

Sexual Offences Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as HL Bill 26 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Lord Falconer of Thoroton has 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]

CONTENTS

PART 1

SEXUAL OFFENCES

Rape

- 1 Rape
- 2 Rape of a child under 13

Assault

- 3 Assault by penetration
- 4 Assault of a child under 13 by penetration
- 5 Sexual assault
- 6 Sexual assault of a child under 13

Causing sexual activity without consent

- 7 Causing a person to engage in sexual activity without consent
- 8 Causing a child under 13 to engage in sexual activity

Child sex offences

- 9 Sexual activity with a child
- 10 Causing a child to engage in sexual activity
- 11 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 9 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 a child to engage in sexual activity
- 20 Abuse of position of trust: inciting a child to engage in sexual activity

- 21 Abuse of position of trust: sexual activity in the presence of a child
- 22 Abuse of position of trust: causing a child to watch a sexual act
- 23 Positions of trust
- 24 Positions of trust: interpretation
- 25 Sections 18 to 22: marriage exception
- 26 Sections 18 to 22: sexual relationships which pre-date position of trust
- 27 Sections 18 to 22: existing sexual relationships

Familial child sex offences

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

Offences against persons with a mental disorder or learning disability

- 33 Sexual activity with a person with a mental disorder or learning disability
- 34 Causing a person with a mental disorder or learning disability to engage in sexual activity
- 35 Inciting a person with a mental disorder or learning disability to engage in sexual activity
- 36 Engaging in sexual activity in the presence of a person with a mental disorder or learning disability
- 37 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

- 38 Inducement, threat or deception to procure sexual activity with a person with a mental disorder or learning disability
- 39 Causing a person with a mental disorder or learning disability to engage in sexual activity by inducement, threat or deception
- 40 Causing a person with a mental disorder or learning disability to agree to engage in sexual activity by inducement, threat or deception
- 41 Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder or learning disability
- 42 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

- 43 Care workers: sexual activity with a person with a mental disorder or learning disability
- 44 Care workers: causing sexual activity
- 45 Care workers: inciting sexual activity
- 46 Care workers: sexual activity in the presence of a person with a mental disorder or learning disability
- 47 Care workers: causing a person with a mental disorder or learning disability to watch a sexual act
- 48 Care workers: interpretation
- 49 Sections 43 to 47: marriage exception
- 50 Sections 43 to 47: sexual relationships which pre-date care relationships

51 Sections 43 to 47: existing sexual relationships

Indecent photographs of children

52 Indecent photographs of persons aged 16 or 17

53 Criminal investigations or proceedings

Prostitution and child pornography

54 Paying for sex with a child

55 Causing or inciting child prostitution or pornography

56 Causing or inciting prostitution for gain

57 Controlling a child prostitute or a child involved in pornography

58 Controlling prostitution for gain

59 Arranging or facilitating child prostitution or pornography

60 Sections 55 to 59: interpretation

Trafficking

61 Trafficking into the UK for sexual exploitation

62 Trafficking within the UK for sexual exploitation

63 Trafficking out of the UK for sexual exploitation

64 Sections 61 to 63: interpretation and jurisdiction

Preparatory offences

65 Administering a substance with intent

66 Committing an offence with intent to commit a sexual offence

67 Trespass with intent to commit a sexual offence

Sex with an adult relative

68 Sex with an adult relative: penetration

69 Sex with an adult relative: consenting to penetration

Other offences

70 Exposure

71 Voyeurism

72 Intercourse with an animal

73 Sexual penetration of a corpse

74 Sexual activity in public

Offences outside the United Kingdom

75 Offences outside the United Kingdom

General

76 Offences against children under 13

77 "Consent"

78 Presumptions about the absence of consent

79 Section 78: relevant acts

80 "Sexual"

81 Part 1: general interpretation

PART 2

NOTIFICATION AND ORDERS

Notification requirements

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

Information about release or transfer

- 95 Information about release or transfer

Notification orders

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

Sexual offences prevention orders

- 103 Sexual offences prevention orders: applications and grounds
- 104 Section 103: supplemental
- 105 Sexual offences prevention orders: effect
- 106 Sexual offences prevention orders: variations, renewals and discharges
- 107 Interim sexual offences prevention orders
- 108 SOPOs and interim SOPOs: appeals
- 109 Offence: breach of SOPO or interim SOPO

Risk of sexual harm orders

- 110 Risk of sexual harm orders: applications, grounds and effect
- 111 Section 110: interpretation
- 112 Risk of sexual harm orders: variations, renewals and discharges
- 113 Interim risk of sexual harm orders
- 114 RSHOs and interim RSHOs: appeals
- 115 Offence: breach of RSHO or interim RSHO

116 Effect of conviction etc. of an offence under section 115

Power to amend Schedules 2 and 3

117 Power to amend Schedules 2 and 3

General

118 Young offenders: application

119 Part 2: general interpretation

120 Conditional discharges and probation orders

121 Interpretation: mentally disordered offenders

122 Part 2: Northern Ireland

PART 3

GENERAL

123 Orders and regulations

124 Minor and consequential amendments

125 Repeals and revocation

126 Commencement

127 Extent, saving etc.

128 Short title

-
- Schedule 1 – Sexual offences to which section 75 applies
 - Schedule 2 – Sexual offences for purposes of Part 2
 - Schedule 3 – Other offences for purposes of Part 2
 - Schedule 4 – Minor and consequential amendments
 - Schedule 5 – Repeals and revocation

A
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.

BE 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) subsection (2) or (3) applies.
- (2) This subsection applies if A does not believe that B consents (whether because he knows that B does not consent, gives no thought to whether B consents, or otherwise). 10
- (3) This subsection applies if—
 (a) a reasonable person would in all the circumstances doubt whether B consents, and
 (b) A does not act in a way that a reasonable person would consider sufficient in all the circumstances to resolve such doubt. 15
- (4) Section 78 applies to an offence under this section.
- (5) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life. 20

2 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
 - (b) the other person is under 13. 5
- (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

*Assault***3 Assault by penetration**

- (1) A person (A) commits an offence if— 10
- (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,
 - (b) the penetration is sexual,
 - (c) B does not consent to the penetration, and
 - (d) subsection (2) or (3) applies. 15
- (2) This subsection applies if A does not believe that B consents (whether because he knows that B does not consent, gives no thought to whether B consents, or otherwise).
- (3) This subsection applies if—
- (a) a reasonable person would in all the circumstances doubt whether B consents, and
 - (b) A does not act in a way that a reasonable person would consider sufficient in all the circumstances to resolve such doubt. 20
- (4) Section 78 applies to an offence under this section.
- (5) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life. 25

4 Assault of a child under 13 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, 30
 - (b) the penetration is sexual, and
 - (c) B is under 13.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

5 Sexual assault 35

- (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) subsection (2) or (3) applies. 40

-
- (2) This subsection applies if A does not believe that B consents (whether because he knows that B does not consent, gives no thought to whether B consents, or otherwise).
- (3) This subsection applies if –
- (a) a reasonable person would in all the circumstances doubt whether B consents, and
 - (b) A does not act in a way that a reasonable person would consider sufficient in all the circumstances to resolve such doubt.
- (4) Section 78 applies to an offence under this section.
- (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 10 years.
- 6 Sexual assault of a child under 13**
- (1) A person (A) commits an offence if –
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual, and
 - (c) 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.
- Causing sexual activity without consent*
- 7 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
 - (d) subsection (2) or (3) applies.
- (2) This subsection applies if A does not believe that B consents (whether because he knows that B does not consent, gives no thought to whether B consents, or otherwise).
- (3) This subsection applies if –
- (a) a reasonable person would in all the circumstances doubt whether B consents, and
 - (b) A does not act in a way that a reasonable person would consider sufficient in all the circumstances to resolve such doubt.
- (4) Section 78 applies to an offence under this section.

-
- (5) 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,
 - (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
- (6) Unless subsection (5) applies, a person guilty of an offence under this section is liable – 10
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.
- 8 Causing a child under 13 to engage in sexual activity 15**
- (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, and
 - (c) B is under 13.
- (2) A person guilty of an offence under this section is liable, on conviction on indictment – 20
- (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 involved – 25
- (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.
- Child sex offences* 30
- 9 Sexual activity with a child**
- (1) A person aged 18 or over (A) commits an offence if –
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) B is under 16, and
 - (d) A does not reasonably believe that B is 16 or over.
- 35
- (2) Section 76 applies to an offence under this section.
- (3) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

10 Causing a child to engage in sexual activity

- (1) A person aged 18 or over (A) commits an offence if—
 - (a) he intentionally causes another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) B is under 16, and
 - (d) A does not reasonably believe that B is 16 or over.
- (2) Section 76 applies to an offence under this section.
- (3) 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 Inciting a child to engage in sexual activity

- (1) A person aged 18 or over (A) commits an offence if—
 - (a) he intentionally incites another person (B) to engage in an activity,
 - (b) the activity is sexual, and
 - (c) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this 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—
 - (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
 - (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—
 - (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

- (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 a person engaging in an activity,
 - (b) the activity is sexual, and

-
- (c) either –
- (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this 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.
- 14 Child sex offences committed by children or young persons 10**
- (1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 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; 15
 - (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 he intentionally arranges or facilitates the doing of anything which, if done as he intends, either – 20
- (a) will involve the commission by any person of an offence under any of sections 9 to 14, or
 - (b) would do so but for the existence of facts which make the commission of the offence impossible.
- (2) For the purposes of subsection (1), section 76 is to be disregarded. 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 14 years. 30
- 16 Sections 9 to 15: marriage exception**
- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 9 to 14 against another person (B) is not an offence under that section if – 35
- (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 9 to 15 it is for the defendant to prove that subsection (1) applied. 40

17 Meeting a child following sexual grooming etc.

- (1) A person aged 18 or over (A) commits an offence if –
- (a) he intentionally meets, or travels with the intention of meeting, another person (B), having met or communicated with B on at least two earlier occasions, 5
 - (b) at the time, he intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence,
 - (c) B is under 16, and
 - (d) A does not reasonably believe that B is 16 or over. 10
- (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 – 15
 - (i) an offence under this Part,
 - (ii) an offence under section 4 of the Criminal Law Amendment Act 1885 (c. 69) (unlawful carnal knowledge of a girl under 14),
 - (iii) an offence under section 5 of that Act (unlawful carnal knowledge of a girl under 17), 20
 - (iv) an offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)) (indecent conduct towards a child), or
 - (v) anything done outside England and Wales and Northern Ireland which is not an offence within any of sub-paragraphs (i) to (iv) but would be if done in England and Wales or Northern Ireland. 25
- (3) In this section as it applies to Northern Ireland, subsection (1) (c)(i) has effect with the substitution of “17” for “16” in both places.
- (4) A person guilty of an offence under this section is liable – 30
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Abuse of a position of trust 35

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),
 - (b) the touching is sexual,
 - (c) A is in a position of trust in relation to B, and
 - (d) B is under 18. 40
- (2) Where in proceedings for an offence under this section the defendant proves that he believed that the other person was 18 or over, he is not guilty of the offence unless it is proved that his belief was unreasonable.

