room, the offence would nevertheless be complete.

The explanatory paragraphs which relate to the Article 32 offence of "sexual activity with a child family member" also apply to this offence.

Article 34: Family relationships

Article 34 lists the relationships relevant for the purposes of Articles 33 and 34.

The definition of familial relationships in Article 34 extends beyond the immediate blood relatives of the child to cover more distant family members who are, or who have been, part of the child's household or who are, or have at any time held a position of trust in relation to the child. In addition, the prohibited relationships include those who live in the same household as the child and who are regularly involved in caring for, training or supervising or being in sole charge of the child.

The definition of the family unit is drawn into three categories:

- core family members, including adoptive relationships (parents, current or former foster parents, grandparents, brothers, sisters, half-brothers, half-sisters, aunts and uncles). For the purposes of Articles 32 and 33 this offence may be committed as long as the victim is under 18, so for example, even where A is no longer a child's foster parent, he will commit an offence by having sex with that child while the child is under 18;
- wider family members who live, or have lived, in the same household as the child or who are, or have been, regularly involved in caring for, training or supervising or being in sole charge of the child (stepparents, cousins, stepbrothers and stepsisters, current or former foster siblings). Where the relationship with the child ceases (for example, where A ceases to be the partner of the child's mother), the offence will still be committed if A has sex with the child while the child is under 18; and

- other persons who are living in the same household as the child and who hold a position of trust or authority in relation to the child at the time of the alleged offence (e.g. a lodger who regularly baby-sits the child). This category of relationship differs from the other two categories in that an offence will not be committed if A has a lawful sexual relationship with the child after the familial relationship has ceased, even where the child is under 18.

Paragraph (5) provides definitions of some of the terms used in this Article, e.g. aunt, cousin, foster parent, stepparent and partner.

Article 35: Articles 32 and 33: exception for spouses and civil partners

Article 35 provides that, where a person is lawfully married to or the civil partner of a young person under 18 at the time of engaging in activity that would otherwise be an offence under Articles 32 and 33, he shall not be guilty of this offence.

Article 36: Articles 32 and 33: sexual relationships which pre-date family relationships

A person is not liable for a familial child sex offence under Articles 32 or 33 where a lawful sexual relationship existed between the parties immediately before the onset of the circumstances giving rise to the familial relationship. An example of this would be where two 16 year olds are in a sexual relationship and the girl's father and boy's mother subsequently marry. The requirement that the sexual relationship be lawful means that the defence would not apply, in the above situation for example, if the two children were under 16. It is for the defendant to prove that the lawful sexual relationship existed prior to the position of trust arising.

Abuse of children under 18 through prostitution and pornography

Articles 37 to 40 introduce a new set of offences specifically dealing with the exploitation of children through prostitution and pornography which provide protection for all children up to the age of 18.

The offences are not committed where the defendant reasonably believes that a child in reality aged 13-17 is aged 18 or over. It will be for the prosecution to prove that A did not reasonably believe that the child was aged 18 or over. Where the child is aged under 13, the defendant will commit the offence regardless of any reasonable belief about the child's age.

Article 37: Paying for sexual services of a child

Article 37 makes it an offence for any person intentionally to obtain for himself the sexual services of a child aged under 18, where, in advance of obtaining those services, he has made or promised payment, or knows that another person has made or promised such payment. The payment can be made or promised to the child, or another person, for example the child's pimp, or parent.

Paragraph (2) specifies that "payment" means any financial advantage. This means that it covers not only money changing hands, but also a discharge of an obligation to pay such as the waiving of a debt, or provision of goods or services free of charge or at a reduced cost, for example supplying illegal drugs free or for less than street value. "Services" in this context includes the provision of sexual services.

Paragraph (3) sets out the circumstances under which the maximum penalty for this offence would be life imprisonment on conviction on indictment. Those circumstances are where the child is under 13 years old, and the sexual activity paid for involved penetration of the child's anus or vagina with any part of the adult's body or any other object, penetration of the child's mouth with the adult's penis, penetration by the child of the adult's anus or vagina, with any part of the child's body or anything else, or penetration of the adult's mouth with the child's penis.

Paragraph (4) states that where the offence involved a child under 13 but there was no penetration as set out in paragraph (3), or where the offence involved any sexual activity with a child aged 13, 14 or 15, the

maximum penalty for the offence is 14 years imprisonment, and the offence is triable summarily or on indictment.

Paragraph (5) explains that where the offence involves a child aged 16 or 17, the offence is triable summarily or on indictment and has a maximum penalty of 7 years imprisonment.

Article 38: Causing or inciting child prostitution or pornography

Article 38 makes it an offence for a person (A) intentionally to cause or incite a child under 18 into prostitution or involvement in pornography in any part of the world. The prostitution or pornography itself does not need to take place for the offence to be committed.

This offence is targeted at the recruitment into prostitution or pornography of a child who is not engaged in that activity at the time. This covers both first time recruitment, and re-recruitment of a child who has previously been involved but is not currently involved at the time. (Where the child is already involved in prostitution or pornography, the offence of controlling a child prostitute or a child involved in pornography at Article 39 will be the appropriate one to consider.)

The offence would be committed where a “pimp” makes a living from the prostitution of others and encourages new recruits to work for him. It could also cover where the defendant forces the victim to take part in child pornography for any reason (for example in order to pay the rent for the accommodation they share).

The causing or inciting must take place in Northern Ireland. However, the prostitution or pornography can take place, or be intended to take place, in any part of the world, for example, a “pimp” in Northern Ireland might use the internet to arrange the recruitment of children into prostitution in Thailand.

Unlike the equivalent adult offence at Article 62, there is no requirement that the prostitution or pornography must be done for the gain of A.

In cases relating to prostitution where the prosecution are not confident that they can prove beyond reasonable doubt that the defendant did not reasonably believe that the child was 18 or over, and where it can be proved that the defendant acted for, or in the expectation of gain, the defendant may also be charged with the offence at Article 62 (causing or inciting prostitution for gain) which covers the recruitment into prostitution of persons of any age. This carries a lower maximum penalty of 7 years.

The offence is triable summarily or on indictment and has a maximum penalty of 14 years.

Article 39: Controlling a child prostitute or a child involved in pornography

Article 39 makes it an offence for a person (A) intentionally to control any of the activities of a child (B) that relate to B’s prostitution or involvement in pornography in any part of the world.

“Any of the activities” is specified to ensure that it captures situations in which only part of the child’s time is controlled. An example of the type of behaviour that the offence targets is where A directs B to charge a certain price for a particular sexual service and B complies with this request or direction. Alternatively, it could be directing a child to pose for an indecent photograph or film.

The controlling must take place in Northern Ireland. However, the prostitution or pornography can take place in any part of the world, for example a person in Northern Ireland might give directions over the telephone regarding the price that a child prostitute in Amsterdam should charge for sexual services.

