

Sexual Offences Act 2003

2003 CHAPTER 42

Sweet & Maxwell Ltd.

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

[20th November 2003]

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–
 - (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
 - (b) B does not consent to the penetration, and
 - (c) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault

2 Assault by penetration

- (1) A person (A) commits an offence if–
 - (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,
 - (b) the penetration is sexual,
 - (c) B does not consent to the penetration, and

(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)

- (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

3 Sexual assault

- (1) A person (A) commits an offence if–
 - (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) B does not consent to the touching, and
 - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Sections 75 and 76 apply to an offence under this section.
- (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 10 years.

Causing sexual activity without consent

4 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) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Sections 75 and 76 apply to an offence under this section.
- (4) A person guilty of an offence under this section, if the activity caused involved–
 - (a) penetration of B's anus or vagina,
 - (b) penetration of B's mouth with a person's penis,
 - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
 - (d) penetration of a person's mouth with B's penis,
 is liable, on conviction on indictment, to imprisonment for life.
- (5) Unless subsection (4) applies, a person guilty of an offence under this section is liable–

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

Rape and other offences against children under 13

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

6 Assault of a child under 13 by penetration

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

7 Sexual assault of a child under 13

- (1) A person commits an offence if—
 - (a) he intentionally touches another person,
 - (b) the touching is sexual, and
 - (c) the other person is under 13.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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

- (1) A person commits an offence if—
 - (a) he intentionally causes or incites 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, if the activity caused or incited involved—
 - (a) penetration of B's anus or vagina,

- (b) penetration of B's mouth with a person's penis,
 - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
 - (d) penetration of a person's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for life.
- (3) Unless subsection (2) 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 to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Child sex offences

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, 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, 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
 - (d) penetration of A's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (3) Unless subsection (2) 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 to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

10 Causing or inciting a child to engage in sexual activity

- (1) A person aged 18 or over (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
 - (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, if the activity caused or incited involved—
- (a) penetration of B's anus or vagina,
 - (b) penetration of B's mouth with a person's penis,
 - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
 - (d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

- (3) Unless subsection (2) 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 to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

11 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—
 - (i) when another person (B) is present or is in a place from which A can be observed, and
 - (ii) 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.

12 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 an image of any 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—
- (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 Child sex offences committed by children or young persons

- (1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 to 12 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;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

14 Arranging or facilitating commission of a child sex offence

- (1) A person commits an offence if–
 - (a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and
 - (b) doing it will involve the commission of an offence under any of sections 9 to 13.
- (2) A person does not commit an offence under this section if–
 - (a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and
 - (b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts.
- (3) For the purposes of subsection (2), a person acts for the protection of a child if he acts for the purpose of–
 - (a) protecting the child from sexually transmitted infection,
 - (b) protecting the physical safety of the child,
 - (c) preventing the child from becoming pregnant, or
 - (d) promoting the child's emotional well-being by the giving of advice,
 and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.
- (4) A person guilty of an offence under this section is liable–
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

15 Meeting a child following sexual grooming etc.

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

- (i) an offence under this Part,
 - (ii) an offence within any of paragraphs 61 to 92 of Schedule 3, or
 - (iii) anything done outside England and Wales and Northern Ireland which is not an offence within sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) if done in England and Wales.
- (3) In this section as it applies to Northern Ireland—
- (a) subsection (1) has effect with the substitution of “17” for “16” in both places;
 - (b) subsection (2)(b)(iii) has effect with the substitution of “sub-paragraph (ii) if done in Northern Ireland” for “sub-paragraph (i) if done in England and Wales”.
- (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 10 years.

Abuse of position of trust

16 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,
 - (d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This subsection applies where A—
- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this section—
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,
- it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (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.

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

- (1) A person aged 18 or over (A) commits an offence if—
 - (a) he intentionally causes or incites another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) A is in a position of trust in relation to B,
 - (d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This subsection applies where A—
 - (a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this section—
 - (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances,it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (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.

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

- (1) A person aged 18 or over (A) commits an offence if—
 - (a) he intentionally engages in an activity,
 - (b) the activity is sexual,
 - (c) for the purpose of obtaining sexual gratification, he engages in it—
 - (i) when another person (B) is present or is in a place from which A can be observed,and

- (ii) 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,
 - (e) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (f) either–
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This subsection applies where A–
- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and
 - (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this section–
- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances, it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (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.

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

- (1) A person aged 18 or over (A) commits an offence if–
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
 - (b) the activity is sexual,
 - (c) A is in a position of trust in relation to B,
 - (d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
 - (e) either–
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) This subsection applies where A–
- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(2), (3), (4) or (5), and

- (b) is not in such a position of trust by virtue of other circumstances.
- (3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (4) Where in proceedings for an offence under this section–
 - (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2), (3), (4) or (5), and
 - (b) it is not proved that he was in such a position of trust by virtue of other circumstances, it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.
- (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.

20 Abuse of position of trust: acts done in Scotland

Anything which, if done in England and Wales or Northern Ireland, would constitute an offence under any of sections 16 to 19 also constitutes that offence if done in Scotland.

21 Positions of trust

- (1) For the purposes of sections 16 to 19, a person (A) is in a position of trust in relation to another person (B) if–
 - (a) any of the following subsections applies, or
 - (b) any condition specified in an order made by the Secretary of State is met.
- (2) This subsection applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.
- (3) This subsection applies if A looks after persons under 18 who are resident in a home or other place in which–
 - (a) accommodation and maintenance are provided by an authority under section 23(2) of the Children Act 1989 (c. 41) or Article 27(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), or
 - (b) accommodation is provided by a voluntary organisation under section 59(1) of that Act or Article 75(1) of that Order,
 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–
 - (a) a hospital,
 - (b) an independent clinic,
 - (c) a care home, residential care home or private hospital,

- (d) a community home, voluntary home or children's home,
- (e) a home provided under section 82(5) of the Children Act 1989, or
- (f) a residential family centre,

and B is accommodated and cared for in that institution.

(5) This subsection applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This subsection applies if A is appointed to be the guardian of B under Article 159 or 160 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).

(7) This subsection applies if A is engaged in the provision of services under, or pursuant to anything done under—

- (a) sections 8 to 10 of the Employment and Training Act 1973 (c. 50), or
- (b) section 114 of the Learning and Skills Act 2000 (c. 21),

and, in that capacity, looks after B on an individual basis.

(8) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means)—

- (a) in the exercise of functions of a local authority under section 20 or 21 of the Children Act 1989 (c. 41), or
- (b) in the exercise of functions of an authority under Article 21 or 23 of the Children (Northern Ireland) Order 1995.

(9) This subsection applies if A, as a person who is to report to the court under section 7 of the Children Act 1989 or Article 4 of the Children (Northern Ireland) Order 1995 on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means).

(10) 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,

and, in that capacity, looks after B on an individual basis.

(11) This subsection applies if—

- (a) B is subject to a care order, a supervision order or an education supervision order, and
- (b) in the exercise of functions conferred by virtue of the order on an authorised person or the authority designated by the order, A looks after B on an individual basis.

(12) This subsection applies if A—

- (a) is an officer of the Service appointed for B under section 41(1) of the Children Act 1989,
- (b) is appointed a children's guardian of B under rule 6 or rule 18 of the Adoption Rules 1984 (S.I. 1984/265), or
- (c) is appointed to be the guardian ad litem of B under rule 9.5 of the Family Proceedings Rules 1991 (S. I. 1991/1247) or under Article 60(1) of the Children (Northern Ireland) Order 1995,

and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).

(13) 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.

22 Positions of trust: interpretation

- (1) The following provisions apply for the purposes of section 21.
- (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.
- (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 (whether face to face or by any other means).
- (4) A person receives education at an educational institution if–
 - (a) he is registered or otherwise enrolled as a pupil or student at the institution, or
 - (b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.
- (5) In section 21–
 - “authority”–
 - (a) in relation to England and Wales, means a local authority;
 - (b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));
 - “care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);
 - “care order” has–
 - (a) in relation to England and Wales, the same meaning as in the Children Act 1989 (c. 41), and
 - (b) in relation to Northern Ireland, the same meaning as in the Children (Northern Ireland) Order 1995;
 - “children's home” has–
 - (a) in relation to England and Wales, the meaning given by section 1 of the Care Standards Act 2000, and
 - (b) in relation to Northern Ireland, the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) (“the 2003 Order”) if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;
 - “community home” has the meaning given by section 53 of the Children Act 1989;
 - “education supervision order” has–
 - (a) in relation to England and Wales, the meaning given by section 36 of the Children Act 1989, and
 - (b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995;
 - “hospital”–

(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 (c. 14);

(b) in relation to Northern Ireland, means a hospital within the meaning given by Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), or any other establishment which is a hospital within the meaning given by Article 2(2) of the 2003 Order;

“independent clinic” has—

(a) in relation to England and Wales, the meaning given by section 2 of the Care Standards Act 2000;

(b) in relation to Northern Ireland, the meaning given by Article 2(2) of the 2003 Order;

“private hospital” has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

“residential care home” means an establishment which is a residential care home for the purposes of the 2003 Order;

“residential family centre” has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

“supervision order” has—

(a) in relation to England and Wales, the meaning given by section 31(11) of the Children Act 1989 (c. 41), and

(b) in relation to Northern Ireland, the meaning given by Article 49(1) of the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2));

“voluntary home” has—

(a) in relation to England and Wales, the meaning given by section 60(3) of the Children Act 1989, and

(b) in relation to Northern Ireland, the meaning given by Article 74(1) of the Children (Northern Ireland) Order 1995.

23 Sections 16 to 19: marriage exception

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if at the time—

(a) B is 16 or over, and

(b) A and B are lawfully married.

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

24 Sections 16 to 19: sexual relationships which pre-date position of trust

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 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.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 16 to 19 it is for the defendant to prove that such a relationship existed at that time.

Familial child sex offences

25 Sexual activity with a child family member

- (1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) the relation of A to B is within section 27,
 - (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and
 - (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.
- (4) A person guilty of an offence under this section, if aged 18 or over at the time of the offence, is liable—
- (a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;
 - (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (6) This subsection applies where 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
 - (d) penetration of A's mouth with B's penis.

26 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 27,
 - (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and
 - (e) either—
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.
- (4) A person guilty of an offence under this section, if he was aged 18 or over at the time of the offence, is liable—
 - (a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;
 - (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (6) This subsection applies where the touching to which the incitement related 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
 - (d) penetration of A's mouth with B's penis.

27 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
 - (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, or
 - (b) 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–
- (a) one of them is or has been the other's step-parent,
 - (b) A and B are cousins,
 - (c) one of them is or has been the other's stepbrother or stepsister, or
 - (d) the parent or present or former foster parent of one of them is or has been the other's foster parent.
- (4) The relation of A to B is within this subsection if–
- (a) A and B live in the same household, and
 - (b) A is regularly involved in caring for, training, supervising or being in sole charge of B.
- (5) For the purposes of this section–
- (a) “aunt” means the sister or half-sister of a person's parent, and “uncle” has a corresponding meaning;
 - (b) “cousin” means the child of an aunt or uncle;
 - (c) a person is a child's foster parent if–
 - (i) he is a person with whom the child has been placed under section 23(2)(a) or 59(1)(a) of the Children Act 1989 (c. 41) (fostering for local authority or voluntary organisation), or
 - (ii) he fosters the child privately, within the meaning given by section 66(1)(b) of that Act;
 - (d) a person is another's partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
 - (e) “step-parent” includes a parent's partner and “stepbrother” and “stepsister” include the child of a parent's partner.

28 Sections 25 and 26: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if at the time–
- (a) B is 16 or over, and
 - (b) A and B are lawfully married.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were lawfully married at the time.

29 Sections 25 and 26: sexual relationships which pre-date family relationships

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if–
- (a) the relation of A to B is not within subsection (2) of section 27,

- (b) it would not be within that subsection if section 67 of the Adoption and Children Act 2002 (c. 38) did not apply, and
 - (c) immediately before the relation of A to B first became such as to fall within section 27, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual intercourse between A and B would have been unlawful.
- (3) In proceedings for an offence under section 25 or 26 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

Offences against persons with a mental disorder impeding choice

30 Sexual activity with a person with a mental disorder impeding choice

- (1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) B is unable to refuse because of or for a reason related to a mental disorder, and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (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 reasonably foreseeable consequences of what is being done, or for any other reason), or
 - (b) he is unable to communicate such a choice to A.
- (3) A person guilty of an offence under this section, if the touching involved—
- (a) penetration of B's anus or vagina with a part of A's body or anything else,
 - (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body, or
 - (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 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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

- (1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) B is unable to refuse because of or for a reason related to a mental disorder, and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

- (2) B is unable to refuse if–
- (a) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason), or
 - (b) he is unable to communicate such a choice to A.
- (3) A person guilty of an offence under this section, if the activity caused or incited involved–
- (a) penetration of B's anus or vagina,
 - (b) penetration of B's mouth with a person's penis,
 - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
 - (d) penetration of a person'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 is liable–
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

32 Engaging in sexual activity in the presence of a person with a mental disorder impeding choice

- (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–
 - (i) when another person (B) is present or is in a place from which A can be observed, and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
 - (d) B is unable to refuse because of or for a reason related to a mental disorder, and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if–
- (a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
 - (b) he is unable to communicate such a choice to A.
- (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 10 years.

33 Causing a person, with a mental disorder impeding choice, to watch a sexual act

- (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 an image of any person engaging in an activity,
 - (b) the activity is sexual,
 - (c) B is unable to refuse because of or for a reason related to a mental disorder, and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if–
- (a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
 - (b) he is unable to communicate such a choice to A.
- (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 10 years.

Inducements etc. to persons with a mental disorder

34 Inducement, threat or deception to procure sexual activity with a person with a mental disorder

- (1) A person (A) commits an offence if–
- (a) with the agreement of another person (B) he intentionally touches that person,
 - (b) the touching is sexual,
 - (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose,
 - (d) B has a mental disorder, and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder.
- (2) A person guilty of an offence under this section, if the touching involved–
- (a) penetration of B's anus or vagina with a part of A's body or anything else,
 - (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body, or
 - (d) penetration of A's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for life.
- (3) Unless subsection (2) 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 14 years.

35 Causing a person with a mental disorder to engage in or agree 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 another person (B) to engage in, or to agree to engage in, an activity,
 - (b) the activity is sexual,
 - (c) B has a mental disorder, and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder.
- (2) A person guilty of an offence under this section, if the activity caused or agreed to 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.
- (3) Unless subsection (2) 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 14 years.

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

- (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–
 - (i) when another person (B) is present or is in a place from which A can be observed, and
 - (ii) 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 or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
 - (e) B has a mental disorder, and
 - (f) A knows or could reasonably be expected to know that B has a mental disorder.
- (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.

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

- (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 an image of any person engaging in an activity,

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

Care workers for persons with a mental disorder

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

- (1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B),
 - (b) the touching is sexual,
 - (c) B has a mental disorder,
 - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
 - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.
- (3) A person guilty of an offence under this section, 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
 - (d) penetration of A's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

39 Care workers: causing or inciting sexual activity

- (1) A person (A) commits an offence if—
- (a) he intentionally causes or incites another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) B has a mental disorder,
 - (d) A knows or could reasonably be expected to know that B has a mental disorder, and
 - (e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section, if the activity caused or incited involved—

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

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

- (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.

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

(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—
 - (i) when another person (B) is present or is in a place from which A can be observed, and
 - (ii) 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,
- (e) A knows or could reasonably be expected to know that B has a mental disorder, and
- (f) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

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

(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 an image of any person engaging in an activity,
- (b) the activity is sexual,

- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

42 Care workers: interpretation

(1) For the purposes of sections 38 to 41, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if—

- (a) B is accommodated and cared for in a care home, community home, voluntary home or children's home, and
- (b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(3) This subsection applies if B is a patient for whom services are provided—

- (a) by a National Health Service body or an independent medical agency, or
- (b) in an independent clinic or an independent hospital,

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

(4) This subsection applies if A—

- (a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder, and
- (b) as such, has had or is likely to have regular face to face contact with B.

(5) In this section—

“care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14);

“children's home” has the meaning given by section 1 of that Act;

“community home” has the meaning given by section 53 of the Children Act 1989 (c. 41);

“employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;

“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,
- (b) a National Health Service trust,
- (c) a Primary Care Trust, or
- (d) a Special Health Authority;

“voluntary home” has the meaning given by section 60(3) of the Children Act 1989.

43 Sections 38 to 41: marriage exception

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 against another person (B) is not an offence under that section if at the time—
- (a) B is 16 or over, and
 - (b) A and B are lawfully married.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were lawfully married at the time.

44 Sections 38 to 41: sexual relationships which pre-date care relationships

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 38 to 41 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 42, 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.
- (3) In proceedings for an offence under any of sections 38 to 41 it is for the defendant to prove that such a relationship existed at that time.

Indecent photographs of children

45 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”.
- (3) After section 1 insert—

“1A Marriage and other relationships

- (1) This section applies where, in proceedings for an offence under section 1(1)(a) of taking or making an indecent photograph of a child, or for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—
- (a) were married, or
 - (b) lived together as partners in an enduring family relationship.
- (2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—
- (a) were married, or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) In the case of an offence under section 1(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.

(5) In the case of an offence under section 1(1)(b), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.

(6) In the case of an offence under section 1(1)(c), if sufficient evidence is adduced to raise an issue both—

(a) as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, and

(b) as to whether the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child,

the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child.”

(4) After section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child) insert—

“160A Marriage and other relationships

(1) This section applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.”

46 Criminal proceedings, investigations etc.

(1) After section 1A of the Protection of Children Act 1978 (c. 37) insert–

“1B Exception for criminal proceedings, investigations etc.

(1) In proceedings for an offence under section 1(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that–

- (a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
- (b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or
- (c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.

(2) In this section “GCHQ” has the same meaning as in the Intelligence Services Act 1994.”

(2) After Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) insert–

“3A. Exception for criminal proceedings, investigations etc.

(1) In proceedings for an offence under Article 3(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that–

- (a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
- (b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or
- (c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.

(2) In this Article “GCHQ” has the same meaning as in the Intelligence Services Act 1994.”

*Abuse of children through prostitution and pornography***47 Paying for sexual services of a child**

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

- (a) he intentionally obtains for himself the sexual services of another person (B),
- (b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and
- (c) either–

- (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) In this section, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.
- (3) A person guilty of an offence under this section against a person under 13, where subsection (6) applies, 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—
 - (a) where subsection (6) applies, on conviction on indictment, to imprisonment for a term not exceeding 14 years;
 - (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (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) This subsection applies where the offence involved—
 - (a) penetration of B's anus or vagina with a part of A's body or anything else,
 - (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body or by B with anything else,or
 - (d) penetration of A's mouth with B's penis.
- (7) In the application of this section to Northern Ireland, subsection (4) has effect with the substitution of “17” for “16”.