-
- (3) Where in proceedings for an offence under this section it is proved that a position of trust existed because of circumstances within section 23(2), (3), (4) or (5) and the defendant proves that he did not know of those circumstances, he is not guilty of the offence unless it is proved –
- (a) that he could reasonably have been expected to know of those circumstances, or
 - (b) that a position of trust existed because of other circumstances.
- (4) Section 76 applies to an offence under this section. 5
- (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; 10
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- 19 Abuse of position of trust: causing a child to engage in sexual activity**
- (1) A person aged 18 or over (A) commits an offence if – 15
- (a) he intentionally causes another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) A is in a position of trust in relation to B, and
 - (d) B is under 18.
- (2) Where in proceedings for an offence under this section the defendant proves that he believed that the other person was 18 or over, he is not guilty of the offence unless it is proved that his belief was unreasonable. 20
- (3) Where in proceedings for an offence under this section it is proved that a position of trust existed because of circumstances within section 23(2), (3), (4) or (5) and the defendant proves that he did not know of those circumstances, he is not guilty of the offence unless it is proved – 25
- (a) that he could reasonably have been expected to know of those circumstances, or
 - (b) that a position of trust existed because of other circumstances.
- (4) Section 76 applies to an offence under this section. 30
- (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. 35
- 20 Abuse of position of trust: inciting a child to engage in sexual activity**
- (1) A person aged 18 or over (A) commits an offence if –
- (a) he intentionally incites another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) A is in a position of trust in relation to B, and 40
 - (d) B is under 18.

- (2) Where in proceedings for an offence under this section the defendant proves that he believed that the other person was 18 or over, he is not guilty of the offence unless it is proved –
 - (a) that his belief was unreasonable, or
 - (b) that the other person was under 13. 5
- (3) Where in proceedings for an offence under this section it is proved that a position of trust existed because of circumstances within section 23(2), (3), (4) or (5) and the defendant proves that he did not know of those circumstances, he is not guilty of the offence unless it is proved –
 - (a) that he could reasonably have been expected to know of those circumstances, or
 - (b) that a position of trust existed because of other circumstances. 10
- (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; 15
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

21 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, 20
 - (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,
 - (d) A is in a position of trust in relation to B, and 25
 - (e) B is under 18.
- (2) Where in proceedings for an offence under this section the defendant proves that he believed that the other person was 18 or over, he is not guilty of the offence unless it is proved –
 - (a) that his belief was unreasonable, or 30
 - (b) that the other person was under 13.
- (3) Where in proceedings for an offence under this section it is proved that a position of trust existed because of circumstances within section 23(2), (3), (4) or (5) and the defendant proves that he did not know of those circumstances, he is not guilty of the offence unless it is proved –
 - (a) that he could reasonably have been expected to know of those circumstances, or
 - (b) that a position of trust existed because of other circumstances. 35
- (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; 40
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

22 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 – 45

-
- (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 a person engaging in an activity,
- (b) the activity is sexual, 5
- (c) A is in a position of trust in relation to B, and
- (d) B is under 18.
- (2) Where in proceedings for an offence under this section the defendant proves that he believed that the other person was 18 or over, he is not guilty of the offence unless it is proved – 10
- (a) that his belief was unreasonable, or
- (b) that the other person was under 13.
- (3) Where in proceedings for an offence under this section it is proved that a position of trust existed because of circumstances within section 23(2), (3), (4) or (5) and the defendant proves that he did not know of those circumstances, he is not guilty of the offence unless it is proved – 15
- (a) that he could reasonably have been expected to know of those circumstances, or
- (b) that a position of trust existed because of other circumstances.
- (4) 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 5 years.
- 23 Positions of trust** 25
- (1) For the purposes of sections 18 to 22, 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. 30
- (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 – 35
- (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, 40
- and 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 – 45
- (a) a hospital,
- (b) a care home or private hospital,

- (c) a community home, voluntary home or children’s home,
 - (d) a home provided under section 82(5) of the Children Act 1989 (c. 41), or
 - (e) 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 full-time education at an educational institution and B is receiving full-time education at that institution. 5
 - (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. 10
 - (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 (S.I. 1995/755 (N.I. 2)),and, in that capacity, looks after B on an individual basis. 15
 - (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. 20

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. 25
- (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). 30
- (4) A person receives full-time education at an educational institution if –
 - (a) he is registered or otherwise enrolled as a full-time 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. 35
- (5) In section 23 –
 - “authority” –
 - (a) in relation to England and Wales, means a local authority; 40
 - (b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Children (Northern Ireland) Order 1995;
 - “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 – 45

-
- (a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000 (c. 14), and
- (b) in relation to Northern Ireland, the meaning that would be given by Article 90(1) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) if in Article 91(2) of that Order paragraphs (b), (c), (f) and (g) and the words after paragraph (h) were omitted; 5
- “community home” has the meaning given by section 53(1) of the Children Act 1989 (c. 41);
- “hospital” – 10
- (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; 15
- (b) in relation to Northern Ireland, has 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));
- “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)); 20
- “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, and 25
- (b) in relation to Northern Ireland, the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995.
- 25 Sections 18 to 22: marriage exception**
- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 18 to 22 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.
- 26 Sections 18 to 22: 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 22 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. 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 18 to 22 it is for the defendant to prove that such a relationship existed at that time.

27 Sections 18 to 22: existing sexual relationships

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 18 to 22 against another person (B) is not an offence under that section if—
 - (a) immediately before the commencement of that section, a sexual relationship existed between A and B, and 5
 - (b) the conduct would (apart from this section) constitute the offence only because any of subsections (6) to (8) of section 23 applies.
- (2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful. 10
- (3) In proceedings for an offence under any of sections 18 to 22 it is for the defendant to prove that such a relationship existed at that time.

Familial child sex offences

28 Sexual activity with a child family member

- (1) A person (A) commits an offence if— 15
 - (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) the relation of A to B is within section 30, and
 - (d) B is under 18.
- (2) Where in proceedings for an offence under this section the defendant proves that he believed that the other person was 18 or over, he is not guilty of the offence unless it is proved that his belief was unreasonable. 20
- (3) Where in proceedings for an offence under this section—
 - (a) it is proved that the relation of the defendant to the other person was of a description falling within section 30, and 25
 - (b) the defendant proves that he did not know that his relation to the other person was of that description,he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that his relation to the other person was of that description. 30
- (4) Section 76 applies to an offence under this section.
- (5) 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.
- (6) Unless subsection (5) applies, 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. 40

29 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 30, and
 (d) B is under 18. 5
- (2) Where in proceedings for an offence under this section the defendant proves that he believed that the other person was 18 or over, he is not guilty of the offence unless it is proved –
 (a) that his belief was unreasonable, or
 (b) that the other person was under 13. 10
- (3) Where in proceedings for an offence under this section –
 (a) it is proved that the relation of the defendant to the other person was of a description falling within section 30, and
 (b) the defendant proves that he did not know that his relation to the other person was of that description, 15
 he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that his relation to the other person was of that description.
- (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. 20
- (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; 25
 (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

30 Family relationships

- (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 30
 (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 –
 (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, 35
 (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 – 40
 (a) one of them is or has been the partner of the other's parent,
 (b) one of them is or has been the partner or spouse of the other's aunt or uncle,
 (c) A and B are cousins, or
 (d) the parent of one of them is or has been the other's foster parent. 45

- (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.
- (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; 5
 - (b) “cousin” means the child of an aunt or uncle;
 - (c) a person is a child’s foster parent if –
 - (i) he is a person with whom the child has been placed under sections 23(2)(a) or 59(1)(a) of the Children Act 1989 (c. 41) (fostering for local authority or voluntary organisation), or 10
 - (ii) he fosters the child privately, within the meaning given by section 66(1)(b) of that Act;
 - (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. 15

31 Sections 28 and 29: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under section 28 or 29 against another person (B) is not an offence under that section if they are lawfully married at the time. 20
- (2) In proceedings for such an offence it is for A to prove that he and B were lawfully married at the time.

32 Sections 28 and 29: existing sexual relationships

- (1) Conduct by a person (A) which would otherwise be an offence under section 28 or 29 against another person (B) is not an offence under that section if, immediately before the commencement of that section, 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. 30
- (3) In proceedings for an offence under section 28 or 29 it is for the defendant to prove that such a relationship existed at that time.

