

# Sexual Offences Bill [HL]

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, will be published separately as Bill 128 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Blunkett made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Sexual Offences Bill [HL] are compatible with the Convention rights.



# Sexual Offences Bill [HL]

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## CONTENTS

### PART 1

#### SEXUAL OFFENCES

##### *Rape*

- 1 Rape
- 2 Anonymity of defendant in rape etc. cases

##### *Assault*

- 3 Assault by penetration
- 4 Sexual assault

##### *Causing sexual activity without consent*

- 5 Causing a person to engage in sexual activity without consent

##### *Rape and other offences against children under 13*

- 6 Rape of a child under 13
- 7 Assault of a child under 13 by penetration
- 8 Sexual assault of a child under 13
- 9 Causing or inciting a child under 13 to engage in sexual activity

##### *Child sex offences*

- 10 Sexual activity with a child
- 11 Causing or inciting a child to engage in sexual activity
- 12 Engaging in sexual activity in the presence of a child
- 13 Causing a child to watch a sexual act
- 14 Child sex offences committed by children or young persons
- 15 Arranging or facilitating commission of a child sex offence
- 16 Sections 10 to 15: marriage exception
- 17 Meeting a child following sexual grooming etc.

*Abuse of a position of trust*

- 18 Abuse of position of trust: sexual activity with a child
- 19 Abuse of position of trust: causing or inciting a child to engage in sexual activity
- 20 Abuse of position of trust: sexual activity in the presence of a child
- 21 Abuse of position of trust: causing a child to watch a sexual act
- 22 Abuse of position of trust: acts done in Scotland
- 23 Positions of trust
- 24 Positions of trust: interpretation
- 25 Sections 18 to 21: marriage exception
- 26 Sections 18 to 21: sexual relationships which pre-date position of trust

*Familial child sex offences*

- 27 Sexual activity with a child family member
- 28 Inciting a child family member to engage in sexual activity
- 29 Family relationships
- 30 Sections 27 and 28: marriage exception
- 31 Sections 27 and 28: sexual relationships which pre-date family relationships

*Offences against persons with a mental disorder or learning disability*

- 32 Sexual activity with a person with a mental disorder or learning disability
- 33 Causing or inciting a person with a mental disorder or learning disability to engage in sexual activity
- 34 Engaging in sexual activity in the presence of a person with a mental disorder or learning disability
- 35 Causing a person with a mental disorder or learning disability to watch a sexual act

*Inducements etc. to persons with mental disorder or learning disability*

- 36 Inducement, threat or deception to procure sexual activity with a person with a mental disorder or learning disability
- 37 Causing a person with a mental disorder or learning disability to engage in or agree to sexual activity by inducement, threat or deception
- 38 Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder or learning disability
- 39 Causing a person with a mental disorder or learning disability to watch a sexual act by inducement, threat or deception

*Care workers for persons with mental disorder or learning disability*

- 40 Care workers: sexual activity with a person with a mental disorder or learning disability
- 41 Care workers: causing or inciting sexual activity
- 42 Care workers: sexual activity in the presence of a person with a mental disorder or learning disability
- 43 Care workers: causing a person with a mental disorder or learning disability to watch a sexual act
- 44 Care workers: interpretation
- 45 Sections 40 to 43: marriage exception
- 46 Sections 40 to 43: sexual relationships which pre-date care relationships

*Indecent photographs of children*

- 47 Indecent photographs of persons aged 16 or 17
- 48 Criminal investigations or proceedings

*Abuse of children through prostitution and pornography*

- 49 Paying for sexual services of a child
- 50 Causing or inciting child prostitution or pornography
- 51 Controlling a child prostitute or a child involved in pornography
- 52 Arranging or facilitating child prostitution or pornography
- 53 Sections 50 to 52: interpretation

*Exploitation of prostitution*

- 54 Causing or inciting prostitution for gain
- 55 Controlling prostitution for gain
- 56 Sections 54 and 55: interpretation

*Extension of gender-specific prostitution offences*

- 57 Extension of gender-specific prostitution offences

*Trafficking*

- 58 Trafficking into the UK for sexual exploitation
- 59 Trafficking within the UK for sexual exploitation
- 60 Trafficking out of the UK for sexual exploitation
- 61 Sections 58 to 60: interpretation and jurisdiction

*Preparatory offences*

- 62 Administering a substance with intent
- 63 Committing an offence with intent to commit a sexual offence
- 64 Trespass with intent to commit a sexual offence

*Sex with an adult relative*

- 65 Sex with an adult relative: penetration
- 66 Sex with an adult relative: consenting to penetration

*Other offences*

- 67 Sexual activity in a public lavatory
- 68 Exposure
- 69 Voyeurism
- 70 Voyeurism: interpretation
- 71 Intercourse with an animal
- 72 Sexual penetration of a corpse

*Offences outside the United Kingdom*

- 73 Offences outside the United Kingdom

*Supplementary and general*

- 74 Exceptions to aiding, abetting and counselling
- 75 “Consent”
- 76 Presumptions about the absence of belief in consent
- 77 Conclusive presumptions about consent
- 78 Sections 76 and 77: relevant acts
- 79 “Sexual”
- 80 Part 1: general interpretation

**PART 2**

## NOTIFICATION AND ORDERS

*Notification requirements*

- 81 Persons becoming subject to notification requirements
- 82 Persons formerly subject to Part 1 of the Sex Offenders Act 1997
- 83 The notification period
- 84 Notification requirements: initial notification
- 85 Notification requirements: changes
- 86 Notification requirements: periodic notification
- 87 Notification requirements: travel outside the United Kingdom
- 88 Method of notification and related matters
- 89 Section 88: interpretation
- 90 Young offenders: parental directions
- 91 Parental directions: variations, renewals and discharges
- 92 Offences relating to notification
- 93 Certificates for purposes of Part 2

*Information about release or transfer*

- 94 Information about release or transfer

*Notification orders*

- 95 Notification orders: applications and grounds
- 96 Notification orders: effect
- 97 Sections 95 and 96: relevant offences
- 98 Interim notification orders
- 99 Notification orders and interim notification orders: appeals
- 100 Appeals in relation to notification orders and interim notification orders: Scotland
- 101 Sections 95 to 98: Scotland

*Sexual offences prevention orders*

- 102 Sexual offences prevention orders: applications and grounds
- 103 SOPOs: further provision as respects Scotland
- 104 Section 102: supplemental
- 105 SOPOs: effect
- 106 SOPOs: variations, renewals and discharges
- 107 Interim SOPOs
- 108 SOPOs and interim SOPOs: appeals
- 109 Appeals in relation to SOPOs and interim SOPOs: Scotland

- 110 Sections 102 and 104 to 107: Scotland  
 111 Offence: breach of SOPO or interim SOPO

*Foreign travel orders*

- 112 Foreign travel orders: applications and grounds  
 113 Section 112: interpretation  
 114 Section 112: qualifying offenders  
 115 Foreign travel orders: effect  
 116 Foreign travel orders: variations, renewals and discharges  
 117 Foreign travel orders: appeals  
 118 Appeals in relation to foreign travel orders: Scotland  
 119 Sections 112 to 116: Scotland  
 120 Offence: breach of foreign travel order

*Risk of sexual harm orders*

- 121 Risk of sexual harm orders: applications, grounds and effect  
 122 Section 121: interpretation  
 123 RSHOs: variations, renewals and discharges  
 124 Interim RSHOs  
 125 RSHOs and interim RSHOs: appeals  
 126 Offence: breach of RSHO or interim RSHO  
 127 Effect of conviction etc. of an offence under section 126

*Power to amend Schedules 3 and 4*

- 128 Power to amend Schedules 3 and 4

*General*

- 129 Young offenders: application  
 130 Offences with thresholds  
 131 Part 2: general interpretation  
 132 Conditional discharges and probation orders  
 133 Interpretation: mentally disordered offenders  
 134 Part 2: Northern Ireland

**PART 3**

GENERAL

- 135 Orders and regulations  
 136 Minor and consequential amendments  
 137 Repeals and revocations  
 138 Commencement  
 139 Extent, saving etc.  
 140 Short title

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Schedule 1 – Extension of gender-specific prostitution offences  
 Schedule 2 – Sexual offences to which section 73 applies

- Schedule 3 – Sexual offences for purposes of Part 2
- Schedule 4 – Other offences for purposes of Part 2
- Schedule 5 – Minor and consequential amendments
- Schedule 6 – Repeals and revocations



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**B I L L**

TO

Make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts, and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

SEXUAL OFFENCES

*Rape*

**1 Rape**

- (1) A person (A) commits an offence if— 5  
(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. 10
- (3) Sections 76 and 77 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life. 15

**2 Anonymity of defendant in rape etc. cases**

The defendant in rape etc. cases shall enjoy the same right to anonymity as is enjoyed by the complainant.

*Assault***3 Assault by penetration**

- (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, 5
  - (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. 10
- (3) Sections 76 and 77 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

**4 Sexual assault**

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- (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. 20
- (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) Sections 76 and 77 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable— 25
- (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* 30**5 Causing a person to engage in sexual activity without consent**

- (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 35
  - (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) Sections 76 and 77 apply to an offence under this section.
- (4) A person guilty of an offence under this section, if the activity caused involved –
- (a) penetration of B’s anus or vagina,
  - (b) penetration of B’s mouth with a person’s penis, 5
  - (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 subsection (4) applies, a person guilty of an offence under this section is liable – 10
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 15 15 years.

*Rape and other offences against children under 13*

**6 Rape of a child under 13**

- (1) A person commits an offence if –
- (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and 20
  - (b) the other person is under 13.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

**7 Assault of a child under 13 by penetration**

- (1) A person commits an offence if – 25
- (a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else,
  - (b) the penetration is sexual, and
  - (c) the other person is under 13.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life. 30

**8 Sexual assault of a child under 13**

- (1) A person commits an offence if –
- (a) he intentionally touches another person,
  - (b) the touching is sexual, and 35
  - (c) the other person is under 13.
- (2) A person guilty of an offence under this section 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 40 40 years.

**9 Causing or inciting a child under 13 to engage in sexual activity**

- (1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
  - (b) the activity is sexual, and 5
  - (c) B is under 13.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment—
- (a) where subsection (3) applies, to imprisonment for life;
  - (b) in any other case, to imprisonment for a term not exceeding 14 years. 10
- (3) This subsection applies if the activity caused or incited involved—
- (a) penetration of B’s anus or vagina,
  - (b) penetration of B’s mouth with a person’s penis,
  - (c) penetration of a person’s anus or vagina with a part of B’s body or by B with anything else, or 15
  - (d) penetration of a person’s mouth with B’s penis.

*Child sex offences***10 Sexual activity with a child**

- (1) A person aged 18 or over (A) commits an offence if—
- (a) he intentionally touches another person (B), 20
  - (b) the touching is sexual, and
  - (c) either—
    - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
    - (ii) B is under 13. 25
- (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**11 Causing or inciting a child to engage in sexual activity**

- (1) A person aged 18 or over (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity, 30
  - (b) the activity is sexual, and
  - (c) either—
    - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or 35
    - (ii) B is under 13.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**12 Engaging in sexual activity in the presence of a child**

- (1) A person aged 18 or over (A) commits an offence if— 40

- 
- (a) he intentionally engages in an activity,  
(b) the activity is sexual,  
(c) for the purpose of obtaining sexual gratification, he engages in it in the presence of another person (B), knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it, and 5  
(d) either –  
(i) B is under 16 and A does not reasonably believe that B is 16 or over, or  
(ii) B is under 13.
- (2) A person guilty of an offence under this section is liable – 10  
(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.
- 13 Causing a child to watch a sexual act** 15
- (1) A person aged 18 or over (A) commits an offence if –  
(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at a photograph or pseudo-photograph of any person engaging in an activity, 20  
(b) the activity is sexual, and  
(c) either –  
(i) B is under 16 and A does not reasonably believe that B is 16 or over, or  
(ii) B is under 13. 25
- (2) A person guilty of an offence under this section 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. 30
- 14 Child sex offences committed by children or young persons**
- (1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 10 to 13 if he were aged 18.
- (2) A person guilty of an offence under this section 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; 35  
(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- 15 Arranging or facilitating commission of a child sex offence**
- (1) A person commits an offence if – 40  
(a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and

- (b) doing it will involve the commission of an offence under any of sections 10 to 14.
- (2) A person does not commit an offence under this section if –
- (a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and 5
- (b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts.
- (3) For the purposes of subsection (2), a person acts for the protection of a child if he acts for the purpose of – 10
- (a) protecting the child from sexually transmitted infection,
- (b) protecting the physical safety of the child,
- (c) preventing the child from becoming pregnant, or
- (d) promoting the child’s emotional well-being by the giving of advice, and not for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child’s participation in it. 15
- (4) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years. 20

## 16 Sections 10 to 15: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 10 to 14 against another person (B) is not an offence under that section if – 25
- (a) at the time, A and B are lawfully married,
- (b) no other person is taking part or otherwise involved, and
- (c) the conduct does not involve a photograph or pseudo-photograph of any other person engaging in a sexual activity.
- (2) In proceedings for an offence under any of sections 10 to 15 it is for the defendant to prove that subsection (1) applied. 30

## 17 Meeting a child following sexual grooming etc.

- (1) A person aged 18 or over (A) commits an offence if –
- (a) having met or communicated with another person (B) on at least two earlier occasions, he – 35
- (i) intentionally meets B, or
- (ii) travels with the intention of meeting B in any part of the world,
- (b) at the time, he intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence, 40
- (c) B is under 16, and
- (d) A does not reasonably believe that B is 16 or over.
- (2) In subsection (1) –

- (a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;
- (b) “relevant offence” means –
  - (i) an offence under this Part, 5
  - (ii) an offence within any of paragraphs 58 to 90 of Schedule 3, or
  - (iii) anything done outside England and Wales and Northern Ireland which is not an offence within sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) if done in England and Wales. 10
- (3) In this section as it applies to Northern Ireland –
  - (a) subsection (1) has effect with the substitution of “17” for “16” in both places;
  - (b) subsection (2)(b)(iii) has effect with the substitution of “sub-paragraph (ii) if done in Northern Ireland” for “sub-paragraph (i) if done in England and Wales”. 15
- (4) A person guilty of an offence under this section is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years. 20

*Abuse of a position of trust*

**18 Abuse of position of trust: sexual activity with a child**

- (1) A person aged 18 or over (A) commits an offence if –
  - (a) he intentionally touches another person (B), 25
  - (b) the touching is sexual,
  - (c) A is in a position of trust in relation to B,
  - (d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and 30
  - (e) either –
    - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13.
- (2) This subsection applies where A – 35
  - (a) is in a position of trust in relation to B by virtue of circumstances within section 23(2), (3), (4) or (5), and
  - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it. 40
- (4) Where in proceedings for an offence under this section –

- 
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 23(2), (3), (4) or (5), and
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances, 5
- it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances. 10
- (5) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years. 15
- 19 Abuse of position of trust: causing or inciting a child to engage in sexual activity**
- (1) A person aged 18 or over (A) commits an offence if –
- (a) he intentionally causes or incites another person (B) to engage in an activity, 20
- (b) the activity is sexual,
- (c) A is in a position of trust in relation to B,
- (d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and 25
- (e) either –
- (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
- (ii) B is under 13.
- (2) This subsection applies where A – 30
- (a) is in a position of trust in relation to B by virtue of circumstances within section 23(2), (3), (4) or (5), and
- (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it. 35
- (4) Where in proceedings for an offence under this section –
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 23(2), (3), (4) or (5), and 40
- (b) it is not proved that he was in such a position of trust by virtue of other circumstances,
- it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances. 45



- (5) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

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## 20 Abuse of position of trust: sexual activity in the presence of a child

- (1) A person aged 18 or over (A) commits an offence if –
- (a) he intentionally engages in an activity,
  - (b) the activity is sexual,
  - (c) for the purpose of obtaining sexual gratification, he engages in it in the presence of another person (B), knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it, 10
  - (d) A is in a position of trust in relation to B,
  - (e) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and 15
  - (f) either –
    - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13. 20
- (2) This subsection applies where A –
- (a) is in a position of trust in relation to B by virtue of circumstances within section 23(2), (3), (4) or (5), and
  - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it. 25
- (4) Where in proceedings for an offence under this section –
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 23(2), (3), (4) or (5), and 30
  - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,
- it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances. 35
- (5) A person guilty of an offence under this section is liable – 40
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

**21 Abuse of position of trust: causing a child to watch a sexual act**

- (1) A person aged 18 or over (A) commits an offence if –
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at a photograph or pseudo-photograph of any person engaging in an activity, 5
  - (b) the activity is sexual,
  - (c) A is in a position of trust in relation to B,
  - (d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and 10
  - (e) either –
    - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13. 15
- (2) This subsection applies where A –
- (a) is in a position of trust in relation to B by virtue of circumstances within section 23(2), (3), (4) or (5), and
  - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it. 20
- (4) Where in proceedings for an offence under this section –
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 23(2), (3), (4) or (5), and 25
  - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,
- it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances. 30
- (5) A person guilty of an offence under this section is liable – 35
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

**22 Abuse of position of trust: acts done in Scotland**

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Anything which, if done in England and Wales or Northern Ireland, would constitute an offence under any of sections 18 to 21 also constitutes that offence if done in Scotland.