48 Causing or inciting child prostitution or pornography

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

49 Controlling a child prostitute or a child involved in pornography

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

50 Arranging or facilitating child prostitution or pornography

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

51 Sections 48 to 50: interpretation

- (1) For the purposes of sections 48 to 50, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.
- (2) In those sections “prostitute” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.
- (3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

*Exploitation of prostitution***52 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

- (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.

53 Controlling prostitution for gain

- (1) A person commits an offence if–
 - (a) he intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world, and
 - (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.

54 Sections 52 and 53: interpretation

- (1) In sections 52 and 53, “gain” means–
 - (a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or
 - (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.
- (2) In those sections “prostitute” and “prostitution” have the meaning given by section 51(2).

Amendments relating to prostitution

55 Penalties for keeping a brothel used for prostitution

- (1) The Sexual Offences Act 1956 (c. 69) is amended as follows.
- (2) After section 33 insert–

“33A Keeping a brothel used for prostitution

- (1) It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).
- (2) In this section “prostitution” has the meaning given by section 51(2) of the Sexual Offences Act 2003.”

(3) In Schedule 2 (mode of prosecution, punishment etc.), after paragraph 33 insert (as a paragraph with no entry in the fourth column)–

A33	“ Keeping a brothel used for prostitution (section 33A).	(i) on indictment (i i) summary	Seven years Six months, or the statutory maximum, or both.”
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56 Extension of gender-specific prostitution offences

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

Trafficking

57 Trafficking into the UK for sexual exploitation

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

- (a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) he believes that another person is likely to do something 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.

(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 Trafficking within the UK for sexual exploitation

(1) A person commits an offence if 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
- (b) he believes that another person is likely to do something 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.

(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.

59 Trafficking out of the UK for sexual exploitation

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

- (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 believes that another person is likely to do something 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.
- (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.

60 Sections 57 to 59: interpretation and jurisdiction

- (1) In sections 57 to 59, “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),
 - (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.
- (2) Sections 57 to 59 apply to anything done—
- (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—
- (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),
 - (f) a British protected person within the meaning given by section 50(1) of that Act.

Preparatory offences

61 Administering a substance with intent

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

62 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.
- (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.
- (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;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

63 Trespass with intent to commit a sexual offence

- (1) A person commits an offence if–
 - (a) he is a trespasser on any premises,
 - (b) he intends to commit a relevant sexual offence on the premises, and
 - (c) he knows that, or is reckless as to whether, he is a trespasser.
- (2) In this section–
 - “premises” includes a structure or part of a structure;
 - “relevant sexual offence” has the same meaning as in section 62;
 - “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;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Sex with an adult relative

64 Sex with an adult relative: penetration

- (1) A person aged 16 or over (A) commits an offence if–
 - (a) he intentionally penetrates another person's vagina or anus with a part of his body or anything else, or penetrates another person's mouth with his penis,
 - (b) the penetration is sexual,
 - (c) the other person (B) is aged 18 or over,
 - (d) A is related to B in a way mentioned in subsection (2), and
 - (e) A knows or could reasonably be expected to know that he is related to B in that way.

(2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)–

- (a) “uncle” means the brother of a person's parent, and “aunt” has a corresponding meaning;
- (b) “nephew” means the child of a person's brother or sister, and “niece” has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(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.

65 Sex with an adult relative: consenting to penetration

(1) A person aged 16 or over (A) commits an offence if–

- (a) another person (B) penetrates A's vagina or anus with a part of B's body or anything else, or penetrates A's mouth with B's penis,
- (b) A consents to the penetration,
- (c) the penetration is sexual,
- (d) B is aged 18 or over,
- (e) A is related to B in a way mentioned in subsection (2), and
- (f) A knows or could reasonably be expected to know that he is related to B in that way.

(2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)–

- (a) “uncle” means the brother of a person's parent, and “aunt” has a corresponding meaning;
- (b) “nephew” means the child of a person's brother or sister, and “niece” has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(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.

*Other offences***66 Exposure**

- (1) A person commits an offence if—
 - (a) he intentionally exposes his genitals, and
 - (b) he intends that someone will see them and be caused alarm or distress.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

67 Voyeurism

- (1) A person commits an offence if—
 - (a) for the purpose of obtaining sexual gratification, he observes another person doing a private act, and
 - (b) he knows that the other person does not consent to being observed for his sexual gratification.
- (2) A person commits an offence if—
 - (a) he operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person (B) doing a private act, and
 - (b) he knows that B does not consent to his operating equipment with that intention.
- (3) A person commits an offence if—
 - (a) he records another person (B) doing a private act,
 - (b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act, and
 - (c) he knows that B does not consent to his recording the act with that intention.
- (4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection (1).
- (5) A person guilty of an offence under this section is liable—
 - (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.

68 Voyeurism: interpretation

- (1) For the purposes of section 67, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and—
 - (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear,
 - (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.

(2) In section 67, “structure” includes a tent, vehicle or vessel or other temporary or movable structure.

69 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
 - (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;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

70 Sexual penetration of a corpse

- (1) A person commits an offence if—
 - (a) he intentionally performs an act of penetration with a part of his body or anything else,
 - (b) what is penetrated is a part of the body of a dead person,
 - (c) he knows that, or is reckless as to whether, that is what is penetrated, and
 - (d) the penetration is sexual.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

71 Sexual activity in a public lavatory

- (1) A person commits an offence if—
 - (a) he is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise,
 - (b) he intentionally engages in an activity, and,
 - (c) the activity is sexual.
- (2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.
- (3) 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.

*Offences outside the United Kingdom***72 Offences outside the United Kingdom**

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

*Supplementary and general***73 Exceptions to aiding, abetting and counselling**

- (1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if he acts for the purpose of—
- (a) protecting the child from sexually transmitted infection,
 - (b) protecting the physical safety of the child,
 - (c) preventing the child from becoming pregnant, or
 - (d) promoting the child's emotional well-being by the giving of advice,
- and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.
- (2) This section applies to—
- (a) an offence under any of sections 5 to 7 (offences against children under 13);
 - (b) an offence under section 9 (sexual activity with a child);
 - (c) an offence under section 13 which would be an offence under section 9 if the offender were aged 18;

(d) an offence under any of sections 16, 25, 30, 34 and 38 (sexual activity) against a person under 16.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

74 “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.

75 Evidential presumptions about consent

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

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

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

(2) The circumstances are that—

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

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

76 Conclusive presumptions about consent

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

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

77 Sections 75 and 76: relevant acts

In relation to an offence to which sections 75 and 76 apply, references in those sections 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”).
An offence under section 2 (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.
An offence under section 3 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under section 4 (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.

78 “Sexual”

For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that–

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

79 Part 1: general interpretation

- (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) “Image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.
- (5) References to an image of a person include references to an image of an imaginary person.
- (6) “Mental disorder” has the meaning given by section 1 of the Mental Health Act 1983 (c. 20).

(7) References to observation (however expressed) are to observation whether direct or by looking at an image.

(8) Touching includes touching—

- (a) with any part of the body,
- (b) with anything else,
- (c) through anything,

and in particular includes touching amounting to penetration.

(9) “Vagina” includes vulva.

(10) In relation to an animal, references to the vagina or anus include references to any similar part.

PART 2

NOTIFICATION AND ORDERS

Notification requirements

80 Persons becoming subject to notification requirements

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

- (a) he is convicted of an offence listed in Schedule 3;
- (b) he is found not guilty of such an offence by reason of insanity;
- (c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or
- (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.

(2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a “relevant offender”.

81 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 3;
- (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
- (d) in England and Wales or Northern Ireland, he was cautioned in respect of such an offence.

(2) Subsection (1) does not apply if the notification period ended before the commencement of this Part.

(3) Subsection (1)(a) does not apply to a conviction before 1st September 1997 unless, at the beginning of that day, the person—

- (a) had not been dealt with in respect of the offence;

- (b) was serving a sentence of imprisonment or a term of service detention, or was subject to a community order, in respect of the offence;
- (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence; or
- (d) was detained in a hospital or was subject to a guardianship order, following the conviction.

(4) Paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 1st September 1997 unless, at the beginning of that day, the person—

- (a) had not been dealt with in respect of the finding; or
- (b) was detained in a hospital, following the finding.

(5) Subsection (1)(d) does not apply to a caution given before 1st September 1997.

(6) A person who would have been within subsection (3)(b) or (d) or (4)(b) but for the fact that at the beginning of 1st September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision.

(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.

(8) The provisions are—

- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
- (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales);
- (c) section 2A of the Crime and Disorder Act 1998 (interim orders made in England and Wales);
- (d) section 20 of the Crime and Disorder Act 1998 (sex offender orders and interim orders made in Scotland);
- (e) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland);
- (f) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

82 The notification period

(1) The notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him.

<i>TABLE</i>	
<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
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

TABLE	
Description of relevant offender	Notification period
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
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
A person within section 80(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, a probation order, is made in respect of the offence	The period of conditional discharge or, in Scotland, the probation period
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 80(1)(a) or 81(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3—

- (a) to consecutive terms of imprisonment; or
- (b) to terms of imprisonment which are partly concurrent.

(4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which—

- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
- (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.

(5) Where a relevant offender the subject of a finding within section 80(1)(c) or 81(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

(6) In this Part, “relevant date” means—

- (a) in the case of a person within section 80(1)(a) or 81(1)(a), the date of the conviction;
- (b) in the case of a person within section 80(1)(b) or (c) or 81(1)(b) or (c), the date of the finding;
- (c) in the case of a person within section 80(1)(d) or 81(1)(d), the date of the caution;
- (d) in the case of a person within section 81(7), the date which, for the purposes of Part 1 of the Sex Offenders Act 1997 (c. 51), was the relevant date in relation to that person.

83 Notification requirements: initial notification

(1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5).

(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 80(1) if—

- (a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a 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 81(1) or an order within section 81(7) if the offender complied with section 2(1) of the Sex Offenders Act 1997 in respect of the conviction, finding, caution or order.
- (4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if–
- (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 a 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.
- (5) The information is–
- (a) the relevant offender's date of birth;
 - (b) his national insurance number;
 - (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
 - (d) his home address on the relevant date;
 - (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;
 - (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–
- (a) remanded in or committed to custody by an order of a court;
 - (b) serving a sentence of imprisonment or a term of service detention;
 - (c) detained in a hospital; or
 - (d) outside the United Kingdom.
- (7) In this Part, “home address” means, in relation to any person–
- (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.

84 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 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
 - (b) any change of his home address,
 - (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997, or
 - (d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,
- 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 83(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.
- (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).
- (4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—
- (a) the notification does not affect the duty imposed by subsection (1), and
 - (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.
- (5) Section 83(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 83(1).
- (6) In this section, “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.

85 Notification requirements: periodic notification

- (1) A relevant offender must, within the period of one year after each event within subsection (2), notify to the police the information set out in section 83(5), unless within that period he has given a notification under section 84(1).
- (2) The events are—
- (a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);
 - (b) any notification given by the relevant offender under section 83(1) or 84(1); and
 - (c) any notification given by him under subsection (1).
- (3) Where the period referred to in subsection (1) would (apart from this subsection) end whilst subsection (4) 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 (4) first ceases to apply to him.
- (4) This subsection applies to the relevant offender if he is—

- (a) remanded in or committed to custody by an order of a court,
- (b) serving a sentence of imprisonment or a term of service detention,
- (c) detained in a hospital, or
- (d) outside the United Kingdom.

86 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—
- (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);
 - (b) if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).
- (2) A notification under this subsection must disclose—
- (a) the date on which the offender will leave the United Kingdom;
 - (b) the country (or, if there is more than one, the first country) to which he will travel and his point of arrival (determined in accordance with the regulations) in that country;
 - (c) any other information prescribed by the regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom.
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom.
- (4) Regulations under subsection (1) may make different provision for different categories of person.

87 Method of notification and related matters

- (1) A person gives a notification under section 83(1), 84(1) or 85(1) by—
- (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and
 - (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- (2) A person giving a notification under section 84(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.
- (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 83(1), 84(1) or 85(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—
- (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.

88 Section 87: interpretation

(1) Subsections (2) to (4) apply for the purposes of section 87.

(2) “Photograph” includes any process by means of which an image may be produced.

(3) “Local police area” means, in relation to a person—

- (a) the police area in which his home address is situated;
- (b) in the absence of a home address, the police area in which the home address last notified is situated;
- (c) in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person in a way mentioned in subsection (4) is situated.

(4) The ways are—

- (a) dealing with a person in respect of an offence listed in Schedule 3 or a finding in relation to such an offence;
 - (b) dealing with a person in respect of an offence under section 128 or a finding in relation to such an offence;
 - (c) making, in respect of a person, a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order;
 - (d) making, in respect of a person, an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales or Scotland) or Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland);
- and in paragraphs (a) and (b), “finding” in relation to an offence means a finding of not guilty of the offence by reason of insanity or a finding that the person was under a disability and did the act or omission charged against him in respect of the offence.

(5) Subsection (3) applies as if Northern Ireland were a police area.

89 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.

<i>TABLE</i>	
<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 80(1)(a) to (c) or 81(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 129(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
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 83 to 86 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.
- (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.
- (4) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”)—
- (a) who resides in his police area, or who the chief officer believes is in or is intending to come to his police area, and
 - (b) who the chief officer believes is under 18.
- (5) In Scotland, a chief constable may, by summary application to any sheriff within whose sheriffdom lies any part of the area of his police force, apply for a direction under subsection (1) in respect of a relevant offender (“the subject”)—
- (a) who resides in that area, or who the chief constable believes is in or is intending to come to that area, and
 - (b) who the chief constable believes is under 16.

90 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 89(1).
- (2) The persons are—
- (a) the young offender;
 - (b) the parent;
 - (c) the chief officer of police for the area in which the young offender resides;
 - (d) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;

- (e) in Scotland, where the appropriate court is a civil court–
 - (i) the chief constable of the police force within the area of which the young offender resides;
 - (ii) a chief constable who believes that the young offender is in, or is intending to come to, the area of his police force,
 and in any other case, the prosecutor;
 - (f) where the direction was made on an application under section 89(4), the chief officer of police who made the application;
 - (g) where the direction was made on an application under section 89(5), the chief constable who made the application.
- (3) An application under subsection (1) may be made–
- (a) where the appropriate court is the Crown Court (or in Scotland a criminal court), in accordance with rules of court;
 - (b) in any other case, by complaint (or, in Scotland, by summary application).
- (4) On the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.
- (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 89(1).

91 Offences relating to notification

- (1) A person commits an offence if he–
- (a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), 87(4) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or
 - (b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.
- (2) A person guilty of an offence under this section is liable–
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) A person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(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.
- (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.

92 Certificates for purposes of Part 2

- (1) Subsection (2) applies where on any date a person is–

- (a) convicted of an offence listed in Schedule 3;
 - (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
 - (ii) that the offence in question is an offence listed in Schedule 3, 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.
- (3) Subsection (4) applies where on any date a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 3.
- (4) If the constable—
- (a) informs the person that he has been cautioned on that date and that the offence in question is an offence listed in Schedule 3, 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.

93 Abolished homosexual offences

Schedule 4 (procedure for ending notification requirements for abolished homosexual offences) has effect.

Information for verification

94 Part 2: supply of information to Secretary of State etc. for verification

- (1) This section applies to information notified to the police under—
- (a) section 83, 84 or 85, or
 - (b) section 2(1) to (3) of the Sex Offenders Act 1997 (c. 51).
- (2) A person within subsection (3) may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—
- (a) the Secretary of State,
 - (b) a Northern Ireland Department, or
 - (c) a person providing services to the Secretary of State or a Northern Ireland Department in connection with a relevant function,
- for use for the purpose of verifying the information.
- (3) The persons are—
- (a) a chief officer of police (in Scotland, a chief constable),
 - (b) the Police Information Technology Organisation,
 - (c) the Director General of the National Criminal Intelligence Service,

- (d) the Director General of the National Crime Squad.
- (4) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to—
- (a) checking its accuracy by comparing it with information held—
 - (i) where the person is the Secretary of State or a Northern Ireland Department, by him or it in connection with the exercise of a relevant function, or
 - (ii) where the person is within subsection (2)(c), by that person in connection with the provision of services referred to there, and
 - (b) compiling a report of that comparison.
- (5) Subject to subsection (6), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).
- (6) This section does not authorise the doing of anything that contravenes the Data Protection Act 1998 (c. 29).
- (7) This section does not affect any power existing apart from this section to supply information.
- (8) In this section—
- “Northern Ireland Department” means the Department for Employment and Learning, the Department of the Environment or the Department for Social Development;
- “relevant function” means—
- (a) a function relating to social security, child support, employment or training,
 - (b) a function relating to passports,
 - (c) a function under Part 3 of the Road Traffic Act 1988 (c. 52) or Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

95 Part 2: supply of information by Secretary of State etc.

- (1) A report compiled under section 94 may be supplied by—
- (a) the Secretary of State,
 - (b) a Northern Ireland Department, or
 - (c) a person within section 94(2)(c),
- to a person within subsection (2).
- (2) The persons are—
- (a) a chief officer of police (in Scotland, a chief constable),
 - (b) the Director General of the National Criminal Intelligence Service,
 - (c) the Director General of the National Crime Squad.
- (3) Such a report may contain any information held—
- (a) by the Secretary of State or a Northern Ireland Department in connection with the exercise of a relevant function, or
 - (b) by a person within section 94(2)(c) in connection with the provision of services referred to there.
- (4) Where such a report contains information within subsection (3), the person within subsection (2) to whom it is supplied—
- (a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Part, and

(b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(5) Subsections (5) to (8) of section 94 apply in relation to this section as they apply in relation to section 94.

Information about release or transfer

96 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.

(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.

Notification orders

97 Notification orders: applications and grounds

(1) A chief officer of police may, by complaint to any magistrates' court whose commission area includes any part of his police area, apply for an order under this section (a "notification order") in respect of a person ("the defendant") if—

(a) it appears to him that the following three conditions are met with respect to the defendant, and

(b) the defendant resides in his police area or the chief officer believes that the defendant is in, or is intending to come to, his police area.

(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 equivalent to a finding that he is not guilty by reason of insanity,

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or

(d) he has been cautioned in respect of a relevant offence.

(3) The second condition is that—

(a) the first condition is met because of a conviction, finding or caution which occurred on or after 1st September 1997,

(b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it, or

- (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date the person was, in respect of the offence or finding, subject under the law in force in the country concerned to detention, supervision or any other disposal equivalent to any of those mentioned in section 81(3) (read with sections 81(6) and 131).
- (4) The third condition is that the period set out in section 82 (as modified by subsections (2) and (3) of section 98) in respect of the relevant offence has not expired.
- (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 98, “relevant offence” has the meaning given by section 99.