Offences against persons with a mental disorder or learning disability

33 Sexual activity with a person with a mental disorder or learning disability

- (1) A person (A) commits an offence if – 35
- (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
 - (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. 40

-
- (2) B is unable to refuse if –
- (a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or possible consequences of what is being done, or for any other reason), or 5
 - (b) he is unable to communicate such a choice to A.
- (3) Section 76 applies to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment – 10
- (a) where subsection (5) applies, to imprisonment for life;
 - (b) in any other case, to imprisonment for a term not exceeding 14 years.
- (5) This subsection applies 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, 15
 - (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.
- 34 Causing a person with a mental disorder or learning disability to engage in sexual activity**
- (1) A person (A) commits an offence if – 20
- (a) he intentionally causes a person (B) to engage in an activity,
 - (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. 25
- (2) B is unable to refuse if –
- (a) he lacks the capacity to choose whether to agree to engaging in the activity caused (whether because he lacks sufficient understanding of the nature or possible consequences of the activity, or for any other reason), or 30
 - (b) he is unable to communicate such a choice to A.
- (3) Section 76 applies to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment – 35
- (a) where subsection (5) applies, to imprisonment for life;
 - (b) in any other case, to imprisonment for a term not exceeding 14 years.
- (5) This subsection applies if the activity caused involved – 40
- (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.

35 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 incites a person (B) to engage in an activity,
 - (b) the activity is sexual, 5
 - (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 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, to imprisonment for life.

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

20

- (1) A person (A) commits an offence if—
 - (a) he intentionally engages in an activity,
 - (b) the activity is sexual,
 - (c) for the purpose of obtaining sexual gratification, he engages in it 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, 25
 - (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. 30
- (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 35
 - (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, to imprisonment for a term not exceeding 10 years.

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

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, 45

-
- (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. 5
- (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 10
 - (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, to imprisonment for a term not exceeding 10 years.
- Inducements etc. to persons with mental disorder or learning disability*
- 38 Inducement, threat or deception to procure sexual activity with a person with a mental disorder or learning disability 15**
- (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, 20
 - (c) A obtains B’s agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose,
 - (d) B has a mental disorder or learning disability, and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder or learning disability. 25
- (2) Section 76 applies to an offence under this section.
- (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. 30
- (4) This subsection applies 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.
- 39 Causing a person with a mental disorder or learning disability to engage in 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 a person (B) to engage in an activity, 40
 - (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.
 - (2) Section 76 applies to an offence under this section.
 - (3) A person guilty of an offence under this section is liable, on conviction on indictment – 5
 - (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 activity caused involved – 10
 - (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.
 - 40 Causing a person with a mental disorder or learning disability to agree to engage in sexual activity by inducement, threat or deception 15**
 - (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 a person (B) to agree to engage in an activity, 20
 - (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.
 - (2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life. 25
 - 41 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, 30
 - (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,
 - (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, 35
 - (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. 40
 - (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.

42 Causing a person with a mental disorder or learning disability to watch a sexual act by inducement, threat or deception

- (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, 10
 - (b) the activity is sexual,
 - (c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
 - (d) B has a mental disorder or learning disability, and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder or learning disability. 15
- (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. 20

Care workers for persons with mental disorder or learning disability

43 Care workers: sexual activity with a person with a mental disorder or learning disability

- (1) A person (A) commits an offence if – 25
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) B has a mental disorder or learning disability, and
 - (d) A is involved in B’s care in a way that falls within section 48.
- (2) Where in proceedings for an offence under this section the defendant proves that he did not know that the other person had a mental disorder or learning disability, he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that the other person had a mental disorder or learning disability. 30
- (3) Section 76 applies to an offence under this section. 35
- (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. 40

44 Care workers: causing sexual activity

- (1) A person (A) commits an offence if –

-
- (a) he intentionally causes a person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) B has a mental disorder or learning disability, and
 - (d) A is involved in B's care in a way that falls within section 48.
- (2) Where in proceedings for an offence under this section the defendant proves that he did not know that the other person had a mental disorder or learning disability, he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that the other person had a mental disorder or learning disability. 5
- (3) Section 76 applies to an offence under this section. 10
- (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. 15
- 45 Care workers: inciting sexual activity**
- (1) A person (A) commits an offence if—
- (a) he intentionally incites a person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) B has a mental disorder or learning disability, and 20
 - (d) A is involved in B's care in a way that falls within section 48.
- (2) Where in proceedings for an offence under this section the defendant proves that he did not know that the other person had a mental disorder or learning disability, he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that the other person had a mental disorder or learning disability. 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
- 46 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, 35
 - (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,
 - (d) B has a mental disorder or learning disability, and 40
 - (e) A is involved in B's care in a way that falls within section 48.
- (2) Where in proceedings for an offence under this section the defendant proves that he did not know that the other person had a mental disorder or learning disability, he is not guilty of the offence unless it is proved that he could

reasonably have been expected to know that the other person had a mental disorder or learning disability.

- (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.

47 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, and
 - (d) A is involved in B’s care in a way that falls within section 48.
- (2) Where in proceedings for an offence under this section the defendant proves that he did not know that the other person had a mental disorder or learning disability, he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that the other person had a mental disorder or learning disability. 20
- (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; 25
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

48 Care workers: interpretation

- (1) For the purposes of sections 43 to 47, 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. 30
- (2) This subsection applies if –
- (a) B is accommodated and cared for in a care home or children’s home, and
 - (b) A, in the course of employment, performs any functions in the home in the course of which he has regular face to face contact with B. 35
- (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, 40
- and A, in the course of employment, performs any functions for the body or agency or in the clinic or hospital, in the course of which he has regular face to face contact with B.
- (4) This subsection applies if –

-
- (a) B lives in his own home, and
- (b) A, whether or not in the course of employment, regularly provides personal care to B.
- (5) In this section –
- “care home” has the meaning given by section 3 of the Care Standards Act 2000 (c. 14); 5
- “children’s home” has the meaning given by section 1 of that Act;
- “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; 10
- “independent clinic”, “independent hospital” and “independent medical agency” have the meaning given by section 2 of the Care Standards Act 2000;
- “National Health Service body” means –
- (a) a Health Authority, 15
- (b) a National Health Service trust,
- (c) a Primary Care Trust, or
- (d) a Special Health Authority.
- 49 Sections 43 to 47: marriage exception**
- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 43 to 47 against another person (B) is not an offence under that section if they are lawfully married at the time. 20
- (2) In proceedings for such an offence it is for A to prove that he and B were lawfully married at the time.
- 50 Sections 43 to 47: sexual relationships which pre-date care relationships** 25
- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 43 to 47 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 48, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful. 30
- (3) In proceedings for an offence under any of sections 43 to 47 it is for the defendant to prove that such a relationship existed at that time.
- 51 Sections 43 to 47: existing sexual relationships**
- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 43 to 47 against another person (B) is not an offence under that section if, immediately before the commencement of that section, 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 43 to 47 it is for the defendant to prove that such a relationship existed at that time.

*Indecent photographs of children***52 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
- (5) This section does not apply to photographs or pseudo-photographs taken or made before the commencement of this section.

53 Criminal investigations or proceedings 30

After section 1A of the Protection of Children Act 1978 insert –

“1B Exception for criminal investigations or proceedings

- (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 – 35
- (a) if it is necessary to do so, for the purposes of criminal proceedings in any part of the world, or
- (b) in accordance with an authorisation under this section.
- (2) An authorisation may be given only if it appears to the person or persons giving it to be necessary for the purposes of the prevention,

detection or investigation of crime in any part of the world, or for any particular purpose falling within those purposes.

- (3) An authorisation –
 - (a) must be in writing,
 - (b) must specify the person to whom it is given and the purpose or purposes for which it is given, and 5
 - (c) may specify conditions to which it is subject.
- (4) An authorisation may be given by –
 - (a) a chief officer of police,
 - (b) the Director General of the National Crime Squad, 10
 - (c) the Director General of the National Criminal Intelligence Service,
 - (d) the Commissioners of Customs and Excise, or
 - (e) the Director of Public Prosecutions.”

Prostitution and child pornography 15

54 Paying for sex with a child

- (1) A person (A) commits an offence if –
 - (a) he intentionally obtains for himself the sexual services of another person (B),
 - (b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and 20
 - (c) either –
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or 25
 - (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 gratuitously or at a discount.
- (3) A person guilty of an offence under this section against a person under 13, where the offence involved – 30
 - (a) penetration of B’s anus or vagina with a part of A’s body or anything else,
 - (b) penetration of B’s mouth with A’s penis,
 - (c) penetration of A’s anus or vagina with a part of B’s body or by B with anything else, or 35
 - (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. 40
- (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;
 - (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”. 5

55 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, 10
 - (b) he does so for or in the expectation of gain for himself or a third person, and
 - (c) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or 15
 - (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. 20

56 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 25
 - (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. 30

57 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, 35
 - (b) he does so for or in the expectation of gain for himself or a third person, and
 - (c) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or 40
 - (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.
- 58 Controlling prostitution for gain** 5
- (1) A person commits an offence if –
 - (a) he intentionally controls any of the activities of another person relating to that person’s prostitution, and
 - (b) he does so for or in the expectation of gain for himself or a third person.
 - (2) A person guilty of an offence under this 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 7 years.
- 59 Arranging or facilitating child prostitution or pornography** 15
- (1) A person (A) commits an offence if –
 - (a) he intentionally arranges or facilitates the prostitution or involvement in pornography of another person (B),
 - (b) he does so for or in the expectation of gain for himself or a third person, and 20
 - (c) either –
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
 - (2) 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 14 years.
- 60 Sections 55 to 59: interpretation** 30
- (1) Subsections (2) to (4) apply for the purposes of sections 55 to 59.
 - (2) 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.
 - (3) “Gain” means – 35
 - (a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount; or
 - (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.
 - (4) “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. 40

- (5) In subsection (4), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount.

