

**WORKING
WITHIN THE
SEXUAL
OFFENCES
ORDER 2008**



Northern
Ireland
Office

The Sexual Offences (Northern Ireland) Order 2008 provides a clear modern framework to protect everyone from sexual crime. This leaflet sets out the main laws affecting those who work with children, and those who provide care services to those with mental disorders.

Further leaflets in this series cover the laws designed to protect adults and to protect children and young people. These leaflets are:

- Safer from sexual crime: how the law is protecting you
- Safer from sexual crime: protecting children and young people

There are also short leaflets covering the following topics:

- Sex and consent: what you need to know
- Sex, young people and the law: what you need to know
- Adult sexual offending against children: the law
- Sex and the vulnerable: what you need to know
- The law and prostitution: what you need to know

PROTECTING THE PUBLIC

Sexual crime, and the fear of sexual crime, has a profound and damaging effect on the lives of individuals and communities. The Sexual Offences (Northern Ireland) Order 2008 is a major piece of law reform, designed to protect the public from sexual crime.

The Order closely follows the law in England and Wales set out in the Sexual Offences Act 2003. It is also the result of careful consultation and vigorous debate in Northern Ireland. Many organisations working with victims of sexual crime, and with people who are vulnerable to abuse, contributed to the consultation process.

The Order provides a comprehensive new legislative framework for sexual offences. It covers offences against adults (including people with mental disorders), offences against children, and familial sexual offences. The Order puts victims first. It reflects the reality of life in the 21st century and sets out clear boundaries about what is, and is not, acceptable. It ensures that men, women and people of all sexual orientations are equally protected from sexual crime. It sets out strong penalties for offenders, and gives the courts and police the clarity they need to do their job and help protect the public from sexual crime. It also sets clear new parameters for people working with children, and with people with mental disorders.

Protecting people who are vulnerable to abuse

The risks to children from sexual abuse are well known. Less obvious perhaps are the risks faced by people of any age who have a mental disorder - especially a learning disability - that makes them vulnerable to sexual abuse and exploitation. The overwhelming majority of people working with children and vulnerable adults are conscientious and responsible people, intent on providing a good service to them. The law must be able to deal, however, with the minority of individuals who betray the trust placed in them and use their positions to take sexual advantage of those in their care and supervision.

Articles 23 to 31 of the Order set out existing laws relating to abuse of a position of trust by people who work with children. Articles 51 to 57 contain new offences for people who are engaged in providing care, assistance or services to someone in connection with a mental disorder.

The specific offences set out in these articles do not preclude the use of other general and child-specific offences set out elsewhere in the Order; these can also be applied to people working with children, or with people with mental disorders, where appropriate.

CHILDREN AND YOUNG PEOPLE ABUSE OF POSITIONS OF TRUST

The position of trust offences, which were already law in Northern Ireland under the Sexual Offences Act 2003, have been re-enacted without any change.

Protecting 16 and 17 year-olds

The position of trust offences cover all children under 18. They are mainly designed to protect young people aged 16 and 17 who, even though they are over the age of consent, are potentially vulnerable to sexual abuse from people in positions of trust or authority.

Where young people are 12 or under, or between 13 and 15, offences against them are likely to be charged under the general laws in the Order for these age groups. A separate leaflet in this series, *Safer from sexual crime: protecting children and young people*, gives more detail on these offences.

What are 'positions of trust'?

The Order sets down specific positions of trust to which offences relate. People who are in these positions of trust will normally have power and authority in a child's life, and may have a key influence on their future.

They will have regular contact with the child, and may be acting in loco parentis.

Abuse of trust: specific occupations

The Order sets out a series of occupations to which the abuse of position of trust laws apply. These include positions where a person looks after a young person, such as:

- Institutions looking after young people who are detained under a court order or enactment, such as a young offenders institution.
- Accommodation provided by Health and Social Care (HSC) Trusts and voluntary organisations under statutory provision.
- Hospitals, independent clinics, care homes, residential care homes, private hospitals, community homes, voluntary homes, children's homes and residential family centres.
- Educational institutions.