Unlike the equivalent adult offence at Article 63, there is no requirement that the prostitution or pornography must be done for the gain of A.

In cases relating to prostitution where the prosecution are not confident that they can prove beyond reasonable doubt that the defendant did not reasonably believe that the child was 18 or over, and where it can be proven that the defendant acted for, or in the expectation of gain, the defendant may also be charged with the offence at Article 63 (controlling prostitution for gain) which covers the recruitment into prostitution of persons of any age. This carries a lower maximum penalty of 7 years.

The offence is triable summarily or on indictment and has a maximum penalty of 14 years.

Article 40: Arranging or facilitating child prostitution or pornography

Article 40 makes it an offence for a person (A) to arrange or facilitate the involvement of a child (B) in prostitution or pornography in any part of the world.

The offence would cover, for example, A delivering B to a place where he/she will be used to make pornography, A making practical arrangements for the shooting of indecent photographs of B, or a landlord (A) knowingly allowing his flat to be used as a location for child prostitution.

The arranging or facilitating must take place in Northern Ireland. However, the prostitution or pornography can take place in any part of the world, for example a person in Northern Ireland might make arrangements in correspondence or over the internet for the filming of a child in a pornographic film in Cambodia.

There is no requirement that the prostitution or pornography must be carried out for the gain of A.

The offence is triable summarily or on indictment and has a maximum penalty of 14 years.

Article 41: Articles 38 to 40: interpretation

Article 41 explains, for the purposes of Articles 38 to 40 the terms “pornography”, “prostitute” and “payment”.

Paragraph (1) gives a definition of “involved in pornography” as when an indecent image of the person is recorded.

Paragraph (2) defines “prostitute” as someone 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 themselves or a third person.

Paragraph (3) defines “payment” in relation to the definition of “prostitute” above, as any financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount.

Indecent photographs of children under 18

Article 42: Indecent photographs of persons aged 16 or 17

Article 42 amends the Protection of Children (Northern Ireland) Order 1978 so that the offences under that Order of taking, making, permitting to take, distributing, showing, possessing with intent to distribute, and advertising indecent photographs or pseudo-photographs of children will now also be applicable where the photographs concerned are of children of 16 or 17 years of age. The same change applies to the offence of possessing an indecent photograph or pseudo-photograph of a child at Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (Article 15(5) applies the 1978 Order definition of “child”).

The Article is intended to provide additional protection to children of this age particularly from widespread dissemination of photographs, not least since once they are distributed on the internet they can never be recalled.

It was believed, however, that use of photographs within an established relationship should not be criminalized. Therefore the Article also creates a number of conditions which if satisfied will mean that the defendant is not guilty of an offence under Article 3(1)(a), (b) or (c) of the 1978 Order (provided that the offence charged relates to a photograph and not a pseudo-photograph).

The conditions in relation to an offence under Article 3(1)(a) of the 1978 Order (taking or making indecent photographs) are as follows:

- Firstly, the defendant must prove that the photograph in question was of the child aged 16 or over and that at the time of the taking or making of the photograph he and the child were married, were civil partners of each other, or living together as partners in an enduring family relationship (Article 3B(1)).
- Secondly, the defendant must show that there is enough evidence 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 consented (Article 3B(4)).
- Thirdly, the photograph must not be one that shows a person other than the child and the defendant (Article 3B(3)).

If any of these conditions is not satisfied, the prosecution need only prove the offence as set out in Article 3(1)(a) of the 1978 Order. However, if the three conditions are satisfied, the defendant is not guilty of the offence unless the prosecution also prove that the child did not consent and that the defendant did not reasonably believe that the child consented (Article 3B(4)).

The conditions in relation to an offence under Article 3(1)(b) of the 1978 Order (distributing or showing indecent photographs) are as follows:

- Firstly, the defendant must prove that the photograph in question was of the child aged 16 or over, and that either at the time of distributing or showing it, or at the time of obtaining it, he and the child were married, were civil partners of each other, or living together as partners in an enduring family relationship (Article 3B(1) and (2)).
- Secondly, the photograph must not be one that shows a person other than the child and the defendant (Article 3B(3)).

If either of these conditions is not satisfied, the prosecution need only prove the offence as set out in Article 3(1)(b) of the 1978 Order, but if both the conditions are satisfied, the defendant is not guilty of the offence unless the prosecution prove that the showing or distribution was to a person other than the child (Article 3B(5)).

The conditions in relation to an offence under Article 3(1)(c) of the 1978 Order (being in possession of indecent photographs with a view to their being distributed or shown) are as follows:

- Firstly, the defendant must prove that the photograph in question was of the child aged 16 or over and that either at the time of his possession of it with a view to distributing or showing it, or at the time when he obtained it, he and the child were married, were civil partners of each other, or living together as partners in an enduring family relationship (Article 3B(1) and (2)).

- Secondly, the defendant must show that there is enough evidence to raise an issue as to whether the child consented (or the defendant reasonably believed that the child consented) to the photograph's being in the defendant's possession, and also as to whether the defendant had the photograph in his possession with a view to distributing or showing it to a person other than the child (Article 3B(6)).
- Thirdly, the photograph must not be one that shows a person other than the child and the defendant (Article 3B(3)).

If any of these conditions is not satisfied, the prosecution need only prove the offence as set out in Article 3(1)(c) of the 1978 Order. But if the three conditions are satisfied, the defendant is not guilty of the offence unless the prosecution also prove either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed to a person other than the child.

Similar provision is made in relation to an offence under Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (possession of indecent photograph of a child). The conditions are as follows:

- Firstly, the defendant must prove that the photograph in question was of the child aged 16 or over and that at the time when he possessed the photograph, or at the time when he obtained it, he and the child were married, were civil partners of each other, or living together as partners in an enduring family relationship (Article 15A(1) and (2)).
- Secondly, the defendant must show that there is enough evidence to raise an issue as to whether the child consented to the photograph being in his possession or as to whether the defendant reasonably believed that the child so consented (Article 15A(4)).
- Thirdly, the photograph must not be one that shows a person other than the child and the defendant (Article 15A(3)).

If any of these conditions is not satisfied, the prosecution need only prove the offence as set out in Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988. But if the three conditions are satisfied, the defendant is not guilty of the offence unless the prosecution prove that the child did not consent and that the defendant did not reasonably believe that the child consented (Article 15A(4)).

4 Sexual offences against a person with a mental disorder

Articles 43-57 deal with offences committed against persons with a mental disorder. These Articles apply in cases where the victim is unable to agree to the sexual activity because of a mental disorder which impedes their choice (43-46) or it might appear that the victim had agreed to the sexual activity but because of a mental disorder which makes them vulnerable to inducements, threats or deceptions (47-50) or because they are in a relationship of care (51-54), their consent was not or could be deemed not to have been freely given. However, it is important to appreciate that where a person with a mental disorder is able to consent freely to sexual activity, they have the same rights to engage in consensual sexual activity as anyone else.