Trafficking

- 61 Trafficking into the UK for sexual exploitation** 5
- (1) A person (A) commits an offence if, for or in the expectation of gain for himself or another, 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 10
- (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. 15
- (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. 20
- 62 Trafficking within the UK for sexual exploitation**
- (1) A person (A) commits an offence if, for or in the expectation of gain for himself or another, he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either –
- (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 25
- (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. 30
- (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. 35
- 63 Trafficking out of the UK for sexual exploitation**
- (1) A person (A) commits an offence if, for or in the expectation of gain for himself or another, he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either – 40
- (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.
- (2) 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 14 years.
- 64 Sections 61 to 63: interpretation and jurisdiction 10**
 - (1) In sections 61 to 63 –
 - “relevant offence” means –
 - (a) an offence under this Part,
 - (b) an offence under section 1(1)(a) of the Protection of Children Act 1978 (c. 37), 15
 - (c) an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
 - (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
 - (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; 20
 - “gain” has the meaning given by section 60(3).
 - (2) Sections 61 to 63 apply to anything done – 25
 - (a) in the United Kingdom, or
 - (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.
 - (3) This subsection applies to – 30
 - (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British National (Overseas),
 - (d) a British Overseas citizen,
 - (e) a person who is a British subject under the British Nationality Act 1981 (c. 61), 35
 - (f) a British protected person within the meaning given by section 50(1) of that Act.

Preparatory offences

- 65 Administering a substance with intent 40**
 - (1) A person commits an offence if he intentionally administers a substance to, or causes a substance to be taken by, another person (B) –
 - (a) knowing that B does not consent, and

- (b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.
- (2) A person guilty of an offence under this 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 10 years.
- 66 Committing an offence with intent to commit a sexual offence**
- (1) A person commits an offence under this section if he commits any offence with the intention of committing a relevant sexual offence. 10
- (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).
- (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. 15
- (4) Unless subsection (3) 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; 20
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.
- 67 Trespass with intent to commit a sexual offence**
- (1) A person commits an offence if –
- (a) he intentionally enters a structure, part of a structure or any land with the intention of committing a relevant sexual offence, and 25
- (b) he enters as a trespasser, knowing that, or being reckless as to whether, he is a trespasser.
- (2) In this section –
- “relevant sexual offence” has the same meaning as in section 66; 30
- “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 –
- (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 10 years.

Sex with an adult relative

- 68 Sex with an adult relative: penetration**
- (1) A person aged 16 or over (A) commits an offence if – 40

- (a) he intentionally penetrates another person’s vagina or anus with a part of his body or anything else, or penetrates another person’s mouth with his penis,
 - (b) the penetration is sexual, and
 - (c) the other person is a relative of A aged 18 or over. 5
- (2) In this section, “relative” means a parent, grandparent, child, grandchild, brother, sister, half-brother or half-sister.
- (3) Where in proceedings for an offence under this section –
 - (a) it is proved that the defendant was related to the other person in any of the ways mentioned in subsection (2), and 10
 - (b) the defendant proves that he did not know that they were related in that way,he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that they were related in that way.
- (4) A person guilty of an offence under this section is liable – 15
 - (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.
- 69 Sex with an adult relative: consenting to penetration 20**
- (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, and 25
 - (d) B is a relative of A aged 18 or over.
- (2) In this section, “relative” means a parent, grandparent, child, grandchild, brother, sister, half-brother or half-sister.
- (3) Where in proceedings for an offence under this section –
 - (a) it is proved that the defendant was related to the other person in any of the ways mentioned in subsection (2), and 30
 - (b) the defendant proves that he did not know that they were related in that way,he is not guilty of the offence unless it is proved that he could reasonably have been expected to know that they were related in that way. 35
- (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. 40

Other offences

70 Exposure

- (1) A person (A) commits an offence if –

- (a) he intentionally exposes his genitals,
 - (b) he knows or intends that someone will see them, and
 - (c) he knows or intends that, or (unless subsection (2) applies) is reckless as to whether, a person who sees them will be caused alarm or distress.
- (2) This subsection applies where A is in a dwelling and does not know or intend that a child aged under 16 will see his genitals. 5
- (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. 10

71 Voyeurism

- (1) A person (A) commits an offence if –
- (a) for the purpose of obtaining sexual gratification, he observes another person (B) doing a private act or looks at a moving or still image of B doing such an act, 15
 - (b) he knows that B does not consent to being observed or (as the case may be) to the image being looked at, for his sexual gratification, and
 - (c) where the image is of B doing such an act on an earlier occasion, he knows that, while doing the act, B did not consent to the act being recorded with a view to an image of the act becoming available for the sexual gratification of A, a class of persons to which A belongs, or persons generally. 20
- (2) For the purposes of this section, 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 – 25
- (a) the person’s genitals, buttocks or breasts are exposed or covered only with underwear,
 - (b) the person is using a lavatory, or
 - (c) the person is doing a sexual act that is not of a kind ordinarily done in public. 30
- (3) In this section, “structure” includes a tent, vehicle or vessel or other temporary or movable structure.
- (4) A person commits an offence if he installs or operates 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). 35
- (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 2 years. 40

72 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.
- (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 5
 - (c) A knows that, or is reckless as to whether, that is what A is being penetrated by.
- (3) A person guilty of an offence under this 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 2 years.

73 Sexual penetration of a corpse

- (1) A person (A) commits an offence if –
- (a) he intentionally performs an act of penetration with a part of his body or anything else, 15
 - (b) what is penetrated is a part of the body of a dead person,
 - (c) he knows that, or is reckless as to whether, that is what is penetrated, and
 - (d) the penetration is sexual. 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;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years. 25

74 Sexual activity in public

- (1) A person commits an offence if –
- (a) he is in a public place,
 - (b) he intentionally engages in an activity within subsection (3),
 - (c) the activity is sexual, and 30
 - (d) he knows that, or is reckless as to whether, someone (other than a person he reasonably believes to be a willing observer) will see any part of him or of another participant.
- (2) A person commits an offence if –
- (a) he is not in a dwelling, 35
 - (b) he intentionally engages in an activity within subsection (3),
 - (c) the activity is sexual, and
 - (d) he knows that, or is reckless as to whether, someone in a public place (other than a person he reasonably believes to be a willing observer) will see any part of him or of another participant. 40
- (3) 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 the other person’s clothes.
- (4) In this section – 5
“participant” means, in relation to an activity within a paragraph of subsection (3), a person referred to in that paragraph;
“public place” means –
(a) a place to which the public or any section of the public has or is permitted to have access, whether on payment or otherwise, or 10
(b) the common parts of a building containing two or more separate dwellings;
“willing observer” means a person who is willing to see the participants engage in the activity within subsection (3).
- (5) A person guilty of an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both. 15

Offences outside the United Kingdom

75 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 – 20
(a) constituted an offence under the law in force in that country or territory, and
(b) would constitute a sexual offence to which this section applies if it had been done in England and Wales or in Northern Ireland, 25
constitutes that sexual offence under the law of that part of the United Kingdom.
- (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. 30
- (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.
- (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 – 35
(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion met,
(b) showing his grounds for that opinion, and
(c) requiring the prosecution to prove that it is met. 40
- (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).
- (6) In the Crown Court the question whether the condition is met is to be decided by the judge alone. 45

- (7) Schedule 1 lists the sexual offences to which this section applies.

General

76 Offences against children under 13

Where this section applies to an offence, a person may not be convicted of that offence if what is proved against him is an offence under section 2, 4, 6 or 8 (offences against children under 13). 5

77 “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.

78 Presumptions about the absence of consent

10

- (1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act, that any of the circumstances specified in subsection (3) existed, and that the defendant knew that those circumstances existed –
- (a) 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 the complainant consented, and 15
 - (b) the defendant is to be taken not to have believed that the complainant consented unless the defendant proves that he did believe it.
- (2) Nothing said or done in the course of cross-examination of the complainant is to be taken to be sufficient to raise an issue for the purposes of subsection (1)(a), unless it amounts to an admission that the complainant consented. 20
- (3) The circumstances referred to in subsection (1) 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; 30
 - (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
 - (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
 - (e) because of the complainant’s physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented. 35
- (4) In subsection (3)(a) and (b), the reference to the time when 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 when the first sexual activity began. 40
- (5) Subsection (6) applies if, in proceedings for an offence to which this section applies –

- (a) it is proved that the defendant did the relevant act and that the complainant did not consent to it, and
- (b) the only evidence adduced of circumstances from which the defendant might have formed a belief that the complainant consented is –
- (i) evidence of anything said or done by a third party, or 5
- (ii) evidence of circumstances from which the defendant could not have formed such a belief except on the grounds that they were consistent with anything said or done by a third party.
- (6) Where this subsection applies, it is to be conclusively presumed –
- (a) that a reasonable person would in all the circumstances have doubted whether the complainant consented, and 10
- (b) that the defendant did not act in a way that a reasonable person would consider sufficient in all the circumstances to resolve such doubt.
- (7) 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 (8) existed, it is to be conclusively presumed –
- (a) that the complainant did not consent to the relevant act, and 15
- (b) that the defendant did not believe that the complainant consented to the relevant act.
- (8) The circumstances referred to in subsection (7) are that –
- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act; 20
- (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant. 25

79 Section 78: relevant acts

In relation to an offence to which section 78 applies, references in that section to the relevant act and to the complainant are to be read as follows –

<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”).	30
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.	35
An offence under section 5 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.	40

	<i>Offence</i>	<i>Relevant Act</i>	
	An offence under section 7 (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.	5
80	“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		10
	(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.		
81	Part 1: general interpretation		15
	(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).		20
	(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,		25
	(b) with anything else,		
	(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.		30

PART 2

NOTIFICATION AND ORDERS

Notification requirements

82	Persons becoming subject to notification requirements		35
	(1) A person is subject to the notification requirements of this Part for the period set out in section 84 (“the notification period”) if—		

- (a) he is convicted of an offence listed in Schedule 2;
 - (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
 - (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence. 5
- (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”.