## 23 Positions of trust

- (1) For the purposes of sections 18 to 21, a person (A) is in a position of trust in relation to another person (B) if—
  - (a) any of subsections (2) to (8) applies, or
  - (b) any condition specified in an order made by the Secretary of State is met. 5
- (2) This subsection applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.
- (3) This subsection applies if A looks after persons under 18 who are resident in a home or other place in which—
  - (a) accommodation and maintenance are provided by an authority under section 23(2) of the Children Act 1989 (c. 41) or Article 27(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), or
  - (b) accommodation is provided by a voluntary organisation under section 59(1) of that Act or Article 75(1) of that Order, 15and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.
- (4) This subsection applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions—
  - (a) a hospital,
  - (b) an independent clinic,
  - (c) a care home, residential care home or private hospital,
  - (d) a community home, voluntary home or children’s home,
  - (e) a home provided under section 82(5) of the Children Act 1989, or 20
  - (f) a residential family centre,and B is accommodated and cared for in that institution.
- (5) This subsection applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution. 30
- (6) This subsection applies if A is engaged in the provision of services under, or pursuant to anything done under, section 114 of the Learning and Skills Act 2000 (c. 21) and, in that capacity, looks after B on an individual basis.
- (7) This subsection applies if A is a personal adviser appointed for B under—
  - (a) section 23B(2) of, or paragraph 19C of Schedule 2 to, the Children Act 1989, or
  - (b) Article 34A(10) or 34C(2) of the Children (Northern Ireland) Order 1995, 35and, in that capacity, looks after B on an individual basis.
- (8) This subsection applies if—
  - (a) B is subject to requirements imposed by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and
  - (b) A looks after B on an individual basis in pursuance of the requirements. 40 45

**24 Positions of trust: interpretation**

- (1) The following provisions apply for the purposes of section 23.
- (2) Subject to subsection (3), a person looks after persons under 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons. 5
- (3) A person (A) looks after another person (B) on an individual basis if—
- (a) A is regularly involved in caring for, training or supervising B, and
  - (b) in the course of his involvement, A regularly has unsupervised contact with B alone (whether face to face or by any other means).
- (4) A person receives education at an educational institution if— 10
- (a) he is registered or otherwise enrolled as a pupil or student at the institution, or
  - (b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled. 15
- (5) In section 23—
- “authority”—
- (a) in relation to England and Wales, means a local authority;
  - (b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)); 20
- “care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);
- “children’s home” has—
- (a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000, and 25
  - (b) in relation to Northern Ireland, the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) (“the 2003 Order”) if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted; 30
- “community home” has the meaning given by section 53 of the Children Act 1989 (c. 41);
- “hospital”— 35
- (a) in relation to England and Wales, means a hospital within the meaning given by section 128(1) of the National Health Service Act 1977 (c. 49), or any other establishment which is a hospital within the meaning given by section 2(3) of the Care Standards Act 2000; 40
  - (b) in relation to Northern Ireland, means a hospital within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), or any other establishment which is a hospital within the meaning given by Article 2(2) of the 2003 Order; 45
- “independent clinic” has—
- (a) in relation to England and Wales, the meaning given by section 2 of the Care Standards Act 2000;

- 
- (b) in relation to Northern Ireland, the meaning given by Article 2(2) of the 2003 Order;  
“private hospital” has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));  
“residential care home” means an establishment which is a residential care home for the purposes of the 2003 Order; 5  
“residential family centre” has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);  
“voluntary home” has –
- (a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989 (c. 41), and 10  
(b) in relation to Northern Ireland, the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- 25 Sections 18 to 21: marriage exception** 15
- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 18 to 21 against another person (B) is not an offence under that section if they are lawfully married at the time.
- (2) In proceedings for such an offence it is for A to prove that he and B were lawfully married at the time. 20
- 26 Sections 18 to 21: sexual relationships which pre-date position of trust**
- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 18 to 21 against another person (B) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B. 25
- (2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.
- (3) In proceedings for an offence under any of sections 18 to 21 it is for the defendant to prove that such a relationship existed at that time.
- Familial child sex offences* 30
- 27 Sexual activity with a child family member**
- (1) A person (A) commits an offence if –
- (a) he intentionally touches another person (B),  
(b) the touching is sexual,  
(c) the relation of A to B is within section 29, 35  
(d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and  
(e) either –
- (i) B is under 18 and A does not reasonably believe that B is 18 or over, or  
(ii) B is under 13. 40

- 
- (2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 29, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.
- (4) A person guilty of an offence under this section, if aged 18 or over at the time of the offence, is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- 28 Inciting a child family member to engage in sexual activity**
- (1) A person (A) commits an offence if—
- (a) he intentionally incites another person (B) to touch, or allow himself to be touched by, A,
  - (b) the touching is sexual,
  - (c) the relation of A to B is within section 29,
  - (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and
  - (e) either—
    - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 29, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.
- (4) A person guilty of an offence under this section, if he was aged 18 or over at the time of the offence, is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

## 29 Family relationships

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- (1) The relation of one person (A) to another (B) is within this section if –
  - (a) it is within any of subsections (2) to (4), or
  - (b) it would be within one of those subsections but for section 67 of the Adoption and Children Act 2002 (c. 38) (status conferred by adoption).
- (2) The relation of A to B is within this subsection if – 10
  - (a) one of them is the other’s parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle,
  - (b) one of them is or has been the other’s step-parent, or
  - (c) A is or has been B’s foster parent.
- (3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and – 15
  - (a) one of them is or has been the partner of the other’s parent,
  - (b) A and B are cousins,
  - (c) one of them is or has been the other’s stepbrother or stepsister, or 20
  - (d) the parent or present or former foster parent of one of them is or has been the other’s foster parent.
- (4) The relation of A to B is within this subsection if –
  - (a) A and B live in the same household, and
  - (b) A is regularly involved in caring for, training, supervising or being in sole charge of B. 25
- (5) For the purposes of this section –
  - (a) “aunt” means the sister or half-sister of a person’s parent, and “uncle” has a corresponding meaning;
  - (b) “cousin” means the child of an aunt or uncle; 30
  - (c) a person is a child’s foster parent if –
    - (i) he is a person with whom the child has been placed under sections 23(2)(a) or 59(1)(a) of the Children Act 1989 (c. 41) (fostering for local authority or voluntary organisation), or
    - (ii) he fosters the child privately, within the meaning given by section 66(1)(b) of that Act; 35
  - (d) a person is another’s partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
  - (e) “stepbrother” and “stepsister” include the child of a parent’s partner. 40

## 30 Sections 27 and 28: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under section 27 or 28 against another person (B) is not an offence under that section if they are lawfully married at the time.

- (2) In proceedings for such an offence it is for A to prove that he and B were lawfully married at the time.

### 31 Sections 27 and 28: sexual relationships which pre-date family relationships

- (1) Conduct by a person (A) which would otherwise be an offence under section 27 or 28 against another person (B) is not an offence under that section if – 5
- (a) the relation of A to B is not within subsection (2) of section 29,
  - (b) it would not be within that subsection if section 67 of the Adoption and Children Act 2002 (c. 38) did not apply, and
  - (c) immediately before the relation of A to B first became such as to fall within section 29, a sexual relationship existed between A and B. 10
- (2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between A and B would have been unlawful.
- (3) In proceedings for an offence under section 27 or 28 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

*Offences against persons with a mental disorder or learning disability* 15

### 32 Sexual activity with a person with a mental disorder or learning disability

- (1) A person (A) commits an offence if –
- (a) he intentionally touches another person (B),
  - (b) the touching is sexual,
  - (c) B is unable to refuse because of a mental disorder or learning disability, and 20
  - (d) A knows or could reasonably be expected to know that B has a mental disorder or learning disability and that because of it B is likely to be unable to refuse.
- (2) B is unable to refuse if – 25
- (a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or possible consequences of what is being done, or for any other reason), or
  - (b) he is unable to communicate such a choice to A. 30
- (3) A person guilty of an offence under this section is liable, on conviction on indictment –
- (a) where subsection (4) applies, to imprisonment for life;
  - (b) in any other case, to imprisonment for a term not exceeding 14 years.
- (4) This subsection applies if the touching involved – 35
- (a) penetration of B’s anus or vagina with a part of A’s body or anything else,
  - (b) penetration of B’s mouth with A’s penis,
  - (c) penetration of A’s anus or vagina with a part of B’s body, or
  - (d) penetration of A’s mouth with B’s penis. 40



**33 Causing or inciting a person with a mental disorder or learning disability to engage in sexual activity**

- (1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity, 5
  - (b) the activity is sexual,
  - (c) B is unable to refuse because of a mental disorder or learning disability, and
  - (d) A knows or could reasonably be expected to know that B has a mental disorder or learning disability and that because of it B is likely to be unable to refuse. 10
- (2) B is unable to refuse if—
- (a) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or possible consequences of the activity, or for any other reason), or 15
  - (b) he is unable to communicate such a choice to A.
- (3) A person guilty of an offence under this section is liable, on conviction on indictment—
- (a) where subsection (4) applies, to imprisonment for life; 20
  - (b) in any other case, to imprisonment for a term not exceeding 14 years.
- (4) This subsection applies if the activity caused or incited involved—
- (a) penetration of B’s anus or vagina,
  - (b) penetration of B’s mouth with a person’s penis,
  - (c) penetration of a person’s anus or vagina with a part of B’s body or by B with anything else, or 25
  - (d) penetration of a person’s mouth with B’s penis.

**34 Engaging in sexual activity in the presence of a person with a mental disorder or learning disability**

- (1) A person (A) commits an offence if— 30
- (a) he intentionally engages in an activity,
  - (b) the activity is sexual,
  - (c) for the purpose of obtaining sexual gratification, he engages in it in the presence of another person (B), knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it, 35
  - (d) B is unable to refuse because of a mental disorder or learning disability, and
  - (e) A knows or could reasonably be expected to know that B has a mental disorder or learning disability and that because of it B is likely to be unable to refuse. 40
- (2) B is unable to refuse if—
- (a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
  - (b) he is unable to communicate such a choice to A. 45

- (3) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years.

**35 Causing a person with a mental disorder or learning disability to watch a sexual act**

- (1) A person (A) commits an offence if – 5
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at a photograph or pseudo-photograph of any person engaging in an activity,
  - (b) the activity is sexual, 10
  - (c) B is unable to refuse because of a mental disorder or learning disability, and
  - (d) A knows or could reasonably be expected to know that B has a mental disorder or learning disability and that because of it B is likely to be unable to refuse. 15
- (2) B is unable to refuse if –
- (a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
  - (b) he is unable to communicate such a choice to A. 20
- (3) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years.

*Inducements etc. to persons with mental disorder or learning disability*

**36 Inducement, threat or deception to procure sexual activity with a person with a mental disorder or learning disability** 25

- (1) A person (A) commits an offence if –
- (a) with the agreement of another person (B) he intentionally touches that person,
  - (b) the touching is sexual,
  - (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose, 30
  - (d) B has a mental disorder or learning disability, and
  - (e) A knows or could reasonably be expected to know that B has a mental disorder or learning disability.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment – 35
- (a) where subsection (3) applies, to imprisonment for life;
  - (b) in any other case, to imprisonment for a term not exceeding 14 years.
- (3) This subsection applies if the touching involved – 40
- (a) penetration of B's anus or vagina with a part of A's body or anything else,
  - (b) penetration of B's mouth with A's penis,
  - (c) penetration of A's anus or vagina with a part of B's body, or
  - (d) penetration of A's mouth with B's penis.

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- 37 Causing a person with a mental disorder or learning disability to engage in or agree to sexual activity by inducement, threat or deception**
- (1) A person (A) commits an offence if –
- (a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity, 5
  - (b) the activity is sexual,
  - (c) B has a mental disorder or learning disability, and
  - (d) A knows or could reasonably be expected to know that B has a mental disorder or learning disability. 10
- (2) A person guilty of an offence under this section is liable, on conviction on indictment –
- (a) where subsection (3) applies, to imprisonment for life;
  - (b) in any other case, to imprisonment for a term not exceeding 14 years.
- (3) This subsection applies if the activity caused or agreed to involved – 15
- (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. 20
- 38 Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder or learning disability**
- (1) A person (A) commits an offence if –
- (a) he intentionally engages in an activity,
  - (b) the activity is sexual, 25
  - (c) for the purpose of obtaining sexual gratification, he engages in it in the presence of another person (B), knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
  - (d) B agrees to be present because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement, 30
  - (e) B has a mental disorder or learning disability, and
  - (f) A knows or could reasonably be expected to know that B has a mental disorder or learning disability.
- (2) A person guilty of an offence under this section is liable – 35
- (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.
- 39 Causing a person with a mental disorder or learning disability to watch a sexual act by inducement, threat or deception** 40
- (1) A person (A) commits an offence if –
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to

	look at a photograph or pseudo-photograph of any person engaging in an activity,	
	(b) the activity is sexual,	
	(c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,	5
	(d) B has a mental disorder or learning disability, and	
	(e) A knows or could reasonably be expected to know that B has a mental disorder or learning disability.	
(2)	A person guilty of an offence under this section is liable –	10
	(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.	
	<i>Care workers for persons with mental disorder or learning disability</i>	15
<b>40</b>	<b>Care workers: sexual activity with a person with a mental disorder or learning disability</b>	
(1)	A person (A) commits an offence if –	
	(a) he intentionally touches another person (B),	
	(b) the touching is sexual,	20
	(c) B has a mental disorder or learning disability,	
	(d) A knows or could reasonably be expected to know that B has a mental disorder or learning disability, and	
	(e) A is involved in B’s care in a way that falls within section 44.	
(2)	Where in proceedings for an offence under this section it is proved that the other person had a mental disorder or learning disability, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder or learning disability unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.	25 30
(3)	A person guilty of an offence under this section, if the touching involved –	
	(a) penetration of B’s anus or vagina with a part of A’s body or anything else,	
	(b) penetration of B’s mouth with A’s penis,	
	(c) penetration of A’s anus or vagina with a part of B’s body, or	35
	(d) penetration of A’s mouth with B’s penis,	
	is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.	
(4)	Unless subsection (3) applies, a person guilty of an offence under this section is liable –	40
	(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.	

#### **41 Care workers: causing or inciting sexual activity**

- (1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
  - (b) the activity is sexual, 5
  - (c) B has a mental disorder or learning disability,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder or learning disability, and
  - (e) A is involved in B’s care in a way that falls within section 44.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder or learning disability, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder or learning disability unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it. 10
- (3) A person guilty of an offence under this section, if the activity caused or incited involved—
- (a) penetration of B’s anus or vagina,
  - (b) penetration of B’s mouth with a person’s penis,
  - (c) penetration of a person’s anus or vagina with a part of B’s body or by B with anything else, or 20
  - (d) penetration of a person’s mouth with B’s penis,
- is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable— 25
- (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. 30

#### **42 Care workers: sexual activity in the presence of a person with a mental disorder or learning disability**

- (1) A person (A) commits an offence if—
- (a) he intentionally engages in an activity,
  - (b) the activity is sexual, 35
  - (c) for the purpose of obtaining sexual gratification, he engages in it in the presence of another person (B), knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
  - (d) B has a mental disorder or learning disability,
  - (e) A knows or could reasonably be expected to know that B has a mental disorder or learning disability, and 40
  - (f) A is involved in B’s care in a way that falls within section 44.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder or learning disability, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder or learning disability unless sufficient evidence 45

is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

- (3) A person guilty of an offence under this section 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; 5
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### **43 Care workers: causing a person with a mental disorder or learning disability to watch a sexual act**

- (1) A person (A) commits an offence if – 10
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at a photograph or pseudo-photograph of any person engaging in an activity,
  - (b) the activity is sexual, 15
  - (c) B has a mental disorder or learning disability,
  - (d) A knows or could reasonably be expected to know that B has a mental disorder or learning disability, and
  - (e) A is involved in B’s care in a way that falls within section 44.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder or learning disability, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder or learning disability unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it. 25
- (3) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years. 30

#### **44 Care workers: interpretation**

- (1) For the purposes of sections 40 to 43, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.
- (2) This subsection applies if – 35
- (a) B is accommodated and cared for in a care home, community home, voluntary home or children’s home, and
  - (b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B. 40
- (3) This subsection applies if B is a patient for whom services are provided –
- (a) by a National Health Service body or an independent medical agency, or
  - (b) in an independent clinic or an independent hospital,

and A has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

- (4) This subsection applies if A –
- (a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B’s mental disorder or learning disability, and 5
  - (b) as such, has had or is likely to have regular face to face contact with B.
- (5) In this section –
- “care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14); 10
  - “children’s home” has the meaning given by section 1 of that Act;
  - “community home” has the meaning given by section 53 of the Children Act 1989 (c. 41);
  - “employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; 15
  - “independent clinic”, “independent hospital” and “independent medical agency” have the meaning given by section 2 of the Care Standards Act 2000; 20
  - “National Health Service body” means –
    - (a) a Health Authority,
    - (b) a National Health Service trust,
    - (c) a Primary Care Trust, or
    - (d) a Special Health Authority; 25
  - “voluntary home” has the meaning given by section 60(3) of the Children Act 1989.

**45 Sections 40 to 43: marriage exception**

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 40 to 43 against another person (B) is not an offence under that section if they are lawfully married at the time. 30
- (2) In proceedings for such an offence it is for A to prove that he and B were lawfully married at the time.

**46 Sections 40 to 43: sexual relationships which pre-date care relationships**

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 40 to 43 against another person (B) is not an offence under that section if, immediately before A became involved in B’s care in a way that falls within section 44, a sexual relationship existed between A and B. 35
- (2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful. 40
- (3) In proceedings for an offence under any of sections 40 to 43 it is for the defendant to prove that such a relationship existed at that time.