It is also important to note that where a person with a mental disorder did not consent to the sexual activity, there are other offences such as rape, sexual assault etc., which also apply.

"Mental disorder" is defined in Article 2(9) as having "the meaning given by Article 3 of the Mental Health (Northern Ireland) Order 1986 ". In that Order, mental disorder means "mental illness, mental handicap and any other disorder or disability of mind ". This definition includes "learning disability".

Offences against persons with a mental disorder impeding choice

Articles 43-46 deal with offences where the victim is unable to refuse to engage in or to watch a sexual activity because of, or for a reason related to, a mental disorder. It is a requirement of these offences that the offender knew or could reasonably have been expected to know that the victim had a mental disorder and that because of it he/she was likely to be unable to refuse.

"Sexual" is defined in Article 4. It states that "penetration, touching or any other activity is sexual if a reasonable person would consider that:

- whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
- 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."

Paragraph (2) of each Article states that a victim is unable to refuse if he/she lacks the capacity to choose whether to agree to the touching or other activity (whether because he/she lacks sufficient understanding of the nature of or the reasonably foreseeable consequences of what is being done, or for any other reason or is unable to communicate such a choice to the offender). Sufficient understanding of the nature and reasonably foreseeable consequences might include knowing that sexual activity is different from personal care and that some sexual activities can lead to pregnancy or the transmission of disease. Other reasons why a person may be unable to refuse might include not understanding that they had a choice through institutionalization, or because they suffered from a condition that might affect their ability to make a choice.

Article 43: Sexual activity with a person with a mental disorder impeding choice

This Article makes it an offence intentionally to touch someone sexually when that person, because of, or for a reason related to, a mental disorder is unable to refuse.

"Touching" is defined at Article 2(11) and covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. It includes penetration.

The offence is triable only on indictment with a maximum penalty of life imprisonment where the sexual touching involves penetration. In all other cases, the offence is triable summarily or on indictment and has a maximum penalty of 14 years imprisonment.

Article 44: Causing or inciting a person with a mental disorder impeding choice, to engage in sexual activity

This Article makes it an offence intentionally to cause or incite someone to engage in a sexual activity when that person, because of, or for a reason related to, a mental disorder is unable to refuse.

It covers a range of behaviour, including the offender causing or inciting the victim to have sexual intercourse with him or causing or inciting the victim to masturbate a third person. The offence is committed if incitement takes place, even if sexual activity does not actually happen because, for example, a relative of the victim intervenes to prevent it.

The offence is triable only on indictment with a maximum penalty of life imprisonment where the sexual touching involves penetration. In all other cases the offence is triable summarily or on indictment and has a maximum penalty of 14 years imprisonment.

Article 45: Engaging in sexual activity in the presence of a person with a mental disorder impeding choice

This Article makes it an offence to engage in sexual activity for the purposes of sexual gratification in the presence of someone, or in a place from which that person can observe them, when that person, because of, or for reasons related to, a mental disorder is unable to refuse.

The offence is only committed where the offender knows or believes that the victim is aware of the sexual activity or intends him/her to be aware of it. The victim might be aware of the sexual activity because he/she is watching it at the offender's behest or because the offender is describing to the victim what he is doing. It would also cover the situation where the offender performs a sexual act in a place where he knows that he can be seen by a person with a mental disorder, for example, via a webcam.

The offence is intended to cover the situation where someone seeks sexual gratification not from the sexual act itself but rather from the fact that he is performing that act in the presence or intended presence of a person with a mental disorder. The motive of sexual gratification is a necessary safeguard intended to avoid capturing those who engage in sexual activity in front of a person with a mental disorder for a legitimate reason. For example, someone who kisses their partner in the presence of someone with a mental disorder impeding choice could be deemed to be engaging in sexual activity intentionally in front of them and might otherwise be caught by the offence even though their presence was not part of the sexual gratification.

The offence is triable summarily or on indictment and has a maximum penalty of 10 years imprisonment.

Article 46: Causing a person, with a mental disorder impeding choice, to watch a sexual act

This Article makes it an offence for a person, for the purposes of his own sexual gratification, to cause a person to watch a sexual act, or to look at an image of any person engaging in sexual activity, when that person because of, or for reasons related to, a mental disorder is unable to refuse. The act can be live or recorded. Examples of this offence would be where a person forces a person with a mental disorder to watch two people have sex or forces them to watch a pornographic film or sends them indecent images over the internet.

The term "image" is defined in Article 2(7) and means a moving or still image and includes an image produced by any means and, where the context permits, a three dimensional image.

The offence is triable summarily or on indictment and has a maximum penalty of 10 years imprisonment.

Inducements etc. to persons with a mental disorder

Articles 47-50 deal with offences where the victim is persuaded to engage in or watch a sexual act by means of an inducement offered or given, a threat made or a deception practised for that purpose. In these offences, there is no need to prove that the victim is unable to refuse.

An inducement might be promising the victim presents of anything from CDs to a holiday, a threat might be stating that a member of the victim's family might be hurt and a deception might be suggesting that the victim would get into trouble if he/she does not engage in sexual activity, or persuading him/her that it is expected that friends should engage in sexual activity.

The offence requires that the offender knew or could reasonably have been expected to have known that the victim had a mental disorder.

"Sexual" is defined in Article 4. It states that "penetration, touching or any other activity is sexual if a reasonable person would consider that:

- whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
- 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."

Article 47: Inducement, threat or deception to procure sexual activity with a person with a mental disorder

Article 47 makes it an offence intentionally to touch someone sexually when that person has a mental disorder and their agreement to the touching is obtained by an inducement offered or given, a threat made or a deception practised.

"Touching" is defined at Article 2(11) and covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. It includes touching amounting to penetration.

The offence is triable only on indictment with a maximum penalty of life imprisonment where the sexual touching involves penetration. In all other cases the offence is triable summarily or on indictment and has a maximum penalty of 14 years imprisonment.

Article 48: Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception

Article 48 makes it an offence to cause a person with a mental disorder to engage in or agree to engage in sexual activity when their agreement is obtained through an inducement offered or given, a threat made or a deception practised.

This Article differs from Article 47 in that the person perpetrating the inducement, threat or deception need not be the one with whom the victim is caused to engage in or agree to sexual activity. The person might use these means to cause the victim to engage in or agree to sexual activity with a third person, for example the defendant's friend. Once the defendant has caused the person to agree to sexual activity the offence is complete. "Causing a person to agree" is used in preference to "incite" as it rests better with "inducement, threat or deception" which is simply a description of forms of incitement.

The offence is triable only on indictment with a maximum penalty of life imprisonment where the sexual touching involves penetration. In all other cases, the offence is triable summarily or on indictment and has a maximum penalty of 14 years imprisonment.

Article 49: Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

Article 49 makes it an offence to engage in a sexual act, for the purposes of sexual gratification, in the presence of a person with a mental disorder when their agreement to be present is obtained by an inducement, threat or deception.