83 Persons formerly subject to Part 1 of the Sex Offenders Act 1997

- (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 2;
 - (b) he was found not guilty of such an offence by reason of insanity;
 - (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 15
 - (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. 20
- (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;
 - (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; 25
 - (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
 - (d) was detained in a hospital or was subject to a guardianship order, following the conviction. 30
- (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
 - (b) was detained in a hospital, following the finding.
- (5) Subsection (1)(d) does not apply to a caution given before 1st September 1997. 35
- (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.
- (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. 40
- (8) The provisions are –
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders); 45

- (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);
- (d) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland); 5
- (e) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

84 The notification period

- (1) The notification period for a person within section 82(1) or 83(1) is the period in the second column of the following Table opposite the description that applies to him. 10

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	15
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	20
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	25
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	30
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	
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	35
A person within section 82(1)(d)	2 years beginning with that date	

TABLE

<i>Description of relevant offender</i>	<i>Notification period</i>	
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	
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.		
(3) Subsection (4) applies where a relevant offender within section 82(1)(a) or 83(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 2—		5
(a) to consecutive terms of imprisonment; or		
(b) to terms of imprisonment which are partly concurrent.		
(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 —		10
(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) Where a relevant offender the subject of a finding within section 82(1)(c) or 83(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.		15
(6) In this Part, “relevant date” means—		
(a) in the case of a person within section 82(1)(a) or 83(1)(a), the date of the conviction;		20
(b) in the case of a person within section 82(1)(b) or (c) or 83(1)(b) or (c), the date of the finding;		
(c) in the case of a person within section 82(1)(d) or 83(1)(d), the date of the caution.		
85 Notification requirements: initial notification		25
(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).		
(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 82(1) if—		30
(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”),		

- (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.
- (3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 83(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. 5
- (4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to a relevant offender in respect of the conviction, finding or caution if – 10
 - (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”),
 - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and 15
 - (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 –
 - (a) the relevant offender’s date of birth; 20
 - (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; 25
 - (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 – 30
 - (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. 35
- (7) In this Part, “home address” means, in relation to any person –
 - (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. 40

86 Notification requirements: changes

- (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 85(1), this subsection, or section 2 of the Sex Offenders Act 1997,
 - (b) any change of his home address, 45

- (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 85(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51), or
- (d) his release from custody pursuant to an order of the court or from imprisonment, service detention or detention in a hospital, 5
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 85(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. 10
- (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). 15
- (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 20
- (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.
- (5) Section 85(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 85(1). 25
- (6) In this Part, “qualifying period” means –
- (a) a period of 7 days, or
- (b) two or more periods, in any period of 12 months, which taken together amount to 7 days. 30

87 Notification requirements: periodic notification

- (1) A relevant offender must notify to the police the information set out in section 85(5) within the period of one year after the last of the following events to have occurred –
- (a) the commencement of this Part; 35
- (b) any notification given under section 85(1);
- (c) any notification given under section 86(1) and, if more than one such notification has been given, the last such notification;
- (d) any notification given under this subsection and, if more than one such notification has been given, the last such notification. 40
- (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.
- (3) This subsection applies to the relevant offender if he is – 45
- (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.

88 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 – 5
 - (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). 10
- (2) A notification under this subsection must disclose –
 - (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; 15
 - (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.
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offenders’s return to the United Kingdom. 20
- (4) Regulations under subsection (1) may make different provision for different categories of person.

89 Method of notification and related matters

- (1) A person gives a notification under section 85(1), 86(1) or 87(1) by – 25
 - (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
 - (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. 30
- (2) A person giving a notification under section 86(1) –
 - (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. 35
- (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 85(1), 86(1) or 87(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 – 40
 - (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.
- (6) Regulations under subsection (1) may make different provision for different categories of person. 5

90 Section 89: interpretation

- (1) Subsections (2) to (4) apply for the purposes of section 89.
- (2) “Photograph” includes any process by means of which an image may be produced.
- (3) “Local police area” means, in relation to a person— 10
- (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;
- (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. 15
- (4) The ways are—
- (a) dealing with a person in respect of an offence listed in Schedule 2;
- (b) dealing with a person in respect of an offence under section 115;
- (c) making, in respect of a person, a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order. 20
- (5) Subsection (3) applies as if Northern Ireland were a police area.

91 Young offenders: parental directions

- (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. 25 30

TABLE

<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 82(1)(a) to (c) or 83(1)(a) to (c)	The court which deals with the offender in respect of the conviction or finding
A relevant offender within section 116(1)(a) to (c)	The court which deals with the offender in respect of the conviction or finding

35

TABLE

<i>Description of person</i>	<i>Court which may make the direction</i>
A person who is the subject of a notification order or interim notification order or (except in Scotland) a sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
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
(2) Where this subsection applies – (a) the obligations that would (apart from this subsection) be imposed by or under sections 85 to 88 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.	5
(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.	10
(4) A chief officer of police who believes that a relevant offender – (a) is under 18, and (b) is in, or is intending to come to, his police area, 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 the offender (“the defendant”).	15
(5) In Scotland, a chief constable who believes that a relevant offender – (a) is under 16, and (b) is in, or is intending to come to, the area of his police force, may, by summary application to any sheriff within whose sheriffdom lies any part of that area, apply for a direction under subsection (1) in respect of the offender (“the subject”).	20
92 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 91(1).	25
(2) The persons are – (a) the young offender; (b) the parent; (c) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;	30

- (d) in Scotland, a chief constable who believes that the young offender is in, or is intending to come to, the area of his police force;
 - (e) where the direction was made on an application under section 91(4), the chief officer of police who made the application;
 - (f) where the direction was made on an application under section 91(5), the chief constable 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 (or, in Scotland, by summary application). 10
- (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. 15
- (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 91(1).

93 Offences relating to notification

- (1) A person commits an offence if he – 20
- (a) fails, without reasonable excuse, to comply with section 85(1), 86(1), 86(4)(b), 87(1), 89(4) or 91(2)(b) or any requirement imposed by regulations made under section 88(1); or
 - (b) notifies to the police, in purported compliance with section 85(1), 86(1) or 87(1), or with any requirement imposed by regulations made under section 88(1), any information which he knows to be false. 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 5 years. 30
- (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 85(1), 86(1) or 87(1), or a requirement imposed by regulations made under section 88(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. 35
- (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. 40

94 Certificates for purposes of Part 2

- (1) Subsection (2) applies where a person is –
- (a) convicted of an offence listed in Schedule 2;
 - (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 –
 - (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 5
 - (ii) that the offence in question is an offence to which this Part applies, and
 - (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. 10
- (3) Subsection (4) applies where a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 2.
- (4) If the constable – 15
 - (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, the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts. 20

Information about release or transfer

95 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. 25
- (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.
- (3) The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender. 30

Notification orders

96 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 – 35
 - (a) it appears to him that the following three conditions are met with respect to the defendant, and
 - (b) he believes that the defendant is in, or is intending to come to, his police area. 40
- (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),
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding corresponding to one in respect of an offence listed in Schedule 2 that he is not guilty by reason of insanity, 5
- (c) such a court has made in respect of a relevant offence a finding corresponding to one in respect of an offence listed in Schedule 2 that he is under a disability and did the act charged against him in respect of the offence, or
- (d) he has been cautioned for a relevant offence. 10
- (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,
- (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 15
- (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 corresponding to any of those mentioned in section 83(3) (read with sections 83(6) and 118). 20
- (4) The third condition is that the period set out in section 84 (as modified by subsections (2) and (3) of section 97) in respect of the relevant offence has not expired. 25
- (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 97, “relevant offence” has the meaning given by section 98. 30

97 Notification orders: effect

- (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 35
- (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 84.
- (2) The “relevant date” means –
- (a) in the case of a person within section 96(2)(a), the date of the conviction; 40
- (b) in the case of a person within section 96(2)(b) or (c), the date of the finding;
- (c) in the case of a person within section 96(2)(d), the date of the caution.
- (3) In section 84 –
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 82 are to be read as references to the defendant; 45

-
- (b) the reference in the Table to section 82(1)(d) is to be read as a reference to section 96(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; 5
- (d) the reference to offences listed in Schedule 2 is to be read as a reference to relevant offences.
- (4) In sections 85 and 87, references to the commencement of this Part are to be read as references to the date of service of the notification order. 10
- 98 Sections 96 and 97: relevant offences**
- (1) “Relevant offence” in sections 96 and 97 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 2 if it had been done in any part of the United Kingdom. 15
- (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 taken as having been met unless, not later than rules of court may provide, the defendant serves on the applicant a notice— 20
- (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 25
- (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).
- 99 Interim notification orders**
- (1) This section applies where an application for a notification order (“the main application”) has not been determined. 30
- (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
- (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. 35
- (3) The court may, if it considers it just to do so, make an interim notification order.
- (4) Such an order—
- (a) has effect only for a fixed period, specified in the order; 40
- (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;
- (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. 5
- 100 Notification orders and interim notification orders: appeals**
A defendant may appeal to the Crown Court against the making of a notification order or an interim notification order.
- 101 Appeals: Scotland** 10
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. 15
- 102 Sections 96 to 99 : Scotland**
- (1) Sections 96 to 99 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; 20
- (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). 25
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above. 30
- (3) The clerk of the court by which, by virtue of that subsection, a notification order or interim notification 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, 35
- 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 Person Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate). 40

Sexual offences prevention orders

103 Sexual offences prevention orders: applications and grounds

- (1) A court may make an order under this section (a “sexual offences prevention order”) in respect of a person (“the defendant”) where any of subsections (2) to (4) applies to the defendant and – 5
- (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;
 - (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. 10
- (2) This subsection applies to the defendant where the court deals with him in respect of a conviction for an offence listed in Schedule 2 or 3.
- (3) This subsection applies to the defendant where the court deals with him in respect of a finding – 15
- (a) that he is not guilty of an offence listed in Schedule 2 or 3 by reason of insanity, or
 - (b) that he is under a disability and has done the act charged against him in respect of such an offence. 20
- (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
 - (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 a sexual offences prevention order in respect of a person who he believes is in, or is intending to come to, his police area if it appears to the chief officer that – 25
- (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. 30
- (6) An application under subsection (5) may be made to any magistrates’ court whose commission area includes – 35
- (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).