*Indecent photographs of children***47 Indecent photographs of persons aged 16 or 17**

- (1) The Protection of Children Act 1978 (c. 37) (which makes provision about indecent photographs of persons under 16) is amended as follows.
- (2) In section 2(3) (evidence) and section 7(6) (meaning of “child”), for “16” substitute “18”. 5
- (3) After section 1 insert –
- “1A Exceptions where a child aged 16 or over consents**
- (1) It is not an offence under section 1(1)(a) for a person to take or make an indecent photograph of a child aged 16 or over with the consent of the child. 10
- (2) It is not an offence under section 1(1)(a) for one person to permit another to take, with the consent of a child aged 16 or over, an indecent photograph of that child.
- (3) Where a person takes or makes an indecent photograph of a child aged 16 or over with the consent of the child, it is not an offence – 15
- (a) under section 1(1)(b), for him to distribute or show the photograph to the child, or
- (b) under section 1(1)(c), for him to have the photograph in his possession with the child’s consent with a view to its being distributed or shown by him only to the child.” 20
- (4) In section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child), after subsection (1) insert –
- “(1A) Where a person takes or makes an indecent photograph of a child aged 16 or over with the consent of the child, it is not an offence under subsection (1) above for him to have the photograph in his possession with the child’s consent.” 25

**48 Criminal investigations or proceedings**

- (1) After section 1A of the Protection of Children Act 1978 insert –
- “1B Exception for criminal investigations or proceedings** 30
- (1) It is not an offence under section 1(1)(a) for a person to make an indecent photograph or pseudo-photograph of a child in accordance with an authorisation under this section.
- (2) An authorisation may be given by a person within subsection (3) if it appears to that person necessary for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world, or for any particular purpose falling within those purposes. 35
- (3) Those persons are –
- (a) a chief officer of police, 40
- (b) the Director General of the National Crime Squad,



- 
- (c) the Director General of the National Criminal Intelligence Service,
  - (d) the Commissioners of Customs and Excise, and
  - (e) the Director of Public Prosecutions.
- (4) An authorisation may be given by the Director-General of the Security Service if it appears to him necessary for the exercise of any of the functions of the Service. 5
- (5) An authorisation may be given by the Director of GCHQ if it appears to him necessary for the exercise of any of the functions of GCHQ (and in this subsection “GCHQ” has the same meaning as in the Intelligence Services Act 1994 (c. 13)). 10
- (6) An authorisation –
- (a) must be in writing,
  - (b) must specify the person to whom it is given and the purpose for which it is given, and 15
  - (c) may specify conditions to which it is subject.”
- (2) After Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) insert –
- “Exception for criminal investigations or proceedings**
- 3A.** (1) It is not an offence under Article 3(1)(a) for a person to make an indecent photograph or pseudo-photograph of a child in accordance with an authorisation under this section. 20
- (2) An authorisation may be given by a person within paragraph (3) if it appears to that person necessary for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world, or for any particular purpose falling within those purposes. 25
- (3) Those persons are –
- (a) the Chief Constable of the Police Service of Northern Ireland,
  - (b) the Director General of the National Crime Squad, 30
  - (c) the Director General of the National Crime Intelligence Service,
  - (d) the Commissioners of Customs and Excise, and
  - (e) the Director of Public Prosecutions.
- (4) An authorisation may be given by the Director-General of the Security Service if it appears to him necessary for the exercise of any of the functions of the Service. 35
- (5) An authorisation may be given by the Director of GCHQ if it appears to him necessary for the exercise of any of the functions of GCHQ (and in this paragraph “GCHQ” has the same meaning as in the Intelligence Services Act 1994). 40
- (6) An authorisation –
- (a) must be in writing,
  - (b) must specify the person to whom it is given and the purpose for which it is given, and 45
  - (c) may specify conditions to which it is subject.”

*Abuse of children through prostitution and pornography***49 Paying for sexual services of a child**

- (1) A person (A) commits an offence if—
- (a) he intentionally obtains for himself the sexual services of another person (B), 5
  - (b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and
  - (c) either—
    - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or 10
    - (ii) B is under 13.
- (2) In this section, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount. 15
- (3) A person guilty of an offence under this section against a person under 13, where the offence involved—
- (a) penetration of B’s anus or vagina with a part of A’s body or anything else,
  - (b) penetration of B’s mouth with A’s penis, 20
  - (c) penetration of A’s anus or vagina with a part of B’s body or by B with anything else, or
  - (d) penetration of A’s mouth with B’s penis,
- is liable, on conviction on indictment, to imprisonment for life.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section against a person under 16 is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years. 25
- (5) Unless subsection (3) or (4) applies, a person guilty of an offence under this section 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; 30
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.
- (6) In the application of this section to Northern Ireland, subsection (4) has effect with the substitution of “17” for “16”. 35

**50 Causing or inciting child prostitution or pornography**

- (1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to become a prostitute, or to be involved in pornography, in any part of the world, and 40
  - (b) either—
    - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13.

- (2) A person guilty of an offence under this section is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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## **51 Controlling a child prostitute or a child involved in pornography**

- (1) A person (A) commits an offence if –
  - (a) he intentionally controls any of the activities of another person (B) relating to B’s prostitution or involvement in pornography in any part of the world, and
  - (b) either –
    - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13.
- (2) A person guilty of an offence under this section is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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## **52 Arranging or facilitating child prostitution or pornography**

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- (1) A person (A) commits an offence if –
  - (a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person (B), and
  - (b) either –
    - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
    - (ii) B is under 13.
- (2) A person guilty of an offence under this section is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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## **53 Sections 50 to 52: interpretation**

- (1) For the purposes of sections 50 to 52, a person is involved in pornography if an indecent moving or still image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.
- (2) In those sections “prostitute” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.
- (3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

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*Exploitation of prostitution***54 Causing or inciting prostitution for gain**

- (1) A person commits an offence if –
- (a) he intentionally causes or incites another person to become a prostitute in any part of the world, and 5
  - (b) he does so for or in the expectation of gain for himself or a third person.
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years. 10

**55 Controlling prostitution for gain**

- (1) A person commits an offence if –
- (a) he intentionally controls any of the activities of another person relating to that person’s prostitution in any part of the world, and 15
  - (b) he does so for or in the expectation of gain for himself or a third person.
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years. 20

**56 Sections 54 and 55: interpretation**

- (1) In sections 54 and 55, “gain” means –
- (a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or 25
  - (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.
- (2) In those sections “prostitute” and “prostitution” have the meaning given by section 53(2). 30

*Extension of gender-specific prostitution offences***57 Extension of gender-specific prostitution offences**

Schedule 1 (extension of gender-specific prostitution offences) has effect.

*Trafficking***58 Trafficking into the UK for sexual exploitation** 35

- (1) A person (A) commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either –

- (a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or
  - (b) he intends to facilitate the doing of anything to or in respect of B, after B's arrival but in any part of the world, which if done as he intends it to be done or believes that it will be done will involve the commission of a relevant offence. 5
- (2) A person guilty of an offence under this section 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; 10
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

## 59 Trafficking within the UK for sexual exploitation

- (1) A person (A) commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either – 15
- (a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or
  - (b) he intends to facilitate the doing of anything to or in respect of B, during or after the journey and in any part of the world, which if done as he intends it to be done or believes that it will be done will involve the commission of a relevant offence. 20
- (2) A person guilty of an offence under this section 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; 25
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

## 60 Trafficking out of the UK for sexual exploitation

- (1) A person (A) commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either – 30
- (a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, or
  - (b) he intends to facilitate the doing of anything, after B's departure but in any part of the world, which if done as he intends it to be done or believes that it will be done will involve the commission of a relevant offence. 35
- (2) A person guilty of an offence under this section 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; 40
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

## 61 Sections 58 to 60: interpretation and jurisdiction

- (1) In sections 58 to 60, “relevant offence” means –
- (a) an offence under this Part, 45

<ul style="list-style-type: none"> <li>(b) an offence under section 1(1)(a) of the Protection of Children Act 1978 (c. 37),</li> <li>(c) an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),</li> <li>(d) an offence under Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)), or</li> <li>(e) anything done outside England and Wales and Northern Ireland which is not an offence within any of paragraphs (a) to (d) but would be if done in England and Wales or Northern Ireland.</li> </ul>	<p>5</p> <p>10</p>
<p>(2) Sections 58 to 60 apply to anything done –</p> <ul style="list-style-type: none"> <li>(a) in the United Kingdom, or</li> <li>(b) outside the United Kingdom, by a body incorporated under the law of a part of the United Kingdom or by an individual to whom subsection (3) applies.</li> </ul>	<p>15</p>
<p>(3) This subsection applies to –</p> <ul style="list-style-type: none"> <li>(a) a British citizen,</li> <li>(b) a British overseas territories citizen,</li> <li>(c) a British National (Overseas),</li> <li>(d) a British Overseas citizen,</li> <li>(e) a person who is a British subject under the British Nationality Act 1981 (c. 61),</li> <li>(f) a British protected person within the meaning given by section 50(1) of that Act.</li> </ul>	<p>20</p>
<i>Preparatory offences</i>	
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<b>62 Administering a substance with intent</b>	
<p>(1) A person commits an offence if he intentionally administers a substance to, or causes a substance to be taken by, another person (B) –</p> <ul style="list-style-type: none"> <li>(a) knowing that B does not consent, and</li> <li>(b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.</li> </ul>	<p>30</p>
<p>(2) A person guilty of an offence under this section is liable –</p> <ul style="list-style-type: none"> <li>(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;</li> <li>(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.</li> </ul>	<p>35</p>
<b>63 Committing an offence with intent to commit a sexual offence</b>	
<p>(1) A person commits an offence under this section if he commits any offence with the intention of committing a relevant sexual offence.</p>	
<p>(2) In this section, “relevant sexual offence” means any offence under this Part (including an offence of aiding, abetting, counselling or procuring such an offence).</p>	<p>40</p>

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- (3) A person guilty of an offence under this section is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable – 5
- (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.
- 64 Trespass with intent to commit a sexual offence** 10
- (1) A person commits an offence if –
- (a) he is a trespasser on any premises,
  - (b) he intends to commit a relevant sexual offence on the premises, and
  - (c) he knows that, or is reckless as to whether, he is a trespasser.
- (2) In this section – 15
- “premises” includes a structure or part of a structure;
  - “relevant sexual offence” has the same meaning as in section 63;
  - “structure” includes a tent, vehicle or vessel or other temporary or movable structure.
- (3) A person guilty of an offence under this section is liable – 20
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.
- Sex with an adult relative* 25
- 65 Sex with an adult relative: penetration**
- (1) A person aged 16 or over (A) commits an offence if –
- (a) he intentionally penetrates another person’s vagina or anus with a part of his body or anything else, or penetrates another person’s mouth with his penis, 30
  - (b) the penetration is sexual,
  - (c) the other person (B) is aged 18 or over,
  - (d) A is related to B in a way mentioned in subsection (2), and
  - (e) A knows or could reasonably be expected to know that he is related to B in that way. 35
- (2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, or half-sister.
- (3) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was. 40

- (4) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

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## 66 Sex with an adult relative: consenting to penetration

- (1) A person aged 16 or over (A) commits an offence if –
- (a) another person (B) penetrates A’s vagina or anus with a part of B’s body or anything else, or penetrates A’s mouth with B’s penis,
  - (b) A consents to the penetration,
  - (c) the penetration is sexual,
  - (d) the other person (B) is aged 18 or over,
  - (e) A is related to B in a way mentioned in subsection (2), and
  - (f) A knows or could reasonably be expected to know that he is related to B in that way.
- (2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, or half-sister.
- (3) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.
- (4) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

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### *Other offences*

## 67 Sexual activity in a public lavatory

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- (1) A person commits an offence if –
- (a) he is in a public lavatory,
  - (b) he intentionally engages in activity within subsection (2),
  - (c) the activity is sexual.
- (2) An activity is within this subsection if it involves –
- (a) a person, with a part of that person’s body or anything else, penetrating that or another person’s vagina or anus;
  - (b) a person, with his penis, penetrating the mouth of another person;
  - (c) a person touching that person’s vagina, anus or penis, other than through that person’s clothes; or
  - (d) a person touching another person’s vagina, anus or penis, other than through that person’s clothes.

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- (3) A lavatory is a public lavatory if the public or any section of the public has or is permitted to have access to it whether on payment or otherwise.
- (4) A person guilty of an offence under this section 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; 5
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

## 68 Exposure

- (1) A person (A) commits an offence if –
  - (a) he intentionally exposes his genitals, and 10
  - (b) he knows or intends that someone will see them and be caused alarm or distress.
- (2) A person guilty of an offence under this section 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; 15
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

## 69 Voyeurism

- (1) A person commits an offence if –
  - (a) for the purpose of obtaining sexual gratification, he observes another person doing a private act, and 20
  - (b) he knows that the other person does not consent to being observed for his sexual gratification.
- (2) A person commits an offence if –
  - (a) he operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person (B) doing a private act, and 25
  - (b) he knows that B does not consent to his operating equipment with that intention.
- (3) A person commits an offence if – 30
  - (a) he records another person (B) doing a private act,
  - (b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act, and
  - (c) he knows that B does not consent to his recording the act with that intention. 35
- (4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection (1).
- (5) A person guilty of an offence under this section is liable – 40
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

**70 Voyeurism: interpretation**

- (1) The following apply for the purposes of section 69.
- (2) A person is doing a private act if the person is in a structure which, in the circumstances, would reasonably be expected to provide privacy, and –
- (a) the person’s genitals, buttocks or breasts are exposed or covered only with underwear, 5
  - (b) the person is using a lavatory, or
  - (c) the person is doing a sexual act that is not of a kind ordinarily done in public.
- (3) Observation means any observation, whether direct or by looking at an image produced in any way. 10
- (4) In section 69 and this section –  
“image” means a moving or still image, produced by any means, and  
“structure” includes a tent, vehicle or vessel or other temporary or movable structure. 15

**71 Intercourse with an animal**

- (1) A person commits an offence if –
- (a) he intentionally performs an act of penetration with his penis,
  - (b) what is penetrated is the vagina or anus of a living animal, and
  - (c) he knows that, or is reckless as to whether, that is what is penetrated. 20
- (2) A person (A) commits an offence if –
- (a) A intentionally causes, or allows, A’s vagina or anus to be penetrated,
  - (b) the penetration is by the penis of a living animal, and
  - (c) A knows that, or is reckless as to whether, that is what A is being penetrated by. 25
- (3) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years. 30

**72 Sexual penetration of a corpse**

- (1) A person commits an offence if –
- (a) he intentionally performs an act of penetration with a part of his body or anything else,
  - (b) what is penetrated is a part of the body of a dead person, 35
  - (c) he knows that, or is reckless as to whether, that is what is penetrated, and
  - (d) the penetration is sexual.
- (2) A person guilty of an offence under this section 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; 40
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

*Offences outside the United Kingdom*

**73 Offences outside the United Kingdom**

- (1) Subject to subsection (2), any act done by a person in a country or territory outside the United Kingdom which –
- (a) constituted an offence under the law in force in that country or territory, and 5
  - (b) would constitute a sexual offence to which this section applies if it had been done in England and Wales or in Northern Ireland,
- constitutes that sexual offence under the law of that part of the United Kingdom. 10
- (2) Proceedings by virtue of this section may be brought only against a person who was on 1st September 1997, or has since become, a British citizen or resident in the United Kingdom.
- (3) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this section, however it is described in that law. 15
- (4) Subject to subsection (5), the condition in subsection (1)(a) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice –
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion met, 20
  - (b) showing his grounds for that opinion, and
  - (c) requiring the prosecution to prove that it is met.
- (5) The court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (4). 25
- (6) In the Crown Court the question whether the condition is met is to be decided by the judge alone.
- (7) Schedule 2 lists the sexual offences to which this section applies.

*Supplementary and general* 30

**74 Exceptions to aiding, abetting and counselling**

- (1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if he acts for the purpose of –
- (a) protecting the child from sexually transmitted infection,
  - (b) protecting the physical safety of the child, 35
  - (c) preventing the child from becoming pregnant, or
  - (d) promoting the child’s emotional well-being by the giving of advice,
- and not for the purpose of causing or encouraging either the activity constituting the offence or the child’s participation in it.
- (2) This section applies to – 40
- (a) an offence under any of sections 6 to 8 (offences against children under 13);

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- (b) an offence under section 10 (sexual activity with a child);
- (c) an offence under section 14 which would be an offence under section 10 if the offender were aged 18;
- (d) an offence under any of sections 18, 27, 32, 36 and 40 (sexual activity) against a person under 16. 5
- (3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.
- 75 “Consent”**
- For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice. 10
- 76 Presumptions about the absence of belief in consent**
- (1) If in proceedings for an offence to which this section applies it is proved –
- (a) that the defendant did the relevant act,
- (b) that any of the circumstances specified in subsection (2) existed, and 15
- (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. 20
- (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; 25
- (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; 30
- (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. 35
- (3) In subsection (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. 40
- 77 Conclusive presumptions about consent**
- (1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed –
- (a) that the complainant did not consent to the relevant act, and 45

- (b) that the defendant did not believe that the complainant consented to the relevant act.
- (2) The circumstances are that—
  - (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act; 5
  - (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

**78 Sections 76 and 77: relevant acts**

In relation to an offence to which sections 76 and 77 apply, references in those sections to the relevant act and to the complainant are to be read as follows— 10

<i>Offence</i>	<i>Relevant Act</i>	
An offence under section 1 (rape).	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”).	15
An offence under section 3 (assault by penetration).	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person (“the complainant”), where the penetration is sexual.	20
An offence under section 4 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.	25
An offence under section 5 (causing a person to engage in sexual activity without consent).	The defendant intentionally causing another person (“the complainant”) to engage in an activity, where the activity is sexual.	30

**79 “Sexual”**

For the purposes of this Part, penetration, touching or any other activity is sexual if—

- (a) from its nature, a reasonable person would consider that it may (at least) be sexual, and 35
- (b) a reasonable person would consider that it is sexual because of its nature, its circumstances or the purpose of any person in relation to it, or all or some of those considerations.

**80 Part 1: general interpretation**

40

- (1) The following apply for the purposes of this Part.

- (2) Penetration is a continuing act from entry to withdrawal.
- (3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).
- (4) “Mental disorder” has the meaning given by section 1 of the Mental Health Act 1983 (c. 20). 5
- (5) “Photograph” and “pseudo-photograph” have the same meaning as in the Protection of Children Act 1978 (c. 37).
- (6) Touching includes touching –  
 (a) with any part of the body,  
 (b) with anything else, 10  
 (c) through anything,  
 and in particular includes touching amounting to penetration.
- (7) “Vagina” includes vulva.
- (8) In relation to an animal, references to the vagina or anus include references to any similar part. 15

## PART 2

### NOTIFICATION AND ORDERS

#### *Notification requirements*

#### **81 Persons becoming subject to notification requirements**

- (1) A person is subject to the notification requirements of this Part for the period set out in section 83 (“the notification period”) if – 20  
 (a) he is convicted of an offence listed in Schedule 3;  
 (b) he is found not guilty of such an offence by reason of insanity;  
 (c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or 25  
 (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.
- (2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a “relevant offender”.

#### **82 Persons formerly subject to Part 1 of the Sex Offenders Act 1997** 30

- (1) A person is, from the commencement of this Part until the end of the notification period, subject to the notification requirements of this Part if, before the commencement of this Part –  
 (a) he was convicted of an offence listed in Schedule 3;  
 (b) he was found not guilty of such an offence by reason of insanity; 35  
 (c) he was found to be under a disability and to have done the act charged against him in respect of such an offence; or  
 (d) in England and Wales or Northern Ireland, he was cautioned in respect of such an offence.