98 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
 - (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 82.
- (2) The “relevant date” means—
 - (a) in the case of a person within section 97(2)(a), the date of the conviction;
 - (b) in the case of a person within section 97(2)(b) or (c), the date of the finding;
 - (c) in the case of a person within section 97(2)(d), the date of the caution.
- (3) In section 82—
 - (a) references, except in the Table, to a person (or relevant offender) within any provision of section 80 are to be read as references to the defendant;
 - (b) the reference in the Table to section 80(1)(d) is to be read as a reference to section 97(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;
 - (d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.
- (4) In sections 83 and 85, references to the commencement of this Part are to be read as references to the date of service of the notification order.

99 Sections 97 and 98: relevant offences

- (1) “Relevant offence” in sections 97 and 98 means an act which—
 - (a) constituted an offence under the law in force in the country concerned, and
 - (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) if it had been done in any part of the United Kingdom.
- (2) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

- (3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
 - (b) showing his grounds for that opinion, and
 - (c) requiring the applicant to prove that the condition is met.
- (4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

100 Interim notification orders

- (1) This section applies where an application for a notification order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim notification order”)—
- (a) may be made in the complaint containing the main application, or
 - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- (3) The court may, if it considers it just to do so, make an interim notification order.
- (4) Such an order—
- (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) While such an order has effect—
- (a) the defendant is subject to the notification requirements of this Part;
 - (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.

101 Notification orders and interim notification orders: appeals

A defendant may appeal to the Crown Court against the making of a notification order or interim notification order.

102 Appeals in relation to notification orders and interim notification orders: Scotland

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.

103 Sections 97 to 100: Scotland

- (1) Sections 97 to 100 apply to Scotland with the following modifications—
- (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
 - (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
 - (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).
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.
- (3) The clerk of the court by which, by virtue of that subsection, a notification order or interim notification order is made, varied, renewed or discharged shall cause a copy of, as the case may be—
- (a) the order as so made, varied or renewed; or
 - (b) the interlocutor by which discharge is effected,
- to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

Sexual offences prevention orders

104 Sexual offences prevention orders: applications and grounds

- (1) A court may make an order under this section in respect of a person (“the defendant”) where any of subsections (2) to (4) applies to the defendant and—
- (a) where subsection (4) applies, it is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
 - (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5.
- (3) This subsection applies to the defendant where the court deals with him in respect of a finding—
- (a) that he is not guilty of an offence listed in Schedule 3 or 5 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.
- (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 a magistrates' court apply for an order under this section in respect of a person who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that—

- (a) the person is a qualifying offender, and
- (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(6) An application under subsection (5) may be made to any magistrates' court whose commission area includes—

- (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).

105 SOPOs: further provision as respects Scotland

(1) A chief constable may apply for an order under this section in respect of a person who he believes is in, or is intending to come to, the area of his police force if it appears to the chief constable that—

- (a) the person has been convicted of, found not guilty by reason of insanity of or found to be under a disability and to have done the act charged against him in respect of—
 - (i) an offence listed in paragraph 60 of Schedule 3; or
 - (ii) before the commencement of this Part, an offence in Scotland other than is mentioned in paragraphs 36 to 59 of that Schedule if the chief constable considers that had the conviction or finding been after such commencement it is likely that a determination such as is mentioned in paragraph 60 would have been made in relation to the offence; and
- (b) the person has since the conviction or finding acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made by summary application to a sheriff within whose sheriffdom lies—

- (a) any part of the area of the applicant's police force; or
- (b) any place where it is alleged that the person acted in a way mentioned in subsection (1)(b).

(3) The sheriff may make the order where satisfied—

- (a) that the person's behaviour since the conviction or finding makes it necessary to make such an order, for the purposes of protecting the public or any particular members of the public from serious sexual harm from the person; and
- (b) where the application is by virtue of subsection (1)(a)(ii), that there was a significant sexual aspect to the person's behaviour in committing the offence.

(4) Subsection (3) of section 106 applies for the purposes of this section as it applies for the purposes of section 104 and subsections (2) and (3) of section 112 apply in relation to a summary application made by virtue of subsection (1) as they apply in relation to one made by virtue of subsection (1)(g) of that section.

106 Section 104: supplemental

- (1) In this Part, “sexual offences prevention order” means an order under section 104 or 105.
- (2) Subsections (3) to (8) apply for the purposes of section 104.
- (3) “Protecting the public or any particular members of the public from serious sexual harm from the defendant” means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3.
- (4) Acts, behaviour, convictions and findings include those occurring before the commencement of this Part.
- (5) “Qualifying offender” means a person within subsection (6) or (7).
- (6) A person is within this subsection if, whether before or after the commencement of this Part, he—
 - (a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 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, or
 - (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.
- (7) A person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—
 - (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
 - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
 - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
 - (d) he has been cautioned in respect of a relevant offence.
- (8) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (6) or (7).
- (9) In subsection (7), “relevant offence” means an act which—
 - (a) constituted an offence under the law in force in the country concerned, and
 - (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5 if it had been done in any part of the United Kingdom.
- (10) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (9), however it is described in that law.
- (11) Subject to subsection (12), on an application under section 104(5) the condition in subsection (9)(b) (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—
 - (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,

- (b) showing his grounds for that opinion, and
- (c) requiring the applicant to prove that the condition is met.

(12) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (11).

107 SOPOs: effect

- (1) A sexual offences prevention order–
 - (a) prohibits the defendant from doing anything described in the order, and
 - (b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.
- (2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (3) Where–
 - (a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,
 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
 - (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.
- (7) Section 106(3) applies for the purposes of this section and section 108.

108 SOPOs: variations, renewals and discharges

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual offences prevention order.
- (2) The persons are–
 - (a) the defendant;
 - (b) the chief officer of police for the area in which the defendant resides;
 - (c) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area;
 - (d) where the order was made on an application under section 104(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;
 - (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.
- (5) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).
- (6) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and–
- (a) where the application is made by a chief officer of police, that chief officer, or
 - (b) in any other case, the chief officer of police for the area in which the defendant resides.
- (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;
 - (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.
- (8) This section applies to orders under–
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders),
 - (b) section 2 or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales or Scotland), and
 - (c) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland),
- as it applies to sexual offences prevention orders.

109 Interim SOPOs

- (1) This section applies where an application under section 104(5) or 105(1) (“the main application”) has not been determined.
- (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
 - (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.
- (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.

(5) Section 107(3) to (5) apply to an interim sexual offences prevention order as if references to an order were references to such an order, and with the omission of “as renewed from time to time” in both places.

(6) 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.

(7) Subsection (6) applies to orders under—

(a) section 2A or 20(4)(a) of the Crime and Disorder Act 1998 (c. 37) (interim orders made in England and Wales or Scotland), 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.

110 SOPOs and interim SOPOs: appeals

(1) A defendant may appeal against the making of a sexual offences prevention order—

(a) where section 104(2) applied to him, as if the order were a sentence passed on him for the offence;

(b) where section 104(3) (but not section 104(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 104(5), to the Crown Court.

(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 108, or the refusal to make such an order—

(a) where the application for such an order was made to the Crown Court, to the Court of Appeal;

(b) in any other case, to the Crown Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(5) Any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purpose of section 108(7) or 109(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).

111 Appeals in relation to SOPOs and interim SOPOs: Scotland

In Scotland—

(a) an interlocutor granting, refusing, varying, renewing or discharging a sexual offences prevention order or interim sexual offences prevention order is an appealable interlocutor; and

(b) where an appeal is taken against an interlocutor so granting, varying or renewing such an order the order shall, without prejudice to any power of the court to vary or recall it, continue to have effect pending the disposal of the appeal.

112 Sections 104 and 106 to 109: Scotland

- (1) Sections 104 and 106 to 109 apply to Scotland with the following modifications—
- (a) subsections (1)(b), (2) and (3) of section 104 shall be disregarded;
 - (b) an application under subsection (5) of section 104 shall not be competent in respect of a person who is a qualifying offender by virtue only of a conviction or finding which relates to any offence listed at paragraphs 64 to 111 of Schedule 5;
 - (c) 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;
 - (d) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
 - (e) an application for a sexual offences prevention order or interim sexual offences prevention order is made by summary application to any sheriff within whose sheriffdom lies—
 - (i) any part of the area of the applicant's police force; or
 - (ii) any place where it is alleged that the person in respect of whom the order is sought or has effect acted in a way mentioned in subsection (5)(b) of section 104, (references to “the court” being construed accordingly);
 - (f) an application for the variation, renewal or discharge of either such order is made by summary application to the sheriff who made the order or to a sheriff—
 - (i) within whose sheriffdom the person subject to the order resides; or
 - (ii) where the application is made by a chief constable, within whose sheriffdom lies any part of the area of the applicant's police force, (references to “the court” being construed accordingly).
- (2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(e) or (f) above.
- (3) The clerk of the court by which, by virtue of that subsection, a sexual offences prevention order or interim sexual offences prevention order is made, varied, renewed or discharged shall cause a copy of, as the case may be—
- (a) the order as so made, varied or renewed; or
 - (b) the interlocutor by which discharge is effected,
- to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

113 Offence: breach of SOPO or interim SOPO

- (1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by—
- (a) a sexual offences prevention order;
 - (b) an interim sexual offences prevention order;

- (c) an order under section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);
 - (d) an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales and in Scotland);
 - (e) an order under Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland).
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge or, in Scotland, a probation order.

Foreign travel orders

114 Foreign travel orders: applications and grounds

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

115 Section 114: interpretation

- (1) Subsections (2) to (5) apply for the purposes of section 114.
- (2) "Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom" means protecting persons under 16 generally or any particular person under 16 from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.
- (3) Acts and behaviour include those occurring before the commencement of this Part.
- (4) "Qualifying offender" has the meaning given by section 116.

(5) “Appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 116.

(6) In this section and section 116 as they apply to Northern Ireland, references to persons, or to a person, under 16 are to be read as references to persons, or to a person, under 17.

116 Section 114: qualifying offenders

(1) A person is a qualifying offender for the purposes of section 114 if, whether before or after the commencement of this Part, he—

- (a) has been convicted of an offence within subsection (2),
- (b) has been found not guilty of such an offence by reason of insanity,
- (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
- (d) in England and Wales or Northern Ireland, has been cautioned in respect of such an offence.

(2) The offences are—

- (a) an offence within any of paragraphs 13 to 15, 44 to 46, 77, 78 and 82 of Schedule 3;
- (b) an offence within paragraph 31 of that Schedule, if the intended offence was an offence against a person under 16;
- (c) an offence within paragraph 93 of that Schedule, if—
 - (i) the corresponding civil offence is an offence within any of paragraphs 13 to 15 of that Schedule;
 - (ii) the corresponding civil offence is an offence within paragraph 31 of that Schedule, and the intended offence was an offence against a person under 16; or
 - (iii) the corresponding civil offence is an offence within any of paragraphs 1 to 12, 16 to 30 and 32 to 35 of that Schedule, and the victim of the offence was under 16 at the time of the offence.
- (d) an offence within any other paragraph of that Schedule, if the victim of the offence was under 16 at the time of the offence.

(3) A person is also a qualifying offender for the purposes of section 114 if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part—

- (a) he has been convicted of a relevant offence (whether or not he has been punished for it),
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of insanity,
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence, or
- (d) he has been cautioned in respect of a relevant offence.

(4) In subsection (3), “relevant offence” means an act which—

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence within subsection (2) if it had been done in any part of the United Kingdom.

(5) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (4), however it is described in that law.

(6) Subject to subsection (7), on an application under section 114 the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice—

- (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.

(7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

117 Foreign travel orders: effect

(1) A foreign travel order has effect for a fixed period of not more than 6 months, specified in the order.

(2) The order prohibits the defendant from doing whichever of the following is specified in the order—

- (a) travelling to any country outside the United Kingdom named or described in the order,
- (b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
- (c) travelling to any country outside the United Kingdom.

(3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom.

(4) If at any time while an order (as renewed from time to time) has effect a defendant is not a relevant offender, the order causes him to be subject to the requirements imposed by regulations made under section 86(1) (and for these purposes the defendant is to be treated as if he were a relevant offender).

(5) Where a court makes a foreign travel order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

(6) Section 115(2) applies for the purposes of this section and section 118.

118 Foreign travel orders: variations, renewals and discharges

(1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a foreign travel order.

(2) The persons are—

- (a) the defendant;
- (b) the chief officer of police on whose application the foreign travel order was made;
- (c) the chief officer of police for the area in which the defendant resides;
- (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.

(3) Subject to subsection (4), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the foreign travel order, that the court considers appropriate.

(4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(5) In this section “the appropriate court” means—

- (a) the court which made the foreign travel order;
- (b) a magistrates' court for the area in which the defendant resides; or
- (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.

119 Foreign travel orders: appeals

(1) A defendant may appeal to the Crown Court—

- (a) against the making of a foreign travel order;
- (b) against the making of an order under section 118, 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) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 118(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

120 Appeals in relation to foreign travel orders: Scotland

In Scotland—

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

121 Sections 114 to 118: Scotland

(1) Sections 114 to 118 apply to Scotland with the following modifications—

- (a) references to a chief officer of police and to his police area are to be read, respectively, as references to a chief constable and to the area of his police force;
- (b) references to the defendant are to be read as references to the person in respect of whom the order is sought or has effect;
- (c) an application for a foreign travel order is made by summary application to any sheriff within whose sheriffdom lies any part of the area of the applicant's police force (references to “the court” being construed accordingly);

(d) for paragraphs (a) to (c) of section 118(5) there is substituted—

“(a) the sheriff who made the foreign travel order; or

(b) where the application is made by a chief constable, a sheriff whose sheriffdom includes any part of the area of the applicant's police force.”

(2) A record of evidence shall be kept on any summary application made by virtue of subsection (1)(c) above.

(3) The clerk of the court by which, by virtue of that subsection, a foreign travel order is made, varied, renewed or discharged shall cause a copy of, as the case may be—

(a) the order as so made, varied or renewed; or

(b) the interlocutor by which discharge is effected,

to be given to the person named in the order or sent to him by registered post or by the recorded delivery service (an acknowledgement or certificate of delivery of a copy so sent, issued by the Post Office, being sufficient evidence of the delivery of the copy on the day specified in the acknowledgement or certificate).

122 Offence: breach of foreign travel order

(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

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

(3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge (or, in Scotland, a probation order).

Risk of sexual harm orders

123 Risk of sexual harm orders: applications, grounds and effect

(1) A chief officer of police may by complaint to a magistrates' court apply for an order under this section (a “risk of sexual harm order”) in respect of a person aged 18 or over (“the defendant”) who resides in his police area or who the chief officer believes is in, or is intending to come to, his police area if it appears to the chief officer that—

(a) the defendant has on at least two occasions, whether before or after the commencement of this Part, done an act within subsection (3), and

(b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.

(2) An application under subsection (1) may be made to any magistrates' court whose commission area includes—

(a) any part of the applicant's police area, or

- (b) any place where it is alleged that the defendant acted in a way mentioned in subsection (1)(a).
- (3) The acts are—
- (a) engaging in sexual activity involving a child or in the presence of a child;
 - (b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
 - (c) giving a child anything that relates to sexual activity or contains a reference to such activity;
 - (d) communicating with a child, where any part of the communication is sexual.
- (4) On the application, the court may make a risk of sexual harm order if it is satisfied that—
- (a) the defendant has on at least two occasions, whether before or after the commencement of this section, done an act within subsection (3); and
 - (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.
- (5) Such an order—
- (a) prohibits the defendant from doing anything described in the order;
 - (b) has effect for a fixed period (not less than 2 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.

124 Section 123: interpretation

- (1) Subsections (2) to (7) apply for the purposes of section 123.
- (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 123(3).
- (3) “Child” means a person under 16.
- (4) “Image” means an image produced by any means, whether of a real or imaginary subject.
- (5) “Sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.
- (6) A communication is sexual if—
- (a) any part of it relates to sexual activity, or
 - (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the communication is sexual.
- (7) An image is sexual if—
- (a) any part of it relates to sexual activity, or
 - (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the image is sexual.

(8) In this section, as it applies to Northern Ireland, subsection (3) has effect with the substitution of “17” for “16”.

125 RSHOs: variations, renewals and discharges

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

(2) The persons are—

- (a) the defendant;
- (b) the chief officer of police on whose application the risk of sexual harm order was made;
- (c) the chief officer of police for the area in which the defendant resides;
- (d) a chief officer of police who believes that the defendant is in, or is intending to come to, his police area.

(3) Subject to subsections (4) and (5), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the risk of sexual harm order, that the court considers appropriate.

(4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and—

- (a) where the application is made by a chief officer of police, that chief officer, or
- (b) in any other case, the chief officer of police for the area in which the defendant resides.

(6) Section 124(2) applies for the purposes of this section.

(7) In this section “the appropriate court” means—

- (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.

126 Interim RSHOs

(1) This section applies where an application for a risk of sexual harm order (“the main application”) has not been determined.

(2) An application for an order under this section (“an interim risk of sexual harm order”)—

- (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.

(3) The court may, if it considers it just to do so, make an interim risk of sexual harm order, prohibiting the defendant from doing anything described in the order.

(4) Such an order—

- (a) has effect only for a fixed period, specified in the order;
- (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.

127 RSHOs and interim RSHOs: appeals

- (1) A defendant may appeal to the Crown Court—
- (a) against the making of a risk of sexual harm order;
 - (b) against the making of an interim risk of sexual harm order; or
 - (c) against the making of an order under section 125, 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 125(7) or 126(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).

128 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.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge.

129 Effect of conviction etc. of an offence under section 128

- (1) This section applies to a person (“the defendant”) who—
- (a) is convicted of an offence under section 128;
 - (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) is cautioned in respect of such an offence.
- (2) Where—
- (a) a defendant was a relevant offender immediately before this section applied to him, and

(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect, the defendant remains subject to the notification requirements.

(3) Where the defendant was not a relevant offender immediately before this section applied to him—

(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

(b) this Part applies to the defendant, subject to the modification set out in subsection (4).

(4) The “relevant date” is the date on which this section first applies to the defendant.

(5) In this section “relevant order” means—

(a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a risk of sexual harm order, that order;

(b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim risk of sexual harm order, any risk of sexual harm order made on the hearing of the application to which the interim risk of sexual harm order relates or, if no such order is made, the interim risk of sexual harm order.

Power to amend Schedules 3 and 5

130 Power to amend Schedules 3 and 5

(1) The Secretary of State may by order amend Schedule 3 or 5.

(2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.

(3) For the purposes of sections 106 and 116, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.