104 Section 103: supplemental

- (1) Subsections (2) to (5) apply for the purposes of section 103.
- (2) “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 2. 40

- (3) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part.
- (4) “Qualifying offender” means a person who, whether before or after the commencement of this Part—
- (a) has been convicted of an offence listed in Schedule 2 or 3, 5
 - (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,
 - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence, or 10
 - (e) has been punished under the law in force in a country outside the United Kingdom for an act which—
 - (i) constituted an offence under that law, and
 - (ii) would have constituted an offence listed in Schedule 2 or 3 if it had been done in any part of the United Kingdom. 15
- (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, cautioned or punished as mentioned in subsection (4).
- (6) 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. 20
- (7) Subject to subsection (8), on an application under section 103(5) the condition in subsection (4)(e)(ii) (where relevant) is taken as having been met unless, not later than rules of court may provide, the defendant serves on the applicant a notice— 25
- (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
 - (c) requiring the applicant to prove that the condition is met.
- (8) 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 (7). 30

105 Sexual offences prevention orders: effect

- (1) A sexual offences prevention order—
- (a) prohibits the defendant from doing anything described in the order, and 35
 - (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.
- (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. 40
- (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, 45

the defendant remains subject to the notification requirements.

- (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 5
 - (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. 10
- (7) Section 104(2) applies for the purposes of this section and section 106.

106 Sexual offences prevention orders: 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. 15
- (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; 20
 - (d) where the order was made on an application under section 103(5), the chief officer of police 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; 25
 - (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. 30
- (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. 35
- (6) The court must not discharge an order before the end of 5 years beginning with the date on which the order was made, without the consent of the defendant and –
 - (a) where the order was made on an application under section 103(5), the chief officer of police who made the application; 40
 - (b) in any other case, the chief officer of police for the area in which the defendant resides.
- (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; 5
 - (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. 10
- (8) This section applies to orders under –
- (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 15
 - (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.

107 Interim sexual offences prevention orders

- (1) This section applies where an application under section 103(5) (“the main application”) has not been determined. 20
- (2) An application for an order under this section (“an interim sexual offences prevention order”) –
- (a) may be made by the complaint by which the main application is made, or 25
 - (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 sexual offences prevention order, prohibiting the defendant from doing anything described in the order. 30
- (4) Such an order –
- (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. 35
- (5) While such an order has effect –
- (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. 40
- (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.
- (8) Subsection (7) applies to orders under –

- (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. 5

108 SOPOs and interim SOPOs: appeals

- (1) A defendant may appeal against the making of a sexual offences prevention order –
 - (a) where section 103(2) applied to him, as if the order were a sentence passed on him for the offence; 10
 - (b) where section 103(3) (but not section 103(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 103(5), to the Crown Court. 15
- (2) A defendant may appeal to the Crown Court against the making of an interim sexual offences prevention order.
- (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; 20
 - (b) in any other case, to the Crown Court.
- (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. 25
- (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). 30

109 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; 35
 - (b) an interim sexual offences prevention order;
 - (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 (sex offender orders and interim orders made in England and Wales and in Scotland); 40
 - (e) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (sex offender orders and interim orders made in Northern Ireland).
- (2) A person guilty of an offence under this section is liable – 45

- (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. 5

Risk of sexual harm orders

110 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 he believes is in, or is intending to come to, his police area if it appears to the chief officer that – 10
- (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 15
 - (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 – 20
- (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 – 25
- (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. 30
- (4) On the application, the court may make a risk of sexual harm order if it is satisfied that – 35
- (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
 - (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 – 40
- (a) prohibits the defendant from doing anything described in the order;
 - (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.

111 Section 110: interpretation

- (1) Subsections (2) to (7) apply for the purposes of section 110. 5
- (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 110(3).
- (3) “Child” means a person under 16.
- (4) “Image” means an image produced by any means, whether of a real or imaginary subject. 10
- (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 – 15
- (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.
- (7) An image is sexual if – 20
- (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.
- (8) In this section, as it applies to Northern Ireland, subsection (3) has effect with the substitution of “17” for “16”.

112 Risk of sexual harm orders: variations, renewals and discharges 25

- (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.
- (2) The persons are – 30
- (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;
 - (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area. 35
- (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.
- (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. 40

- (5) The court must not discharge an order before the end of the period of 5 years beginning with the date on which the order was made, without the consent of the chief officer of police who made the application and the defendant.
- (6) Section 111(2) applies for the purposes of this section.
- (7) In this section “the appropriate court” means – 5
- (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. 10

113 Interim risk of sexual harm orders

- (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”) – 15
- (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. 20
- (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 – 25
- (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) 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. 30

114 RSHOs and interim RSHOs: appeals

- (1) A defendant may appeal to the Crown Court – 35
- (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 112, 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.
- (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 112(7) or 113(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). 40

115 Offence: breach of RSHO or interim RSHO

- (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. 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;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years. 10
- (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.

116 Effect of conviction etc. of an offence under section 115

- (1) This section applies to a person (“the defendant”) who –
 - (a) is convicted of an offence under section 115; 15
 - (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. 20
- (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, 25the defendant remains subject to the notification requirements.
- (3) Where the defendant was not a relevant offender immediately before this section applied to him –
 - (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 30
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (4). 35
- (4) The “relevant date” is the date on which this section first applies to the defendant.
- (5) In this section “relevant order” means –
 - (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; 40
 - (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. 45

*Power to amend Schedules 2 and 3***117 Power to amend Schedules 2 and 3**

- (1) The Secretary of State may by order amend Schedule 2 or 3.
- (2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect. 5
- (3) For the purposes of sections 103(4) to (6), 104 and 107, an amendment within subsection (4) applies to convictions, findings, cautions and punishments before as well as after the amendment takes effect.
- (4) An amendment is within this subsection if it – 10
- (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 punishment, to be within a Schedule when it would not otherwise be. 15

*General***118 Young offenders: application**

This Part applies to –

- (a) a period of detention which a person is liable to serve under a detention and training order, or a secure training order, 20
- (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.)), 25
- (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)), 30
- (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, 35
- (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 section 73 of the Children and Young Persons Act (Northern Ireland) 1968, 40
- (i) a sentence of custody for life under section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000, 45

- (j) a sentence of detention, or custody for life, under section 71A 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 43A of the Naval Discipline Act 1957 (c. 53),
as it applies to an equivalent sentence of imprisonment; and references in this Part to prison or imprisonment are to be interpreted accordingly. 5

119 Part 2: general interpretation

In this Part—

“admitted to a hospital” means admitted to a hospital under—

- (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)); 10
(b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25); or 15
(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;

“cautioned” means—

- (a) cautioned by a police officer after the person concerned has admitted the offence, or 20
(b) reprimanded or warned within the meaning given by section 65 of the Crime and Disorder Act 1998 (c. 37),

and “caution” is to be interpreted accordingly;

“community order” means— 25

- (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; 30
(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 35
(d) a community supervision order under paragraph 4 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957;

“conviction” includes a finding of guilt by a court-martial, and “convicted” is to be interpreted accordingly; 40

“country” includes territory;

“detained in a hospital” means detained in a hospital under—

- (a) Part III of the Mental Health Act 1983, section 71 of the Mental Health (Scotland) Act 1984 (c. 36), Part VI of the Criminal Procedure (Scotland) Act 1995 or Part III of the Mental Health (Northern Ireland) Order 1986; 45
(b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991; or

- (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);
- “guardianship order” means a guardianship order under section 37 of the Mental Health Act 1983 (c. 20), section 58 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or Article 44 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)); 5
- “home address” has the meaning given by section 85(7);
- “interim notification order” has the meaning given by section 99(2); 10
- “interim risk of sexual harm order” has the meaning given by section 113(2);
- “interim sexual offences prevention order” has the meaning given by section 107(2);
- “local police area” has the meaning given by section 90(3); 15
- “local probation board” has the same meaning as in the Criminal Justice and Court Services Act 2000 (c. 43);
- “notification order” has the meaning given by section 96(1);
- “notification period” has the meaning given by section 82(1);
- “order for conditional discharge” has the meaning given by each of the following – 20
- (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)); 25
 - (c) paragraph 2(1) of Schedule 5A to the Army Act 1955;
 - (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 I of the Children (Scotland) Act 1995 (c. 36); 30
- “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; 35
 - (b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996;
 - (c) paragraph 2(1) of Schedule 5A to the Army Act 1955;
 - (d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955; 40
 - (e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957;
- “probation order” has the meaning given by section 228(1) of the Criminal Procedure (Scotland) Act 1995;
- “probation period” has the meaning given by section 307(1) of the Criminal Procedure (Scotland) Act 1995; 45
- “qualifying period” has the meaning given by section 86(6);
- “relevant date” has the meaning given by section 84(6) (save in the circumstances mentioned in sections 97, 99, 105, 107 and 116);
- “relevant offender” has the meaning given by section 82(2);
- “restriction order” means – 50

- (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 (c. 46) or Article 47(1) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));
 - (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 5
 - (c) a direction under subsection (2) 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); 10
- “risk of sexual harm order” has the meaning given by section 110(1);
- “sexual offences prevention order” has the meaning given by section 103(1);
- “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; 15
- “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. 20

120 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 –
 - (a) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conviction with absolute or conditional discharge deemed not to be a conviction); 25
 - (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); 30
 - (c) section 247(1) of the Criminal Procedure (Scotland) Act 1995 (conviction with probation order or absolute discharge deemed not to be a conviction);
 - (d) paragraph 5(1) of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957 (conviction with absolute or conditional discharge deemed not to be a conviction). 35
- (2) This section applies only to convictions after the commencement of this Part.

121 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. 40
- (2) The enactments are –
 - (a) section 37(3) of the Mental Health Act 1983;
 - (b) section 58(3) of the Criminal Procedure (Scotland) Act 1995; 45
 - (c) Article 44(4) of the Mental Health (Northern Ireland) Order 1986.

