
STATUTORY INSTRUMENTS

2008 No. 1769 (N.I. 2)

NORTHERN IRELAND

The Sexual Offences (Northern Ireland) Order 2008

*Made - - - - 9th July 2008
Coming into operation in accordance with Article 1(2)
and (3)*

At the Court at Buckingham Palace, the 9th day of July 2008

Present,

The Queen's Most Excellent Majesty in Council

Whereas—

- (a) the Secretary of State, in accordance with subsection (4)(a) of section 85 of the Northern Ireland Act 1998 (c.47), laid before Parliament a document which contained a draft of this proposed Order;
- (b) the Secretary of State referred the document to the Northern Ireland Assembly for its consideration;
- (c) the period referred to in subsection (4)(c) of that section has ended; and
- (d) a draft of this Order has been approved by resolution of each House of Parliament:

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

Modifications etc. (not altering text)

- C1** Order: functions of Secretary of State transferred (12.4.2010) to Department of Justice by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **4(1)(2)**, Sch. 1 (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

PART 1

INTRODUCTORY

Title and commencement

- 1.—(1) This Order may be cited as the Sexual Offences (Northern Ireland) Order 2008.
- (2) The following provisions of this Order come into operation one week after the day on which this Order is made—
 - (a) this Part;
 - (b) Article 80;
 - (c) Article 82.
- (3) The other provisions of this Order come into operation on such day or days as the Secretary of State may by order appoint.

Subordinate Legislation Made

P1 [Art. 1\(3\)](#) power fully exercised: 2.2.2009 appointed by [S.R. 2008/510](#), [art. 2](#)

Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.
- (2) The following provisions of this Article apply for the purposes of this Order.
- (3) “Statutory provision” must be construed in accordance with section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).
- (4) “The 1995 Order” means the Children (Northern Ireland) Order 1995 (NI 2).
- (5) Penetration is a continuing act from entry to withdrawal.
- (6) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).
- (7) “Image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.
- (8) References to an image of a person include references to an image of an imaginary person.
- (9) “Mental disorder” has the meaning given by Article 3 of the Mental Health (Northern Ireland) Order 1986 (NI 4).
- (10) References to observation (however expressed) are to observation whether direct or by looking at an image.
- (11) Touching includes touching—
 - (a) with any part of the body,
 - (b) with anything else,
 - (c) through anything,and in particular includes touching amounting to penetration.
- (12) “Vagina” includes vulva.
- (13) In relation to an animal, references to the vagina or anus include references to any similar part.

“Consent”

3. For the purposes of this Order, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

“Sexual”

4. For the purposes of this Order, except [^{F1}Article 22A (sexual communication with a child) or] Article 75 (sexual activity in a public lavatory), penetration, touching or any other activity is sexual if a reasonable person would consider that—

- (a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both), it is sexual.

Textual Amendments

F1 Words in art. 4 inserted (25.7.2015) by Justice Act (Northern Ireland) 2015 (c. 9), ss. 90(2), 106(1)(b)

PART 2

NON-CONSENSUAL SEXUAL OFFENCES

Rape

Rape

- 5.—(1) A person (A) commits an offence if—
- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
 - (b) B does not consent to the penetration, and
 - (c) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Articles 9 and 10 apply to an offence under this Article.
- (4) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.
- (5) Any reference to rape in a statutory provision shall be construed in accordance with paragraph (1).
- (6) The common law offence of rape is abolished.

Assault

Assault by penetration

- 6.—(1) A person (A) commits an offence if—
- (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Sexual Offences (Northern Ireland) Order 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (b) the penetration is sexual,
- (c) B does not consent to the penetration, and
- (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Articles 9 and 10 apply to an offence under this Article.

(4) A person guilty of an offence under this Article is liable, on conviction on indictment, to imprisonment for life.

Sexual assault

7.—(1) A person (A) commits an offence if—

- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) B does not consent to the touching, and
- (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Articles 9 and 10 apply to an offence under this Article.

(4) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Causing sexual activity without consent

Causing a person to engage in sexual activity without consent

8.—(1) A person (A) commits an offence if—

- (a) he intentionally causes another person (B) to engage in an activity,
- (b) the activity is sexual,
- (c) B does not consent to engaging in the activity, and
- (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Articles 9 and 10 apply to an offence under this Article.

(4) A person guilty of an offence under this Article, if the activity caused involved—

- (a) penetration of B's anus or vagina,
- (b) penetration of B's mouth with a person's penis,
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
- (d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(5) Unless paragraph (4) applies, a person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Evidential presumptions about consent

9.—(1) If in proceedings for an offence to which this Article applies it is proved—

- (a) that the defendant did the relevant act,
- (b) that any of the circumstances specified in paragraph (2) existed, and
- (c) that the defendant knew that those circumstances existed,

the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) The circumstances are that—

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
- (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
- (f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(3) In paragraph (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

Conclusive presumptions about consent

10.—(1) If in proceedings for an offence to which this Article applies it is proved that the defendant did the relevant act and that any of the circumstances specified in paragraph (2) existed, it is to be conclusively presumed—

- (a) that the complainant did not consent to the relevant act, and
- (b) that the defendant did not believe that the complainant consented to the relevant act.

(2) The circumstances are—

- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;
- (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.