- 
- (2) Subsection (1) does not apply if the notification period ended before the commencement of this Part.
- (3) Subsection (1)(a) does not apply to a conviction before 1st September 1997 unless, at the beginning of that day, the person –
- (a) had not been dealt with in respect of the offence; 5
  - (b) was serving a sentence of imprisonment or a term of service detention, or was subject to a community order, in respect of the offence;
  - (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence; or 10
  - (d) was detained in a hospital or was subject to a guardianship order, following the conviction.
- (4) Paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 1st September 1997 unless, at the beginning of that day, the person –
- (a) had not been dealt with in respect of the finding; or 15
  - (b) was detained in a hospital, following the finding.
- (5) Subsection (1)(d) does not apply to a caution given before 1st September 1997.
- (6) A person who would have been within subsection (3)(b) or (d) or (4)(b) but for the fact that at the beginning of 1st September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision. 20
- (7) Where, immediately before the commencement of this Part, an order under a provision within subsection (8) was in force in respect of a person, the person is subject to the notification requirements of this Part from that commencement until the order is discharged or otherwise ceases to have effect. 25
- (8) The provisions are –
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
  - (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales);
  - (c) section 2A of the Crime and Disorder Act 1998 (interim orders made in England and Wales); 30
  - (d) section 20 of the Crime and Disorder Act 1998 (sex offender orders and interim orders made in Scotland);
  - (e) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland); 35
  - (f) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

### 83 The notification period

- (1) The notification period for a person within section 81(1) or 82(1) is the period in the second column of the following Table opposite the description that applies to him. 40

TABLE

<i>Description of relevant offender</i>	<i>Notification period</i>	
A person who, in respect of the offence, is or has been sentenced to imprisonment for life or for a term of 30 months or more	An indefinite period beginning with the relevant date	5
A person who, in respect of the offence, has been made the subject of an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (order for lifelong restriction)	An indefinite period beginning with that date	10
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date	
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date	15
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date	20
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date	25
A person within section 81(1)(d)	2 years beginning with that date	
A person in whose case an order for conditional discharge or, in Scotland, a probation order, is made in respect of the offence	The period of conditional discharge or, in Scotland, the probation period	30
A person of any other description	5 years beginning with the relevant date	
(2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.		35
(3) Subsection (4) applies where a relevant offender within section 81(1)(a) or 82(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3—		
(a) to consecutive terms of imprisonment; or		
(b) to terms of imprisonment which are partly concurrent.		40



- (4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which –
- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
  - (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z. 5
- (5) Where a relevant offender the subject of a finding within section 81(1)(c) or 82(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.
- (6) In this Part, “relevant date” means – 10
- (a) in the case of a person within section 81(1)(a) or 82(1)(a), the date of the conviction;
  - (b) in the case of a person within section 81(1)(b) or (c) or 82(1)(b) or (c), the date of the finding;
  - (c) in the case of a person within section 81(1)(d) or 82(1)(d), the date of the caution. 15

#### 84 Notification requirements: initial notification

- (1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5). 20
- (2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 81(1) if –
- (a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of the court (“the earlier event”), 25
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event. 30
- (3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 82(1) if the offender complied with section 2(1) of the Sex Offenders Act 1997 (c. 51) in respect of the conviction, finding or caution.
- (4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if – 35
- (a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of the court (“the earlier event”), 40
  - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
  - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- (5) The information is – 45
- (a) the relevant offender’s date of birth;
  - (b) his national insurance number;

- 
- (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
  - (d) his home address on the relevant date;
  - (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names; 5
  - (f) his home address on the date on which notification is given;
  - (g) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays.
- (6) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is – 10
- (a) remanded in or committed to custody by an order of a court;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (7) In this Part, “home address” means, in relation to any person – 15
- (a) the address of his sole or main residence in the United Kingdom, or
  - (b) where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.
- 85 Notification requirements: changes** 20
- (1) A relevant offender must, within the period of 3 days beginning with –
- (a) his using a name which has not been notified to the police under section 84(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
  - (b) any change of his home address,
  - (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 84(1), this subsection, or section 2 of the Sex Offenders Act 1997, or 25
  - (d) his release from custody pursuant to an order of the court or from imprisonment, service detention or detention in a hospital, 30
- notify to the police that name, the new home address, the address of those premises or (as the case may be) the fact that he has been released, and (in addition) the information set out in section 84(5).
- (2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur. 35
- (3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1). 40
- (4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified –
- (a) the notification does not affect the duty imposed by subsection (1), and
  - (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified. 45

- (5) Section 84(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 84(1).
- (6) In this Part, “qualifying period” means –
  - (a) a period of 7 days, or 5
  - (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

## 86 Notification requirements: periodic notification

- (1) A relevant offender must notify to the police the information set out in section 84(5) within the period of one year after the last of the following events to have occurred – 10
  - (a) the commencement of this Part;
  - (b) any notification given under section 84(1);
  - (c) any notification given under section 85(1) and, if more than one such notification has been given, the last such notification; 15
  - (d) any notification given under this subsection and, if more than one such notification has been given, the last such notification.
- (2) Where the period referred to in subsection (1) would (apart from this subsection) end whilst subsection (3) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (3) first ceases to apply to him. 20
- (3) This subsection applies to the relevant offender if he is –
  - (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or a term of service detention,
  - (c) detained in a hospital, or 25
  - (d) outside the United Kingdom.

## 87 Notification requirements: travel outside the United Kingdom

- (1) The Secretary of State may by regulations make provision requiring relevant offenders who leave the United Kingdom, or any description of such offenders – 30
  - (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);
  - (b) if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).
- (2) A notification under this subsection must disclose – 35
  - (a) the date on which the offender will leave the United Kingdom;
  - (b) the country (or, if there is more than one, the first country) to which he will travel and his point of arrival (determined in accordance with the regulations) in that country;
  - (c) any other information prescribed by the regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom. 40
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offenders’s return to the United Kingdom.

- (4) Regulations under subsection (1) may make different provision for different categories of person.

## 88 Method of notification and related matters

- (1) A person gives a notification under section 84(1), 85(1) or 86(1) by –
- (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and 5
  - (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- (2) A person giving a notification under section 85(1) – 10
- (a) in relation to a prospective change of home address, or
  - (b) in relation to premises referred to in subsection (1)(c) of that section, may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address. 15
- (3) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.
- (4) Where a notification is given under section 84(1), 85(1) or 86(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), allow the officer or person to – 20
- (a) take his fingerprints,
  - (b) photograph any part of him, or
  - (c) do both these things.
- (5) The power in subsection (4) is exercisable for the purpose of verifying the identity of the relevant offender. 25
- (6) Regulations under subsection (1) may make different provision for different categories of person.

## 89 Section 88: interpretation

- (1) Subsections (2) to (4) apply for the purposes of section 88. 30
- (2) “Photograph” includes any process by means of which an image may be produced.
- (3) “Local police area” means, in relation to a person –
- (a) the police area in which his home address is situated;
  - (b) in the absence of a home address, the police area in which the home address last notified is situated; 35
  - (c) in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person in a way mentioned in subsection (4) is situated.
- (4) The ways are – 40
- (a) dealing with a person in respect of an offence listed in Schedule 3;
  - (b) dealing with a person in respect of an offence under section 126;

- (c) making, in respect of a person, a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order;
  - (d) making, in respect of a person, an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales or Scotland) or Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland). 5
- (5) Subsection (3) applies as if Northern Ireland were a police area.

**90 Young offenders: parental directions** 10

- (1) Where a person within the first column of the following Table (“the young offender”) is under 18 (or, in Scotland, 16) when he is before the court referred to in the second column of the Table opposite the description that applies to him, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for (or, in Scotland, parental responsibilities in relation to) the young offender. 15

TABLE

<i>Description of person</i>	<i>Court which may make the direction</i>	
A relevant offender within section 81(1)(a) to (c) or 82(1)(a) to (c)	The court which deals with the offender in respect of the conviction or finding	20
A relevant offender within section 127(1)(a) to (c)	The court which deals with the offender in respect of the conviction or finding	
A person who is the subject of a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order	25
A relevant offender who is the defendant to an application under subsection (4) (or, in Scotland, the subject of an application under subsection (5))	The court which hears the application	30

- (2) Where this subsection applies –
- (a) the obligations that would (apart from this subsection) be imposed by or under sections 84 to 87 on the young offender are to be treated instead as obligations on the parent, and
  - (b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given. 35
- (3) A direction under subsection (1) takes immediate effect and applies –
- (a) until the young offender attains the age of 18 (or, where a court in Scotland gives the direction, 16); or
  - (b) for such shorter period as the court may, at the time the direction is given, direct. 40

- (4) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”) –
- (a) who resides in his police area, or who the chief officer believes is in or is intending to come to his police area, and 5
  - (b) who the chief officer believes is under 18.
- (5) In Scotland, a chief constable may, by summary application to any sheriff within whose sheriffdom lies any part of the area of his police force, apply for a direction under subsection (1) in respect of a relevant offender (“the subject”) – 10
- (a) who resides in that area, or who the chief constable believes is in or is intending to come to that area, and
  - (b) who the chief constable believes is under 16.

## 91 Parental directions: variations, renewals and discharges

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 90(1). 15
- (2) The persons are –
- (a) the young offender;
  - (b) the parent;
  - (c) the chief officer of police for the area in which the young offender resides; 20
  - (d) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;
  - (e) in Scotland –
    - (i) the chief constable of the police force within the area of which the young offender resides; 25
    - (ii) a chief constable who believes that the young offender is in, or is intending to come to, the area of his police force;
  - (f) where the direction was made on an application under section 90(4), the chief officer of police who made the application; 30
  - (g) where the direction was made on an application under section 90(5), the chief constable who made the application.
- (3) An application under subsection (1) may be made –
- (a) where the appropriate court is the Crown Court, in accordance with rules of court; 35
  - (b) in any other case, by complaint (or, in Scotland, by summary application).
- (4) On the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate. 40
- (5) In this section, the “appropriate court” means –
- (a) where the Court of Appeal made the order, the Crown Court;
  - (b) in any other case, the court that made the direction under section 90(1).

## 92 Offences relating to notification

- (1) A person commits an offence if he –
  - (a) fails, without reasonable excuse, to comply with section 84(1), 85(1), 85(4)(b), 86(1), 88(4) or 90(2)(b) or any requirement imposed by regulations made under section 87(1); or 5
  - (b) notifies to the police, in purported compliance with section 84(1), 85(1) or 86(1), or with any requirement imposed by regulations made under section 87(1), any information which he knows to be false.
- (2) A person guilty of an offence under this section 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; 10
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) A person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 84(1), 85(1) or 86(1), or a requirement imposed by regulations made under section 87(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure. 15
- (4) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found. 20

## 93 Certificates for purposes of Part 2

- (1) Subsection (2) applies where a person is –
  - (a) convicted of an offence listed in Schedule 3; 25
  - (b) found not guilty of such an offence by reason of insanity; or
  - (c) found to be under a disability and to have done the act charged against him in respect of such an offence.
- (2) If the court by or before which the person is so convicted or found –
  - (a) states in open court – 30
    - (i) that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him, and
    - (ii) that the offence in question is an offence to which this Part applies, and 35
  - (b) certifies those facts, whether at the time or subsequently, the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.
- (3) Subsection (4) applies where a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 3. 40
- (4) If the constable –
  - (a) informs the person that he has been cautioned on that date and that the offence in question is an offence to which this Part applies, and
  - (b) certifies those facts, whether at the time or subsequently, in such form as the Secretary of State may by order prescribe, 45

the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.

*Information about release or transfer*

**94 Information about release or transfer**

- |     |   |    |
|-----|---|----|
| (1) | This section applies to a relevant offender who is serving a sentence of imprisonment or a term of service detention, or is detained in a hospital.   | 5  |
| (2) | The Secretary of State may by regulations make provision requiring notice to be given by the person who is responsible for that offender to persons prescribed by the regulations, of any occasion when the offender is released or a different person becomes responsible for him. | 10 |
| (3) | The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender.  |    |

*Notification orders*

**95 Notification orders: applications and grounds**

- |     |   |    |
|-----|---|----|
| (1) | A chief officer of police may, by complaint to any magistrates' court whose commission area includes his police area, apply for an order under this section (a "notification order") in respect of a person ("the defendant") if –  | 15 |
|     | (a) it appears to him that the following three conditions are met with respect to the defendant, and  |    |
|     | (b) the defendant resides in his police area or the chief officer believes that the defendant is in, or is intending to come to, his police area.   | 20 |
| (2) | The first condition is that under the law in force in a country outside the United Kingdom –  |    |
|     | (a) he has been convicted of a relevant offence (whether or not he has been punished for it),   | 25 |
|     | (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,   |    |
|     | (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or  | 30 |
|     | (d) he has been cautioned in respect of a relevant offence.   |    |
| (3) | The second condition is that –  |    |
|     | (a) the first condition is met because of a conviction, finding or caution which occurred on or after 1st September 1997,   | 35 |
|     | (b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it, or   |    |
|     | (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date the person was, in respect of the offence or finding, subject under the law in force in the country concerned to detention, supervision or any other disposal equivalent to | 40 |



- any of those mentioned in section 82(3) (read with sections 82(6) and 129).
- (4) The third condition is that the period set out in section 83 (as modified by subsections (2) and (3) of section 96) in respect of the relevant offence has not expired. 5
- (5) If on the application it is proved that the conditions in subsections (2) to (4) are met, the court must make a notification order.
- (6) In this section and section 96, “relevant offence” has the meaning given by section 97.
- 96 Notification orders: effect** 10
- (1) Where a notification order is made –
- (a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below, and
- (b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 83. 15
- (2) The “relevant date” means –
- (a) in the case of a person within section 95(2)(a), the date of the conviction;
- (b) in the case of a person within section 95(2)(b) or (c), the date of the finding; 20
- (c) in the case of a person within section 95(2)(d), the date of the caution.
- (3) In section 83 –
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 81 are to be read as references to the defendant; 25
- (b) the reference in the Table to section 81(1)(d) is to be read as a reference to section 95(2)(d);
- (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made; 30
- (d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.
- (4) In sections 84 and 86, references to the commencement of this Part are to be read as references to the date of service of the notification order. 35
- 97 Sections 95 and 96: relevant offences**
- (1) “Relevant offence” in sections 95 and 96 means an act which –
- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 57) if it had been done in any part of the United Kingdom. 40
- (2) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

- (3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice –
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met, 5
  - (b) showing his grounds for that opinion, and
  - (c) requiring the applicant to prove that the condition is met.
- (4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).
- 98 Interim notification orders 10**
- (1) This section applies where an application for a notification order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim notification order”) –
- (a) may be made in the complaint containing the main application, or 15
  - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim notification order.
- (4) Such an order – 20
- (a) has effect only for a fixed period, specified in the order;
  - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) While such an order has effect –
- (a) the defendant is subject to the notification requirements of this Part; 25
  - (b) this Part applies to the defendant, subject to the modification set out in subsection (6).
- (6) The “relevant date” means the date of service of the order.
- (7) The applicant or the defendant may by complaint apply to the court that made the interim notification order for the order to be varied, renewed or discharged. 30
- 99 Notification orders and interim notification orders: appeals**
- A defendant may appeal to the Crown Court against the making of a notification order or interim notification order.
- 100 Appeals in relation to notification orders and interim notification orders: Scotland 35**
- In Scotland –
- (a) an interlocutor granting or refusing a notification order or interim notification order is an appealable interlocutor; and
  - (b) where an appeal is taken against an interlocutor so granting such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal. 40

**101 Sections 95 to 98: Scotland**

- (1) Sections 95 to 98 apply to Scotland with the following modifications –
- (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force; 5
  - (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
  - (c) an application for a notification order or interim notification order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant’s police force (references to “the court” being construed accordingly). 10
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.
- (3) The clerk of the court by which, by virtue of that subsection, a notification order or interim notification order is made, varied, renewed or discharged shall cause a copy of, as the case may be – 15
- (a) the order as so made, varied or renewed; or
  - (b) the interlocutor by which discharge is effected,
- to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate). 20

*Sexual offences prevention orders*

**102 Sexual offences prevention orders: applications and grounds** 25

- (1) A court may make an order under this section in respect of a person (“the defendant”) where any of subsections (2) to (4) applies to the defendant and –
- (a) where subsection (4) applies, it is satisfied that the defendant’s behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant; 30
  - (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (2) This subsection applies to the defendant where the court deals with him in respect of a conviction for an offence listed in Schedule 3 or 4. 35
- (3) This subsection applies to the defendant where the court deals with him in respect of a finding –
- (a) that he is not guilty of an offence listed in Schedule 3 or 4 by reason of insanity, or 40
  - (b) that he is under a disability and has done the act charged against him in respect of such an offence.
- (4) This subsection applies to the defendant where –
- (a) an application under subsection (5) has been made to the court in respect of him, and 45

- (b) on the application, it is proved that he is a qualifying offender.
- (5) A chief officer of police may by complaint to the magistrates' court apply for an order under this section in respect of a person who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that – 5
- (a) the person is a qualifying offender, and
- (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (6) An application under subsection (5) may be made to any magistrates' court whose commission area includes – 10
- (a) any part of the applicant's police area, or
- (b) any place where it is alleged that the person acted in a way mentioned in subsection (5)(b).
- 103 SOPOs: further provision as respects Scotland** 15
- (1) A chief constable may apply for an order under this section in respect of a person who he believes is in, or is intending to come to, the area of his police force if it appears to the chief constable that –
- (a) the person has been convicted of, found not guilty by reason of insanity of or found to be under a disability and to have done the act charged against him in respect of – 20
- (i) an offence listed in paragraph 57 of Schedule 3; or
- (ii) before the commencement of this Part, an offence in Scotland other than is mentioned in paragraphs 33 to 56 of that Schedule if the chief constable considers that had the conviction or finding been after such commencement it is likely that a determination such as is mentioned in paragraph 57 would have been made in relation to the offence; and 25
- (b) the person has since the conviction or finding acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made. 30
- (2) An application under subsection (1) may be made by summary application to a sheriff within whose sherriffdom lies –
- (a) any part of the area of the applicant's police force; or
- (b) any place where it is alleged that the person acted in a way mentioned in subsection (1)(b). 35
- (3) The sheriff may make the order where satisfied –
- (a) that the person's behaviour since the conviction or finding makes it necessary to make such an order, for the purposes of protecting the public or any particular members of the public from serious sexual harm from the person; and 40
- (b) where the application is by virtue of subsection (1)(a)(ii), that there was a significant sexual aspect to the person's behaviour in committing the offence.
- (4) Subsection (3) of section 104 applies for the purposes of this section as it applies for the purposes of section 102 and subsections (2) and (3) of section 110 apply in relation to a summary application made by virtue of subsection (1) as they apply in relation to one made by virtue of subsection (1)(g) of that section. 45

**104 Section 102: supplemental**

- (1) In this Part, “sexual offences prevention order” means an order under section 102 or 103.
- (2) Subsections (3) to (8) apply for the purposes of section 102.
- (3) “Protecting the public or any particular members of the public from serious sexual harm from the defendant” means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3. 5
- (4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part. 10
- (5) “Qualifying offender” means a person within subsection (6) or (7).
- (6) A person is within this subsection if, whether before or after the commencement of this Part, he—
  - (a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 57) or 4, 15
  - (b) has been found not guilty of such an offence by reason of insanity,
  - (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
  - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence. 20
- (7) A person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
  - (a) he has been convicted of a relevant offence (whether or not he has been punished for it), 25
  - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
  - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or 30
  - (d) he has been cautioned in respect of a relevant offence.
- (8) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (6) or (7). 35
- (9) In subsection (7), “relevant offence” means an act which—
  - (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 57) or 4 if it had been done in any part of the United Kingdom. 40
- (10) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (9), however it is described in that law. 45

- (11) Subject to subsection (12), on an application under section 102(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice –
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met, 5
  - (b) showing his grounds for that opinion, and
  - (c) requiring the applicant to prove that the condition is met.
- (12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11). 10

### 105 SOPOs: effect

- (1) A sexual offences prevention order –
- (a) prohibits the defendant from doing anything described in the order, and
  - (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order. 15
- (2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (3) Where –
- (a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
  - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect, 20
- the defendant remains subject to the notification requirements. 25
- (4) Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order –
- (a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect, and 30
  - (b) this Part applies to the defendant, subject to the modification set out in subsection (5).
- (5) The “relevant date” is the date of service of the order.
- (6) Where a court makes a sexual offences prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect. 35
- (7) Section 104(3) applies for the purposes of this section and section 106.