-
- (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;
 - (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. 5
- (4) In section 119 –
- (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 15
 - (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 VI of the Criminal Procedure (Scotland) Act 1995 (c. 46), and the reference to an order under section 57(2)(b) or 59 of that Act, include respectively – 20
 - (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;
 - (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 (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) include respectively – 25
 - (i) a reference to admission or detention, and 30
 - (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)).
- 122 Part 2: Northern Ireland 35**
- (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.
 - (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. 40
 - (5) 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. 45

- (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 100, 108(1), (2), (3)(b), (4) and (5) and 114 to the Crown Court are to be read as references to a county court. 5
- (9) Any direction of the county court made under section 91(1) on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (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 92, to be treated as if it were made by the court from which the appeal was brought and not by the county court. 10
- (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. 15
- (11) Any order of the county court made 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 112, 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. 20

PART 3

GENERAL

- 123 Orders and regulations** 25
- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under section 23, 88 or 117 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament. 30
- (3) Any other statutory instrument, except one containing an order under section 126, is to be subject to annulment in pursuance of a resolution of either House of Parliament.
- 124 Minor and consequential amendments**
- Schedule 4 contains minor and consequential amendments. 35
- 125 Repeals and revocation**
- The provisions listed in Schedule 5 are repealed or revoked to the extent specified.

126 Commencement

- (1) This Act, except this section and sections 123, 127 and 128, comes into force in accordance with provision made by the Secretary of State by order.
- (2) An order under subsection (1) may –
 - (a) make different provision for different purposes; 5
 - (b) include supplementary, incidental, saving or transitional provisions.

127 Extent, saving etc.

- (1) Except as follows, this Act extends to England and Wales only.
- (2) The following provisions also extend to Northern Ireland –
 - (a) this section, 10
 - (b) sections 8, 17 to 27, 54 to 64, 70 to 73, 75, 80 and 81,
 - (c) Part 2,
 - (d) section 123,
 - (e) sections 124 and 125 and Schedules 4 and 5 so far as relating to –
 - (i) the Sex Offenders Act 1997, 15
 - (ii) the Police Reform Act 2002, and
 - (iii) the Criminal Justice (Northern Ireland) Order 1998,
 - (f) sections 126 and 128.
- (3) The following provisions also extend to Scotland –
 - (a) Part 2 except sections 103 to 116 and Schedule 3, and 20
 - (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. 25

128 Short title

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

SCHEDULES

SCHEDULE 1

Section 75(7)

SEXUAL OFFENCES TO WHICH SECTION 75 APPLIES

England and Wales

- | | | |
|---|---|----|
| 1 | In relation to England and Wales, the following are sexual offences to which section 75 applies – | 5 |
| | (a) an offence under any of sections 2, 4, 6, 8 to 15 and 17 (offences against children under 13 or under 16); | |
| | (b) an offence under any of sections 1, 3, 5, 7, 18 to 47, 54 to 59 and 65 to 67 where the victim of the offence was under 16 at the time of the offence; | 10 |
| | (c) 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), | 15 |
| | 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 75 applies – | 20 |
| | (a) an offence of rape; | |
| | (b) an offence under – | |
| | (i) section 52 of the Offences against the Person Act 1861 (indecent assault upon a female person), | 25 |
| | (ii) section 61 of that Act (buggery), or | |
| | (iii) section 62 of that Act (assault with intent to commit buggery or indecent assault upon a male person); | |
| | (c) an offence under – | |
| | (i) section 4 of the Criminal Law Amendment Act 1885 of unlawful carnal knowledge of a girl under 14, or | 30 |
| | (ii) section 5 of that Act of unlawful carnal knowledge of a girl under 17; | |
| | (d) an offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (indecent conduct towards a child); | 35 |
| | (e) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children); and | |
| | (f) an offence under – | |

- (i) section 8 of this Act (causing a child under 13 to engage in sexual activity), or
 - (ii) any of sections 18 to 22 or 54 to 59 of this Act (abuse of trust, prostitution, child pornography).
- (2) In sub-paragraph (1), paragraphs (a), (b), (c)(ii) and (f)(ii) do not apply where the victim of the offence was 16 or over at the time of the offence. 5

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 10
 - (b) a reference to aiding and abetting, counselling or procuring the commission of that offence.

SCHEDULE 2

Section 82

SEXUAL OFFENCES FOR PURPOSES OF PART 2

Offences in England and Wales 15

- 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 thirteen).
- 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. 20
- 5 An offence under section 12 of that Act (buggery) if –
- (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 6 An offence under section 13 of that Act (indecentcy between men) if – 25
- (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 7 An offence under section 14 of that Act (indecent assault on a woman) if – 30
- (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been –
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
- 8 An offence under section 15 of that Act (indecent assault on a man) if – 35
- (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been –
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.

-
- | | | |
|----|--|----|
| 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 sixteen). | |
| 11 | An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child). | 5 |
| 12 | An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under sixteen 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. | 10 |
| 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. | 15 |
| 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. | 20 |
| 17 | An offence under any of sections 1 to 4 of this Act (rape, assault by penetration). | |
| 18 | An offence under section 5 or 6 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; | 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 |
| 19 | An offence under any of sections 7 to 13 of this Act (causing sexual activity without consent, child sex offences committed by adults). | 40 |
| 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. | |
| 22 | An offence under section 17 of this Act (meeting a child following sexual grooming etc). | 5 |
| 23 | An offence under any of sections 18 to 22 of this Act (abuse of trust) if the offender, in respect of the offence, is or has been –
(a) sentenced to a term of imprisonment,
(b) detained in a hospital, or
(c) made the subject of a community sentence of at least 12 months. | 10 |
| 24 | An offence under any of sections 28, 29 or 33 to 42 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). | 15 |
| 25 | An offence under any of sections 43 to 47 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 –
(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

25 |
| 26 | An offence under section 54 of this Act (paying for sex with a child) if the victim or (as the case may be) other party was under 16. | |
| 27 | An offence under section 65 of this Act (administering a substance with intent). | |
| 28 | An offence under section 66 or 67 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if –
(a) the intended victim of the sex offence was under 18, or
(b) the offender, in respect of the offence or finding, is or has been –
(i) sentenced to a term of imprisonment,
(ii) detained in a hospital, or
(iii) made the subject of a community sentence of at least 12 months. | 30

35 |
| 29 | An offence under section 68 or 69 of this Act (sex with an adult relative) 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. | 40 |
| 30 | An offence under section 70 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 – | 45 |

- (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, 5
 - (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. 10
 - 31 An offence under section 71 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;
 - (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, or
 - (b) detained in a hospital. 20
 - 32 An offence under section 72 or 73 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. 25
- Offences in Scotland*
- 33 Rape.
 - 34 Clandestine injury to women.
 - 35 Abduction of woman or girl with intent to rape if –
 - (a) a person (other than the offender) involved in the offence was under 18, or 30
 - (b) the offender, in respect of the offence or finding, is or has been –
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to hospital subject to a restriction order.
 - 36 Assault with intent to rape or ravish if – 35
 - (a) a person (other than the offender) involved in the offence was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been –
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to hospital subject to a restriction order. 40
 - 37 Indecent assault if –
 - (a) a person (other than the offender) involved in the offence was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been –
 - (i) sentenced to imprisonment for a term of at least 30 months; or 45

	(ii) admitted to hospital subject to a restriction order.	
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.	
40	Sodomy, unless –	5
	(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.	
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.	10
42	An offence under section 52 of the Civic Government (Scotland) Act 1982 (c. 45) (taking and distribution of indecent images of children).	15
43	An offence under section 52A of that Act (possession of indecent images of children).	
44	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.	20
45	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.	
46	An offence under section 3 of that Act (intercourse with child under 16 by person in position of trust).	25
47	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.	
48	An offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16).	30
49	An offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse).	
50	An offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16).	35
51	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 –	40
	(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.	

52 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.

Offences in Northern Ireland

53 Rape.

54 An offence under section 52 of the Offences against the Person Act 1861 (c. 100) (indecent assault upon a female) if – 5

- (a) the victim or (as the case may be) other party was under 18, or
- (b) the offender, in respect of the offence or finding, is or has been –
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to hospital subject to a restriction order. 10

55 An offence under section 61 of that Act (buggery) if –

- (a) the offender was 20 or over, and
- (b) the victim or (as the case may be) other party was under 18.

56 An offence under section 62 of that Act (assault with intent to commit buggery or indecent assault upon a male person) if – 15

- (a) the victim or (as the case may be) other party was under 18, or
- (b) in the case of an indecent assault on a male person, the offender, in respect of the offence or finding, is or has been –
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to hospital subject to a restriction order. 20

57 An offence under section 4 of the Criminal Law Amendment Act 1885 (c. 69) of unlawful carnal knowledge of a girl under 14.

58 An offence under section 5 of that Act of unlawful carnal knowledge of a girl under 17, if the offender was 20 or over.

59 An offence under section 11 of that Act (homosexual offences) if – 25

- (a) the offender was 20 or over, and
- (b) the victim or (as the case may be) other party was under 18.

60 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. 30

61 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).

62 An offence under section 22 of that Act (indecent conduct towards a child).

63 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). 35

64 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

- 65 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).
- 66 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). 5
- 67 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.

Service offences

- 68 An offence under – 10
- (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 32. 15

General

- 69 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, procuring the commission of that offence. 20
- 70 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. 25
- 71 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); 30
 - (b) a reference to an electronic monitoring requirement means such a requirement imposed under section 36B of that Act.
- 72 For the purposes of paragraphs 14, 41 and 64 –
- (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; 35
 - (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. 40

SCHEDULE 3

Section 103

OTHER OFFENCES FOR PURPOSES OF PART 2

Offences in England and Wales

1	Murder.	
2	Manslaughter.	5
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).	10
7	An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).	
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).	15
10	An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).	
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).	20
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	An offence under section 30 of that Act (placing explosives with intent to do bodily injury).	25
16	An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).	
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).	30
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).	
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).	35

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).	
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).	5
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).	10
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).	
31	An offence under section 18 of that Act (carrying a firearm with criminal intent).	15
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.	20
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.	
36	An offence of arson under section 1 of the Criminal Damage Act 1971 (c. 48).	25
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).	
39	An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).	30
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).	35
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).	