(4) An amendment is within this subsection if it—

(a) adds an offence,

(b) removes a threshold relating to an offence, or

(c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

General

131 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,

(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.)),
- (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)),
- (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,
- (g) a sentence under a custodial order within the meaning of section 71AA of, or paragraph 10(1) of Schedule 5A to, the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 43AA of, or paragraph 10(1) of Schedule 4A to, the Naval Discipline Act 1957 (c. 53),
- (h) a sentence of detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 208 of the Criminal Procedure (Scotland) Act 1995 or Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998,
- (i) a sentence of custody for life under section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),
- (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.

132 Offences with thresholds

- (1) This section applies to an offence which in Schedule 3 is listed subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (where a relevant finding has been made in respect of him) in respect of the finding (a “sentencing condition”).
- (2) Where an offence is listed if either a sentencing condition or a condition of another description is met, this section applies only to the offence as listed subject to the sentencing condition.
- (3) For the purposes of this Part (including in particular section 82(6))–
 - (a) a person is to be regarded as convicted of an offence to which this section applies, or
 - (b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,
 at the time when the sentencing condition is met.
- (4) In the following subsections, references to a foreign offence are references to an act which–
 - (a) constituted an offence under the law in force in a country outside the United Kingdom (“the relevant foreign law”), and
 - (b) would have constituted an offence to which this section applies (but not an offence, listed in Schedule 3, to which this section does not apply) if it had been done in any part of the United Kingdom.
- (5) In relation to a foreign offence, references to the corresponding UK offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.

(6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.

(7) Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding UK offence.

(8) Where (by virtue of an order under section 130 or otherwise) an offence is listed in Schedule 5 subject to a sentencing condition, this section applies to that offence as if references to Schedule 3 were references to Schedule 5.

(9) In this section, “relevant finding”, in relation to an offence, means—

- (a) a finding that a person is not guilty of the offence by reason of insanity, or
- (b) a finding that a person is under a disability and did the act charged against him in respect of the offence.

133 Part 2: general interpretation

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

“cautioned” means—

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

and “caution” is to be interpreted accordingly;

“community order” means—

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

“community supervision order” means an 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;

“country” includes territory;

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

(a) Part 3 of the Mental Health Act 1983, section 71 of the Mental Health (Scotland) Act 1984 (c. 36), Part 6 of the Criminal Procedure (Scotland) Act 1995 or Part III of the Mental Health (Northern Ireland) Order 1986;

(b) Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991; or

(c) regulations under subsection (3) of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957;

“guardianship order” means a guardianship order under section 37 of the Mental Health Act 1983 (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));

“home address” has the meaning given by section 83(7);

“interim notification order” has the meaning given by section 100(2);

“interim risk of sexual harm order” has the meaning given by section 126(2);

“interim sexual offences prevention order” has the meaning given by section 109(2);

“local police area” has the meaning given by section 88(3);

“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 97(1);

“notification period” has the meaning given by section 80(1);

“order for conditional discharge” has the meaning given by each of the following–

(a) section 12(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

(b) Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24));

(c) paragraph 2(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18);

(d) paragraph 2(1) of Schedule 5A to the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);

(e) paragraph 2(1) of Schedule 4A to the Naval Discipline Act 1957 (c. 53);

“parental responsibility” has the same meaning as in the Children Act 1989 (c. 41) or the Children (Northern Ireland) Order 1995 (S.I. 1995/ 755 (N.I. 2)), and “parental responsibilities” has the same meaning as in Part 1 of the Children (Scotland) Act 1995 (c. 36);

“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;

(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;

(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;

“relevant date” has the meaning given by section 82(6) (save in the circumstances mentioned in sections 98, 100, 107, 109 and 129);

“relevant offender” has the meaning given by section 80(2);

“restriction order” means–

- (a) an order under section 41 of the Mental Health Act 1983, section 57(2)(b) or 59 of the Criminal Procedure (Scotland) Act 1995 or Article 47(1) of the Mental Health (Northern Ireland) Order 1986;
- (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 (S.I. 1986/595 (N.I. 4)); or
- (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);

“risk of sexual harm order” has the meaning given by section 123(1);

“sexual offences prevention order” has the meaning given by section 106(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;

“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.

(2) Where under section 141 different days are appointed for the commencement of different provisions of this Part, a reference in any such provision to the commencement of this Part is to be read (subject to section 98(4)) as a reference to the commencement of that provision.

134 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);
- (b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conviction with absolute or conditional discharge deemed not to be a conviction);
- (c) section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (conviction with probation order or absolute discharge deemed not to be a conviction);
- (d) paragraph 5(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53) (conviction with absolute or conditional discharge or community supervision order deemed not to be a conviction).

(2) Subsection (1) applies only to convictions after the commencement of this Part.

(3) The provisions listed in subsection (1)(d) do not apply for the purposes of this Part to a conviction for an offence in respect of which a community supervision order is or has (before or after the commencement of this Part) been made.

135 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.

- (2) The enactments are—
- (a) section 37(3) of the Mental Health Act 1983 (c. 20);
 - (b) section 58(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46);
 - (c) Article 44(4) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).
- (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.
- (4) In section 133—
- (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
 - (ii) a reference to a restriction order treated as made by paragraph 2(1) of that Schedule;
 - (b) a reference to admission or detention under any provision of Part 6 of the Criminal Procedure (Scotland) Act 1995, and the reference to an order under section 57(2)(b) or 59 of that Act, include respectively—
 - (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—
 - (i) a reference to admission or detention, and
 - (ii) a reference to a direction,
 under section 46 of the Mental Health Act 1983, section 69 of the Mental Health (Scotland) Act 1984 (c. 36) or Article 52 of the Mental Health (Northern Ireland) Order 1986.

136 Part 2: Northern Ireland

- (1) This Part applies to Northern Ireland with the following modifications.
- (2) References to a chief officer of police are to be read as references to the Chief Constable of the Police Service of Northern Ireland.
- (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.

- (5) Subject to subsection (6), references to a magistrates' court are to be read as references to a court of summary jurisdiction.
- (6) References to a magistrates' court for the area in which the defendant resides are to be read as references to a court of summary jurisdiction for the petty sessions district which includes the area where the defendant resides.
- (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 101, 110(1), (2), (3)(b), (4) and (5), 119 and 127 to the Crown Court are to be read as references to a county court.
- (9) Any direction of the county court made under section 89(1) on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (appeals in other cases) (other than one directing that an application be re-heard by a court of summary jurisdiction) is, for the purposes of section 90, to be treated as if it were made by the court from which the appeal was brought and not by the county court.
- (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 108, 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.

PART 3

GENERAL

137 Service courts

- (1) In this Act—
- (a) a reference to a court order or a conviction or finding includes a reference to an order of or a conviction or finding by a service court,
 - (b) a reference to an offence includes a reference to an offence triable by a service court,
 - (c) “proceedings” includes proceedings before a service court, and
 - (d) a reference to proceedings for an offence under this Act includes a reference to proceedings for the offence under section 70 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 42 of the Naval Discipline Act 1957 (c. 53) for which the offence under this Act is the corresponding civil offence.
- (2) In sections 92 and 104(1), “court” includes a service court.
- (3) Where the court making a sexual offences prevention order is a service court—
- (a) sections 104(1)(a) and (4) to (6), 105, 109, 111 and 112 do not apply,
 - (b) in section 108, “the appropriate court” means the Crown Court in England and Wales, and
 - (c) in section 110(3)(a), the references to the Crown Court and Court of Appeal are references to the Crown Court and Court of Appeal in England and Wales.
- (4) In this section “service court” means a court-martial or Standing Civilian Court.

138 Orders and regulations

- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State is exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under section 21, 86 or 130 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Any other statutory instrument, except one containing an order under section 141, is to be subject to annulment in pursuance of a resolution of either House of Parliament.

139 Minor and consequential amendments

Schedule 6 contains minor and consequential amendments.

140 Repeals and revocations

The provisions listed in Schedule 7 are repealed or revoked to the extent specified.

141 Commencement

- (1) This Act, except this section and sections 138, 142 and 143, 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;
 - (b) include supplementary, incidental, saving or transitional provisions.

142 Extent, saving etc.

- (1) Subject to section 137 and to subsections (2) to (4), this Act extends to England and Wales only.
- (2) The following provisions also extend to Northern Ireland—
 - (a) sections 15 to 24, 46 to 54, 57 to 60, 66 to 72, 78 and 79,
 - (b) Schedule 2,
 - (c) Part 2, and
 - (d) sections 138, 141, 143 and this section.
- (3) The following provisions also extend to Scotland—
 - (a) Part 2 except sections 93 and 123 to 129 and Schedule 4, and
 - (b) sections 138, 141, 143 and this section.
- (4) Unless otherwise provided, any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.
- (5) 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 (c. 51).
- (6) For the purposes of the Scotland Act 1998 (c. 46), this Act is to be taken to be a pre-commencement enactment.

143 Short title

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

SCHEDULE 1**EXTENSION OF GENDER-SPECIFIC PROSTITUTION OFFENCES****Section 56***Sexual Offences Act 1956 (c. 69)***1**

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

*Street Offences Act 1959 (c. 57)***2**

In section 1(1) of the Street Offences Act 1959 (loitering or soliciting for purposes of prostitution), after “prostitute” insert “(whether male or female)”.

3

(1) Section 2 of that Act (application to court by woman cautioned for loitering or soliciting) is amended as follows.

(2) In the heading of the section, for “woman” substitute “person”.

(3) In subsection (1)–

- (a) for “woman” substitute “person”,
- (b) for “her” in each place substitute “his”, and
- (c) for “she” in each place substitute “he”.

(4) In subsection (2)–

- (a) for “woman” in the first place substitute “person”,
- (b) for “he” substitute “the chief officer”, and
- (c) for “woman” in the second place substitute “person cautioned”.

(5) In subsection (3), for “woman” substitute “person cautioned”.

*Sexual Offences Act 1985 (c. 44)***4**

(1) The Sexual Offences Act 1985 is amended as follows.

(2) For the heading “*Soliciting of women by men*” substitute “*Soliciting for the purpose of prostitution*”.

(3) In section 1 (kerb-crawling)–

- (a) for “man” substitute “person”,

- (b) for “a woman” substitute “another person”,
 - (c) for “women” in each place substitute “persons”, and
 - (d) for “the woman” substitute “the person”.
- (4) In section 2 (persistent soliciting of women for the purpose of prostitution)–
- (a) for the heading of the section substitute “Persistent soliciting”,
 - (b) for “man” substitute “person”,
 - (c) for “a woman” substitute “another person”, and
 - (d) for “women” substitute “persons”.
- (5) In section 4 (interpretation)–
- (a) omit subsections (2) and (3),
 - (b) for “man” substitute “person”,
 - (c) for “a woman” substitute “another person”,
 - (d) for “her” in the first place substitute “that person”, and
 - (e) for “her” in the second place substitute “that person's”.

SCHEDULE 2

SEXUAL OFFENCES TO WHICH SECTION 72 APPLIES

Section 72(7)

1 England and Wales

In relation to England and Wales, the following are sexual offences to which section 72 applies–

- (a) an offence under any of sections 5 to 15 (offences against children under 13 or under 16);
- (b) an offence under any of sections 1 to 4, 16 to 41, 47 to 50 and 61 where the victim of the offence was under 16 at the time of the offence;
- (c) an offence under section 62 or 63 where the intended offence was an offence against a person under 16;
- (d) an offence under–
 - (i) section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), or
 - (ii) section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child),
 in relation to a photograph or pseudo-photograph showing a child under 16.

2 Northern Ireland

(1) In relation to Northern Ireland, the following are sexual offences to which section 72 applies–

- (a) rape;
- (b) an offence under–
 - (i) section 52 of the Offences against the Person Act 1861 (c. 100) (indecent assault upon a female person), or
 - (ii) section 53 or 54 of that Act (abduction of woman);
- (c) an offence under–
 - (i) section 2 of the Criminal Law Amendment Act 1885 (c. 69) (procurement of girl under 21),

- (ii) section 3 of that Act (procuring defilement of woman using threats, etc.),
- (iii) section 4 of that Act of unlawful carnal knowledge of a girl under 14,
- (iv) section 5 of that Act of unlawful carnal knowledge of a girl under 17, or
- (v) section 7 of that Act (abduction of girl under 18);
- (d) an offence under–
 - (i) section 1 of the Punishment of Incest Act 1908 (c. 45) (incest by males), or
 - (ii) section 2 of that Act (incest by females);
- (e) an offence under–
 - (i) section 21 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.)) (causing or encouraging seduction, etc. of girl under 17), or
 - (ii) section 22 of that Act (indecent conduct towards a child);
- (f) 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);
- (g) 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);
- (h) an offence under Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (indecent photographs of children);
- (i) an offence under–
 - (i) Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (buggery),
 - (ii) Article 20 of that Order (assault with intent to commit buggery), or
 - (iii) Article 21 of that Order (indecent assault on a male);
- (j) an offence under–
 - (i) section 15 of this Act (meeting a child following sexual grooming etc.), or
 - (ii) any of sections 16 to 19 or 47 to 50 of this Act (abuse of trust, prostitution, child pornography).

(2) Sub-paragraph (1), apart from paragraphs (f) and (h), does not apply where the victim of the offence was 17 or over at the time of the offence.

3 General

A reference in paragraph 1 or 2(1) to an offence includes–

- (a) a reference to an attempt, conspiracy or incitement to commit that offence; and
- (b) a reference to aiding and abetting, counselling or procuring the commission of that offence.

SCHEDULE 3

SEXUAL OFFENCES FOR PURPOSES OF PART 2

Section 80

England and Wales

1

An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).

2

An offence under section 5 of that Act (intercourse with girl under 13).

3

An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.

4

An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.

5

An offence under section 12 of that Act (buggery) if–

- (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 (indecent between men) if–

- (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–

- (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–

- (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 16).

11

An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).

12

An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under 16 to have incestuous sexual intercourse).

13

An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and–

- (a) the conviction, finding or caution was before the commencement of this Part, or
- (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

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 and–

- (a) the conviction, finding or caution was before the commencement of this Part, or
- (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

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 and–

- (a) the conviction, finding or caution was before the commencement of this Part, or
- (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

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.

17

An offence under section 1 or 2 of this Act (rape, assault by penetration).

18

An offence under section 3 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;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–

- (a) sentenced to a term of imprisonment,
- (b) detained in a hospital, or
- (c) made the subject of a community sentence of at least 12 months.

19

An offence under any of sections 4 to 6 of this Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).

20

An offence under section 7 of this Act (sexual assault of a child under 13) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

21

An offence under any of sections 8 to 12 of this Act (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults).

22

An offence under section 13 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.

23

An offence under section 14 of this Act (arranging or facilitating the commission of a child sex offence) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.

24

An offence under section 15 of this Act (meeting a child following sexual grooming etc).

25

An offence under any of sections 16 to 19 of this Act (abuse of a position 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.

26

An offence under section 25 or 26 of this Act (familial child sex offences) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

27

An offence under any of sections 30 to 37 of this Act (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).

28

An offence under any of sections 38 to 41 of this Act (care workers for persons with mental disorder) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, 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.

29

An offence under section 47 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

30

An offence under section 61 of this Act (administering a substance with intent).

31

An offence under section 62 or 63 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

32

An offence under section 64 or 65 of this Act (sex with an adult relative) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

33

An offence under section 66 of this Act (exposure) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,

- (b) detained in a hospital, or
- (c) made the subject of a community sentence of at least 12 months.

34

An offence under section 67 of this Act (voyeurism) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

35

An offence under section 69 or 70 of this Act (intercourse with an animal, sexual penetration of a corpse) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

Scotland

36

Rape.

37

Clandestine injury to women.

38

Abduction of woman or girl with intent to rape.

39

Assault with intent to rape or ravish.

40

Indecent assault.

41

Lewd, indecent or libidinous behaviour or practices.

42

Shameless indecency, if a person (other than the offender) involved in the offence was under 18.

43

Sodomy, unless every person involved in the offence was 16 or over and was a willing participant.

44

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.

45

An offence under section 52 of the Civic Government (Scotland) Act 1982 (c. 45) (taking and distribution of indecent images of children).

46

An offence under section 52A of that Act (possession of indecent images of children).

47

An offence under section 106 of the Mental Health (Scotland) Act 1984 (c. 36) (protection of mentally handicapped females).

48

An offence under section 107 of that Act (protection of patients).

49

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.

50

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.

51

An offence under section 3 of that Act (intercourse with child under 16 by person in position of trust).

52

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.

53

An offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16).

54

An offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse).

55

An offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16).

56

An offence under section 13(5) of that Act (homosexual offences) unless every person involved (whether in the offence or in the homosexual act) was 16 or over and was a willing participant.

57

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.

58

An offence under section 311(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (non-consensual sexual acts).

59

An offence under section 313(1) of that Act (persons providing care services: sexual offences).

60

An offence in Scotland other than is mentioned in paragraphs 36 to 59 if the court, in imposing sentence or otherwise disposing of the case, determines for the purposes of this paragraph that there was a significant sexual aspect to the offender's behaviour in committing the offence.

Northern Ireland

61

Rape.

62

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

- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
- (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

63

An offence under section 53 or 54 of that Act (abduction of woman by force for unlawful sexual intercourse) if the offender—

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

64

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.

65

An offence under section 62 of that Act of assault with intent to commit buggery if the victim or (as the case may be) other party was under 18, and the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

66

An offence under section 62 of that Act of indecent assault upon a male person if–

- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

67

An offence under section 2 of the Criminal Law Amendment Act 1885 (c. 69) (procuration) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

68

An offence under section 3 of that Act (procuring defilement of woman by threats or fraud, etc.) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

69

An offence under section 4 of that Act of unlawful carnal knowledge of a girl under 14 if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

70

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

71

An offence under section 7 of that Act (abduction of girl under 18) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

72

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

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

73

An offence under section 1 of the Punishment of Incest Act 1908 (c. 45) (incest by males), if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim or (as the case may be) other party 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.

74

An offence under section 2 of that Act (incest by females), if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim or (as the case may be) other party 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.

75

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) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

76

An offence under section 22 of that Act (indecent conduct towards a child) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

77

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) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

78

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, and the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

79

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) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

80

An offence under Article 122 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (offences against women suffering from severe mental handicap).

81

An offence under Article 123 of that Order (offences against patients) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, 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.

82

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) if the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

83

An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), 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 12 months.

84

An offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (buggery) if–

- (a) the offender was 20 or over, and
- (b) the victim or (as the case may be) other party was under 17.

85

An offence under Article 20 of that Order (assault with intent to commit buggery) if the victim was under 18 and the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.

86

An offence under Article 21 of that Order (indecent assault upon a male) if–

- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

87

An offence under section 15 of this Act (meeting a child following sexual grooming etc.).

88

An offence under any of sections 16 to 19 of this Act (abuse of trust) 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 12 months.