The offence is only committed where the offender knows or believes that the victim is aware of the sexual activity or intends him/her to be aware of it. The victim

might be aware of the sexual activity because he/she is watching it at the offender's behest or because the offender is describing to the victim what he is doing. It would also cover the situation where the offender performs a sexual act in a place where he knows that he can be seen by a person with a mental disorder, for example, via a webcam.

The offence is triable summarily or on indictment and has a maximum penalty of 10 years imprisonment.

Article 50: Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

Article 50 makes it an offence to cause someone to watch a sexual act or to look at an image of someone engaging in a sexual act for sexual gratification where their agreement was obtained by an inducement, threat or deception.

The term "image" is defined in Article 2(7) and means a moving or still image and includes an image produced by any means and, where the context permits, a three dimensional image.

The offence is triable summarily or on indictment and, on indictment, has a maximum penalty of 10 years imprisonment.

Care workers for persons with a mental disorder

Articles 51-54 deal with the situation where a care worker involves someone in his care, who has a mental disorder, in sexual activity. In these offences any sexual activity between the care worker and the person with the mental disorder is prohibited whilst that relationship continues. For these offences, therefore, the apparent consent of the victim is only an issue in as much as it may absolve the defendant from a non-consensual offence such as rape or sexual assault.

Paragraph (2) of each Article states that where 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 the person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably be expected to know. In that case, it would be for the prosecution to prove that the offender knew or it was reasonable to expect them to have known that the other person had a mental disorder.

"Sexual" is defined in Article 4. It states that "penetration, touching or any other activity is sexual if a reasonable person would consider that:

- whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
- 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."

The relationships of care that are covered by these offences are set out in Article 55.

Article 51: Care workers: sexual activity with a person with a mental disorder

Article 51 makes it an offence for a care worker to engage in sexual touching with a person with a mental disorder where he is involved in his care.

"Touching" is defined at Article 2(11) and covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. It includes penetration.

The offence is triable only on indictment with a maximum penalty of 14 years imprisonment where the sexual touching involves penetration. In all other cases, the offence is triable summarily or on indictment and has a maximum penalty of 10 years imprisonment.

Article 52: Care workers: causing or inciting sexual activity

Article 52 makes it an offence for a care worker intentionally to cause or incite another person to engage in sexual activity when that person has a mental disorder and he is involved in his care.

It will cover a range of behaviour, including the care worker causing or inciting the victim to have sexual intercourse with him or causing or inciting the victim to masturbate a third person. The offence is committed if incitement takes place, even if sexual activity does not actually happen because, for example, a relative of the victim intervenes to prevent it.

The offence is triable only on indictment with a maximum penalty of 14 years imprisonment where the sexual touching involves penetration. In all other cases, the offence is triable summarily or on indictment and has a maximum penalty of 10 years imprisonment.

Article 53: Care workers: sexual activity in the presence of a person with a mental disorder

Article 53 makes it an offence for a care worker intentionally to engage in sexual activity in the presence of a person who has a mental disorder when he is involved in his care. The purpose must be to obtain sexual gratification from the fact that the victim is present.

The motive of sexual gratification is a necessary safeguard intended to avoid capturing a care worker who engages in sexual activity, in front of a person with a mental disorder in his care, for a legitimate reason such as providing sex education in accordance with an agreed care plan. Another example might be where a care worker kisses his partner in front of the person in his care. He could be deemed to be engaging in sexual activity intentionally in the presence of a person with a mental disorder and might otherwise be caught by the offence. The offence would not be committed as the presence of the person with a mental disorder is not an element of any sexual gratification.

The offence is only committed where the offender knows or believes that the victim is aware of the sexual activity or intends him/her to be aware of it. The victim might be aware of the sexual activity because he/she is watching it at the offender's behest or because the offender is describing to the victim what he is doing. It would also cover the situation where the offender performs a sexual act in a place where he knows that he can be seen by a person with a mental disorder, for example, via a webcam.

The offence is triable summarily or on indictment and, on indictment, has a maximum penalty of seven years imprisonment.

Article 54: Care workers: causing a person with a mental disorder to watch a sexual act

Article 54 makes it an offence for a care worker intentionally to cause a person with a mental disorder in his care to watch a sexual act or to look at an image of someone engaging in a sexual activity. The purpose must be to obtain sexual gratification from the fact that the victim is watching the act or looking at the image. It is not intended that this Article should prevent care workers from providing legitimate sex education and this requirement ensures, for example that a care worker showing a person with a mental disorder in their care a video of a sexual act as part of an approved care plan will not be liable for this offence.

The term "image" is defined in Article 2(7) and means a moving or still image and includes an image produced by any means and, where the context permits, a three dimensional image.

The offence is triable summarily or on indictment and, on indictment, has a maximum penalty of seven years imprisonment.

Article 55: Care workers: interpretation

This Article defines a relationship of care for the purposes of Articles 51 to 54. This relationship is defined broadly to cover circumstances where a relationship exists because one person has a mental disorder and another person is regularly involved (or likely to be involved) face to face in their care and that care arises from the mental disorder, whether on a primary or ancillary level, and whether on a paid or voluntary basis. It can include, for example, not only doctors, nurses and social workers but also receptionists, cleaning staff, advocates or voluntary helpers.

Paragraphs (2) to (4) describe the circumstances in which a relationship of care exists. Paragraph (2) deals with the case where the person cared for is accommodated in a care home, community home, voluntary home or children's home. An example of a relationship covered by paragraph (2) would be where the care worker is a member of staff in a care home and the person with a mental disorder is resident there. Paragraph (3) deals with the case where the person cared for is in receipt of services provided by a Health and Social Services Board or Trust or private medical agency or an independent clinic or independent hospital. An example of a relationship covered by paragraph (3) would be where the care worker is a receptionist at a clinic attended regularly by the person with a mental disorder. In these cases, the carer provides functions in the home or for the body or agency in the course of employment which bring him into, or are likely to bring him into, regular face to face contact with the person cared for. Paragraph (4) deals with any situation where care, assistance or services are provided, whether in the course of employment or otherwise. In this case, the care worker must be involved, or be likely to become involved, in regular face to face contact with the person with a mental disorder. An example of a relationship covered by paragraph (4)

would be where the care worker takes the person with a mental disorder on outings every week or visits him/her at home to provide complementary therapy. The inclusion of the situation where the care worker is "likely to have" regular face to face contact is in recognition of the fact that a relationship of care could be established on the first occasion.

Paragraph (5) defines the homes, bodies and agencies covered by the Article.

Paragraph (5) also defines the term "employment".

Article 56: Articles 51 to 54: exception for spouses and civil partners

This Article states that an offence is not committed under Articles 51 to 54 if the carer and the person cared for are legally married or civil partners of each other and the latter is 16 years of age or older.