### 106 SOPOs: variations, renewals and discharges

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual offences prevention order. 40
- (2) The persons are –
- (a) the defendant;

- 
- (b) the chief officer of police for the area in which the defendant resides;
- (c) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area;
- (d) where the order was made on an application under section 102(5), the chief officer of police who made the application. 5
- (3) An application under subsection (1) may be made –
- (a) where the appropriate court is the Crown Court, in accordance with rules of court;
- (b) in any other case, by complaint.
- (4) Subject to subsections (5) and (6), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual offences prevention order, that the court considers appropriate. 10
- (5) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose). 15
- (6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and – 20
- (a) where the application is made by a chief officer of police, that chief officer, or
- (b) in any other case, the chief officer of police for the area in which the defendant resides. 25
- (7) In this section “the appropriate court” means –
- (a) where the Crown Court or the Court of Appeal made the sexual offences prevention order, the Crown Court;
- (b) where a magistrates’ court made the order, that court, a magistrates’ court for the area in which the defendant resides or, where the application is made by a chief officer of police, any magistrates’ court whose commission area includes any part of the chief officer’s police area; 30
- (c) where a youth court made the order, that court, a youth court for the area in which the defendant resides or, where the application is made by a chief officer of police, any youth court whose commission area includes any part of the chief officer’s police area. 35
- (8) This section applies to orders under – 40
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders),
- (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales), and
- (c) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland),
- as it applies to sexual offences prevention orders. 45

**107 Interim SOPOs**

- (1) This section applies where an application under section 102(5) (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim sexual offences prevention order”) – 5
  - (a) may be made by the complaint by which the main application is made, or
  - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made. 10
- (3) The court may, if it considers it just to do so, make an interim sexual offences prevention order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order – 15
  - (a) has effect only for a fixed period, specified in the order;
  - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) While such an order has effect – 20
  - (a) the defendant is subject to the notification requirements of this Part;
  - (b) this Part applies to the defendant, subject to the modification set out in subsection (6).
- (6) The “relevant date” means the date of service of the order.
- (7) The applicant or the defendant may by complaint apply to the court that made the interim sexual offences prevention order for the order to be varied, renewed or discharged. 25
- (8) Subsection (7) applies to orders under – 30
  - (a) section 2A of the Crime and Disorder Act 1998 (c. 37) (interim orders made in England and Wales), and
  - (b) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (interim orders made in Northern Ireland),

as it applies to interim sexual offences prevention orders.

**108 SOPOs and interim SOPOs: appeals**

- (1) A defendant may appeal against the making of a sexual offences prevention order – 35
  - (a) where section 102(2) applied to him, as if the order were a sentence passed on him for the offence;
  - (b) where section 102(3) (but not section 102(2)) applied to him, as if he had been convicted of the offence and the order were a sentence passed on him for that offence;
  - (c) where the order was made on an application under section 102(5), to the Crown Court. 40
- (2) A defendant may appeal to the Crown Court against the making of an interim sexual offences prevention order.



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- (3) A defendant may appeal against the making of an order under section 106, or the refusal to make such an order –
- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
  - (b) in any other case, to the Crown Court. 5
- (4) On an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (5) Any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates’ court) is for the purpose of section 106(7) or 107(7) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court). 10
- 109 Appeals in relation to SOPOs and interim SOPOs: Scotland 15**
- In Scotland –
- (a) an interlocutor granting, refusing, varying, renewing or discharging a sexual offences prevention order or interim sexual offences prevention order is an appealable interlocutor; and
  - (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal. 20
- 110 Sections 102 and 104 to 107: Scotland**
- (1) Sections 102 and 104 to 107 apply to Scotland with the following modifications – 25
- (a) subsections (1)(b), (2) and (3) of section 102 shall be disregarded;
  - (b) an application under subsection (5) of section 102 shall not be competent in respect of a person who is a qualifying offender by virtue only of a conviction or finding which relates to an offence listed at paragraph 64 of Schedule 4; 30
  - (c) in section 106(8), for the words from “orders”, where it first occurs, to the end of paragraph (c) there is substituted “sex offender orders under section 20 of the Crime and Disorder Act 1998”;
  - (d) in section 107(8), for the words from “orders”, where it first occurs, to the end of paragraph (b) there is substituted “interim sex offender orders under section 20 of the Crime and Disorder Act 1998”; 35
  - (e) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force; 40
  - (f) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
  - (g) an application for a sexual offences prevention order or interim sexual offences prevention order is made by summary application to any sheriff within whose sheriffdom lies – 45
    - (i) any part of the area of the applicant’s police force; or

- (ii) any place where it is alleged that the person in respect of whom the order is sought or has effect acted in a way mentioned in subsection (5)(b) of section 102,  
(references to “the court” being construed accordingly);
- (h) an application for the variation, renewal or discharge of either such order is made by summary application to the sheriff who made the order or to a sheriff –
- (i) within whose sheriffdom the person subject to the order resides;  
or
- (ii) where the application is made by a chief constable, within whose sheriffdom lies any part of the area of the applicant’s police force,  
(references to “the court” being construed accordingly).
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(g) or (h) above. 15
- (3) The clerk of the court by which, by virtue of that subsection, a sexual offences prevention order or interim sexual offences prevention order is made, varied, renewed or discharged shall cause a copy of, as the case may be –
- (a) the order as so made, varied or renewed; or
- (b) the interlocutor by which discharge is effected, 20
- to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate). 25

### 111 Offence: breach of SOPO or interim SOPO

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by –
- (a) a sexual offences prevention order;
- (b) an interim sexual offences prevention order; 30
- (c) an order under section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
- (d) an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales and in Scotland); 35
- (e) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland).
- (2) A person guilty of an offence under this section 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; 40
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge. 45

*Foreign travel orders*

**112 Foreign travel orders: applications and grounds**

- (1) A chief officer of police may by complaint to the magistrates' court apply for an order under this section (a "foreign travel order") in respect of a person ("the defendant") who resides in his police area or who the chief officer believes is in or is intending to come to his police area if it appears to the chief officer that—
- (a) the defendant is a qualifying offender, and
- (b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made to any magistrates' court whose commission area includes any part of the applicant's police area.
- (3) On the application, the court may make a foreign travel order if it is satisfied that—
- (a) the defendant is a qualifying offender, and
- (b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

**113 Section 112: interpretation**

- (1) Subsections (2) to (5) apply for the purposes of section 112.
- (2) "Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom" means protecting persons under 16 generally or any particular person under 16 from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.
- (3) Acts and behaviour include those occurring before the commencement of this Part.
- (4) "Qualifying offender" has the meaning given by section 114.
- (5) "Appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 114.
- (6) In this section and section 114 as they apply to Northern Ireland, references to persons, or to a person, under 16 are to be read as references to persons, or to a person, under 17.

**114 Section 112: qualifying offenders**

- (1) A person is a qualifying offender for the purposes of section 112 if, whether before or after the commencement of this Part, he—
- (a) has been convicted of an offence within subsection (2),
- (b) has been found not guilty of such an offence by reason of insanity,
- (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or

- (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.
- (2) The offences are –
- (a) an offence within any of paragraphs 13 to 15, 41 to 43, 75, 76 and 80 of Schedule 3; 5
- (b) an offence within paragraph 28 of that Schedule, if the intended offence was an offence against a person under 16;
- (c) an offence within paragraph 91 of that Schedule, if –
- (i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule; 10
- (ii) the corresponding civil offence is an offence within paragraph 28 of that Schedule, and the intended offence was an offence against a person under 16; or
- (iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 27 and 29 to 32 of that Schedule, and the victim of the offence was under 16 at the time of the offence. 15
- (d) an offence within any other paragraph of that Schedule, if the victim of the offence was under 16 at the time of the offence.
- (3) A person is also a qualifying offender for the purposes of section 112 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part – 20
- (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity, 25
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
- (d) he has been cautioned in respect of a relevant offence. 30
- (4) In subsection (3), “relevant offence” means an act which –
- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom. 35
- (5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.
- (6) Subject to subsection (7), on an application under section 112 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice – 40
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
- (b) showing his grounds for that opinion, and 45
- (c) requiring the applicant to prove that the condition is met.
- (7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

### 115 Foreign travel orders: effect

- (1) A foreign travel order has effect for a fixed period of not more than 6 months, specified in the order.
- (2) The order prohibits the defendant from doing whichever of the following is specified in the order –
  - (a) travelling to any country outside the United Kingdom named or described in the order, 5
  - (b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
  - (c) travelling to any country outside the United Kingdom. 10
- (3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.
- (4) If at any time while an order (as renewed from time to time) has effect a defendant is not a relevant offender, the order causes him to be subject to the requirements imposed by regulations made under section 87(1) (and for these purposes the defendant is to be treated as if he were a relevant offender). 15
- (5) Where a court makes a foreign travel order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect. 20
- (6) Section 113(2) applies for the purposes of this section and section 116.

### 116 Foreign travel orders: variations, renewals and discharges

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a foreign travel order.
- (2) The persons are –
  - (a) the defendant;
  - (b) the chief officer of police on whose application the foreign travel order was made;
  - (c) the chief officer of police for the area in which the defendant resides;
  - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area. 25
- (3) Subject to subsection (4), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the foreign travel order, that the court considers appropriate. 30
- (4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose). 35
- (5) In this section “the appropriate court” means –
  - (a) the court which made the foreign travel order;
  - (b) a magistrates’ court for the area in which the defendant resides; or 40

- (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of his police area.

### 117 Foreign travel orders: appeals

- (1) A defendant may appeal to the Crown Court – 5
- (a) against the making of a foreign travel order;
- (b) against the making of an order under section 116, or the refusal to make such an order.
- (2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just. 10
- (3) Any order made by the Crown Court on an appeal under subsection (1)(a) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 116(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court). 15

### 118 Appeals in relation to foreign travel orders: Scotland

In Scotland –

- (a) an interlocutor granting, refusing, varying, renewing or discharging a foreign travel order is an appealable interlocutor; and 20
- (b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

### 119 Sections 112 to 116: Scotland 25

- (1) Sections 112 to 116 apply to Scotland with the following modifications –
- (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
- (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect; 30
- (c) an application for a foreign travel order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to "the court" being construed accordingly); 35
- (d) for paragraphs (a) to (c) of section 116(5) there is substituted –
- “(a) the sheriff who made the foreign travel order; or
- (b) where the application is made by a chief constable, a sheriff whose sheriffdom includes any part of the area of the applicant's police force.” 40
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.

- (3) The clerk of the court by which, by virtue of that subsection, a foreign travel order is made, varied, renewed or discharged shall cause a copy of, as the case may be –
- (a) the order as so made, varied or renewed; or
  - (b) the interlocutor by which discharge is effected,
- to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

## 120 Offence: breach of foreign travel order

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge (or, in Scotland, a probation order).

### *Risk of sexual harm orders*

## 121 Risk of sexual harm orders: applications, grounds and effect

- (1) A chief officer of police may by complaint to the magistrates' court apply for an order under this section (a "risk of sexual harm order") in respect of a person aged 18 or over ("the defendant") who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that –
- (a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and
  - (b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.
- (2) An application under subsection (1) may be made to any magistrates' court whose commission area includes –
- (a) any part of the applicant's police area, or
  - (b) any place where it is alleged that the defendant acted in a way mentioned in subsection (1)(a).
- (3) The acts are –
- (a) engaging in sexual activity involving a child or in the presence of a child;
  - (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
  - (c) giving a child anything that relates to sexual activity or contains a reference to such activity;

- (d) communicating with a child, where any part of the communication is sexual.
- (4) On the application, the court may make a risk of sexual harm order if it is satisfied that—
- (a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and 5
- (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.
- (5) Such an order—
- (a) prohibits the defendant from doing anything described in the order; 10
- (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.
- (6) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.
- (7) Where a court makes a risk of sexual harm order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect. 15

## 122 Section 121: interpretation

- (1) Subsections (2) to (7) apply for the purposes of section 121.
- (2) “Protecting children generally or any child from harm from the defendant” means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 121(3). 20
- (3) “Child” means a person under 16.
- (4) “Image” means an image produced by any means, whether of a real or imaginary subject. 25
- (5) “Sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider to be sexual.
- (6) A communication is sexual if—
- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider that any part of the communication is sexual. 30
- (7) An image is sexual if—
- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider that any part of the image is sexual. 35
- (8) In this section, as it applies to Northern Ireland, subsection (3) has effect with the substitution of “17” for “16”.

## 123 RSHOs: variations, renewals and discharges

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a risk of sexual harm order. 40



- 
- (2) The persons are –
- (a) the defendant;
  - (b) the chief officer of police on whose application the risk of sexual harm order was made;
  - (c) the chief officer of police for the area in which the defendant resides; 5
  - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.
- (3) Subject to subsections (4) and (5), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the risk of sexual harm order, that the court considers appropriate. 10
- (4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose). 15
- (5) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and –
- (a) where the application is made by a chief officer of police, that chief officer, or 20
  - (b) in any other case, the chief officer of police for the area in which the defendant resides.
- (6) Section 122(2) applies for the purposes of this section.
- (7) In this section “the appropriate court” means – 25
- (a) the court which made the risk of sexual harm order;
  - (b) a magistrates’ court for the area in which the defendant resides; or
  - (c) where the application is made by a chief officer of police, any magistrates’ court whose commission area includes any part of his police area. 30

## 124 Interim RSHOs

- (1) This section applies where an application for a risk of sexual harm order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim risk of sexual harm order”) – 35
- (a) may be made by the complaint by which the main application is made, or
  - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made. 40
- (3) The court may, if it considers it just to do so, make an interim risk of sexual harm order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order –
- (a) has effect only for a fixed period, specified in the order; 45

- (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) The applicant or the defendant may by complaint apply to the court that made the interim risk of sexual harm order for the order to be varied, renewed or discharged. 5

### 125 RSHOs and interim RSHOs: appeals

- (1) A defendant may appeal to the Crown Court –
- (a) against the making of a risk of sexual harm order;
  - (b) against the making of an interim risk of sexual harm order; or
  - (c) against the making of an order under section 123, or the refusal to make such an order. 10
- (2) On any such appeal, the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order made by the Crown Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 123(7) or 124(5) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court). 15

### 126 Offence: breach of RSHO or interim RSHO 20

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by –
- (a) a risk of sexual harm order; or
  - (b) an interim risk of sexual harm order.
- (2) A person guilty of an offence under this section is liable – 25
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge. 30

### 127 Effect of conviction etc. of an offence under section 126

- (1) This section applies to a person (“the defendant”) who –
- (a) is convicted of an offence under section 126; 35
  - (b) is found not guilty of such an offence by reason of insanity;
  - (c) is found to be under a disability and to have done the act charged against him in respect of such an offence; or
  - (d) in England and Wales or Northern Ireland, is cautioned in respect of such an offence. 40
- (2) Where –
- (a) a defendant was a relevant offender immediately before this section applied to him, and

- (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect,  
the defendant remains subject to the notification requirements.
- (3) Where the defendant was not a relevant offender immediately before this section applied to him – 5
- (a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to him until the relevant order (as renewed from time to time) ceases to have effect, and 10
- (b) this Part applies to the defendant, subject to the modification set out in subsection (4).
- (4) The “relevant date” is the date on which this section first applies to the defendant.
- (5) In this section “relevant order” means – 15
- (a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a risk of sexual harm order, that order;
- (b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim risk of sexual harm order, any risk of sexual harm order made on the hearing of the application to which the interim risk of sexual harm order relates or, if no such order is made, the interim risk of sexual harm order. 20

*Power to amend Schedules 3 and 4*

**128 Power to amend Schedules 3 and 4**

- (1) The Secretary of State may by order amend Schedule 3 or 4. 25
- (2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.
- (3) For the purposes of sections 104 and 114, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect. 30
- (4) An amendment is within this subsection if it –
- (a) adds an offence,
- (b) removes a threshold relating to an offence, or
- (c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be. 35

*General*

**129 Young offenders: application**

- This Part applies to – 40
- (a) a period of detention which a person is liable to serve under a detention and training order, or a secure training order,

- (b) a period for which a person is ordered to be detained in residential accommodation under section 44(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
- (c) a period of training in a training school, or of custody in a remand centre, which a person is liable to undergo or serve by virtue of an order under section 74(1)(a) or (e) of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)), 5
- (d) a period for which a person is ordered to be detained in a juvenile justice centre under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)), 10
- (e) a period for which a person is ordered to be kept in secure accommodation under Article 44A of the Order referred to in paragraph (d),
- (f) a sentence of detention in a young offender institution, a young offenders institution or a young offenders centre, 15
- (g) a sentence under a custodial order within the meaning of section 71AA of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43AA of the Naval Discipline Act 1957 (c. 53),
- (h) a sentence of detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 208 of the Criminal Procedure (Scotland) Act 1995 or Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998, 20
- (i) a sentence of custody for life under section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000, 25
- (j) a sentence of detention, or custody for life, under section 71A of the Army Act 1955 or the Air Force Act 1955 or section 43A of the Naval Discipline Act 1957,
- as it applies to an equivalent sentence of imprisonment; and references in this Part to prison or imprisonment are to be interpreted accordingly. 30

### 130 Offences with thresholds

- (1) This section applies to an offence which in Schedule 3 is listed subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (where a relevant finding has been made in respect of him) in respect of the finding. 35
- (2) For the purposes of this Part (including in particular section 83(6))—
- (a) a person is to be regarded as convicted of such an offence, or
- (b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,
- at the time when the condition is met. 40
- (3) In the following subsections, references to a foreign offence are references to an act which—
- (a) constituted an offence under the law in force in a country outside the United Kingdom (“the relevant foreign law”), and
- (b) would have constituted an offence to which this section applies (but not an offence, listed in Schedule 3, to which this section does not apply) if it had been done in any part of the United Kingdom. 45

- (4) In relation to a foreign offence, references to the corresponding UK offence are references to the offence (or any offence) to which subsection (3)(b) applies in the case of that foreign offence.
- (5) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence. 5
- (6) Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court’s finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence. 10
- (7) Where (by virtue of an order under section 128 or otherwise) an offence is listed in Schedule 4 subject to a condition such as is mentioned in subsection (1), this section applies to that offence as if references to Schedule 3 were references to Schedule 4. 15
- (8) In this section, “relevant finding”, in relation to an offence, means –
- (a) a finding that a person is not guilty of the offence by reason of insanity, or 20
  - (b) a finding that a person is under a disability and did the act charged against him in respect of the offence.