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).	5
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).	10
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).	
53	An offence under section 10 of that Act (seizing or exercising control of fixed platforms).	15
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).	20
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-aggravated assaults).	25
59	An offence falling within section 31(1)(a) or (b) of that Act (racially-aggravated offences under section 4 or 4A of the Public Order Act 1986).	
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).	30
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.	
62	An offence under section 54 of this Act, where the victim or (as the case may be) other party was 16 or over.	35
63	An offence under any of sections 55 to 59 or 61 to 63 of this Act.	

Offences in Scotland

64	An offence inferring personal violence, other than an offence listed in Schedule 2.	
----	---	--

Offences in Northern Ireland

65	Murder.	
66	Manslaughter.	
67	Kidnapping.	
68	Riot.	5
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).	10
73	An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).	
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).	15
76	An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).	
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).	20
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).	
81	An offence under section 30 of that Act (placing explosives with intent to do bodily injury).	25
82	An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).	
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).	30
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.	
87	An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).	35
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).	

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).	5
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).	10
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.	
95	An offence under section 10 of that Act (aggravated burglary).	15
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.	
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).	20
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).	
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).	25
102	An offence under Article 19 of that Order (carrying a firearm with criminal intent).	
103	An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).	30
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).	35
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).	
108	An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).	40

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).	
111	An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).	5
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).	10
115	An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).	
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).	15
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).	20
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).	25
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.	30
123	An offence under section 54 of this Act, where the victim or (as the case may be) other party was 16 or over.	
124	An offence under any of sections 55 to 59 or 61 to 63 of this Act.	

Service offences

125	An offence under –	35
	(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 above.	40

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, procuring the commission of that offence. 5
- 127 A reference in a preceding paragraph to a person’s age is a reference to his age at the time of the offence.

SCHEDULE 4

Section 124

MINOR AND CONSEQUENTIAL AMENDMENTS 10

Vagrancy Act 1824 (c. 83)

- 1 In section 4 of the Vagrancy Act 1824 (rogues and vagabonds), omit the words from “every person wilfully” to “female”.

Town Police Clauses Act 1847 (c. 89)

- 2 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:”. 15

Sexual Offences Act 1956 (c. 37)

- 3 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. 20

Mental Health Act 1959 (c. 72)

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

Indecency with Children Act 1960 (c. 33) 25

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

Sexual Offences Act 1967 (c. 60)

- 6 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),
 - (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). 30

Theft Act 1968 (c. 60)

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

National Health Service Reorganisation Act 1973 (c. 32)

- 8 In Schedule 4 to the National Health Service Reorganisation Act 1973 (minor and consequential amendments), omit paragraph 92. 5

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

- 9 In the Sexual Offences (Amendment) Act 1976, omit—
(a) in section 1 (meaning of “rape”), subsection (2), and
(b) in section 7 (citation, interpretation etc.), subsection (3). 10

Criminal Law Act 1977 (c. 45)

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

National Health Service Act 1977 (c. 49)

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

Protection of Children Act 1978 (c. 37)

- 12 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,”.

Magistrates’ Courts Act 1980 (c. 43) 20

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

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

- 14 In Schedule 3 to the Mental Health (Amendment) Act 1982 (consequential amendments), omit paragraphs 29 and 34. 25

Mental Health Act 1983 (c. 20)

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

Sexual Offences Act 1985 (c. 44)

- 16 In section 5 of the Sexual Offences Act 1985 (short title, commencement etc.), omit subsection (2). 30

Criminal Justice Act 1988 (c. 33)

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

Children Act 1989 (c. 49)

- 18 In Schedule 12 to the Children Act 1989 (minor amendments), omit paragraphs 11 to 14 and 16. 5

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

- 19 In the Sexual Offences (Amendment) Act 1992, omit section 4 (anonymity of victims: incest or buggery).

Criminal Justice and Public Order Act 1994 (c. 33) 10

- 20 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 15
(d) in Schedule 10 (consequential amendments), paragraphs 26 and 35(2) and (4).

Crime (Sentences) Act 1997 (c. 43)

- 21 In the Crime (Sentences) Act 1997, omit section 52 (increased penalty for indecency with children). 20

Sex Offenders Act 1997 (c. 51)

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

Crime and Disorder Act 1998 (c. 37)

- 23 (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). 25
(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”.
(4) In section 20(6) (effect of sex offender order), for the words “Part I of the Sex Offenders Act 1997” substitute “Part 2 of the Sexual Offences Act 2003”. 30
(5) After section 20 insert –

“20A Sex offender orders: supplemental

- (1) In section 20 above and this section “sex offender” means a person who – 35

-
- (a) has been convicted of sexual offence listed in Schedule 2 to the Sexual Offences Act 2003;
- (b) has been found not guilty of such an offence by reason of insanity, or found to be under a disability and to have done the act charged against him in respect of such an offence; 5
- (c) has been cautioned by a constable, in England and Wales or Northern Ireland, in respect of such an offence which, at the time when the caution was given, he had admitted; or
- (d) has been punished under the law in force in a country or territory outwith the United Kingdom for an act which – 10
- (i) constituted an offence under that law; and
- (ii) would have constituted a sexual offence listed in that Schedule if it had been done in any part of the United Kingdom.
- (2) In section 20(2)(b) above “the relevant date”, in relation to a sex offender, means the date or, as the case may be, the latest date on which he has been convicted, found, cautioned or punished as mentioned in subsection (1) above. 15
- (3) Subsection (1) and (2) of section 118 of the Sexual Offences Act 2003 (interpretation; mentally disordered offenders) apply for the construction of references in subsections (1) and (2) above as they apply for the construction of references in Part 2 of that Act. 20
- (4) In subsections (1) and (2) above, “cautioned” has the same meaning as in Part 2 of that Act.
- (5) An act punishable under the law in force in any country or territory outwith the United Kingdom constitutes, however it is described in that law, an offence under that law for the purposes of subsection (1) above. 25
- (6) Subject to subsection (7) below the condition in subsection (1(d)(i) above shall be taken to be satisfied unless, not later than rules of court may provide, the person in respect of whom the order is sought serves on the applicant a notice – 30
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion satisfied;
- (b) showing his grounds for that opinion; and 35
- (c) requiring the applicant to show that it is satisfied.
- (7) The sheriff, if he thinks fit, may permit the person in respect of whom the order is sought to require the applicant to show that the condition is satisfied without the prior service of a notice under subsection (6) above.” 40
- (6) In section 21A(1) (offence of doing in Scotland anything prohibited by sex offender order made in England and Wales or Northern Ireland), before paragraph (a) insert –
- “(za) an order under section 103 (sexual offences prevention order) or 107 (interim sexual offences prevention order) of the Sexual Offences Act 2003;” 45
- (7) In Schedule 8 (minor and consequential amendments), omit paragraph 144.

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

- 24 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)

- 25 In Schedule 4 to the Care Standards Act 2000 (minor and consequential amendments), omit paragraph 2. 5

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

- 26 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). 10

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

- 27 (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). 15
(4) Omit sections 3 and 4 (abuse of position of trust).
(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). 20

Armed Forces Act 2001 (c. 19)

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

Police Reform Act 2002 (c. 30)

- 29 In the Police Reform Act 2002, omit sections 67 to 69 and 72 to 74 (sex offender orders and interim orders). 25

Adoption and Children Act 2002 (c. 38)

- 30 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 68 and 69 of the Sexual Offences Act 2003 (sex with an adult relative).” 30

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

- 31 In the Nationality, Asylum and Immigration Act 2002, omit sections 145 and 146 (traffic in prostitution). 35

SCHEDULE 5

Section 125

REPEALS AND REVOCATION

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
Vagrancy Act 1824 (c. 83)	In section 4, the words from “every person wilfully” to “female”.	5
Town Police Clauses Act 1847 (c. 89)	In section 28 the words “every person who wilfully and indecently exposes his person:”.	
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.	10 15
Mental Health Act 1959 (c. 72)	Sections 127 and 128.	
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.	20
Theft Act 1968 (c. 60)	In section 9(2), the words “or raping any person”.	25
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).	30
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.	35
Mental Health (Amendment) Act 1982 (c. 51)	In Schedule 3, paragraphs 29 and 34.	
Mental Health Act 1983 (c. 20)	In Schedule 4, paragraph 15.	
Sexual Offences Act 1985 (c. 44)	Section 5(2).	
Children Act 1989 (c. 49)	In Schedule 12, paragraphs 11 to 14 and 16.	40
Sexual Offences (Amendment) Act 1992 (c. 34)	Section 4.	
Criminal Justice and Public Order Act 1994 (c. 33)	Sections 142 to 144. In Schedule 10, paragraphs 26 and 35(2) and (4).	

<i>Reference</i>	<i>Extent of repeal or revocation</i>	
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. 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(7). In Schedule 8, paragraph 144.	10
The 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.	15
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.	20
Sexual Offences (Amendment) Act 2000 (c. 44)	Section 1(1) and (2). Section 2(1) to (3). Sections 3 and 4. Section 5. Section 6(1).	25
Armed Forces Act 2001 (c. 19)	In Schedule 6, paragraphs 2 and 59.	
Police Reform Act 2002 (c. 30)	Sections 67 to 69. Sections 72 to 74.	
Nationality, Asylum and Immigration Act 2002 (c. 41)	Sections 145 and 146.	30

Sexual Offences Bill [HL]

A

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.

The Lord Falconer of Thoroton

Ordered to be Printed, 28th January 2003

© Parliamentary copyright House of Lords 2003
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ*

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx net

HL Bill 26

(xxxxxx)

53/2

xxxbarxxx