It is for the carer to prove that the parties were lawfully married or civil partners of each other at the time.

Article 57: Articles 51 to 54: sexual relationships which pre-date care relationships

This Article provides a defence for the carer if he can prove that his sexual relationship with the person in his charge pre-dated the start of the relationship of care, as long as that sexual relationship was lawful. This would cover the situation, for example, where someone, who looked after his or her partner following the onset of a mental disorder, continues to have a consensual sexual relationship.

5 Prostitution

Article 58: Interpretation of this Part

This Article defines terms used in Articles 59 to 61.

Paragraph (2) applies the Article 41(2) definition of “prostitute” or “prostitution” to the offences.

Paragraphs (3) and (4) define “payment” and “gain” as any financial advantage, including the discharge of a debt or obligation to pay, such as waiving a debt, or the provision of goods or services gratuitously or at a discount, for example a quantity of illegal drugs at no or substantially reduced cost. The provision of services can include sexual services so that the “gain” can be the provision of sexual services to the defendant free or at a discount. “Gain” also includes the good will of another person, which is, or appears likely in the future to bring financial advantage. For example, this would cover A inciting B to work as a prostitute for C, where A expects this will lead to C providing him (A) with cheap drugs at a later date.

Paragraph (5) provides that conduct is persistent if it takes place on two or more occasions in any period of three months.

Paragraph (6) defines “motor vehicle” and paragraph (7) defines “street” for the purposes of the offence as any bridge, road, lane, footway, subway, square, court, alley or passage whether thoroughfare or not, which is open to the public.

Article 59: Loitering or soliciting for purposes of prostitution

Article 59 makes it an offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution. Conduct is persistent if it takes place on two or more occasions in any period of three months.

Article 60: Kerb-crawling

Article 60 makes it an offence for a person A to solicit another person B (or different persons) for the purpose of prostitution from a motor vehicle while it is in a street or public place; or in a street or public place while in the immediate vicinity of a motor vehicle that he has just got out of or off. The soliciting must be persistent or in such a manner or in such circumstances as to be likely to cause annoyance to the person B (or other persons) solicited, or nuisance to other persons in the neighbourhood.

Paragraph (3) provides that soliciting another person for the purposes of prostitution is a reference to A soliciting that other person B to provide services as a prostitute to A.

Article 61: Persistent soliciting

Article 61 makes it an offence for a person A if in a street or public place to persistently solicit another person B (or different persons) for the purpose of prostitution. Paragraph (3) provides that soliciting another person for the purposes of prostitution is a reference to A soliciting that other person B to provide services as a prostitute to A.

Exploitation of prostitution

Articles 62 to 64 provide for offences tackling the exploitation of adult prostitution, and make all offences relating to prostitution gender-neutral.

Article 62: Causing or inciting prostitution for gain

Article 62 makes it an offence for a person (A) intentionally to cause or incite a person (B) into prostitution anywhere in the world where A does so for or in expectation of gain for himself or for a third party. The prostitution itself does not need to take place for the offence to be committed.

This offence covers those who recruit others into prostitution for their own gain or someone else's, regardless of whether this is achieved by force or otherwise. It covers not only the recruitment of those who have never before been involved in prostitution, but also those who may previously have been involved in it, but who are not currently involved in prostitution at the time. Where the person is already involved in prostitution, and is subject to the direction of the defendant, the latter may be charged with controlling prostitution under Article 63.

Whilst the offence is not specifically limited to where the person caused or incited to become a prostitute is 18 or over, it is primarily aimed at such cases, as causing or inciting the prostitution of those under 18 is dealt with by the offence at Article 38, which carries a higher penalty. However, where the prosecution may have difficulty proving that the defendant suspected of causing or inciting child prostitution under Article 38 did not reasonably believe that the child was 18 or over, the Article 62 offence could also be prosecuted to ensure that he does not escape liability altogether.

The causing or inciting must take place in the Northern Ireland. However, the prostitution can take place, or be intended to take place, in any part of the world, for example, a person in Northern Ireland might use the internet to recruit prostitutes to work in Eastern Europe.

The offence is framed in gender neutral terms so that it covers any person, male or female, causing or inciting the prostitution of any other person.

"Gain" is defined at Article 58 (4).

The offence is triable summarily or on indictment. It has a maximum penalty of 7 years imprisonment.

Article 63: Controlling prostitution for gain

Article 63 makes it an offence for a person (A) intentionally to control another person's (B's) activities relating to prostitution, in any part of the world, where A does so for, or in the expectation of, gain for himself or a third party. "Any of the activities" is specified to ensure that it captures situations in which only part of the B's time is controlled. It would cover those who control the price that a prostitute charges for different sexual services, who require a prostitute to work in a particular place or to provide sexual services to a particular number of men each night.

Whilst the offence is not specifically limited to where the person controlled as a prostitute is 18 or over, it is primarily aimed at such cases, as controlling the prostitution of those under 18 is dealt with by the offence at Article 39, which carries a higher penalty. However, where the prosecution may have difficulty proving that the defendant suspected of controlling a child prostitute under Article 39 did not reasonably believe that the child was 18 or over, the Article 63 offence could also be prosecuted to ensure that he does not escape liability altogether.

The controlling must take place in Northern Ireland. However, the prostitution can take place, or be intended to take place, in any part of the world, for example, a "pimp" in Northern Ireland might direct a woman in Malaysia to charge a higher price for sexual services to increase his income from her prostitution.

The offence is framed in gender neutral terms so that it covers any person, male or female, causing or inciting the prostitution of any other person.

"Gain" is defined at Article 58 (4).

The offence is triable summarily or on indictment. It has a maximum penalty of 7 years imprisonment.

Article 64: Keeping a brothel used for prostitution

Article 64 makes it an offence to keep a brothel used for prostitution.

The offence covers anyone who keeps, manages, or acts or assists in the management of a brothel to which people resort for practices involving prostitution. This offence enables the prosecution of anyone involved in any way in the running of premises where prostitution takes place. This offence could be used where it might be difficult for the prosecution to make out the element of “control” in the offence under Article 63, for example, where an owner of a brothel, or multiple brothels, exploits several prostitutes at his premises, but distances himself from the actual running of the premises.

The offence is triable summarily or on indictment and has a maximum penalty of 7 years imprisonment.

6 Miscellaneous sexual offences

Preparatory offences

Article 65: Administering a substance with intent

Article 65 makes it an offence for a person (A) intentionally to administer a substance or to cause any substance to be taken by another person (B) where A knows that B does not consent to taking that substance and where A intends to stupefy or overpower B so that any person can engage in sexual activity involving B.

The offence is intended to cover use of so-called "date rape drugs" (e.g. chloroform, Gammahydroxybutyrate (GHB) and Rohypnol) administered without the victim's knowledge or consent, but would also cover the use of any other substance with the relevant intention. It would cover A "spiking" B's drinks with alcohol where a) B did not know he/she was consuming alcohol or b) B knew he/she was drinking alcohol but had his/her drink "spiked" without his/her knowledge. It would not cover A encouraging B to get drunk so that A could have sex with B, where B knew that he/she was consuming alcohol.