### 131 Part 2: general interpretation

In this Part –

“admitted to a hospital” means admitted to a hospital under – 25

- (a) section 37 of the Mental Health Act 1983 (c. 20), section 57(2)(a) or 58 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Article 44 or 50A(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));
- (b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25); or 30
- (c) regulations made under subsection (3) of section 116B of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 63B of the Naval Discipline Act 1957 (c. 53); 35

“cautioned” means –

- (a) cautioned by a police officer after the person concerned has admitted the offence, or
- (b) reprimanded or warned within the meaning given by section 65 of the Crime and Disorder Act 1998 (c. 37), 40

and “caution” is to be interpreted accordingly;

“community order” means –

- (a) a community order within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
- (b) a probation order or community service order under the Criminal Procedure (Scotland) Act 1995 or a supervised attendance order made in pursuance of section 235 of that Act; 45

- (c) a community order within the meaning of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)), a probation order under section 1 of the Probation Act (Northern Ireland) 1950 (c. 7 (N.I.)) or a community service order under Article 7 of the Treatment of Offenders (Northern Ireland) Order 1976 (S.I. 1976/226 (N.I. 40)); or 5
- (d) a community supervision order under paragraph 4 of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53); 10
- “conviction” includes a finding of guilt by a court-martial, and “convicted” is to be interpreted accordingly;
- “country” includes territory;
- “detained in a hospital” means detained in a hospital under –
- (a) Part 3 of the Mental Health Act 1983 (c. 20), section 71 of the Mental Health (Scotland) Act 1984 (c. 36), Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Part III of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)); 15
- (b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25); or 20
- (c) regulations made under subsection (3) of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957;
- “guardianship order” means a guardianship order under section 37 of the Mental Health Act 1983, section 58 of the Criminal Procedure (Scotland) Act 1995 or Article 44 of the Mental Health (Northern Ireland) Order 1986; 25
- “home address” has the meaning given by section 84(7);
- “interim notification order” has the meaning given by section 98(2);
- “interim risk of sexual harm order” has the meaning given by section 124(2); 30
- “interim sexual offences prevention order” has the meaning given by section 107(2);
- “local police area” has the meaning given by section 89(3);
- “local probation board” has the same meaning as in the Criminal Justice and Court Services Act 2000 (c. 43); 35
- “notification order” has the meaning given by section 95(1);
- “notification period” has the meaning given by section 81(1);
- “order for conditional discharge” has the meaning given by each of the following – 40
- (a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
- (b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996;
- (c) paragraph 2(1) of Schedule 5A to the Army Act 1955; 45
- (d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955;
- (e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957;
- “parental responsibility” has the same meaning as in the Children Act 1989 (c. 41) or the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), and “parental responsibilities” has the same meaning as in Part 1 of the Children (Scotland) Act 1995 (c. 36); 50

- “the period of conditional discharge” has the meaning given by each of the following –
- (a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
  - (b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)); 5
  - (c) paragraph 2(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18);
  - (d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19); 10
  - (e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957 (c. 53);
- “probation order” has the meaning given by section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46);
- “probation period” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995; 15
- “qualifying period” has the meaning given by section 85(6);
- “relevant date” has the meaning given by section 83(6) (save in the circumstances mentioned in sections 96, 98, 105, 107 and 127);
- “relevant offender” has the meaning given by section 81(2); 20
- “restriction order” means –
- (a) an order under section 41 of the Mental Health Act 1983 (c. 20), section 57(2)(b) or 59 of the Criminal Procedure (Scotland) Act 1995 or Article 47(1) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)); 25
  - (b) a direction under paragraph 2(1)(b) of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) or Article 50A(3)(b) of the Mental Health (Northern Ireland) Order 1986; or
  - (c) a direction under subsection (2) of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957; 30
- “risk of sexual harm order” has the meaning given by section 121(1);
- “sexual offences prevention order” has the meaning given by section 104(1); 35
- “supervision” means supervision in pursuance of an order made for the purpose or, in the case of a person released from prison on licence, in pursuance of a condition contained in his licence;
- “term of service detention” means a term of detention awarded under section 71(1)(e) of the Army Act 1955 or the Air Force Act 1955 or section 43(1)(e) of the Naval Discipline Act 1957. 40

### 132 Conditional discharges and probation orders

- (1) The following provisions do not apply for the purposes of this Part to a conviction for an offence in respect of which an order for conditional discharge or, in Scotland, a probation order is made – 45
- (a) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction with absolute or conditional discharge deemed not to be a conviction);

- (b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conviction with absolute or conditional discharge deemed not to be a conviction);
  - (c) section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (conviction with probation order or absolute discharge deemed not to be a conviction); 5
  - (d) paragraph 5(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53) (conviction with absolute or conditional discharge deemed not to be a conviction). 10
- (2) This section applies only to convictions after the commencement of this Part.

### 133 Interpretation: mentally disordered offenders

- (1) In this Part, a reference to a conviction includes a reference to a finding of a court in summary proceedings, where the court makes an order under an enactment within subsection (2), that the accused did the act charged; and similar references are to be interpreted accordingly. 15
- (2) The enactments are –
  - (a) section 37(3) of the Mental Health Act 1983 (c. 20);
  - (b) section 58(3) of the Criminal Procedure (Scotland) Act 1995;
  - (c) Article 44(4) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)). 20
- (3) In this Part, a reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence includes a reference to his being or having been found –
  - (a) unfit to be tried for the offence; 25
  - (b) to be insane so that his trial for the offence cannot or could not proceed; or
  - (c) unfit to be tried and to have done the act charged against him in respect of the offence.
- (4) In section 131 – 30
  - (a) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and the reference to a direction under paragraph 2(1)(b) of that Schedule, include respectively –
    - (i) a reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity) Act 1964 (c. 84); and 35
    - (ii) a reference to a restriction order treated as made by paragraph 2(1) of that Schedule;
  - (b) a reference to admission or detention under any provision of Part 6 of the Criminal Procedure (Scotland) Act 1995, and the reference to an order under section 57(2)(b) or 59 of that Act, include respectively – 40
    - (i) a reference to admission or detention under section 174(3) or 376(2) of the Criminal Procedure (Scotland) Act 1975 (c. 21); and
    - (ii) a reference to a restriction order made under section 178(1) or 379(1) of that Act; 45
  - (c) a reference to admission or detention under regulations made under subsection (3), and the reference to a direction under subsection (2), of



section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957 include respectively –

- (i) a reference to admission or detention, and
- (ii) a reference to a direction,

under section 46 of the Mental Health Act 1983 (c. 20), section 69 of the Mental Health (Scotland) Act 1984 (c. 36) or Article 52 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).

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### 134 Part 2: Northern Ireland

- (1) This Part applies to Northern Ireland with the following modifications.
- (2) References to a chief officer of police are to be read as references to the Chief Constable of the Police Service of Northern Ireland. 10
- (3) References to police areas are to be read as references to Northern Ireland.
- (4) References to a complaint are to be read as references to a complaint under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) to a court of summary jurisdiction. 15
- (5) Subject to subsection (6), references to a magistrates' court are to be read as references to a court of summary jurisdiction.
- (6) References to a magistrates' court for the area in which the defendant resides are to be read as references to a court of summary jurisdiction for the petty sessions district which includes the area where the defendant resides. 20
- (7) References to a youth court for the area in which the defendant resides are to be read as references to a youth court for the petty sessions district which includes the area where the defendant resides.
- (8) References in sections 99, 108(1), (2), (3)(b), (4) and (5), 117 and 125 to the Crown Court are to be read as references to a county court. 25
- (9) Any direction of the county court made under section 90(1) on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (appeals in other cases) (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 91, to be treated as if it were made by the court from which the appeal was brought and not by the county court. 30
- (10) Any order of the county court made on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 106, to be treated as if it were an order of the court from which the appeal was brought and not an order of the county court. 35

## PART 3

### GENERAL

### 135 Orders and regulations

- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument. 40

- 
- (2) A statutory instrument containing an order or regulations under section 23, 87 or 128 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Any other statutory instrument, except one containing an order under section 138, is to be subject to annulment in pursuance of a resolution of either House of Parliament. 5

### 136 Minor and consequential amendments

Schedule 5 contains minor and consequential amendments.

### 137 Repeals and revocations

The provisions listed in Schedule 6 are repealed or revoked to the extent specified. 10

### 138 Commencement

- (1) This Act, except this section and sections 135, 139 and 140, comes into force in accordance with provision made by the Secretary of State by order.
- (2) An order under subsection (1) may – 15
- (a) make different provision for different purposes;
  - (b) include supplementary, incidental, saving or transitional provisions.

### 139 Extent, saving etc.

- (1) Except as follows, this Act extends to England and Wales only.
- (2) The following provisions also extend to Northern Ireland – 20
- (a) sections 17 to 26, 48 to 61, 67 to 73, 79 and 80,
  - (b) Part 2, and
  - (c) this Part.
- (3) The following provisions also extend to Scotland – 25
- (a) Part 2 except sections 121 to 127, and
  - (b) this Part.
- (4) Section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) continues to have effect despite the repeal by this Act of section 8 of the Sex Offenders Act 1997.
- (5) For the purposes of the Scotland Act 1998 (c. 46), this Act is to be taken to be a pre-commencement enactment. 30

### 140 Short title

This Act may be cited as the Sexual Offences Act 2003.

## SCHEDULES

## SCHEDULE 1

Section 57

## EXTENSION OF GENDER-SPECIFIC PROSTITUTION OFFENCES

*Sexual Offences Act 1956 (c. 69)*

- |   |   |   |
|---|---|---|
| 1 | In section 36 of the Sexual Offences Act 1956 (permitting premises to be used for prostitution), at the end insert “(whether any prostitute involved is male or female)”. | 5 |
|---|---|---|

*Street Offences Act 1959 (c. 57)*

- |   |  |    |
|---|--|----|
| 2 | In section 1(1) of the Street Offences Act 1959 (loitering or soliciting for purposes of prostitution), after “prostitute” insert “(whether male or female)”.  | 10 |
| 3 | (1) Section 2 of that Act (application to court by woman cautioned for loitering or soliciting) is amended as follows.<br>(2) In the heading of the section, for “woman” substitute “person”.<br>(3) In subsection (1) – | 15 |
|   | (a) for “woman” substitute “person”,<br>(b) for “her” in each place substitute “his”, and<br>(c) for “she” in each place substitute “he”.  |    |
|   | (4) In subsection (2) –  |    |
|   | (a) for “woman” in the first place substitute “person”,<br>(b) for “he” substitute “the chief officer”, and<br>(c) for “woman” in the second place substitute “person cautioned”.  | 20 |
|   | (5) In subsection (3), for “woman” substitute “person cautioned”.  |    |

*Sexual Offences Act 1985 (c. 44)*

- |   |  |    |
|---|--|----|
| 4 | (1) The Sexual Offences Act 1985 is amended as follows.<br>(2) For the heading “ <i>Soliciting of women by men</i> ” substitute “ <i>Soliciting for the purpose of prostitution</i> ”.<br>(3) In section 1 (kerb-crawling) – | 25 |
|   | (a) for “man” substitute “person”,<br>(b) for “a woman” substitute “another person”,<br>(c) for “women” in each place substitute “persons”, and<br>(d) for “the woman” substitute “the person”.                              | 30 |
|   | (4) In section 2 (persistent soliciting of women for the purpose of prostitution) –  |    |
|   | (a) for the heading of the section substitute “Persistent soliciting”,   |    |

- (b) for “man” substitute “person”,
  - (c) for “a woman” substitute “another person”, and
  - (d) for “women” substitute “persons”.
- (5) In section 4 (interpretation) –
- (a) omit subsections (2) and (3), 5
  - (b) for “man” substitute “person”,
  - (c) for “a woman” substitute “another person”,
  - (d) for “her” in the first place substitute “that person”, and
  - (e) for “her” in the second place substitute “that person’s”.

## SCHEDULE 2

Section 73(7)

10

## SEXUAL OFFENCES TO WHICH SECTION 73 APPLIES

*England and Wales*

- 1 In relation to England and Wales, the following are sexual offences to which section 73 applies –
- (a) an offence under any of sections 6 to 15 and 17 (offences against children under 13 or under 16); 15
  - (b) an offence under any of sections 1 to 5, 18 to 43, 49 to 52 and 62 where the victim of the offence was under 16 at the time of the offence;
  - (c) an offence under section 63 or 64 where the intended offence was an offence against a person under 16; 20
  - (d) an offence under –
    - (i) section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), or
    - (ii) section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child), 25
 in relation to a photograph or pseudo-photograph showing a child under 16.

*Northern Ireland*

- 2 (1) In relation to Northern Ireland, the following are sexual offences to which section 73 applies – 30
- (a) an offence of rape;
  - (b) an offence of indecent assault upon a female;
  - (c) an offence under –
    - (i) section 52 of the Offences against the Person Act 1861 (indecent assault upon a female person), or 35
    - (ii) section 53 or 54 of that Act (abduction of woman);
  - (d) an offence under –
    - (i) section 2 of the Criminal Law Amendment Act 1885 (c. 69) (procurator of girl under 21),
    - (ii) section 3 of that Act (procuring defilement of woman using threats, etc.), 40

- (iii) section 4 of that Act of unlawful carnal knowledge of a girl under 14,
    - (iv) section 5 of that Act of unlawful carnal knowledge of a girl under 17, or
    - (v) section 7 of that Act (abduction of girl under 18);
  - (e) an offence under –
    - (i) section 1 of the Punishment of Incest Act 1908 (c. 45) (incest by males), or
    - (ii) section 2 of that Act (incest by females);
  - (f) an offence under –
    - (i) section 21 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)) (causing or encouraging seduction, etc. of girl under 17), or
    - (ii) section 22 of that Act (indecent conduct towards a child);
  - (g) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children);
  - (h) an offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I. 6)) (inciting girl under 16 to have incestuous sexual intercourse);
  - (i) an offence under Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (indecent photographs of children);
  - (j) an offence under –
    - (i) Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (buggery),
    - (ii) Article 20 of that Order (assault with intent to commit buggery), or
    - (iii) Article 21 of that Order (indecent assault on a male);
  - (k) an offence under –
    - (i) section 17 of this Act (meeting a child following sexual grooming etc.), or
    - (ii) any of sections 18 to 21 or 49 to 52 of this Act (abuse of trust, prostitution, child pornography).
- (2) Sub-paragraph (1), apart from paragraphs (h) and (i), does not apply where the victim of the offence was 17 or over at the time of the offence.

*General*

- 3 A reference in paragraph 1 or 2(1) to an offence includes –
  - (a) a reference to an attempt, conspiracy or incitement to commit that offence; and
  - (b) a reference to aiding and abetting, counselling or procuring the commission of that offence.