89

An offence under section 47 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 17 and the offender–

- (a) was 18 or over, or
- (b) is or has been sentenced in respect of the offence to a term of imprisonment of at least 12 months.

90

An offence under section 66 of this Act (exposure) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

91

An offence under section 67 of this Act (voyeurism) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case—
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been—
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

92

An offence under section 69 or 70 of this Act (intercourse with an animal, sexual penetration of a corpse) if—

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

*Service offences***93**

(1) An offence under—

- (a) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18),
- (b) section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), or
- (c) section 42 of the Naval Discipline Act 1957 (c. 53),

of which the corresponding civil offence (within the meaning of that Act) is an offence listed in any of paragraphs 1 to 35.

(2) A reference in any of those paragraphs to being made the subject of a community sentence of at least 12 months is to be read, in relation to an offence under an enactment referred to in sub-paragraph (1), as a reference to being sentenced to a term of service detention of at least 112 days.

*General***94**

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 36 to 43, a reference to aiding, abetting, counselling or procuring the commission of that offence.

95

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.

96

In this Schedule “community sentence” has—

- (a) in relation to England and Wales, the same meaning as in the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and
- (b) in relation to Northern Ireland, the same meaning as in the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)).

97

For the purposes of paragraphs 14, 44 and 78—

- (a) a person is to be taken to have been under 16 at any time if it appears from the evidence as a whole that he was under that age at that time;
- (b) section 7 of the Protection of Children Act 1978 (c. 37) (interpretation), subsections (2) to (2C) and (8) of section 52 of the Civic Government (Scotland) Act 1982 (c. 45), and Article 2(2) and (3) 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.

98

A determination under paragraph 60 constitutes part of a person's sentence, within the meaning of the Criminal Procedure (Scotland) Act 1995 (c. 46), for the purposes of any appeal or review.

SCHEDULE 4

PROCEDURE FOR ENDING NOTIFICATION REQUIREMENTS FOR ABOLISHED HOMOSEXUAL OFFENCES

Section 93

1 Scope of Schedule

This Schedule applies where a relevant offender is subject to the notification requirements of this Part as a result of a conviction, finding or caution in respect of an offence under—

- (a) section 12 or 13 of the Sexual Offences Act 1956 (c. 69) (buggery or indecency between men), or
- (b) section 61 of the Offences against the Person Act 1861 (c. 100) or section 11 of the Criminal Law Amendment Act 1885 (c. 69) (corresponding Northern Ireland offences).

2 Application for decision

(1) The relevant offender may apply to the Secretary of State for a decision as to whether it appears that, at the time of the offence, the other party to the act of buggery or gross indecency—

- (a) where paragraph 1(a) applies, was aged 16 or over,
- (b) where paragraph 1(b) applies, was aged 17 or over,

and consented to the act.

(2) An application must be in writing and state—

- (a) the name, address and date of birth of the relevant offender,
- (b) his name and address at the time of the conviction, finding or caution,
- (c) so far as known to him, the time when and the place where the conviction or finding was made or the caution given and, for a conviction or finding, the case number,

(d) such other information as the Secretary of State may require.

(3) An application may include representations by the relevant offender about the matters mentioned in sub-paragraph (1).

3 Decision by Secretary of State

(1) In making the decision applied for, the Secretary of State must consider—

- (a) any representations included in the application, and
- (b) any available record of the investigation of the offence and of any proceedings relating to it that appears to him to be relevant,

but is not to seek evidence from any witness.

(2) On making the decision the Secretary of State must—

- (a) record it in writing, and
- (b) give notice in writing to the relevant offender.

4 Effect of decision

(1) If the Secretary of State decides that it appears as mentioned in paragraph 2(1), the relevant offender ceases, from the beginning of the day on which the decision is recorded under paragraph 3(2)(a), to be subject to the notification requirements of this Part as a result of the conviction, finding or caution in respect of the offence.

(2) Sub-paragraph (1) does not affect the operation of this Part as a result of any other conviction, finding or caution or any court order.

5 Right of appeal

(1) If the Secretary of State decides that it does not appear as mentioned in paragraph 2(1), and if the High Court gives permission, the relevant offender may appeal to that court.

(2) On an appeal the court may not receive oral evidence.

(3) The court—

- (a) if it decides that it appears as mentioned in paragraph 2(1), must make an order to that effect,
- (b) otherwise, must dismiss the appeal.

(4) An order under sub-paragraph (3)(a) has the same effect as a decision of the Secretary of State recorded under paragraph 3(2)(a) has under paragraph 4.

(5) There is no appeal from the decision of the High Court.

6 Interpretation

(1) In this Schedule a reference to an offence includes—

- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

(2) In the case of an attempt, conspiracy or incitement, references in paragraph 2 to the act of buggery or gross indecency are references to the act of buggery or gross indecency to which the attempt, conspiracy or incitement related (whether or not that act occurred).

7 Transitional provision

Until the coming into force of the repeal by this Act of Part 1 of the Sex Offenders Act 1997 (c. 51), this Schedule has effect as if references to this Part of this Act were references to Part 1 of that Act.

SCHEDULE 5

OTHER OFFENCES FOR PURPOSES OF PART 2

Section 104

England and Wales

1

Murder.

2

Manslaughter.

3

Kidnapping.

4

False imprisonment.

5

An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).

6

An offence under section 16 of that Act (threats to kill).

7

An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).

8

An offence under section 20 of that Act (malicious wounding).

9

An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).

10

An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).

11

An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).

12

An offence under section 27 of that Act (abandoning children).

13

An offence under section 28 of that Act (causing bodily injury by explosives).

14

An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).

15

An offence under section 30 of that Act (placing explosives with intent to do bodily injury).

16

An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).

17

An offence under section 32 of that Act (endangering the safety of railway passengers).

18

An offence under section 35 of that Act (injuring persons by furious driving).

19

An offence under section 37 of that Act (assaulting officer preserving wreck).

20

An offence under section 38 of that Act (assault with intent to resist arrest).

21

An offence under section 47 of that Act (assault occasioning actual bodily harm).

22

An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).

23

An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).

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).

26

An offence under section 1 of the Infanticide Act 1938 (c. 36) (infanticide).

27

An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).

28

An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).

29

An offence under section 17(1) of that Act (use of firearm to resist arrest).

30

An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act).

31

An offence under section 18 of that Act (carrying a firearm with criminal intent).

32

An offence under section 8 of the Theft Act 1968 (c. 60) (robbery or assault with intent to rob).

33

An offence under section 9 of that Act of burglary with intent to—
(a) inflict grievous bodily harm on a person, or
(b) do unlawful damage to a building or anything in it.

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).

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).

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).

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).

48

An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).

49

An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).

50

An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).

51

An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).

52

An offence under section 9 of that Act (hijacking of ships).

53

An offence under section 10 of that Act (seizing or exercising control of fixed platforms).

54

An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).

55

An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).

56

An offence under section 13 of that Act (offences involving threats).

57

An offence under section 4 of the Protection from Harassment Act 1997 (c. 40) (putting people in fear of violence).

58

An offence under section 29 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults).

59

An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986 (c. 64)).

60

An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).

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 47 of this Act, where the victim or (as the case may be) other party was 16 or over.

63

An offence under any of sections 48 to 53 or 57 to 59 of this Act.

Scotland

64

Murder.

65

Culpable homicide.

66

Assault.

67

Assault and robbery.

68

Abduction.

69

Plagium.

70

Wrongful imprisonment.

71

Threatening personal violence.

72

Breach of the peace inferring personal violence.

73

Wilful fireraising.

74

Culpable and reckless fireraising.

75

Mobbing and rioting.

76

An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).

77

An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosives with intent to endanger life or property).

78

An offence under section 12 of the Children and Young Persons (Scotland) Act 1937 (c. 37) (cruelty to persons under 16).

79

An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).

80

An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).

81

An offence under section 17(1) of that Act (use of firearm to resist arrest).

82

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).

83

An offence under section 18 of that Act (carrying a firearm with criminal intent).

84

An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).

85

An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).

86

An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).

87

An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).

88

An offence under section 4 of that Act (offences in relation to certain dangerous articles).

89

An offence under section 105 of the Mental Health (Scotland) Act 1984 (c. 36) (ill-treatment of patients).

90

An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).

91

An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).

92

An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).

93

An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).

94

An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).

95

An offence under section 9 of that Act (hijacking of ships).

96

An offence under section 10 of that Act (seizing or exercising control of fixed platforms).

97

An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).

98

An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).

99

An offence under section 13 of that Act (offences involving threats).

100

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).

101

An offence under section 7 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (procuring).

102

An offence under section 9 of that Act (permitting girl to use premises for intercourse).

103

An offence under section 11 of that Act (trading in prostitution and brothel-keeping).

104

An offence under section 12 of that Act (allowing child to be in brothel).

105

An offence under section 13(9) of that Act (living on earnings of male prostitution etc.).

106

An offence under section 50A of that Act (racially-aggravated harassment).

107

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.

108

An offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity, war crimes and related offences as specified in Schedule 1 to that Act).

109

An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc.).

110

An offence to which section 74 of that Act applies (offences aggravated by religious prejudice).

111

An offence under section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (ill-treatment and wilful neglect of mentally disordered person).

Northern Ireland

112

Murder.

113

Manslaughter.

114

Kidnapping.

115

Riot.

116

Affray.

117

False imprisonment.

118

An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).

119

An offence under section 16 of that Act (threats to kill).

120

An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).

121

An offence under section 20 of that Act (malicious wounding).

122

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).

123

An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).

124

An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).

125

An offence under section 27 of that Act (abandoning children).

126

An offence under section 28 of that Act (causing bodily injury by explosives).

127

An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).

128

An offence under section 30 of that Act (placing explosives with intent to do bodily injury).

129

An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).

130

An offence under section 32 of that Act (endangering the safety of railway passengers).

131

An offence under section 35 of that Act (injuring persons by furious driving).

132

An offence under section 37 of that Act (assaulting officer preserving wreck).

133

An offence under section 47 of that Act of assault occasioning actual bodily harm.

134

An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).

135

An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).

136

An offence under section 25 of the Criminal Justice (Northern Ireland) Act 1945 (c. 15) (child destruction).

137

An offence under section 1 of the Infanticide Act (Northern Ireland) 1939 (c. 5) (infanticide).

138

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).

139

An offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (cruelty to children).

140

An offence under section 8 of the Theft Act (Northern Ireland) 1969 (c. 16) (robbery or assault with intent to rob).

141

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.

142

An offence under section 10 of that Act (aggravated burglary).

143

An offence of arson under Article 3 of the Criminal Damage Northern Ireland) Order 1977 (S.I. 1977/426 (N.I. 4)).

144

An offence under Article 3(2) of that Order (destroying or damaging property) other than an offence of arson.

145

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).

146

An offence under Article 17A of that Order (possession of firearm with intent to cause fear of violence).

147

An offence under Article 18(1) of that Order (use of firearm to resist arrest).

148

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).

149

An offence under Article 19 of that Order (carrying a firearm with criminal intent).

150

An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).

151

An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).

152

An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).

153

An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).

154

An offence under section 4 of that Act (offences in relation to certain dangerous articles).

155

An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).

156

An offence under Article 121 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4) (ill-treatment of patients)).

157

An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).

158

An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).

159

An offence under section 9 of that Act (hijacking of ships).

160

An offence under section 10 of that Act (seizing or exercising control of fixed platforms).

161

An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).

162

An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).

163

An offence under section 13 of that Act (offences involving threats).

164

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).

165

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).

166

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).

167

An offence under section 66 of the Police (Northern Ireland) Act 1998 (c. 32) (assaulting or obstructing a constable etc.).

168

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).

169

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.

170

An offence under section 47 of this Act, where the victim or (as the case may be) other party was 17 or over.

171

An offence under any of sections 48 to 53 or 57 to 59 of this Act.

Service offences

172

An offence under—

- (a) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18),
- (b) section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), or
- (c) section 42 of the Naval Discipline Act 1957 (c. 53),

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.

General

173

A reference in a preceding paragraph to an offence includes—

- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

174

A reference in a preceding paragraph to a person's age is a reference to his age at the time of the offence.

SCHEDULE 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Section 139

Vagrancy Act 1824 (c. 83)

1

In section 4 of the Vagrancy Act 1824 (rogues and vagabonds) except so far as extending to Northern Ireland, omit the words from “every person wilfully” to “female”.

2

In section 4 of the Vagrancy Act 1824 as it extends to Northern Ireland, omit the words from “wilfully, openly, lewdly” to “any female; or”.

Town Police Clauses Act 1847 (c. 89)

3

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

Offences against the Persons Act 1861 (c. 100)

4

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

Criminal Law Amendment Act 1885 (c. 69)

5

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

Vagrancy Act 1898 (c. 39)

6

The Vagrancy Act 1898 ceases to have effect.

Children and Young Persons Act 1933 (c. 12)

7

In Schedule 1 to the Children and Young Persons Act 1933 (offences to which special provisions of that Act apply), for the entry relating to offences under the Sexual Offences Act 1956 (c. 69) substitute—

“Any offence against a child or young person under any of sections 1 to 41, 47 to 53, 57 to 61, 66 and 67 of the Sexual Offences Act 2003, or any attempt to commit such an offence. Any offence under section 62 or 63 of the Sexual Offences Act 2003 where the intended offence was an offence against a child or young person, or any attempt to commit such an offence.”

Visiting Forces Act 1952 (c. 67)

8

(1) Paragraph 1 of the Schedule to the Visiting Forces Act 1952 (offences referred to in section 3 of that Act) is amended as follows.

(2) Before sub-paragraph (a) insert—

“(za) rape and buggery (offences under the law of Northern Ireland);”.

(3) In sub-paragraph (a), omit “rape” and “buggery”.

(4) In sub-paragraph (b), after paragraph (xii) insert—

“(xiii) Part 1 of the Sexual Offences Act 2003.”

Army Act 1955 (3 & 4 Eliz. 2 c. 18)

9

In section 70(4) of the Army Act 1955 (person not to be charged with an offence committed in the United Kingdom where corresponding civil offence is within the subsection)—

(a) omit “or rape”, and

(b) after “International Criminal Court Act 2001” insert “or an offence under section 1 of the Sexual Offences Act 2003 (rape)”.

Air Force Act 1955 (3 & 4 Eliz. 2.c. 19)

10

In section 70(4) of the Air Force Act 1955 (person not to be charged with an offence committed in the United Kingdom where corresponding civil offence is within the subsection)—

(a) omit “or rape”, and

(b) after “International Criminal Court Act 2001” insert “or an offence under section 1 of the Sexual Offences Act 2003 (rape)”.

Sexual Offences Act 1956 (c. 37)

11

In the Sexual Offences Act 1956, omit—

(a) sections 1 to 7, 9 to 17, 19 to 32 and 41 to 47 (offences), and

(b) in Schedule 2 (prosecution, punishment etc.), paragraphs 1 to 32.

*Naval Discipline Act 1957 (c. 53)***12**

In section 48(2) of the Naval Discipline Act 1957 (courts-martial not to have jurisdiction as regards certain offences committed in the United Kingdom)–

- (a) omit “or rape”, and
- (b) before “committed on shore” insert “or an offence under section 1 of the Sexual Offences Act 2003 (rape)”.

*Mental Health Act 1959 (c. 72)***13**

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)***14**

The Indecency with Children Act 1960 ceases to have effect.

*Sexual Offences Act 1967 (c. 60)***15**

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).

*Firearms Act 1968 (c. 27)***16**

In Schedule 1 to the Firearms Act 1968 (offences to which section 17(2) of that Act applies), for paragraph 6 substitute–

“6.

Offences under any of the following provisions of the Sexual Offences Act 2003–

- (a) section 1 (rape);
- (b) section 2 (assault by penetration);
- (c) section 4 (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
- (d) section 5 (rape of a child under 13);
- (e) section 6 (assault of a child under 13 by penetration);

- (f) section 8 (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (g) section 30 (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;
- (h) section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.”

Theft Act 1968 (c. 60)

17

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

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

18

- (1) The Children and Young Persons Act (Northern Ireland) 1968 is amended as follows.
- (2) In section 21 (causing or encouraging seduction or prostitution of girl under 17), omit–
 - (a) in subsection (1), “or the prostitution of,” and
 - (b) in subsection (2), “or the prostitution of,” and “or who has become a prostitute,”.
- (3) In Schedule 1 (offences against children and young persons to which special provisions of that Act apply), at the end insert–

“Any offence against a child or young person under any of sections 15 to 19, 47 to 59, 66 and 67 of the Sexual Offences Act 2003 or any attempt to commit such an offence.”

Rehabilitation of Offenders Act 1974 (c. 53)

19

In section 7 of the Rehabilitation of Offenders Act 1974 (limitations on rehabilitation under that Act), in subsection (2), for paragraph (bb) substitute–

“(bb) in any proceedings under Part 2 of the Sexual Offences Act 2003, or on appeal from any such proceedings;”.

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

20

- (1) The Sexual Offences (Amendment) Act 1976 is amended as follows.
- (2) In section 1 (meaning of “rape”), omit subsection (2).
- (3) In section 7 (citation, interpretation etc.)–

(a) for subsection (2) substitute—

“(2) In this Act—

(a) “a rape offence” means any of the following—

- (i) an offence under section 1 of the Sexual Offences Act 2003 (rape);
- (ii) an offence under section 2 of that Act (assault by penetration);
- (iii) an offence under section 4 of that Act (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
- (iv) an offence under section 5 of that Act (rape of a child under 13);
- (v) an offence under section 6 of that Act (assault of a child under 13 by penetration);
- (vi) an offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (vii) an offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;
- (viii) an offence under section 31 of that Act (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (ix) an attempt, conspiracy or incitement to commit an offence within any of paragraphs (i) to (vii);
- (x) aiding, abetting, counselling or procuring the commission of such an offence or an attempt to commit such an offence.

(b) the use in any provision of the word “man” without the addition of the word “boy” does not prevent the provision applying to any person to whom it would have applied if both words had been used, and similarly with the words “woman” and “girl”.”;

(b) omit subsection (3).

Criminal Law Act 1977 (c. 45)

21

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

Internationally Protected Persons Act 1978 (c. 17)

22

In section 1 of the Internationally Protected Persons Act 1978 (attacks and threats of attacks on protected persons)—

- (a) in subsection (1)(a)–
 - (i) omit “rape;”;
 - (ii) after “Explosive Substances Act 1883” insert “or an offence listed in subsection (1A)”;
- (b) after subsection (1) insert–

“(1A) The offences mentioned in subsection (1)(a) are–

- (a) in Scotland or Northern Ireland, rape;
- (b) an offence under section 1 or 2 of the Sexual Offences Act 2003;
- (c) an offence under section 4 of that Act, where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
- (d) an offence under section 5 or 6 of that Act;
- (e) an offence under section 8 of that Act, where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (f) an offence under section 30 of that Act, where the touching involved penetration within subsection (3)(a) to (d) of that section;
- (g) an offence under section 31 of that Act, where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.”