The positions of trust laws also apply to people who look after young people under 18 in the following ways:

- Regularly having unsupervised contact with them as part of local authority provision of accommodation to young people who are in need or “looked after”, under police protection or detention, or on remand or committed to custody.
- Having regular, unsupervised contact with them as someone who regularly reports to a court on matters of their welfare.
- Looking after them on an individual basis as a Personal Adviser appointed under relevant legislation, such as when young people leave HSC Trusts’ care.
- Looking after them in an official capacity on a regular basis when they are subject to a care order, supervision order, or education supervision order.
- Acting as their guardian as set out in the Children (Northern Ireland) Order 1995
- Looking after or supervising them on an individual basis after their release from detention or in pursuance of a youth conference or court order.

THE ABUSE OF TRUST OFFENCES

The offences for those working in positions of trust cover the same kinds of behaviour as offences which apply to the general public – except that, where positions of trust are concerned, the offences apply where the young person is under 18, instead of under 16.

Sexual activity with a child

This law covers all intercourse, other penetration or sexual touching of a child or young person. It includes sexual touching of any part of their body, clothed or unclothed, either with your body or with an object.

Causing or inciting a child to engage in sexual activity

This covers causing or persuading a child or young person to engage in any sexual activity, including sexual acts with someone else, or making a child strip or masturbate. This offence applies where someone has incited a child to engage in sex, even if the intended sexual activity does not take place.

Engaging in sexual activity in the presence of a child

Under this law, it is an offence to intentionally engage in sexual activity when you know that you can be seen by a child, or you believe or intend that they can see you, and where you do this in order to get sexual gratification from the fact that they may be watching you.

Causing a child to watch a sexual act

This makes it an offence to intentionally cause a child to watch someone else taking part in sexual activity – including looking at images such as videos, photos, or webcams – for the purpose of your own sexual gratification.

Positions of trust: exceptions

There are certain situations in which the position of trust offences do not apply. These are where a person is legally married to or is a civil partner of the young person, or where a lawful sexual relationship existed before the position of trust arose. This would apply, for instance, where a 17 year-old girl goes to stay in a hospital where her adult boyfriend works as a nurse.

Child sex offences: exceptions

The Order ensures that people such as teachers, health professionals, social care professionals, youth justice workers, sexual health counsellors, youth workers, teenage magazine writers, 'agony aunts' and parents are not liable to prosecution when they are acting to protect a child or young person, including those with a mental disorder. The exceptions apply to the offence of 'arranging or facilitating the commission of a child sex offence' and to aiding, abetting or counselling the commission of certain other child sex offences.

The exception covers people who are: 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.

This means that, for instance, a health professional who provides contraception to an under 16 year-old, a teacher who promotes contraception as part of sex education, or a social worker who accompanies a young person to a sexual health clinic, would be exempted from these offences, providing they are acting to protect the child.

These exceptions do not apply if someone acts to cause or encourage a sexual offence, or a child's participation in it, for their own sexual gratification. This might include, for instance, someone explaining sexual intercourse to a child in order to assist their friend to engage in sexual activity with them.

OFFENCES AGAINST PEOPLE WITH MENTAL DISORDERS

The Sexual Offences Order uses the same definition of 'mental disorders' as the Mental Health (Northern Ireland) Order 1986: "mental illness, mental handicap and any other disorder or disability of mind". This includes learning disabilities.

Previously, there have been only a very small number of prosecutions for sexual offences against people with mental disorders. This can be exacerbated by the difficulties of gathering evidence from someone who may not understand or be able to articulate what has happened to them. There is evidence to suggest that people with a mental disorder are targeted for sexual abuse by offenders precisely because of this difficulty.

The Order frames important new legislation to protect people with mental disorders. Articles 43 to 46 relate to offences against people who cannot legally consent to sexual activity because of a mental disorder impeding choice. Articles 47 to 50 relate to offences against people who may or may not legally be able to consent to sexual activity but who are vulnerable to inducements, threats or deceptions because of a mental disorder.