## SCHEDULE 3

Section 81

## SEXUAL OFFENCES FOR PURPOSES OF PART 2

*England and Wales*

- |    |  |    |
|----|--|----|
| 1  | An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).   |    |
| 2  | An offence under section 5 of that Act (intercourse with girl under 13).   | 5  |
| 3  | An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.   |    |
| 4  | An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.   |    |
| 5  | An offence under section 12 of that Act (buggery) if—<br>(a) the offender was 20 or over, and<br>(b) the victim or (as the case may be) other party was under 18.  | 10 |
| 6  | An offence under section 13 of that Act (indecent between men) if—<br>(a) the offender was 20 or over, and<br>(b) the victim or (as the case may be) other party was under 18.   | 15 |
| 7  | An offence under section 14 of that Act (indecent assault on a woman) if—<br>(a) the victim or (as the case may be) other party was under 18, or<br>(b) the offender, in respect of the offence or finding, is or has been—<br>(i) sentenced to imprisonment for a term of at least 30 months; or<br>(ii) admitted to a hospital subject to a restriction order. | 20 |
| 8  | An offence under section 15 of that Act (indecent assault on a man) if—<br>(a) the victim or (as the case may be) other party was under 18, or<br>(b) the offender, in respect of the offence or finding, is or has been—<br>(i) sentenced to imprisonment for a term of at least 30 months; or<br>(ii) admitted to a hospital subject to a restriction order.   | 25 |
| 9  | An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.   |    |
| 10 | An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).   |    |
| 11 | An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).   | 30 |
| 12 | An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under 16 to have incestuous sexual intercourse).   |    |
| 13 | An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16.   | 35 |
| 14 | An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16.         | 40 |

- |    |  |    |
|----|--|----|
| 15 | An offence under section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of a child), if the indecent photographs or pseudo-photographs showed persons under 16.   |    |
| 16 | An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), if the offender was 20 or over.   | 5  |
| 17 | An offence under any of sections 1, 3, 6 and 7 of this Act (rape, assault by penetration).   |    |
| 18 | An offence under section 4 or 8 of this Act (sexual assault) if –  |    |
|    | (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;   | 10 |
|    | (b) in any other case –  |    |
|    | (i) the victim was under 18, or  |    |
|    | (ii) the offender, in respect of the offence or finding, is or has been –  | 15 |
|    | (a) sentenced to a term of imprisonment,   |    |
|    | (b) detained in a hospital, or   |    |
|    | (c) made the subject of a community sentence of at least 18 months, involving the offender being (for at least some of that period) subject to a community rehabilitation order, community punishment and rehabilitation order, supervision order or an electronic monitoring requirement. | 20 |
| 19 | An offence under any of sections 5 or 9 to 13 of this Act (causing sexual activity without consent, child sex offences committed by adults).   | 25 |
| 20 | An offence under section 14 of this Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.  |    |
| 21 | An offence under section 15 of this Act (arranging or facilitating the commission of a child sex offence) if, where the offender is under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.                                    | 30 |
| 22 | An offence under section 17 of this Act (meeting a child following sexual grooming etc).   |    |
| 23 | An offence under any of sections 18 to 21 of this Act (abuse of trust) if the offender, in respect of the offence, is or has been –  | 35 |
|    | (a) sentenced to a term of imprisonment,   |    |
|    | (b) detained in a hospital, or   |    |
|    | (c) made the subject of a community sentence of at least 12 months.  |    |
| 24 | An offence under any of sections 27, 28 or 32 to 39 of this Act (familial child sex offences, offences against persons with a mental disorder or learning disability, inducements etc. to persons with mental disorder or learning disability).  | 40 |
| 25 | An offence under any of sections 40 to 43 of this Act (care workers for persons with mental disorder or learning disability) if the offender, in respect of the offence or finding, is or has been –   | 45 |

	(a) sentenced to a term of imprisonment,	
	(b) detained in a hospital, or	
	(c) made the subject of a community sentence of at least 18 months, involving the offender being (for at least some of that period) subject to a community rehabilitation order, community punishment and rehabilitation order, supervision order or an electronic monitoring requirement.	5
26	An offence under section 49 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16.	
27	An offence under section 62 of this Act (administering a substance with intent).	10
28	An offence under section 63 or 64 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if –	
	(a) the intended offence was an offence against a person under 18, or	
	(b) the offender, in respect of the offence or finding, is or has been –	15
	(i) sentenced to a term of imprisonment,	
	(ii) detained in a hospital, or	
	(iii) made the subject of a community sentence of at least 12 months.	
29	An offence under section 65 or 66 of this Act (sex with an adult relative) if the offender, in respect of the offence or finding, is or has been –	20
	(a) sentenced to a term of imprisonment, or	
	(b) detained in a hospital.	
30	An offence under section 68 of this Act (exposure) if –	
	(a) where the offender was under 18, he is or has been sentenced to imprisonment for a term of at least 12 months;	25
	(b) in any other case –	
	(i) the victim was under 18, or	
	(ii) the offender, in respect of the offence or finding, is or has been –	30
	(a) sentenced to a term of imprisonment,	
	(b) detained in a hospital, or	
	(c) made the subject of a community sentence of at least 18 months, involving the offender being (for at least some of that period) subject to a community rehabilitation order, community punishment and rehabilitation order, supervision order or an electronic monitoring requirement.	35
31	An offence under section 69 of this Act (voyeurism) if –	
	(a) where the offender was under 18, he is or has been sentenced to imprisonment for a term of at least 12 months;	40
	(b) in any other case –	
	(i) the victim was under 18, or	
	(ii) the offender, in respect of the offence or finding, is or has been –	45
	(a) sentenced to a term of imprisonment, or	



(b) detained in a hospital.

- 32 An offence under section 71 or 72 of this Act (intercourse with an animal, sexual penetration of a corpse) if the offender, in respect of the offence or finding, is or has been –
- (a) sentenced to a term of imprisonment, or
  - (b) detained in a hospital.
- 5

*Scotland*

- 33 Rape.
- 34 Clandestine injury to women.
- 35 Abduction of woman or girl with intent to rape. 10
- 36 Assault with intent to rape or ravish.
- 37 Indecent assault.
- 38 Lewd, indecent or libidinous behaviour or practices.
- 39 Shameless indecency, if a person (other than the offender) involved in the offence was under 18. 15
- 40 Sodomy, unless –
- (a) the offender was under 20 and every other person involved in the offence was a willing participant, or
  - (b) every person (other than the offender) involved in the offence was 18 or over and was a willing participant.
- 20
- 41 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16. 25
- 42 An offence under section 52 of the Civic Government (Scotland) Act 1982 (c. 45) (taking and distribution of indecent images of children).
- 43 An offence under section 52A of that Act (possession of indecent images of children).
- 44 An offence under section 106 of the Mental Health (Scotland) Act 1984 (c. 36) (protection of mentally handicapped females). 30
- 45 An offence under section 107 of that Act (protection of patients).
- 46 An offence under section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (incest), if a person (other than the offender) involved in the offence was under 18. 35
- 47 An offence under section 2 of that Act (intercourse with a stepchild), if a person (other than the offender) involved in the offence was under 18.
- 48 An offence under section 3 of that Act (intercourse with child under 16 by person in position of trust).

49	An offence under section 5 of that Act (unlawful intercourse with girl under 16), save in the case of an offence in contravention of subsection (3) of that section where the offender was under 20.	
50	An offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16).	5
51	An offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse).	
52	An offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16).	10
53	An offence under section 13(5) of that Act (homosexual offences) unless— (a) every person (other than the offender) involved in the offence was 18 or over and was a willing participant, or (b) the offender was under 20 and either the homosexual act in question— (i) was an act of sodomy, and every other person involved in the offence was a willing participant; or (ii) was not an act of sodomy.	15
54	An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), where the offender was 20 or over.	20
55	An offence under section 311(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (non-consensual sexual acts).	
56	An offence under section 313(1) of that Act (persons providing care services: sexual offences).	
57	An offence in Scotland other than is mentioned in paragraphs 33 to 56 if the court, in imposing sentence or otherwise disposing of the case, determines for the purposes of this paragraph that there was a significant sexual aspect to the offender’s behaviour in committing the offence.	25

*Northern Ireland*

58	Rape.	30
59	Indecent assault upon a female if— (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months; (b) in any other case— (i) the victim was under 18, or (ii) the offender, in respect of the offence or finding, is or has been— (a) sentenced to a term of imprisonment, (b) detained in a hospital, or (c) made the subject of a community sentence of at least 18 months.	35
60	An offence under section 52 of the Offences against the Person Act 1861 (c. 100) (indecent assault upon a female) if—	40

- 
- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
- (b) in any other case –
- (i) the victim was under 18, or 5
  - (ii) the offender, in respect of the offence or finding, is or has been –
- (a) sentenced to a term of imprisonment,
  - (b) detained in a hospital, or
  - (c) made the subject of a community sentence of at least 18 months. 10
- 61 An offence under section 53 or 54 of that Act (abduction of woman by force for unlawful sexual intercourse).
- 62 An offence under section 61 of that Act (buggery) if consent was not present or – 15
- (a) the offender was 20 or over, and
  - (b) the victim or (as the case may be) other party was under 17.
- 63 An offence under section 62 of that Act of assault with intent to commit buggery if the victim or (as the case may be) other party was under 17.
- 64 An offence under section 62 of that Act of indecent assault upon a male person if – 20
- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
  - (b) in any other case – 25
- (i) the victim was under 18, or
  - (ii) the offender, in respect of the offence or finding, is or has been –
- (a) sentenced to a term of imprisonment,
  - (b) detained in a hospital, or 30
  - (c) made the subject of a community sentence of at least 18 months.
- 65 An offence under section 2 of the Criminal Law Amendment Act 1885 (c. 69) (procuration).
- 66 An offence under section 3 of that Act (procuring defilement of woman by threats or fraud, etc.). 35
- 67 An offence under section 4 of that Act of unlawful carnal knowledge of a girl under 14.
- 68 An offence under section 5 of that Act of unlawful carnal knowledge of a girl under 17, if the offender was 20 or over. 40
- 69 An offence under section 7 of that Act (abduction of girl under 18).
- 70 An offence under section 11 of that Act (homosexual offences) if –
- (a) the offender was 20 or over, and
  - (b) the victim or (as the case may be) other party was under 18.

71	An offence under section 1 of the Punishment of Incest Act 1908 (c. 45) (incest by males), if the victim or (as the case may be) other party was under 18.	
72	An offence under section 2 of that Act (incest by females), if the victim or (as the case may be) other party was under 18.	5
73	An offence under section 21 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (causing or encouraging seduction or prostitution of a girl under 17).	
74	An offence under section 22 of that Act (indecent conduct towards a child).	
75	An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (indecent photographs of children).	10
76	An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16.	15
77	An offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I. 6)) (inciting girl under 16 to have incestuous sexual intercourse).	
78	An offence under Article 122 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (offences against women suffering from severe mental handicap).	20
79	An offence under Article 123 of that Order (offences against patients).	
80	An offence under Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (possession of indecent photographs of children).	25
81	An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), if the offender was 20 or over.	
82	An offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (buggery) if –	30
	(a) the offender was 20 or over, and	
	(b) the victim or (as the case may be) other party was under 17.	
83	An offence under Article 20 of that Order (assault with intent to commit buggery) if the victim was under 18.	
84	An offence under Article 21 of that Order (indecent assault upon a male) if –	35
	(a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;	
	(b) in any other case –	
	(i) the victim was under 18, or	40
	(ii) the offender, in respect of the offence or finding, is or has been –	
	(a) sentenced to a term of imprisonment,	
	(b) detained in a hospital, or	

- (c) made the subject of a community sentence of at least 18 months.
- 85 An offence under section 17 of this Act (meeting a child following sexual grooming etc.).
- 86 An offence under any of sections 18 to 21 of this Act (abuse of trust) if the offender, in respect of the offence or finding, is or has been – 5
- (a) sentenced to a term of imprisonment,
  - (b) detained in a hospital, or
  - (c) made the subject of a community sentence of at least 12 months.
- 87 An offence under section 49 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 17. 10
- 88 An offence under section 68 of this Act (exposure) if –
- (a) where the offender was under 18, he is or has been sentenced to imprisonment for a term of at least 12 months;
  - (b) in any other case – 15
    - (i) the victim was under 18, or
    - (ii) the offender, in respect of the offence or finding, is or has been –
      - (a) sentenced to a term of imprisonment,
      - (b) detained in a hospital, or 20
      - (c) made the subject of a community sentence of at least 18 months.
- 89 An offence under section 69 of this Act (voyeurism) if –
- (a) where the offender was under 18, he is or has been sentenced to imprisonment for a term of at least 12 months; 25
  - (b) in any other case –
    - (i) the victim was under 18, or
    - (ii) the offender, in respect of the offence or finding, is or has been –
      - (a) sentenced to a term of imprisonment, or 30
      - (b) detained in a hospital.
- 90 An offence under section 71 or 72 of this Act (intercourse with an animal, sexual penetration of a corpse) if the offender, in respect of the offence or finding, is or has been –
- (a) sentenced to a term of imprisonment, or 35
  - (b) detained in a hospital.

*Service offences*

- 91 An offence under –
- (a) section 70 of the Army Act 1955,
  - (b) section 70 of the Air Force Act 1955, or 40
  - (c) section 42 of the Naval Discipline Act 1957,
- of which the corresponding civil offence (within the meaning of that Act) is an offence under a provision listed in any of paragraphs 1 to 32.

*General*

- 92 A reference in a preceding paragraph to an offence includes –
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
  - (b) except in paragraphs 33 to 40, a reference to aiding, abetting, counselling or procuring the commission of that offence. 5
- 93 A reference in a preceding paragraph to a person’s age is –
- (a) in the case of an indecent photograph, a reference to the person’s age when the photograph was taken;
  - (b) in any other case, a reference to his age at the time of the offence. 10
- 94 In paragraphs 18 to 30 –
- (a) “community sentence”, “community rehabilitation order”, “community punishment and rehabilitation order” and “supervision order” have the same meaning as in the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6); 15
  - (b) a reference to an electronic monitoring requirement means such a requirement imposed under section 36B of that Act.
- 95 In paragraphs 53 to 90, “community sentence” has the same meaning as in the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)).
- 96 For the purposes of paragraphs 14, 41 and 76 – 20
- (a) a person is to be taken to have been under 16 at any time if it appears from the evidence as a whole that he was under that age at that time;
  - (b) section 7 of the Protection of Children Act 1978 (c. 37) (interpretation), subsections (2) to (2C) and (8) of section 52 of the Civic Government (Scotland) Act 1982 (c. 45), and Article 2(2) and (3)(b) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (interpretation) (respectively) apply as each provision applies for the purposes of the Act or Order of which it forms part. 25
- 97 A determination under paragraph 57 constitutes part of a person’s sentence, within the meaning of the Criminal Procedure (Scotland) Act 1995 (c. 46), for the purposes of any appeal or review. 30

## SCHEDULE 4

Section 102

## OTHER OFFENCES FOR PURPOSES OF PART 2

*England and Wales*

35

- 1 Murder.
- 2 Manslaughter.
- 3 Kidnapping.
- 4 False imprisonment.

5	An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).	
6	An offence under section 16 of that Act (threats to kill).	
7	An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).	5
8	An offence under section 20 of that Act (malicious wounding).	
9	An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).	
10	An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).	10
11	An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).	
12	An offence under section 27 of that Act (abandoning children).	
13	An offence under section 28 of that Act (causing bodily injury by explosives).	
14	An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).	15
15	An offence under section 30 of that Act (placing explosives with intent to do bodily injury).	
16	An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).	20
17	An offence under section 32 of that Act (endangering the safety of railway passengers).	
18	An offence under section 35 of that Act (injuring persons by furious driving).	
19	An offence under section 37 of that Act (assaulting officer preserving wreck).	
20	An offence under section 38 of that Act (assault with intent to resist arrest).	25
21	An offence under section 47 of that Act (assault occasioning actual bodily harm).	
22	An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).	
23	An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).	30
24	An offence under section 1 of the Infant Life (Preservation) Act 1929 (c. 34) (child destruction).	
25	An offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to children).	35
26	An offence under section 1 of the Infanticide Act 1938 (c. 36) (infanticide).	
27	An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).	

28	An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).	
29	An offence under section 17(1) of that Act (use of firearm to resist arrest).	
30	An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act).	5
31	An offence under section 18 of that Act (carrying a firearm with criminal intent).	
32	An offence under section 8 of the Theft Act 1968 (c. 60) (robbery or assault with intent to rob).	
33	An offence under section 9 of that Act of burglary with intent to— (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it.	10
34	An offence under section 10 of that Act (aggravated burglary).	
35	An offence under section 12A of that Act (aggravated vehicle-taking) involving an accident which caused the death of any person.	15
36	An offence of arson under section 1 of the Criminal Damage Act 1971 (c. 48).	
37	An offence under section 1(2) of that Act (destroying or damaging property other than an offence of arson).	
38	An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).	20
39	An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).	
40	An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).	
41	An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).	25
42	An offence under section 4 of that Act (offences in relation to certain dangerous articles).	
43	An offence under section 127 of the Mental Health Act 1983 (c. 20) (ill-treatment of patients).	30
44	An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).	
45	An offence under section 1 of the Public Order Act 1986 (c. 64) (riot).	
46	An offence under section 2 of that Act (violent disorder).	
47	An offence under section 3 of that Act (affray).	35
48	An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).	
49	An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).	



50	An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).	
51	An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).	
52	An offence under section 9 of that Act (hijacking of ships).	5
53	An offence under section 10 of that Act (seizing or exercising control of fixed platforms).	
54	An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).	
55	An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).	10
56	An offence under section 13 of that Act (offences involving threats).	
57	An offence under section 4 of the Protection from Harassment Act 1997 (c. 40) (putting people in fear of violence).	
58	An offence under section 29 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults).	15
59	An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986 (c. 64)).	
60	An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).	20
61	An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.	25
62	An offence under section 49 of this Act, where the victim or (as the case may be) other party was 16 or over.	
63	An offence under any of sections 50 to 55 or 58 to 60 of this Act.	

*Scotland*

64	An offence inferring personal violence, other than an offence listed in Schedule 3.	30
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*Northern Ireland*

65	Murder.	
66	Manslaughter.	
67	Kidnapping.	35
68	Riot.	
69	Affray.	
70	False imprisonment.	

71	An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).	
72	An offence under section 16 of that Act (threats to kill).	
73	An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).	5
74	An offence under section 20 of that Act (malicious wounding).	
75	An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).	
76	An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).	10
77	An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).	
78	An offence under section 27 of that Act (abandoning children).	
79	An offence under section 28 of that Act (causing bodily injury by explosives).	
80	An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).	15
81	An offence under section 30 of that Act (placing explosives with intent to do bodily injury).	
82	An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).	20
83	An offence under section 32 of that Act (endangering the safety of railway passengers).	
84	An offence under section 35 of that Act (injuring persons by furious driving).	
85	An offence under section 37 of that Act (assaulting officer preserving wreck).	
86	An offence under section 47 of that Act of assault occasioning actual bodily harm.	25
87	An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).	
88	An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).	30
89	An offence under section 25 of the Criminal Justice (Northern Ireland) Act 1945 (c. 15) (child destruction).	
90	An offence under section 1 of the Infanticide Act (Northern Ireland) 1939 (c. 5) (infanticide).	
91	An offence under section 7(1)(b) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28) (assault with intent to resist arrest).	35
92	An offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (cruelty to children).	