Suppression of Terrorism Act 1978 (c. 26)

23

- (1) Schedule 1 to the Suppression of Terrorism Act 1978 (offences for the purposes of that Act) is amended as follows.
- (2) In paragraph 3, after “Rape” insert “under the law of Scotland or Northern Ireland”.
- (3) For paragraph 9 substitute–

“9.

An offence under any of the following provisions of the Sexual Offences Act 2003–

- (a) sections 1 or 2 (rape, assault by penetration);
- (b) section 4 (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
- (c) section 5 or 6 (rape of a child under 13, assault of a child under 13 by penetration);
- (d) section 8 (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (e) section 30 (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;
- (f) section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.”.

*Protection of Children Act 1978 (c. 37)***24**

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,”.

*Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))***25**

In Article 8 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (limitations on rehabilitation under that Order), in paragraph (2), for sub-paragraph (bb) substitute–

“(bb) in any proceedings under Part 2 of the Sexual Offences Act 2003, or on appeal from any such proceedings;”.

*Magistrates' Courts Act 1980 (c. 43)***26**

- (1) The Magistrates' Courts Act 1980 is amended as follows.
- (2) In section 103 (evidence of persons under 14 in committal proceedings), in subsection (2)(c), after “the Protection of Children Act 1978” insert “or Part 1 of the Sexual Offences Act 2003”.
- (3) In Schedule 7 (consequential amendments), omit paragraph 18.

*Criminal Justice Act 1982 (c. 48)***27**

In the Criminal Justice Act 1982, in Part 2 of Schedule 1 (offences excluded from early release provisions), after the entry relating to the Proceeds of Crime Act 2002 (c. 29) insert–

“SEXUAL OFFENCES ACT 2003

Sections 1 and 2 (rape, assault by penetration).

Section 4 (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section.

Sections 5 and 6 (rape of a child under 13, assault of a child under 13 by penetration).

Section 8 (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.

Section 30 (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section.

Section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.”

Police and Criminal Evidence Act 1984 (c. 60)

28

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 80(7) (sexual offences for purposes of compellability of spouse), after “the Protection of Children Act 1978” insert “or Part 1 of the Sexual Offences Act 2003”.
- (3) In Schedule 1A (specific arrestable offences), after paragraph 26 insert–

“Sexual Offences Act 2003

27.

An offence under–

- (a) section 66 of the Sexual Offences Act 2003 (exposure);
- (b) section 67 of that Act (voyeurism);
- (c) section 69 of that Act (intercourse with an animal);
- (d) section 70 of that Act (sexual penetration of a corpse); or
- (e) section 71 of that Act (sexual activity in public lavatory).”

- (4) In Part 2 of Schedule 5 (serious arrestable offences), after the entry relating to the Obscene Publications Act 1959 (c. 66) insert–

“Sexual Offences Act 2003

18.

Section 1 (rape).

19.

Section 2 (assault by penetration).

20.

Section 4 (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section.

21.

Section 5 (rape of a child under 13).

22.

Section 6 (assault of a child under 13 by penetration).

23.

Section 8 (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.

24.

Section 30 (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section.

25.

Section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.”

*Criminal Justice Act 1988 (c. 33)***29**

(1) The Criminal Justice Act 1988 is amended as follows.

(2) In section 32 (evidence through television links), in subsection (2)(c), after “the Protection of Children Act 1978” insert “or Part 1 of the Sexual Offences Act 2003”.

(3) In section 160(1) (possession of indecent photograph of child), at the beginning insert “Subject to subsection (1A),”.

*Criminal Justice Act 1991 (c. 53)***30**

In section 34A of the Criminal Justice Act 1991 (power to release short-term prisoners on licence), in subsection (2)(da), for “Part I of the Sex Offenders Act 1997” substitute “Part 2 of the Sexual Offences Act 2003”.

*Sexual Offences (Amendment) Act 1992 (c.34)***31**

(1) Section 2 of the Sexual Offences (Amendment) Act 1992 (offences to which that Act applies) is amended as follows.

(2) In subsection (1) (England and Wales)–

(a) after paragraph (d) insert–

“(da) any offence under any of the provisions of Part 1 of the Sexual Offences Act 2003 except section 64, 65, 69 or 71;”;

(b) in paragraph (e) for “(d)” substitute “(da)”.

(3) In subsection (3) (Northern Ireland)–

(a) after paragraph (hh) insert–

“(ha) any offence under any of sections 15 to 21, 47 to 53, 57 to 59, 66, 67, 70 and 72 of the Sexual Offences Act 2003.”;

(b) in paragraph (i) for “(hh)” substitute “(ha)”.

*Criminal Justice and Public Order Act 1994 (c. 33)***32**

(1) The Criminal Justice and Public Order Act 1994 is amended as follows.

(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)

(2) In section 25 (no bail if previous conviction for certain offences), for subsection (2)(d) and (e) substitute—

- “(d) rape under the law of Scotland or Northern Ireland;
- (e) an offence under section 1 of the Sexual Offences Act 1956 (rape);
- (f) an offence under section 1 of the Sexual Offences Act 2003 (rape);
- (g) an offence under section 2 of that Act (assault by penetration);
- (h) an offence under section 4 of that Act (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
- (i) an offence under section 5 of that Act (rape of a child under 13);
- (j) an offence under section 6 of that Act (assault of a child under 13 by penetration);
- (k) an offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (l) an offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;
- (m) an offence under section 31 of that Act (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
- (n) an attempt to commit an offence within any of paragraphs (d) to (m).”

(3) Omit sections 142 to 144.

(4) In Schedule 10 (consequential amendments) omit paragraphs 26 and 35(2) and (4).

Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)

33

In section 5(6) of the Criminal Law (Consolidation) (Scotland) Act 1995 (which relates to construing the expression “a like offence”), after paragraph (c) insert

“or

- (cc) any of sections 9 to 14 of the Sexual Offences Act 2003;”.

Criminal Injuries Compensation Act 1995 (c. 53)

34

In section 11 of the Criminal Injuries Compensation Act 1995 (approval by parliament of certain alterations to the Tariff or provisions of the Scheme)—

- (a) in subsection (3)(d), after “rape” insert “or an offence under section 30 of the Sexual Offences Act 2003”;
- (b) after subsection (8) insert—

“(9) In subsection (3)“rape”, in relation to anything done in England and Wales, means an offence under section 1 or 5 of the Sexual Offences Act 2003.”

*Sexual Offences (Conspiracy and Incitement) Act 1996 (c.29)***35**

In the Schedule to the Sexual Offences (Conspiracy and Incitement) Act 1996 (sexual offences for the purposes of that Act), in paragraph 1–

(a) for sub-paragraph (1)(b) substitute–

“(b) an offence under any of sections 1 to 12, 14 and 15 to 26 of the Sexual Offences Act 2003.”;

(b) in sub-paragraph (2), for “In sub-paragraph (1)(a), sub-paragraphs (i), (iv), (v) and (vi) do” substitute “Sub-paragraph (1)(b) does”.

*Sexual Offences (Protected Material) Act 1997 (c. 39)***36**

In the Schedule to the Sexual Offences (Protected Material) Act 1997 (sexual offences for the purposes of that Act)–

(a) after paragraph 5 insert–

“5A.

Any offence under any provision of Part 1 of the Sexual Offences Act 2003 except section 64, 65, 69 or 71.”;

(b) in paragraph 6, for “1 to 5” substitute “5 and 5A”.

*Sex Offenders Act 1997 (c. 51)***37**

The Sex Offenders Act 1997 ceases to have effect.

*Crime and Disorder Act 1998 (c. 37)***38**

(1) The Crime and Disorder Act 1998 is amended as follows.

(2) Omit sections 2, 2A, 2B and 3 (sex offender orders and interim orders).

(3) In section 4 (appeals against orders)–

(a) in subsection (1), omit “a sex offender order or an order under section 2A above”, and

(b) in subsection (3), omit “or 2(6) above”.

(4) Omit section 20.

(5) In section 21 (procedural provisions with respect to orders)–

(a) omit subsection (2);

(b) in subsection (4)–

(i) omit “or (2)”; and

(ii) for “either of those subsections” substitute “that subsection”;

(c) in subsection (5), omit “or 20”;

- (d) in subsection (6), omit “and sex offender orders” and “or 20(4)(a)”;
- (e) in subsection (7)(b)(i), omit “or, as the case may be, chief constable”;
- (f) omit subsections (7A) and (7B); and
- (g) in subsection (10), omit “or 20”.

(6) Omit section 21A.

(7) In section 22 (offences in connection with breach of orders), omit subsections (6) and (7).

(8) In Schedule 8 (minor and consequential amendments), omit paragraph 144.

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

39

In paragraph 1 of Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998–

- (a) omit sub-paragraphs (c), (e) and (j);
- (b) after sub-paragraph (l) insert–

“(m) Section 69 of the Sexual Offences Act 2003.”

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

40

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

Youth Justice and Criminal Evidence Act 1999 (c. 23)

41

(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) In section 35 (cross examination of child witnesses), in subsection (3)(a), after sub-paragraph (v) insert

“or

(vi) Part 1 of the Sexual Offences Act 2003;”.

(3) In section 62 (meaning of “sexual offence” etc.), for subsection (1) substitute–

“(1) In this Part “sexual offence” means any offence under Part 1 of the Sexual Offences Act 2003.”

Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8))

42

(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) In Article 3(1) (meaning of “sexual offence”), after sub-paragraph (gg) insert–

“(ga) any offence under any of sections 15 to 21, 47 to 53, 57 to 59, 66, 67, and 70 to 72 of the Sexual Offences Act 2003.”

(3) In Article 23 (protection of child complainants and other child witnesses)–

(a) in paragraph (3), after sub-paragraph (c) insert–

“(cc) any offence under any of sections 15 to 21, 47 to 53, 57 to 59, 66 to 72 of the Sexual Offences Act 2003;”;

(b) in paragraph (4)(a), after “(3)(a)” insert “or (cc)”.

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

43

(1) The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.

(2) In section 91 (power to detain offenders under 18 convicted of certain offences), for subsection (1)(b) and (c) substitute–

“(b) an offence under section 3 of the Sexual Offences Act 2003 (in this section, “the 2003 Act”) (sexual assault); or

(c) an offence under section 13 of the 2003 Act (child sex offences committed by children or young persons); or

(d) an offence under section 25 of the 2003 Act (sexual activity with a child family member); or

(e) an offence under section 26 of the 2003 Act (inciting a child family member to engage in sexual activity).”

(3) In section 109 (life sentence for second serious offence), in subsection (5), after paragraph (f) insert–

“(fa) an offence under section 1 or 2 of the Sexual Offences Act 2003 (in this section, “the 2003 Act”) (rape, assault by penetration);

(fb) an offence under section 4 of the 2003 Act (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;

(fc) an offence under section 5 or 6 of the 2003 Act (rape of a child under 13, assault of a child under 13 by penetration);

(fd) an offence under section 8 of the 2003 Act (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;

(fe) an offence under section 30 of the 2003 Act (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;

(ff) an offence under section 31 of the 2003 Act (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;

(fg) an attempt to commit an offence within any of paragraphs (fa) to (ff);”.

(4) In section 161 (definition of “sexual offence” etc.), in subsection (2)–

(a) after paragraph (f) insert–

“(fa) an offence under any provision of Part 1 of the Sexual Offences Act 2003 except section 52, 53 or 71;”;

(b) in paragraph (g), for “(a) to (f)” substitute “(f) and (fa)”.

(5) In Schedule 9 (consequential amendments), omit paragraphs 189, 190 and 193.

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

44

(1) The Criminal Justice and Courts Services Act 2000 is amended as follows.

(2) Omit sections 39 and 66.

(3) In section 68 (sexual and violent offenders for the purposes of risk assessment etc.), in subsection (2), for “Part I of the Sex Offenders Act 1997” substitute “Part 2 of the Sexual Offences Act 2003”.

(4) In section 69 (duties of local probation boards in connection with victims of certain offences), in subsection (8)(b), for “Part I of the Sex Offenders Act 1997” substitute “Part 2 of the Sexual Offences Act 2003”.

(5) In Schedule 4 (offences against children for the purposes of disqualification orders)–

(a) in paragraph 1, for sub-paragraph (m) substitute–

“(m) an offence under any of sections 5 to 26 and 47 to 50 of the Sexual Offences Act 2003 (offences against children).”;

(b) in paragraph 2, for sub-paragraph (n) substitute–

“(n) an offence under any of sections 1 to 4, 30 to 41, 52, 53, 57 to 61, 66 and 67 of the Sexual Offences Act 2003.”;

(c) in paragraph 3, after sub-paragraph (s) insert–

“(sa) he commits an offence under section 62 or 63 of the Sexual Offences Act 2003 (committing an offence or trespassing with intent to commit a sexual offence) in a case where the intended offence was an offence against a child.”

(6) Omit Schedule 5.

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

45

(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).

(4) Omit sections 3 and 4 (abuse of position of trust) except so far as extending to Scotland.

- (5) Omit section 5 (notification requirements for offenders under section 3).
- (6) In section 6 (meaning of “sexual offence” for the purposes of certain enactments), omit subsection (1).

Proceeds of Crime Act 2002 (c. 29)

46

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) In paragraph 4 of Schedule 2 (lifestyle offences: England and Wales), for sub-paragraph (2) substitute–

“(2) An offence under any of sections 57 to 59 of the Sexual Offences Act 2003 (trafficking for sexual exploitation).”

- (3) For paragraph 8 of that Schedule substitute–

“Prostitution and child sex

8

- (1) An offence under section 33 or 34 of the Sexual Offences Act 1956 (keeping or letting premises for use as a brothel).
- (2) An offence under any of the following provisions of the Sexual Offences Act 2003–
 - (a) section 14 (arranging or facilitating commission of a child sex offence);
 - (b) section 48 (causing or inciting child prostitution or pornography);
 - (c) section 49 (controlling a child prostitute or a child involved in pornography);
 - (d) section 50 (arranging or facilitating child prostitution or pornography);
 - (e) section 52 (causing or inciting prostitution for gain);
 - (f) section 53 (controlling prostitution for gain).”
- (4) In paragraph 4 of Schedule 5 (lifestyle offences: Northern Ireland), for sub-paragraph (2) substitute–

“(2) An offence under any of sections 57 to 59 of the Sexual Offences Act 2003 (trafficking for sexual exploitation).”

- (5) In paragraph 8 of that Schedule–
 - (a) after sub-paragraph (1) insert–

“(1A) An offence under any of the following provisions of the Sexual Offences Act 2003–

- (a) section 48 (causing or inciting child prostitution or pornography);
- (b) section 49 (controlling a child prostitute or a child involved in pornography);
- (c) section 50 (arranging or facilitating child prostitution or pornography);
- (d) section 52 (causing or inciting prostitution for gain);
- (e) section 53 (controlling prostitution for gain).”;

- (b) omit sub-paragraphs (2) to (5).

Adoption and Children Act 2002 (c. 38)

47

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 64 and 65 of the Sexual Offences Act 2003 (sex with an adult relative).”

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

48

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

Criminal Justice (Scotland) Act 2003 (asp 7)

49

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

Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(S.I. 2003/417 (N.I. 4))

50

In paragraph 1 of Schedule 1 to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, after sub-paragraph (n) insert—

- “(o) any offence under any of sections 15 to 21 and 47 to 50 of the Sexual Offences Act 2003.”.

Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10))

51

In Schedule 2 to the Access to Justice (Northern Ireland) Order 2003, in paragraph 2(d)—

- (a) omit sub-paragraph (x),
- (b) omit “or” at the end of sub-paragraph (xi),
- (c) at the end of sub-paragraph (xii) insert

“or

(xiii) under section 89, 90, 97, 100, 104, 108, 109, 114, 118, 123, 125 or 126 of the Sexual Offences Act 2003;”.

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

52

In the Criminal Justice (Northern Ireland) Order 2003, omit—

- (a) in Article 19(4), sub-paragraph (a) and
- (b) in Schedule 1, paragraphs 1, 2, 20 and 21.

SCHEDULE 7

REPEALS AND REVOCATIONS

Section 140

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Vagrancy Act 1824 (c. 83)	In section 4 except so far as extending to Northern Ireland, the words from “every person wilfully” to “female”. In section 4 as it extends to Northern Ireland, the words from “wilfully, openly, lewdly” to “any female; or”.
Town Police Clauses Act 1847 (c. 89)	In section 28 the words “every person who wilfully and indecently exposes his person:”.
Offences Against the Person Act 1861 (c. 100)	Sections 61 and 62.
Criminal Law Amendment Act 1885 (c. 69)	Section 2(2) to (4). Section 11.
Vagrancy Act 1898 (c. 39)	The whole Act.
Criminal Law Amendment Act 1912 (c. 20)	Section 7.
Visiting Forces Act 1952 (c. 67)	In the Schedule, in paragraph 1(a) the words “rape, buggery”; paragraph 1(b)(viii).
Army Act 1955 (3 & 4 Eliz. 2 c. 18)	In section 70(4), the words “or rape”.
Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)	In section 70(4), the words “or rape”.
Sexual Offences Act 1956 (c. 69)	Sections 1 to 7. Sections 9 to 17. Sections 19 to 32. Sections 41 to 47. In Schedule 2, paragraphs 1 to 32.
Naval Discipline Act 1957 (c. 53)	In section 48(2), the words “or rape”.
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.

(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)

Reference	Extent of repeal or revocation
	Section 5. Sections 7 and 8. Section 10.
Theft Act 1968 (c. 60)	In section 9(2), the words “or raping any person”.
Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))	In section 21, in subsection (1) the words “or the prostitution of,” and in subsection (2) the words “or the prostitution of,” and “or who has become a prostitute,”.
Criminal Justice Act 1972 (c. 71)	Section 48.
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).
Criminal Law Act 1977 (c. 45)	Section 54.
National Health Service Act 1977 (c. 49)	In Schedule 15, paragraph 29.
Internationally Protected Persons Act 1978 (c. 17)	In section 1(1)(a), the word “rape,”.
Suppression of Terrorism Act 1978 (c. 26)	In section 4(1)(a), the word “11,”. In Schedule 1, paragraph 11.
Magistrates' Courts Act 1980 (c. 43)	In section 103(2)(c), the words from “the Indecency with Children Act 1960” to “1977 or”. In Schedule 1, paragraphs 23, 27 and 32. In Schedule 7, paragraph 18.
Criminal Attempts Act 1981 (c. 47)	In section 4(5), paragraph (a) and the word “and” immediately after it.
Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))	In Article 29(1), the words from “or with an offence under section 1(1)(b) of the Vagrancy Act 1898” to “homosexual act”. In Schedule 2, paragraphs 5(c), 10(c) and 22.
Criminal Justice Act 1982 (c. 48)	In Schedule 1, in Part 1, paragraph 2, and in Part 2, the cross-heading immediately before paragraph 12, and paragraphs 12 to 14.
Mental Health (Amendment) Act 1982 (c. 51)	In Schedule 3, paragraphs 29 and 34.
Homosexual Offences (Northern Ireland) Order 1982 (S.I. 1982/1536 (N.I. 19))	In Article 2(2), in the definition of “homosexual act”, the words from “, an act of gross indecency” to the end. Article 3. Article 7. Article 8. Article 10(2)(a) and (b). In Article 11(1), the words “, or gross indecency with,”. Article 12(1). Article 13. In the Schedule, paragraphs 3, 4 and 7.
Mental Health Act 1983 (c. 20)	In Schedule 4, paragraph 15.
Police and Criminal Evidence Act 1984 (c. 60)	In section 80(7), the words from “the Sexual Offences Act 1956” to “1977 or”. In Schedule 1A, paragraph 4 and the cross-heading immediately before it. In Part 1 of Schedule 5, paragraphs 4 and 6 to 8. In Part 2 of Schedule 5, paragraph 2 and the cross-heading immediately before it.