None of the measures in the Order are intended to interfere with the right to a full and active life, including a sexual life, of people with a mental disorder who have the capacity to consent. The legislation has been carefully framed to reflect this, and the laws which apply to all non-consensual sexual offences against adults - for instance rape and sexual assault - apply just as much to them as anyone else. A separate leaflet in this series, Safer from sexual crime: how the law is protecting you, gives more detail on these offences.

However, the Order recognises the importance of protecting people with mental disorders from sexual abuse by people with whom they are in a relationship of care, and contains new offences specifically for careworkers.

CARE WORKERS FOR PEOPLE WITH A MENTAL DISORDER

Under the Order, any sexual activity between a care worker and a person with a mental disorder is prohibited whilst that relationship of care continues.

A 'relationship of care' is defined as where one person has a mental disorder and another person is regularly involved, or is likely to be involved, face-to-face in their care, where that care arises from the mental disorder. It applies to people working on both a paid and a voluntary basis, and includes staff such as:

- Doctors, nurses, social workers, medical receptionists, cleaning staff, advocates and voluntary helpers.
- Workers in a care home, community home, voluntary home or children's home.
- Workers who provide services through Health and Social Services Boards and Trusts or a private medical agency or independent clinic or hospital.
- Workers who provide services in the home or for a body or agency which brings them into, or could bring them into, regular face-to-face contact with people with mental disorders.
- Workers with regular face-to-face contact with people with mental disorders who provide any services where care or assistance are given. This could include paid or unpaid staff who take people with mental disorders on outings every week, or visit them at home to provide complementary therapy.
- It also includes anyone (including a friend or family member) if they provide care, assistance or services in connection with the person's mental disorder.

THE CARE WORKERS OFFENCES

The laws in the Order relating to care workers of people with mental disorders apply whether or not the victim appears to consent, and whether or not they have the legal capacity to consent. The apparent consent of the victim is only relevant in so far as it may mean that the care worker is not guilty of a non-consensual offence, such as rape or sexual assault.

Care workers may be charged with the following specific offences:

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

This law covers all intercourse, other penetration or sexual touching of someone with a mental disorder. It includes sexual touching of any part of their body, clothed or unclothed, either with a part of the body or with an object.

Care workers: causing or inciting sexual activity

This covers causing or persuading someone with a mental disorder to engage in any sexual activity, including sexual acts with someone else, or making them strip or masturbate. This offence applies where someone has incited a person with a mental disorder to engage in sex, even if the intended sexual activity does not take place.

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

This makes it an offence to intentionally engage in sexual activity when you know that you can be seen by a person with a mental disorder who is in your care, or you believe or intend that they can see you, and where you do this in order to get sexual gratification from the fact that they may be watching you.

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

This makes it an offence to intentionally cause a person with a mental disorder to watch someone else taking part in sexual activity – including looking at images such as videos, photos, or webcams – for the purpose of your own sexual gratification. It is not intended that this should prevent care workers from providing legitimate sex education. For instance, a care worker showing a person with a mental disorder a video of a sexual act as part of an approved care plan would not be liable for this offence.

**Care workers:
exceptions**

There are certain situations in which the care workers' offences do not apply. These are where the care worker is legally married to, or a civil partner of, the person with a mental disorder, or where it can be proved that the sexual relationship pre-dated the start of the relationship of care, as long as that sexual relationship was lawful. This would apply, for instance, where someone who looks after his or her partner following the onset of a mental disorder continues to have a consensual sexual relationship with them.

WORKING WITHIN THE ORDER: IMPLICATIONS FOR POLICY AND PRACTICE

The Sexual Offences Order has important implications for organisations working with children and with people with mental disorders. In light of the new law, the NIO has issued explanatory guidance on the Sexual Offences Order which is available on the NIO website at www.nio.gov.uk/sexualoffences

DHSSPS has also produced updated guidance on child protection issues which is available on www.dhsspsni.gov.uk/index/hss/child_care/child_protection/child_protection_guidance.htm