93	An offence under section 8 of the Theft Act (Northern Ireland) 1969 (c. 16) (robbery or assault with intent to rob).	
94	An offence under section 9 of that Act of burglary with intent to— (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it.	5
95	An offence under section 10 of that Act (aggravated burglary).	
96	An offence of arson under Article 3 of the Criminal Damage Northern Ireland) Order 1977 (S.I. 1977/426 (N.I. 4)).	
97	An offence under Article 3(2) of that Order (destroying or damaging property) other than an offence of arson.	10
98	An offence under Article 17 of the Firearms (Northern Ireland) Order 1981 (S.I. 1981/155 (N.I. 2)) (possession of firearm with intent to endanger life).	
99	An offence under Article 17A of that Order (possession of firearm with intent to cause fear of violence).	
100	An offence under Article 18(1) of that Order (use of firearm to resist arrest).	15
101	An offence under Article 18(2) of that Order (possession of firearm at time of committing or being arrested for an offence specified in Schedule 1 to that Order).	
102	An offence under Article 19 of that Order (carrying a firearm with criminal intent).	20
103	An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).	
104	An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).	
105	An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).	25
106	An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).	
107	An offence under section 4 of that Act (offences in relation to certain dangerous articles).	30
108	An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).	
109	An offence under Article 121 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (ill-treatment of patients).	
110	An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).	35
111	An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).	
112	An offence under section 9 of that Act (hijacking of ships).	

113	An offence under section 10 of that Act (seizing or exercising control of fixed platforms).	
114	An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).	
115	An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).	5
116	An offence under section 13 of that Act (offences involving threats).	
117	An offence under Article 9 of the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/2994 (N.I. 18)) (causing death or grievous bodily injury by dangerous driving).	10
118	An offence under Article 14 of that Order (causing death or grievous bodily injury by careless driving when under the influence of drink or drugs).	
119	An offence under Article 6 of the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)) (putting people in fear of violence).	15
120	An offence under section 66 of the Police (Northern Ireland) Act 1998 (c. 32) (assaulting or obstructing a constable etc.).	
121	An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).	20
122	An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.	
123	An offence under section 49 of this Act, where the victim or (as the case may be) other party was 16 or over.	25
124	An offence under any of sections 50 to 52 or 58 to 60 of this Act.	

*Service offences*

125	An offence under – (a) section 70 of the Army Act 1955, (b) section 70 of the Air Force Act 1955, or (c) section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of that Act) is an offence under a provision listed in any of paragraphs 1 to 63.	30
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*General*

126	A reference in a preceding paragraph to an offence includes – (a) a reference to an attempt, conspiracy or incitement to commit that offence, and (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.	35
127	A reference in a preceding paragraph to a person's age is a reference to his age at the time of the offence.	40

SCHEDULE 5

Section 136

MINOR AND CONSEQUENTIAL AMENDMENTS

*Vagrancy Act 1824 (c. 83)*

- 1 In section 4 of the Vagrancy Act 1824 (rogues and vagabonds) except so far as extending to Northern Ireland, omit the words from “every person wilfully” to “female”. 5
- 2 In section 4 of the Vagrancy Act 1824 as it extends to Northern Ireland, omit the words from “wilfully, openly, lewdly” to “any female; or”.

*Town Police Clauses Act 1847 (c. 89)*

- 3 In section 28 of the Town Police Clauses Act 1847 (penalty for committing certain acts), omit “Every person who wilfully and indecently exposes his person:”.

*Offences against the Persons Act 1861 (c. 100)*

- 4 In the Offences against the Person Act 1861, omit sections 61 and 62.

*Criminal Law Amendment Act 1885 (c. 69)*

- 5 In the Criminal Law Amendment Act 1885, omit –
  - (a) in section 2, subsections (2) to (4), and
  - (b) section 11.

*Vagrancy Act 1898 (c. 39)*

- 6 The Vagrancy Act 1898 ceases to have effect. 20

*Sexual Offences Act 1956 (c. 37)*

- 7 In the Sexual Offences Act 1956, omit –
  - (a) sections 1 to 7, 9 to 17, 19 to 32, 41 to 43, 45, 46A and 47 (offences), and
  - (b) in Schedule 2 (prosecution, punishment etc.), paragraphs 1 to 32.

*Mental Health Act 1959 (c. 72)*

- 8 In the Mental Health Act 1959, omit sections 127 (amendment of Sexual Offences Act 1956) and 128 (sexual intercourse with patients). 25

*Indecency with Children Act 1960 (c. 33)*

- 9 The Indecency with Children Act 1960 ceases to have effect.

*Sexual Offences Act 1967 (c. 60)*

- 10 In the Sexual Offences Act 1967, omit the following –
  - (a) section 1 (amendment of law relating to homosexual acts in private),
  - (b) section 4 (procuring others to commit homosexual acts),

30

- (c) section 5 (living on earnings of male prostitution),
- (d) section 7 (time limit on prosecutions),
- (e) section 8 (restriction on prosecutions), and
- (f) section 10 (past offences).

*Theft Act 1968 (c. 60)*

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- 11 In section 9 of the Theft Act 1968 (burglary), in subsection (2) omit “or raping any person”.

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

- 12 (1) The Children and Young Persons Act (Northern Ireland) 1968 is amended as follows. 10

- (2) In section 21 (causing or encouraging seduction or prostitution of girl under 17), omit –

- (a) in subsection (1), “or the prostitution of,” and
- (b) in subsection (2), “or the prostitution of,” and “or who has become a prostitute,”. 15

- (3) In Schedule 1 (offences against children and young persons to which special provisions of that Act apply), at the end insert –

“Any offence against a child or young person under any of sections 17 to 21, 49 to 60, 68 and 69 of the Sexual Offences Act 2003 or any attempt to commit such an offence.” 20

*National Health Service Reorganisation Act 1973 (c. 32)*

- 13 In Schedule 4 to the National Health Service Reorganisation Act 1973 (minor and consequential amendments), omit paragraph 92.

*Sexual Offences (Amendment) Act 1976 (c. 82)*

- 14 In the Sexual Offences (Amendment) Act 1976, omit – 25
- (a) in section 1 (meaning of “rape”), subsection (2), and
  - (b) in section 7 (citation, interpretation etc.), subsection (3).

*Criminal Law Act 1977 (c. 45)*

- 15 In the Criminal Law Act 1977, omit section 54 (inciting girl under 16 to have incestuous sexual intercourse). 30

*National Health Service Act 1977 (c. 49)*

- 16 In Schedule 15 to the National Health Service Act 1977 (consequential amendments), omit paragraph 29.

*Protection of Children Act 1978 (c. 37)*

- 17 In section 1(1) of the Protection of Children Act 1978 (indecent photographs of children), at the beginning insert “Subject to sections 1A and 1B,”. 35

*Magistrates' Courts Act 1980 (c. 43)*

- 18 In Schedule 7 to the Magistrates' Courts Act 1980 (consequential amendments), omit paragraph 18.

*Mental Health (Amendment) Act 1982 (c. 51)*

- 19 In Schedule 3 to the Mental Health (Amendment) Act 1982 (consequential amendments), omit paragraphs 29 and 34. 5

*Mental Health Act 1983 (c. 20)*

- 20 In Schedule 4 to the Mental Health Act 1983 (consequential amendments), omit paragraph 15.

*Sexual Offences Act 1985 (c. 44)*

10

- 21 In section 5 of the Sexual Offences Act 1985 (short title, commencement etc.), omit subsection (2).

*Criminal Justice Act 1988 (c. 33)*

- 22 In section 160(1) of the Criminal Justice Act 1988 (possession of indecent photograph of child), at the beginning insert "Subject to subsection (1A),". 15

*Children Act 1989 (c. 49)*

- 23 In Schedule 12 to the Children Act 1989 (minor amendments), omit paragraphs 11 to 14 and 16.

*Sexual Offences (Amendment) Act 1992 (c. 34)*

- 24 In the Sexual Offences (Amendment) Act 1992, omit section 4 (anonymity of victims: incest or buggery) except so far as extending to Northern Ireland. 20

*Criminal Justice and Public Order Act 1994 (c. 33)*

- 25 In the Criminal Justice and Public Order Act 1994, omit –  
(a) section 142 (rape of women and men)  
(b) section 143 (male rape and buggery)  
(c) section 144 (revised penalties for buggery and indecency between men), and  
(d) in Schedule 10 (consequential amendments), paragraphs 26 and 35(2) and (4). 25

*Crime (Sentences) Act 1997 (c. 43)*

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- 26 In the Crime (Sentences) Act 1997, omit section 52 (increased penalty for indecency with children).

*Sex Offenders Act 1997 (c. 51)*

- 27 The Sex Offenders Act 1997 ceases to have effect.

*Crime and Disorder Act 1998 (c. 37)*

- 28 (1) The Crime and Disorder Act 1998 is amended as follows.
- (2) Omit sections 2, 2A, 2B and 3 (sex offender orders and interim orders).
- (3) In section 4 (appeals against orders) –
- (a) in subsection (1), omit “a sex offender order or an order under section 2A above”, and
- (b) in subsection (3), omit “or 2(6) above”. 5
- (4) Omit section 20.
- (5) In section 21 (procedural provisions with respect to orders) –
- (a) omit subsection (2); 10
- (b) in subsection (4) –
- (i) omit “or (2)”; and
- (ii) for “either of those subsections” substitute “that subsection”;
- (c) in subsection (5), omit “or 20”;
- (d) in subsection (6), omit “and sex offender orders” and “or 20(4)(a)”; 15
- (e) in subsection (7)(b)(i), omit “or, as the case may be, chief constable”;
- (f) omit subsections (7A) and (7B); and
- (g) in subsection (10), omit “or 20”.
- (6) Omit section 21A.
- (7) In section 22 (offences in connection with breach of orders), omit subsections (6) and (7). 20
- (8) In Schedule 8 (minor and consequential amendments), omit paragraph 144.

*Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9))*

- 29 In paragraph 1 of Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 – 25
- (a) omit sub-paragraphs (c), (e) and (j);
- (b) after sub-paragraph (l) insert –
- “(m) Section 71 of the Sexual Offences Act 2003.”

*Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20))*

- 30 In the Criminal Justice (Northern Ireland) Order 1998, omit Articles 6, 6A, 6B and 7. 30

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 31 In Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (consequential amendments), omit paragraphs 189, 190 and 193.

*Care Standards Act 2000 (c. 14)*

- 32 In Schedule 4 to the Care Standards Act 2000 (minor and consequential amendments), omit paragraph 2. 35



*Criminal Justice and Courts Services Act 2000 (c. 43)*

- 33 In the Criminal Justice and Courts Services Act 2000, omit –  
(a) section 39 (indecent conduct towards 14 and 15 year olds), and  
(b) section 66 and Schedule 5 (amendments of Sex Offenders Act 1997).

*Sexual Offences (Amendment) Act 2000 (c. 44)*

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- 34 (1) The Sexual Offences (Amendment) Act 2000 is amended as follows.  
(2) In section 1 (reduction in age at which certain sexual acts are lawful), omit subsections (1) and (2).  
(3) In section 2 (defences available to persons under age), omit subsections (1) to (3). 10  
(4) Omit sections 3 and 4 (abuse of position of trust) except so far as extending to Scotland.  
(5) Omit section 5 (notification requirements for offenders under section 3).  
(6) In section 6 (meaning of “sexual offence” for the purposes of certain enactments), omit subsection (1). 15

*Armed Forces Act 2001 (c. 19)*

- 35 In Schedule 6 to the Armed Forces Act 2001 (miscellaneous amendments), omit paragraphs 2 and 59.

*Police Reform Act 2002 (c. 30)*

- 36 In the Police Reform Act 2002, omit sections 67 to 74 (sex offender orders and interim orders). 20

*Adoption and Children Act 2002 (c. 38)*

- 37 In section 74 of the Adoption and Children Act 2002 (status conferred by adoption not to apply for the purposes of certain enactments), in subsection (1) for paragraphs (b) and (c) substitute “or  
(b) sections 65 and 66 of the Sexual Offences Act 2003 (sex with an adult relative).” 25

*Nationality, Asylum and Immigration Act 2002 (c. 41)*

- 38 In the Nationality, Asylum and Immigration Act 2002, omit sections 145 and 146 (traffic in prostitution). 30

*Criminal Justice (Scotland) Act 2003 (asp 7)*

- 39 In section 21(9) of the Criminal Justice (Scotland) Act 2003 (power of adjournment where person convicted of sexual offence or offence disclosing significant sexual aspects to behaviour in committing it), for the words from “– (a) “three weeks”” to “each case” substitute ““four weeks” there were”. 35

*Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13))*

- 40 In the Criminal Justice (Northern Ireland) Order 2003, omit –

- (a) in Article 19(4), sub-paragraph (a) and the word “or” immediately after it, and
- (b) in Schedule 1, paragraphs 1, 2, 20 and 21.

## SCHEDULE 6

Section 137

## REPEALS AND REVOCATIONS

5

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
Vagrancy Act 1824 (c. 83)	In section 4 except so far as extending to Northern Ireland, the words from “every person wilfully” to “female”. In section 4 as it extends to Northern Ireland, the words from “wilfully, openly, lewdly” to “any female; or”.	10
Town Police Clauses Act 1847 (c. 89)	In section 28 the words “every person who wilfully and indecently exposes his person.”.	
Offences Against the Person Act 1861 (c. 100)	Sections 61 and 62.	15
Criminal Law Amendment Act 1885 (c. 69)	Section 2(2) to (4). Section 11.	
Vagrancy Act 1898 (c. 39)	The whole Act.	
Criminal Law Amendment Act 1912 (c. 20)	Section 7.	20
Sexual Offences Act 1956 (c. 69)	Sections 1 to 7. Sections 9 to 17. Sections 19 to 32. Sections 41 to 43. Section 45. Section 46A. Section 47. In Schedule 2, paragraphs 1 to 32.	25
Mental Health Act 1959 (c. 72)	Sections 127 and 128.	30
Indecency with Children Act 1960 (c. 33)	The whole Act.	
Sexual Offences Act 1967 (c. 60)	Section 1. Section 4. Section 5. Sections 7 and 8. Section 10.	35
Theft Act 1968 (c. 60)	In section 9(2), the words “or raping any person”.	
Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))	In section 21, in subsection (1) the words “or the prostitution of,” and in subsection (2) the words “or the prostitution of,” and “or who has become a prostitute,”.	40

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
National Health Service Reorganisation Act 1973 (c. 32)	In Schedule 4, paragraph 92.	
Sexual Offences (Amendment) Act 1976 (c. 82)	Section 1(2). Section 7(3).	5
Criminal Law Act 1977 (c. 45)	Section 54.	
National Health Service Act 1977 (c. 49)	In Schedule 15, paragraph 29.	
Magistrates' Courts Act 1980 (c. 43)	In Schedule 7, paragraph 18.	10
Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))	In Article 29(1), the words from “or with an offence under section 1(1)(b) of the Vagrancy Act 1898” to “homosexual act”. In Schedule 2, paragraphs 5(c), 10(c) and 22.	15
Mental Health (Amendment) Act 1982 (c. 51)	In Schedule 3, paragraphs 29 and 34.	
Homosexual Offences (Northern Ireland) Order 1982 (S.I. 1982/1536 (N.I. 19))	In Article 2(2), in the definition of “homosexual act”, the words from “, an act of gross indecency” to the end. Article 3. Article 7. Article 8. Article 10(2)(a) and (b). In Article 11(1), the words “, or gross indecency with,”. Article 12(1). Article 13. In the Schedule, paragraphs 3, 4 and 7.	20
Mental Health Act 1983 (c. 20)	In Schedule 4, paragraph 15.	30
Sexual Offences Act 1985 (c. 44)	Section 4(2) and (3). Section 5(2).	
Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4))	In Schedule 5, in Part II, the entry relating to the Homosexual Offences (Northern Ireland) Order 1982.	35
Children Act 1989 (c. 49)	In Schedule 12, paragraphs 11 to 14 and 16.	
Sexual Offences (Amendment) Act 1992 (c. 34)	Section 4 except so far as extending to Northern Ireland.	
Criminal Justice and Public Order Act 1994 (c. 33)	Sections 142 to 144. In Schedule 10, paragraphs 26 and 35(2) and (4).	40
Crime (Sentences) Act 1997 (c. 43)	Section 52.	
Sex Offenders Act 1997 (c. 51)	The whole Act.	
Crime and Disorder Act 1998 (c. 37)	Sections 2, 2A, 2B and 3.	45

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
Crime and Disorder Act 1998 (c. 37) – <i>cont.</i>	In section 4, in subsection (1) the words “, a sex offender order or an order under section 2A above” and in subsection (3) the words “or 2(6) above”.	5
	Section 20. In Section 21, subsection (2); in subsection (4), the words “or (2)”; in subsection (5), the words “or 20”; in subsection (6), the words “and sex offender orders” and “or 20(4)(a)”; in subsection (7)(b)(i), the words “or, as the case may be, chief constable”; subsections (7A) and (7B); and in subsection (10), the words “or 20”.	10
	Section 21A. Section 22(6) and (7). In Schedule 8, paragraph 144.	15
Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9))	In Schedule 1, paragraph 1(c), (e) and (j).	20
Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)).	Articles 6, 6A, 6B and 7.	
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraphs 189, 190 and 193.	25
Care Standards Act 2000 (c. 14)	In Schedule 4, paragraph 2.	
Criminal Justice and Courts Services Act 2000 (c. 43)	Section 39. Section 66. Schedule 5.	
Sexual Offences (Amendment) Act 2000 (c. 44)	Section 1(1), (2) and (4). Section 2(1) to (3) and (5). Sections 3 and 4 except so far as extending to Scotland. Section 5. Section 6(1).	30
Armed Forces Act 2001 (c. 19)	In Schedule 6, paragraphs 2 and 59.	35
Police Reform Act 2002 (c. 30)	Sections 67 to 74.	
Nationality, Asylum and Immigration Act 2002 (c. 41)	Sections 145 and 146.	
Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13))	In Article 19(4), sub-paragraph (a) and the word “or” immediately after it. In Schedule 1, paragraphs 1, 2, 20 and 21.	40



# Sexual Offences Bill [HL]

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## B I L L

To make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts, and for connected purposes.

*Brought from the Lords, 18th June 2003.*

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*Ordered, by The House of Commons,  
to be Printed, 18th June 2003.*

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LONDON: THE STATIONERY OFFICE  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx net

Bill 128

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