The substance may be administered to B in any way, for example, in a drink (as in the example given above), by injection or by covering B's face with a cloth impregnated with the substance. The substance must be such as to render the victim incapable of giving genuine and voluntary agreement to sexual activity.

The offence applies both where A himself administers the substance to B, and where A causes the substance to be taken by B, for example where A persuades a friend (C) to administer a substance to B, so that A can have sex with B. This might, for example, be because C knows B socially and can more easily slip the substance into B's drink than A can. However, the intended sexual activity need not involve A. In the example given above it could be intended that C or any other person would have sex with B.

The offence would be made out where A administered the substance or caused B to take it (with the relevant

intent) regardless of whether any sexual activity took place, for example because a friend of B saw what was happening and intervened to protect B.

Where the intended sexual activity does take place, both the administering of the substance and the substantive sex offence could be charged. Even if the defendant was acquitted of the rape, because there was doubt as to whether the sexual activity had in fact taken place, it should still be possible to convict the person of the administration of the substance with intent to commit the sexual activity, if the intent is proved.

Where a person engages in sexual activity with another person knowing that he/she is under the influence of stupefying drugs administered by the defendant or someone else, and this sexual activity is one of the non-consensual offences under Articles 5 to 8 of this Order, it will be presumed that the complainant did not consent and that the defendant did not reasonably believe he/she had consented. This is provided for in the evidential presumption about consent at Article 9, paragraph (2)(f).

The term "sexual", used in this Article in the phrase "sexual activity", is defined in Article 4. The sexual activity covered by this offence extends beyond sexual intercourse to all forms of sexual activity including not only physical sexual contact such as masturbation or sexual touching but also activities such as stripping victims and taking photographs of them in pornographic poses. The sexual activity in this offence could involve A having sexual intercourse with or masturbating B; could involve A causing B to commit a sexual act upon him/herself (for example, masturbation); or could involve B and a third party engaging in sexual activity together, regardless of whether the third party had administered the substance.

The offence is triable summarily or on indictment, and has a maximum penalty of 10 years.

Article 66: Committing an offence with intent to commit a sexual offence

Article 66 makes it an offence for a person (A) intentionally to commit any criminal offence with intent to commit any relevant sexual offence as defined in paragraph (2).

“Relevant sexual offence” means any offence under the Order and includes an offence of aiding, abetting counselling or procuring such an offence. It also includes the offences set out in sections 57-59 of the Sexual Offences Act 2003 (trafficking for sexual exploitation).

This offence is intended to capture the situation where A commits a criminal offence but does so with the intention of committing a subsequent sexual offence, regardless of whether or not the substantive sexual offence is committed.

The offence would apply, for example, where A kidnaps the complainant (B) so that he can rape him/her but is caught by the police before committing the rape. It would also apply where A detained B in his flat with this intention, or assaulted B to subdue him/her so that he could more easily rape him/her. This offence is designed as a stand-alone offence, to be charged irrespective of whether or not the substantive sexual offence takes place. Where a sexual offence is actually committed, the defendant could, in principle, face prosecution for both offences.

Evidence of A’s intent might be adduced from what he says or does to the victim or intended victim, or from items in his possession at the time he commits the offence, for example condoms, lubricating jelly, pornographic images or rope.

Where the preparatory offence is kidnapping or false imprisonment, or the offence is committed by assault and the intended relevant sexual offence is rape or assault by penetration, the offence is triable on indictment only, and has a maximum penalty of life

imprisonment. In all other cases, the offence is triable summarily or on indictment and has a maximum penalty of 10 years.

Article 67: Trespass with intent to commit a sexual offence

Article 67 makes it an offence for A to intend to commit a “relevant sexual offence” (defined at paragraph (2) of Article 66) whilst he is on any premises where he is a trespasser, either knowing, or being reckless as to whether, he is trespassing. A person is a trespasser if he is on any premises without the owner’s or occupier’s consent, or other lawful excuse.

This offence is intended to capture, for example, the situation where a person (A) enters a building owned by B, or goes into B’s garden or garage without B’s consent, and he intends to commit a sexual offence against someone on the premises.

A separate offence is needed to cover trespass (as opposed to relying on Article 66) because trespass is a civil tort and not a criminal offence. Evidence of intent to commit a sexual offence would be drawn in the same way as for the offence at Article 66.

The offence is triable summarily or on indictment and has a maximum penalty of 10 years.

Sex with an adult relative**Article 68: Sex with an adult relative: penetration****Article 69: Sex with an adult relative: consenting to penetration**

Article 68 makes it an offence for a person (A) aged 16 or over intentionally to penetrate sexually a relative (B) who is aged 18 or over if he knows or could reasonably have been expected to know that B is his relative.

Article 69 makes it an offence for a person (A) aged 16 or over to consent to being penetrated sexually by a relative (B) aged 18 or over if he knows or could reasonably have been expected to know that B is his relative.

For either offence to be committed the penetration must be “sexual”, as defined at Article 4. The offence would therefore exclude penetration occurring for some other purpose, for example where one sibling helps another to insert a pessary for medical reasons.

A “relative” is defined in paragraph (2) as a parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

Adoptive relatives are included in these two offences. Paragraph 19 of Schedule 1 makes a consequential amendment to the Adoption (Northern Ireland) Order 1987, to the effect that the provision in the 1987 Order that makes an adoptive child a child of the adoptive parents does not apply in relation to these offences. For example, it will not be an offence under either of these Articles for an adoptive brother and sister aged over 18 to have sexual intercourse.

In cases where sexual activity was initiated when one of the parties was an adult and the other was a child under 18, there will normally be a presumption that the criminal responsibility for the offence should rest only with the person who was adult at onset and that no criminal responsibility should attach to the younger party. This will always be the case where the younger party was aged under 16 at the time of the alleged offence. However, these offences have specifically been drafted to apply to defendants aged 16 or over to cover the situation where, for example, a dominant brother aged 17 incites his submissive sister aged 18 into a sexual relationship, having groomed her for this purpose and with the expectation that she will be held responsible because she is an adult. Applying the offences to 16 and 17 year olds means that where a child of 17 is having sex with a family member aged 18, the 18 year old could be prosecuted for a familial child sex offence and the 17 year old could be prosecuted for one of the “sex with an adult relative” offences, with the decision about which party should be prosecuted being based on the facts of the individual case.

The defendant is not guilty of this offence if he does not know that he is related to the complainant. Where the prosecution is able to establish that the defendant is related to the complainant in one of the ways set out in paragraph (2), the defendant will be taken to have known or to have reasonably been expected to know that they were 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. Except in the most unusual circumstances, a person can reasonably be expected to be aware of such close familial ties.