Reference	Extent of repeal or revocation
	In Part 1 of Schedule 6, paragraph 9.
Sexual Offences Act 1985 (c. 44)	Section 3. Section 4(2) and (3). Section 5(2).
Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4))	In Schedule 5, in Part II, the entry relating to the Homosexual Offences (Northern Ireland) Order 1982.
Criminal Justice Act 1988 (c. 33)	In section 32(2)(c), the words from “the Sexual Offences Act 1956” to “1977 or”.
Children Act 1989 (c. 49)	In Schedule 12, paragraphs 11 to 14 and 16.
Criminal Justice and Public Order Act 1994 (c. 33)	Sections 142 to 144. In Schedule 10, paragraphs 26 and 35(2) and (4).
Criminal Procedure and Investigations Act 1996 (c. 25)	Section 56(2)(a).
Sexual Offences (Conspiracy and Incitement) Act 1996 (c. 29)	In the Schedule, paragraph 1(1)(a).
Sexual Offences (Protected Material) Act 1997 (c. 39)	In the Schedule, paragraphs 1 to 4.
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”. Section 20. In Section 21, subsection (2); in subsection (4), the words “or (2)”;
Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9))	In Schedule 1, paragraph 1(c), (e) and (j).
Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)).	Articles 6, 6A, 6B and 7.
Youth Justice and Criminal Evidence Act 1999 (c. 23)	In section 35(3)(a), sub-paragraphs (i) to (iv).
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	Section 161(2)(a) to (e). In Schedule 9, paragraphs 189, 190 and 193.
Care Standards Act 2000 (c. 14)	In Schedule 4, paragraph 2.
Criminal Justice and Courts Services Act 2000 (c. 43)	Section 39. Section 66. In Schedule 4, paragraphs 1(c) to (i), 2(g) to (m) and 3(b) to (r). Schedule 5.

Reference	Extent of repeal or revocation
Sexual Offences (Amendment) Act 2000 (c. 44)	Section 1(1), (2) and (4). Section 2(1) to (3) and (5). Sections 3 and 4 except so far as extending to Scotland. Section 5. Section 6(1).
Armed Forces Act 2001 (c. 19)	In Schedule 6, paragraphs 2 and 59.
Proceeds of Crime Act 2002 (c. 29)	In Schedule 5, paragraph 8(2) to (5).
Police Reform Act 2002 (c. 30)	Sections 67 to 74.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Sections 145 and 146.
Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10))	In Schedule 2, in paragraph 2(d), sub-paragraph (x) and the word “or” at the end of sub-paragraph (xi).
Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13))	In Article 19(4), sub-paragraph (a). In Schedule 1, paragraphs 1, 2, 20 and 21.

EXPLANATORY NOTES

(This note is not part of the Order)

INTRODUCTION

1. These explanatory notes relate to the Sexual Offences Act 2003 which received Royal Assent on 20 November 2003. They have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the act. they are not, and are not meant to be, a comprehensive description of the act. so where a section or part of a section does not seem to require any explanation or comment, none is given.
3. Part 1 of the Act extends only to England and Wales, with the exception of sections 15–24, 46–54, 57–60, 66 to 72, 78 and 79 which extend to Northern Ireland. Part 2 of the Act extends to England, Wales, Northern Ireland and, save for sections 93 and 123–129, Scotland.

BACKGROUND

4. The Government published the White Paper *Protecting the Public: strengthening protection against sex offenders and reforming the law on sexual offences* (Cm 5668) in November 2002. It is available on the Home Office website at www.sexualoffencesbill.homeoffice.gov.uk. The White Paper set out the Government's intentions for reforming the law on sexual offences and for strengthening measures to protect the public from sexual offending. The Government's proposals were based on the recommendations made by two review teams and subsequent public consultation. The recommendations made by the review teams were published in two documents: *Review of Part 1 of the Sex Offenders Act 1997* (2001) and *Setting the Boundaries* (2000).

(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)

SUMMARY

5. The Act is in three Parts:

6. Part 1 makes new provision about sexual offences. It covers the non-consensual offences of rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent. It defines “consent” and “sexual” and sets out evidential and conclusive presumptions about consent. It covers child sex offences and offences involving an abuse of a position of trust towards a child. Familial child sex offences and offences involving adult relatives are provided for, as are offences designed to give protection to persons with a mental disorder. The age of a “child” in the Protection of Children Act 1978 has been amended to 18, and defences are provided for in limited cases where the child is 16 or over and the defendant is the child's partner. A limited defence is also introduced to the offence of “making” an indecent photograph or pseudo-photograph of a child where the purpose of the “making” is to combat crime. This Part also covers offences relating to prostitution, child pornography, and trafficking. It provides for preparatory offences, such as administering a substance with intent to commit a sexual offence, and a number of miscellaneous offences, such as voyeurism and intercourse with an animal. Section 72 provides that there is extra-territorial jurisdiction for many acts which, if committed in England and Wales or Northern Ireland, would amount to offences under Part 1 committed against a child under 16 or (in the case of Northern Ireland) under 17. The Part extends to England and Wales and some provisions also extend to Northern Ireland.

7. Part 2 contains measures for protecting the public from sexual harm. Part 1 of the Sex Offenders Act 1997 has been re-enacted with a number of amendments. A notification order enabling the notification requirements to be applied to offenders with convictions abroad has been created. Sex offender orders (s.2 of Crime and Disorder Act 1998) and restraining orders (s.5 of Sex Offenders Act 1997) have been combined into a new civil preventative order — a sexual offences prevention order. Risk of sexual harm orders, specifically designed to protect children from sexual harm, have been created, as have foreign travel orders, which can be used to prevent an offender with a conviction for a sex offence against a child from travelling to countries where he is at risk of abusing children. Part 2 extends to England and Wales and Northern Ireland, and, save for Schedule 4 and the risk of sexual harm orders, to Scotland.

8. Part 3 contains general provisions relating to the Act, including minor and consequential amendments and commencement provisions.

TERRITORIAL APPLICATION: WALES

9. The Act does not affect the powers of the National Assembly for Wales.

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

Section 1: Rape

10. Section 1 makes it an offence for a person (A) intentionally to penetrate with his penis the vagina, anus or mouth of another person (B) without that person's consent if A does not reasonably believe that B consents. Subsection (2) provides that whether a belief in consent is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents. This and the offence in section 5 are the only offences that can only be committed by a male, because they relate to penile penetration. Subsection (3) provides that sections

75 and 76 apply to this offence. Sections 75 and 76 deal with evidential and conclusive presumptions about consent.

Section 2: Assault by penetration

11. Section 2 covers the situation where a person (A) intentionally penetrates the vagina or anus of another person (B). The offence is committed where the penetration is by a part of A's body (for example, a finger) or anything else, (for example, a bottle); where the penetration is sexual (as defined in section 78), so that it excludes, for example, intimate searches and medical procedures; where B does not consent to the penetration; and where A does not reasonably believe that B consents. What is said in the note to section 1 about whether a belief in consent is reasonable also applies here. This and all subsequent offences in the Bill save the offence at section 5 can be committed by a male or female, against a male or female. Subsection (3) provides that sections 75 and 76 apply to this offence. Sections 75 and 76 deal with evidential and conclusive presumptions about consent.

Section 3: Sexual assault

12. Section 3 makes it an offence for a person (A) intentionally to touch sexually another person (B) without that person's consent, if he does not reasonably believe that B consents. What is said in the note to section 1 about whether a belief in consent is reasonable also applies here. The meaning of "touching" is explained at section 79(8); "sexual" is defined at section 78. The effect of these sections is that the offence covers a wide range of behaviour including, for example, rubbing up against someone's private parts through the person's clothes for sexual gratification. Subsection (3) provides that sections 75 and 76 apply to this offence. Sections 75 and 76 deal with evidential and conclusive presumptions about consent.

Section 4: Causing a person to engage in sexual activity without consent

13. Section 4 makes it an offence for a person (A) intentionally to cause another person (B) to engage in sexual activity (as defined in section 78) without that person's consent, if he does not reasonably believe that B consents. What is said in the note to section 1 about whether a belief in consent is reasonable also applies here. A may cause B to engage in sexual activity with A (for example, a woman who compels a man to penetrate her); on B himself (for example, where one person forces someone else to masturbate himself); or with another person (for example, where one person makes someone else masturbate a third person). Subsection (3) provides that sections 75 and 76 apply to this offence. Sections 75 and 76 deal with evidential and conclusive presumptions about consent.

Section 5: Rape of a child under 13

14. Section 5 makes it an offence for a person intentionally to penetrate with his penis the vagina, anus or mouth of a child under the age of 13. Whether or not the child consented to this act is irrelevant.

Section 6: Assault of a child under 13 by penetration

15. Section 6 makes it an offence for a person intentionally to penetrate sexually the vagina or anus of a child under the age of 13 with a part of his body, such as a finger, or with anything else, such as bottle or other object. The penetration must be sexual, as defined in section 78. Whether or not the child consented to the act is irrelevant.

Section 7: Sexual assault of a child under 13

16. Section 7 makes it an offence for a person to touch sexually a child under the age of 13. The meanings of “touching” and “sexual” are the same as for section 3. Whether or not the child consented to the act is irrelevant.

Section 8: Causing or inciting a child under 13 to engage in sexual activity

17. Section 8 makes it an offence for a person intentionally to cause or incite a child under the age of 13 to engage in sexual activity. In relation to caused sexual activity, the offence covers the same situations as does the offence under section 4 except that, for this offence, whether or not the child consented to engaging in the sexual activity is irrelevant. This section also covers the situation where incitement takes place but the sexual activity itself does not. For example, a person may incite a child to engage in sexual activity with him (for example, where a person incites the child to masturbate him), or on the child himself (for example, where a person incites the child to strip) or with a third person (for example, where someone incites the child to have sexual intercourse with his friend).

Section 9: Sexual activity with a child

18. Section 9 makes it an offence for a person (A) aged 18 or over to intentionally engage in sexual touching of a child under 16. Where the child is aged 13 or over but under 16, the prosecution must prove that A did not reasonably believe that he was 16 or over. “Touching” is explained at section 79(8) and covers all forms of physical contact including penetration; “sexual” is defined at section 78. Whether or not the child consented to the activity is irrelevant.

Section 10: Causing or inciting a child to engage in sexual activity

19. Section 10 makes it an offence for a person (A) aged 18 or over, intentionally to cause or incite a child aged under 16 to engage in sexual activity (as defined at section 78). Where the child is aged 13 or over, but under 16, the prosecution must prove that A did not reasonably believe that he was 16 or over. The sexual activity which is caused or incited may be activity with A (for example, where A causes or incites the child to have sexual intercourse with him), on the child himself (for example, where A causes or incites the child to strip for A's sexual gratification) or with a third person (for example, where A causes or incites the child to have sexual intercourse with A's friend). The incitement constitutes an offence whether or not the activity incited actually takes place. Whether or not the child consented to the activity caused or incited, or to the incitement, is irrelevant.

Section 11: Engaging in sexual activity in the presence of a child

20. Section 11 makes it an offence for a person (A) aged 18 or over intentionally to engage in sexual activity (as defined in section 78), in order to gain sexual gratification, when a child aged under 16 is present or in a place from which A can be observed. Where the child is aged 13 or over but under 16, the prosecution must prove that A did not reasonably believe that he was 16 or over. The offence is committed if A knows or believes that the child is aware that he is engaging in the activity or intends that the child should be aware of this. This offence would cover, for example, A masturbating himself in front of a child, or A masturbating himself in the presence of the child to whom he is describing what he is doing, perhaps because the child is covering his face. It would also cover the situation where A performs a sexual act in a place where he knows that he can be seen by a child, for example via a webcam.

Section 12: Causing a child to watch a sexual act

21. Section 12 makes it an offence for a person (A) intentionally to cause a child aged under 16, for the purpose of the sexual gratification of A, to watch a third person engaging in sexual activity or to look at an image of a person engaging in sexual activity. Where the child is aged 13 or over but under 16, the prosecution must prove that A did not reasonably believe that he was 16 or over. The definition of sexual activity is at section 78. A person who, for his own sexual gratification, forces a child to watch two people have sex, or who forces a child to watch a pornographic film, would commit this offence.

Section 13: Child sex offences committed by children or young persons

22. Section 13 makes it an offence for a person aged under 18 to do anything that would be an offence under any of sections 9 to 12 if he were aged 18 or over. The purpose of this section is to provide a lower penalty where the offender is aged under 18. In practice (although there is no provision about this in the Act) decisions on whether persons under 18 should be charged with child sex offences will be made by Crown Prosecutors in accordance with the principles set out in the Code for Crown Prosecutors. In deciding whether it is in the public interest to prosecute these offences, where there is enough evidence to provide a realistic prospect of conviction, prosecutors may take into consideration factors such as the ages of the parties; the emotional maturity of the parties; whether they entered into a sexual relationship willingly; any coercion or corruption by a person; and the relationship between the parties and whether there was any existence of a duty of care or breach of trust.

Section 14: Arranging or facilitating commission of a child sex offence

23. Section 14 makes it an offence for a person (A) intentionally to arrange or facilitate any action which he intends to do, intends another person to do or believes that another person will do, in any part of the world, which will involve an offence being committed against a child under any of sections 9 to 13.

24. An example of the first two limbs of the offence is where A approaches an agency requesting the agency to procure a child for the purpose of sexual activity either with himself or with a friend. The offence is committed whether or not the sex takes place. An example of the third limb of the offence is where A intentionally drives another person (X) to meet a child with whom he knows X is going to have sexual activity. A may not intend X to have child sexual activity, but he believes that X will do so if he meets that child.

25. Subsection (2) provides an exception for anyone whose actions are intended to protect the child. Subsection (3) defines the concept of acting for the protection of a child as acting to protect a child from pregnancy or sexually transmitted infection, to protect the physical safety of a child or to promote the emotional wellbeing of a child by the giving of advice. The exception only applies if the person is not causing or encouraging an activity that would constitute an offence under sections 9 to 13 and if he is not acting for the purpose of obtaining sexual gratification. An example would be where a health worker believes that a person is having sex with a child under 16. He advises that it is unlawful to have sex with children under 16 but supplies him with condoms because he believes that the person will otherwise have sex with the child without using any protection.

Section 15: Meeting a child following sexual grooming etc.

26. Section 15 makes it an offence for a person (A) aged 18 or over to meet intentionally, or to travel with the intention of meeting, a child aged under 16 in any part of the world, if he has met or communicated with that child on at least two earlier occasions, and intends to commit a “relevant

offence” against that child either at the time of the meeting or on a subsequent occasion. An offence is not committed if A reasonably believes the child to be 16 or over.

27. The section is intended to cover situations where an adult (A) establishes contact with a child through, for example, meetings, telephone conversations or communications on the Internet, and gains the child's trust and confidence so that he can arrange to meet the child for the purpose of committing a “relevant offence” against the child. The course of conduct prior to the meeting that triggers the offence may have an explicitly sexual content, such as A entering into conversations with the child about the sexual acts he wants to engage her in when they meet, or sending images of adult pornography. However, the prior meetings or communication need not have an explicitly sexual content and could for example simply be A giving the child swimming lessons or meeting her incidentally through a friend.

28. The offence will be complete either when, following the earlier communications, A meets the child or travels to meet the child with the intent to commit a relevant offence against the child. The intended offence does not have to take place.

29. The evidence of A's intent to commit an offence may be drawn from the communications between A and the child before the meeting or may be drawn from other circumstances, for example if A travels to the meeting with ropes, condoms and lubricants.

30. Subsection (2)(a) provides that A's previous meetings or communications with the child can have taken place in or across any part of the world. This would cover for example A emailing the child from abroad, A and the child speaking on the telephone abroad, or A meeting the child abroad. The travel to the meeting itself must at least partly take place in England or Wales or Northern Ireland.

Section 16: Abuse of position of trust: sexual activity with a child

Section 17: Abuse of position of trust: causing or inciting a child to engage in sexual activity

Section 18: Abuse of position of trust: sexual activity in the presence of a child

Section 19: Abuse of position of trust: causing a child to watch a sexual act

31. These sections re-enact and amend the offence of abuse of position of trust under sections 3 and 4 of the Sexual Offences (Amendment) Act 2000. The sections each provide that it is an offence for a person (A) aged 18 or over intentionally to behave in certain sexual ways in relation to a child aged under 18, where A is in a position of trust (as defined in section 21) in respect of the child. The prohibited behaviour in each of the sections is identical to that prohibited by the child sex offences in sections 9, 10, 11 and 12 respectively, except that for the abuse of position of trust offences, the child may be 16 or 17.

32. Except where the child is under 13, one of the requirements of the offence is that A does not reasonably believe that the child is 18 or over, and A is subject to an evidential burden in relation to this aspect of the offence (subsection (3) of each section). An evidential burden means that, unless A shows from the evidence that there is an arguable case as to whether he reasonably believed the child to be 18 or over, it is presumed that he did not reasonably believe this. Where the child is under 13, the offence is committed regardless of any belief A might have in relation to the child's age.

33. The effect of subsection (1)(d) (or in the case of section 18, subsection (1)(e)) is that, where A is in a position of trust by virtue of one of the first four categories of position of trust set out at section 21, the prosecution must prove, in addition to the other requirements, that he knew or could

reasonably have been expected to know of the facts placing him in a position of trust with the child. Subsection (4) of each section puts an evidential burden on A in this respect. This means that, unless A shows from the evidence that there is an arguable case as to whether or not he knew or could reasonably have been expected to know of the facts giving rise to the position of trust, it is presumed that he did know or could reasonably have been expected to know them. The first four categories of position of trust all concern situations where A looks after persons under 18 at an institution and the child is at that institution. Subsection (4) is designed to cover cases where, for example, the institution where A works is very large or has a number of different sites, and A may not therefore know that the child is at the institution.