The offences follow on from the offence of familial sexual abuse of a child in that some of the relationships prohibited by law when one or both of the participants is a child will continue to be prohibited once both parties are adults, for example, sex between a half-brother and sister. In other cases, relationships prohibited where one party is under 18 will be lawful once both parties are adults, for example, sex between a step-brother and sister.

The offences prohibit any sexual penetrative acts between family members, regardless of the gender or sexual orientation of the parties, thus broadening the scope of the present incest offences.

Both offences are triable summarily or on indictment and have a maximum penalty of 2 years imprisonment.

Other offences

Articles 70 to 75 cover miscellaneous sexual offences ranging from exposure and voyeurism to sexual penetration of a corpse.

Article 70: Exposure

This Article makes it an offence if someone intentionally exposes his genitals with the intention that another person will see them and be caused alarm or distress.

“Genitals” refers to male or female sexual organs.

It is not necessary for the offence that someone should have seen the genitals or have been caused alarm or distress. It is the intent that defines the offence.

The offence would not apply to a naturist who intentionally exposes his genitals in the knowledge that they may be seen by others but without the intention to cause alarm or distress. Similarly, it would exclude an exhibitionist streaker at a sports occasion.

The offence is triable summarily, or on indictment with a maximum penalty of two years imprisonment.

Article 71: Voyeurism

Paragraph (1) makes it an offence, for the purposes of sexual gratification, to observe another person doing a private act in the knowledge that the other person does not consent to being observed for that purpose. This would include, for example, someone looking through a window or peephole at someone using the lavatory or a couple engaged in sexual intercourse in their house.

Paragraph (2) makes it an offence to operate equipment with the intention of enabling another person, for their sexual gratification, to observe a third person doing a private act in the knowledge that the third person has not consented to this being done for another person's sexual gratification. This would cover the case, for example, where a landlord operated a webcam to allow people, via the internet, to view for their sexual gratification live images of his tenant getting undressed.

Paragraph (3) makes it an offence for a person (A) to record another person doing a private act with the intention that A or a third person will, for the purposes of sexual gratification look at the recorded image, when it is known that the person recorded does not consent to being recorded for that purpose. This would cover the case, for example, where a person secretly recorded another person masturbating in the latter's bedroom to show others for their sexual gratification. Proof that the recording was done for the sexual gratification of others

might come from the fact that it was posted on a pornographic website or was in a pornographic magazine. The offence would catch the person who records the image, rather than the person who looks at it.

Paragraph (4) makes it an offence for a person to install equipment, or to construct or adapt a structure, with the intention of enabling himself, or another person, to commit an offence under paragraph (1). This would cover the case where someone installed a two-way mirror in a house with the intention of spying on someone for sexual gratification. It would not be necessary for the two-way mirror to have been used in that way.

The offence is triable summarily or on indictment with a maximum penalty of two years imprisonment.

Article 72: Voyeurism: interpretation

For the purposes of Article 71, this Article defines a "private act" as an act done in a place and in circumstances where the person would reasonably expect privacy and either the person's genitals, buttocks or breasts are exposed or covered only by underwear, or the person is using a lavatory or the person is doing a sexual act that is not of a kind ordinarily done in public. It would not, for example, include observing people kissing or cuddling in private.

For the purposes of Article 71, this Article states that a "structure" includes "a tent, vehicle or vessel or other temporary or movable structure".

Article 73: Intercourse with an animal

Article 73 makes it an offence for a person to a) intentionally penetrate the vagina or anus of a living animal with his penis where he knows or is reckless as to whether that is what he is penetrating; or b) intentionally cause or allow her vagina or his or her anus to be penetrated by the penis of a living animal where he or she knows or is reckless as to whether that is what is doing the penetrating.

A person would be “reckless” if he foresaw a risk that he was penetrating the vagina or anus of a living animal or being penetrated by the penis of a living animal and took that risk when it was not reasonable to do so. It would be for the jury to decide whether it was reasonable to take such a risk, depending on the circumstances of the case.

The reference to vagina or anus in this context is further explained at paragraphs (12) and (13) of Article 2. References to “vagina” include vulva and in relation to an animal, references to the vagina or anus include references to any similar part.

This offence is related solely to penile penetration in relation to animals. There may be cases where an individual derives sexual pleasure from causing cruelty to animals or where an individual penetrates the sexual organs of an animal with objects, rather than the penis. Such cases should be tried under the cruelty provisions of the Welfare of Animals Act (Northern Ireland) 1972 since it may well be impossible to distinguish whether the individual was motivated by simple cruelty or a desire for sexual gratification.

The offence is triable summarily or on indictment and has a maximum penalty of 2 years.

Article 74: Sexual Penetration of a corpse

Article 74 makes it an offence for a person (A) intentionally to penetrate any part of the body of a dead person (B) with his penis.

The offence is committed when A knows or is reckless as to whether he is penetrating any part of a dead body. A person would be “reckless” if he foresaw a risk that he was penetrating part of a corpse and took that risk when it was not reasonable to do so.

This is intended to cover when A knows he is penetrating a dead body, for example in a mortuary, or where A is reckless as to whether B is alive or dead. It will not cover situations where A penetrates B fully believing B to be alive, but in fact B is dead, or where B unexpectedly dies during intercourse.

The offence is triable summarily or on indictment and has a maximum penalty of 2 years.

Article 75: Sexual activity in a public lavatory

This Article makes it an offence for a person to engage in sexual activity in a public lavatory. It is not necessary for anyone to have been alarmed or distressed by his activity.

A public lavatory is defined as a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise.

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. A distinct definition of sexual is used in this Article (as opposed to the one applied elsewhere in the Order and given in Article 4) because it is unlikely that the third party who witnesses the activity will have information about the purpose of the defendant. For this reason, the sexual activity is limited to that which a reasonable observer would see as unambiguously sexual.

This offence is triable summarily only and has a maximum penalty of six months imprisonment or a fine. This offence does not attract the notification requirements of the Sexual Offences Act 2003.

7 Supplementary and general

Article 76: Offences outside the United Kingdom

Article 76 makes it an offence for a British citizen or UK resident to commit certain acts overseas against a child if such an act would amount to an offence in Northern Ireland.

The offence will apply to sexual offences committed against anyone under 18. The exception to this would be those age-specific offences where the victim must be under 16 or under 13 in order for the offence to be committed.

The exact description of the offence does not have to be the same in both the UK and the foreign country. For example, the offence of rape could apply to a British man who raped a child in another country although that offence was described differently under the law in that country.

This law is intended to cover, for example, an offender who commits an offence against a child family member or a child living in the foreign country while they are on holiday and the offence goes undetected until their return to the UK.

Article 77: Exceptions to aiding, abetting and counselling

Article 77 provides that a person will not be guilty of aiding, abetting or counselling any of the child sex offences in paragraph (2) if he is acting to protect the child's physical safety; protect them from sexually transmitted infection; prevent the child becoming pregnant; or promote their emotional well-being by the giving of advice.

This exception covers not only doctors and other health professionals, but anyone, including parents, other relatives and friends whose only motivation is the

protection of the child. For example, a parent who advises his 14 year old son to protect himself with condoms because he knows that the boy is already having sex with his girlfriend would be covered by this exception. Other examples would include a youth worker who accompanies a young person to a clinic to obtain contraception, a health professional who provides contraception to a young woman under 16 and a teacher who promotes the use of contraception within sex education and encourages young people to visit local contraceptive services.

This exception does not apply if the defendant acts for the purpose of causing or encouraging the activity constituting the child sex offence or the child's participation in it, or for the purpose of sexual gratification. Thus someone who explains the mechanics of sexual intercourse to a child and does this in order to assist his friend to engage in sexual activity with that child would not be protected by this exception.

Paragraph (2) provides that the exception in paragraph (1) shall apply in relation to the offences at Articles 12 to 14 (offences against children under 13); Article 16 (sexual activity with a child); Article 20 (where the offence would fall within the scope of Article 16 if the offender were aged 18 or over); and any of the following where the victim is aged under 16 – Article 23 (abuse of position of trust - sexual activity with a child); Article 32 (sexual activity with a child family member); Article 43 (sexual activity with a person with a mental disorder impeding choice); Article 47 (inducement, threat or deception to procure sexual activity with a person with a mental disorder); Article 51 (Care workers: sexual activity with a person with a mental disorder).

Article 78: Amendments of the Sexual Offences Act 2003

Article 78 provides details of the amendments to the Sexual Offences Act 2003 which no longer apply to Northern Ireland as a result of this Order.

Article 79: Amendment to the Criminal Law Act (Northern Ireland) 1967

Article 79 amends “relevant offence” for section 5(1) of the Criminal Law Act (Northern Ireland) 1967 to exclude from the duty to report information about the commission of a relevant offence (i.e. one with a maximum sentence of 5 years or more) an offence under Article 20 (sexual offences against children committed by children or young persons). For further information see under Article 20.

Annex 1

Table of offences, their penalties and method

A	Offence	Maximum Penalty	Court
Non-consensual sexual offences			
5	Rape	Life	Indictment
6	Assault by penetration	Life	Indictment
7	Sexual assault	10 years	Either way
8	Causing a person to engage in sexual activity without consent	Life, where penetration involved; otherwise 10 years	Where penetration involved, indictment only; otherwise either way
Rape and other offences against children under 13			
12	Rape of a child under 13	Life	Indictment
13	Assault of a child under 13 by penetration	Life	Indictment
14	Sexual assault of a child under 13	14 years	Either way
15	Causing or inciting a child under 13 to engage in sexual activity	Life, where penetration involved; otherwise 14 years	Where penetration involved, indictment only; otherwise either way
Sexual offences against children under 16			
16	Sexual activity with a child	14 years	Where penetration involved, indictment only; otherwise either way
17	Causing or inciting a child to engage in sexual activity	14 years	Where penetration involved, indictment only; otherwise either way

A	Offence	Maximum Penalty	Court
Sexual offences against children under 16 (cont'd)			
18	Engaging in sexual activity in the presence of a child	10 years	Either way
19	Causing a child to watch a sexual act	10 years	Either way
20	Sexual offences against children committed by children or young persons	5 years	Either way
21	Arranging or facilitating the commission of a child sex offence	14 years	Either way
22	Meeting a child following sexual grooming etc.	10 years	
Offences against children under 18: abuse of position of trust			
23 to 26	Abuse of a position of trust offences	5 years	Either way
Familial sex offences against children under 18			
32	Sexual activity with a child family member	14 years where the defendant is aged 18 or over; otherwise 5 years	Where penetration involved, indictment only; otherwise either way
33	Inciting a child family member to engage in sexual activity		
Abuse of children under 18 through prostitution and pornography			
37	Paying for sexual services of a child	Life where child is under 13 and penetration involved; 14 years where under 16 and penetration involved;	If penetration involved, on indictment only; otherwise either way
38	Causing or inciting child prostitution or pornography	otherwise 7 years	Either way

A	Offence	Maximum Penalty	Court
Abuse of children under 18 through prostitution and pornography (cont'd)			
39	Controlling a child prostitute or a child involved in pornography	14 years	Either way
40	Arranging or facilitating child prostitution or pornography		
Indecent photographs of children under 18			
42	Indecent photographs of persons aged 16 or 17	10 years	Either way
Offences against persons with a mental disorder impeding choice			
43	Sexual activity with a person with a mental disorder impeding choice	Life where penetration involved; otherwise 14 years	Where penetration involved, indictment only; otherwise either way
44	Causing or inciting a person with a mental disorder impeding choice, to engage in sexual activity	10 years	Either way
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 etc. to procure sexual activity with a person with a mental disorder	Life where penetration involved; otherwise 14 years	Where penetration involved, indictment only; otherwise either way
48	Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc.		

A	Offence	Maximum Penalty	Court
Inducements etc. to persons with a mental disorder (cont'd)			
49	Engaging in sexual activity in the presence, procured by inducement etc. of a person with a mental disorder	10 years	Either way
50	Causing a person with a mental disorder to watch a sexual act by inducement etc.		
Care workers for persons with a mental disorder			
51	Care workers: sexual activity with a person with a mental disorder	14 years where penetration involved; otherwise 10 years	If penetration involved, on indictment only; otherwise either way
52	Care workers: causing or inciting sexual activity	7 years	Either way
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		
Prostitution			
59	Loitering or soliciting for purposes of prostitution	Fine not exceeding level 3 on the standard scale	Summary
60	Kerb-crawling		
61	Persistent soliciting		
Exploitation of prostitution			
62	Causing or inciting prostitution for gain	7 years	Either way
63	Controlling prostitution for gain		
64	Keeping a brothel used for prostitution		

A	Offence	Maximum Penalty	Court
Preparatory offences			
65	Administering a substance with intent	10 years	Either way
66	Committing an offence with intent to commit a sexual offence	Life where the offence is kidnapping or false imprisonment or assault with intent to commit rape or assault by penetration; otherwise 10 years	Indictment only where the offence is kidnapping or false imprisonment or assault with intent to commit rape or assault by penetration; otherwise summary
67	Trespass with intent to commit a sexual offence	14 years where the intended offence is rape or assault by penetration; otherwise 10 years	Indictment only where the intended offence is rape or assault by penetration; otherwise summary
Sex with an adult relative			
68	Sex with an adult relative: penetration	2 years	Either way
69	Sex with an adult relative: consenting to penetration		
Other offences			
70	Exposure	2 years	Either way
71	Voyeurism		
73	Intercourse with an animal		
74	Sexual penetration of a corpse		
75	Sexual activity in a public lavatory	6 months/level 5 fine	Summary

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