Section 20: Abuse of position of trust: acts done in Scotland

34. Section 20 provides that any act that would, if done in England, Wales or Northern Ireland, constitute an offence under sections 16 to 19 of this Act, also constitutes an offence under those sections if carried out in Scotland.

Section 21: Positions of trust

Section 22: Positions of trust: interpretation

35. Section 21 defines “position of trust” for the purposes of the offences in sections 16, 17, 18 and 19. Subsection (1)(b) of section 21 also provides a power for the Secretary of State to specify further conditions that will constitute a position of trust. The power is subject to the affirmative parliamentary procedure (section 137(2)).

36. The conditions in subsections (2) to (5) use the term “looks after”. This term is defined, in broad terms, at subsection (2) of section 22.

37. Subsection (2) applies where the child is detained following conviction for a criminal offence, for example in a secure training centre or a young offenders institution.

38. Subsection (3) applies to a wide range of settings in which young people are accommodated, including foster care; residential care (local authority, private or voluntary, including secure accommodation); and semi-independent accommodation.

39. Subsection (4) covers places where young people with medical conditions, physical or learning disabilities, mental illness or behavioural problems might be accommodated and includes NHS, private and voluntary accommodation.

40. Subsection (5) covers the situation where the child is receiving education in an educational institution. This concept is further explained at subsection (4) of section 22. The effect of that subsection is that where the child is registered at a college but receives education at another college with which the former has arrangements, A will still be in a position of trust in relation to the child if A works at the former college.

41. Subsection (6) covers children's guardians appointed under Northern Ireland legislation.

42. Subsection (7) includes persons who, in their capacity as, for example, Connexions Personal Advisers (“CPAs”) look after children on an individual basis. The definition of looking after a child on an individual basis, for the purposes of this subsection, and subsections (10) (11) and (13) is at section 22(3). The reference at this definition to contact “by other means” (section 22(3)) is designed to include persons such as CPAs whose normal means of providing support to children is by telephone or via the Internet.

43. Subsection (8) covers those who have unsupervised contact with children in the context of their duties under section 20 or 21 of the Children Act 1989 and equivalent legislation in Northern Ireland. Such persons arrange accommodation for children who, for whatever reason, are not being looked after by those who have parental responsibility for them, and check that their welfare is being looked after once such accommodation has been found. They include local authority staff such as social workers and family centre staff who visit the accommodation in which a child has been placed in order to oversee the child's welfare.

44. Subsection (9) covers persons who have unsupervised contact with children by virtue of their appointment as children and family reporters under section 7 of the Children Act 1989 or under Article 4 of the Children (Northern Ireland) Order 1995. These persons present reports for the court relating to children's welfare.

45. Subsection (10) covers personal advisers who look after children on an individual basis (as defined at section 22(3)) having been appointed by a local authority under the Children Act 1989. Such personal advisers generally provide help and support to children aged 16–17 who have been in local authority care.

46. Subsection (11) covers persons who supervise children pursuant to a care order, supervision order or educational supervision order under various provisions in the Children Act 1989 or the Children (Northern Ireland) Order 1995 and, in that capacity, look after children on an individual basis (again, as defined at section 22(3)).

47. Subsection (12) covers a range of persons who, in the course of their duties, regularly have unsupervised contact with children. These are officers of the Children and Family Court Advisory and Support Service appointed to act as children's guardians under section 41(1) of the Children Act 1989; persons appointed as children's guardians in relation to adoption proceedings under Rules 6 and 18 of the Adoption Rules 1984; and persons appointed under Rule 9.5 of the Family Proceedings Rules 1991 to act as children's guardians ad litem in private law Children Act 1989 proceedings and cases determining wardship.

48. Subsection (13) includes adults who supervise children under bail supervision, a community sentence (for example a probation order, combination order, community service order, supervision order, attendance centre order) and children under conditions following release from detention resulting from a criminal conviction (e.g. those released on licence from a young offenders institution) This would include members of Youth Offending Teams provided they have sufficient contact and connection with the child or someone providing counselling or drug rehabilitation services to the child pursuant to the terms of a court order.

Section 23: Sections 16 to 19: **marriage exception**

49. Section 23 provides that A will not commit an offence under sections 16 to 19 if he can prove that, at the time of the sexual activity, B was aged 16 or over and he and B were lawfully married to each other.

Section 24: Sections 16 to 19: **sexual relationships which pre-date position of trust**

50. Section 24 provides A with a defence to abuse of position of trust offences if he can prove that his sexual relationship with B pre-dated his relationship of trust with B. So if A could prove that he and B had a sexual relationship before A went to work at the school at which B is a pupil, he would not commit an offence by continuing that sexual relationship. The effect of subsection (2)

is to limit this to the situation where the sexual relationship that pre-dated the relationship of trust was lawful, so it would not cover for example a relationship with a child of under 16.

Section 25: Sexual activity with a child family member

51. Section 25 makes it an offence for a person (A) intentionally to touch a family member (as defined in sections 27) aged under 18, where the touching is sexual. The meaning of touching is explained at section 79(8). It covers all forms of physical contact including sexual intercourse. The definition of sexual is at section 78. Additional elements of the offence are that A must know, or be in a position where he could reasonably be expected to know, that the child is his family member and that, except where the child is under 13, he does not reasonably believe that the child is 18 or over.

52. So if, for example, A has never met the child before, and so does not know, and could not reasonably be expected to know, that she is his sister, and reasonably believes she is over 18, he will not commit this offence by engaging in sexual activity with her, even though she is in fact his sister, and only 14.

53. In relation to both these last two elements of the offence A is under an evidential burden (subsections (2) and (3)). This means that unless A shows from the evidence that there is an arguable case about these issues, it is presumed that he did not reasonably believe the child to be 18 or over, and that he knew or could reasonably have been expected to know that the child was his family member. Whether or not the child consented to the touching is irrelevant.

Section 26: Inciting a child family member to engage in sexual activity

54. Section 26 makes it an offence for a person (A) intentionally to incite a child family member (defined in section 27) aged under 18 either to touch A or to allow himself to be touched by A, where the touching is sexual. The meaning of touching is at section 79(8). It covers all forms of physical contact including sexual intercourse. The definition of sexual is at section 78. An example of this offence would be where A encourages B to masturbate A or cajoles B into agreeing to have sex with him. The offence is committed whether or not the sexual touching takes place. So where in the above example A has encouraged B to masturbate him, but the masturbation does not take place because another person enters the room, the offence is nevertheless complete. The two additional elements of the offence (and the evidential burdens) described in relation to section 25 apply to this section too (subsections (1)(d) and (e), (2) and (3)). Whether or not the child consented to the incitement, or the activity being incited is irrelevant.

Section 27: Family relationships

55. Section 27 lists the relationships relevant for the purposes of sections 25 and 26. Section 67 of the Adoption and Children Act 2002 provides that an adoptive child is the child of the adoptive parents and not the biological parents. Adoptive relationships are therefore covered by subsection (1)(a). The categories at subsections (2) to (4) also apply (by virtue of subsection (1)(b)) to the adoptive child's biological family relationships. These relationships fall into three categories.

56. The first category of relationships is listed in subsection (2). Definitions of the relationships mentioned at subsection (2) are at subsection (5)(a) to (c). Persons whose relationships fall within this category will always be each other's family members for the purposes of sections 25 and 26. Even where there is no blood relationship and the relationship can therefore cease — as in the case of foster parents — this offence may be committed for as long as the victim is under 18. So for

example even where A is no longer a child's foster parent, A will commit an offence by having sex with that child while the child is under 18.

57. The second category of relationships is listed in subsection (3). The relationship between A and a child will only fall within this category for the purposes of sections 25 and 26 if A lives, or has lived, in the same household as the child or is, or has been, regularly involved in caring for, training or supervising or being in sole charge of the child. Subsection (3)(a) relates to step-parents, (3)(b) relates to cousins, (3)(c) relates to step-siblings and (3)(d) relates to foster-siblings. The definition of foster parent is at subsection (5)(c) and the definition of step-parent, stepbrother and stepsister is at subsection (5)(e). An example within this category would be a person (A) who lives or has lived in the same house as his first cousin who is under 18. If the cousins had never lived in the same household, A would not commit this offence by having a sexual relationship with the cousin. As with the first category, if the relationship ceases (for example A ceases to be the partner of the child's mother), the offence will still be committed if A has sex with the child while the child is under 18.

58. An example of the third category of relationships (at subsection (4)) would be where a child is living in the same household as an au pair who looks after him. This category of relationship differs from the other two categories in that an offence will not be committed if A has a sexual relationship with the child after the relationship has ceased, even where the child is under 18. So, in this example, if the au pair were to leave the household and/or cease to have responsibility for the child, then the relationship would no longer be relevant for the purposes of sections 25 or 26

Section 28: Sections 25 and 26: **marriage exception**

59. This section provides A with a defence to the offences under sections 25 and 26 if he can prove that at the time of the act the child was aged 16 or over and he was lawfully married to the child.

Section 29: Sections 25 and 26: **sexual relationships which pre-date family relationships**

60. This section provides A with a defence to the offences under sections 25 and 26 if he can prove that his sexual relationship with the child pre-dated the start of the familial relationship as defined in section 27. Thus, for example, where two divorced people meet because their respective 16 and 17 year old children are engaged in a sexual relationship and the parents decide to marry, if all four persons were to move into the same household the criminal law would not interfere in the ongoing sexual relationship between the children, even though they would otherwise have been brought within the scope of the offence. This defence is not available where A and the child are related as set out in section 27(2) (whether by blood or adoption). The effect of subsection (2) is to limit this to the situation where the sexual relationship was lawful so it would not cover for example a relationship with a child of under 16.

Section 30: **Sexual activity with a person with a mental disorder impeding choice**

Section 31: **Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity**

Section 32: **Engaging in sexual activity in the presence of a person with a mental disorder impeding choice**

Section 33: **Causing a person, with a mental disorder impeding choice, to watch a sexual act**

61. All the offences in these sections are concerned with the situation where a person (A) involves another person (B) in sexual activity where B has a mental disorder and because of that mental disorder, or for reasons related to it, B is unable to refuse involvement in the sexual activity. "Mental

disorder” is stated at section 79(6) to have “the meaning given by section 1 of the Mental Health Act 1983”. In section 1(2) of that Act, subject to section 1(3), mental disorder is defined as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind.” A person with a “learning disability” would fall within this definition. The definition of sexual activity is at section 78. Subsection (2) of each section contains a definition of what is meant by B being unable to refuse.

62. The offences are divided according to the different types of sexual activity (the types of sexual activity covered are the same as for the child sex offences (sections 9 to 12)).

63. Section 30 covers touching, which as section 79(8) explains, includes any type of physical contact including penetration.

64. Section 31 covers the situation where A causes or incites B to engage in sexual activity, for example, where A causes B to have sexual intercourse with A's friend, or incites him to do so, even if the incitement does not result in B engaging in sexual activity.

65. Section 32 covers the situation where, for the purpose of obtaining sexual gratification, A engages in sexual activity in the presence of B, or in a place from which B can observe him. The offence is only committed, however, where A knows or believes that B is aware of the sexual activity or intends him to be aware of it. B might be aware of the sexual activity because he is watching it at A's behest or because A is describing what he is doing to B.

66. Section 33 covers the situation where A, for his sexual gratification, causes B to watch a third person engaging in sexual activity or to look at an image of a person engaging in sexual activity. “Image” is defined in section 79(4)).

Section 34: Inducement, threat or deception to procure sexual activity with a person with a mental disorder

Section 35: Causing a person with a mental disorder to engage in or to agree to engage in sexual activity by inducement, threat or deception

Section 36: Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

Section 37: Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

67. Like the previous set of offences, these sections are concerned with the situation where a person (A) involves another person (B) in sexual activity where B has a mental disorder. However, for these offences, there is no need to prove that B is unable to refuse. Instead, the offences address the situation where A uses inducements, threats or deceptions to obtain B's agreement to the sexual activity. The definition of mental disorder is at section 79(6); the definition of sexual activity is at section 78. An inducement might be A promising B presents of anything from sweets to a holiday; a threat might be A stating that he will hurt a member of B's family; and a deception might be A stating that B will get into trouble if he does not engage in sexual activity, or persuading him that it is expected that friends should engage in sexual activity. The division of the sections according to the type of sexual activity involved is similar to that in the previous set of offences.

Section 38: Care workers: sexual activity with a person with a mental disorder

Section 39: Care workers: causing or inciting sexual activity

Section 40: Care workers: sexual activity in the presence of a person with a mental disorder

Section 41: Care workers: causing a person with a mental disorder to watch a sexual act

68. Like the previous two sets of offences, these sections are concerned with the situation where a person (A) involves another person (B) in sexual activity where B has a mental disorder. The difference here is that A and B must be in a relationship of care. There is no need to prove that B is unable to refuse. The definition of mental disorder is at section 79(6); the definition of sexual activity is at section 78. The relationships of care that are covered by these offences are set out at section 42. The offences are divided according to the different types of sexual activity involved. The division is the same as for sections 30 to 33 and what is said in the notes for those sections about the different types of sexual activity covered applies here too. The prosecution must prove, in addition to the other requirements, that the defendant knew or could reasonably have been expected to know that B had a mental disorder. Subsection (2) of each section puts an evidential burden on A in this respect. This means that, unless A shows from the evidence that there is an arguable case as to whether or not he knew or could reasonably have been expected to know of B's mental disorder, it is presumed that he did know or could reasonably have been expected to know of this.

Section 42: Care workers: interpretation

69. This section defines a relationship of care for the purposes of sections 38 to 41. An example of a relationship covered by subsection (2) is where A is a member of staff in a care home and B is a resident there. An example of a relationship covered by subsection (3) is where A is a receptionist at the clinic that B attends every week. Subsection (4) covers any situation where A provides care, assistance or services to B in connection with B's mental disorder. An example of a relationship covered by subsection (4) is where A takes B on outings every week or treats B for his learning disability with complementary therapies in B's own home. In all cases, A must have, or be "likely to have", regular face to face contact with B. The "likely to have" limb is to cover persons who provide care to B in these situations from day one of their involvement with B.

Section 43: Sections 38 to 41: marriage exception

70. This section provides A with a defence to the offences under sections 38 to 41 if he proves he was lawfully married to B at the time of the sexual activity and B was over 16.

Section 44: Sections 38 to 41: sexual relationships which pre-date care relationships

71. This section provides A with a defence to the offences under sections 38 to 41 if he proves that his sexual relationship with B pre-dated his relationship of care with B. But the sexual relationship must have been lawful for this defence to apply. So if A and B had a lawful sexual relationship before B developed his mental disorder and A started caring for him, A would not commit an offence by continuing that sexual relationship.

Section 45: Indecent photographs of persons aged 16 or 17

72. This clause redefines a "child" for the purposes of the Protection of Children Act 1978 ("the 1978 Act") as a person under 18 years, rather than under 16 years, of age. This change means the offences under that Act of taking, making, permitting to take, distributing, showing, possessing with intent to distribute, and advertising indecent photographs or pseudo-photographs of children will now also be applicable where the photographs concerned are of children of 16 or 17 years of age. The same change applies to the offence of possessing an indecent photograph or pseudo-photograph of a child at section 160 of the Criminal Justice Act 1988 (section 160(4) applies the 1978 Act definition of "child").

73. However, the clause also creates a number of conditions which if satisfied will mean that the defendant is not guilty of an offence under section 1(1)(a), (b) or (c) of the 1978 Act (provided that the offence charged relates to a photograph and not a pseudo-photograph).

74. The conditions in relation to an offence under section 1(1)(a) of the 1978 Act (taking or making indecent photographs) are as follows:

75. Firstly, the defendant must prove that the photograph in question was of the child aged 16 or over and that at the time of the taking or making of the photograph he and the child were married or living together as partners in an enduring family relationship (section 1A(1)).

76. Secondly, the defendant must show that there is enough evidence to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child consented (section 1A(4)).

77. Thirdly, the photograph must not be one that shows a person other than the child and the defendant (section 1A(3)).

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

79. The conditions in relation to an offence under section 1(1)(b) of the 1978 Act (distributing or showing indecent photographs) are as follows;

80. Firstly, the defendant must prove that the photograph in question was of the child aged 16 or over, and that either at the time of distributing or showing it, or at the time of obtaining it, he and the child were married or living together as partners in an enduring family relationship (section 1A(1) and (2)).

81. Secondly, the photograph must not be one that shows a person other than the child and the defendant (section 1A(3)).

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

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

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

85. Secondly, the defendant must show that there is enough evidence to raise an issue as to whether the child consented (or the defendant reasonably believed that the child consented) to the photograph's being in the defendant's possession, and also as to whether the defendant had the photograph in his possession with a view to distributing or showing it to a person other than the child (section 1A(6)).

86. Thirdly, the photograph must not be one that shows a person other than the child and the defendant (section 1A(3)).

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

88. Similar provision is made in relation to an offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child). The conditions are as follows:

89. Firstly, the defendant must prove that the photograph in question was of the child aged 16 or over and that at the time when he possessed the photograph, or at the time when he obtained it, he and the child were married or living together as partners in an enduring family relationship (section 160A(1) and (2)).

90. Secondly, the defendant must show that there is enough evidence to raise an issue as to whether the child consented to the photograph being in his possession or as to whether the defendant reasonably believed that the child so consented (section 160A(4)).

91. Thirdly, the photograph must not be one that shows a person other than the child and the defendant (section 160A(3)).

92. If any of these conditions is not satisfied, the prosecution need only prove the offence as set out in section 160 of the Criminal Justice Act 1988. But if the three conditions are satisfied, the defendant is not guilty of the offence unless the prosecution prove that the child did not consent and that the defendant did not reasonably believe that the child consented (section 160A(4)).

Section 46: Criminal proceedings, investigations etc.

93. This clause creates a limited defence to the offence of “making” an indecent photograph or pseudo-photograph of a child, under section 1(1)(a) of the Protection of Children Act 1978. “Making” covers, for example, the situation where a person downloads an image from the Internet or copies a computer hard drive. The defence applies where a person “making” such a photograph or pseudo-photograph can prove that it was necessary for him to do so for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings. The defence also applies to a member of the Security Service or GCHQ (Government Communications Headquarters) who can prove that it was necessary for him to “make” the photograph or pseudo-photograph for the exercise of the functions of the Security Service or GCHQ.

Section 47: Paying for sexual services of a child

94. Section 47 makes it an offence for any person (A) intentionally to obtain for himself the sexual services of a child (B) aged under 18, where those services have been paid for or where payment has been promised. The offence covers the situation where A pays for the services or promises payment either directly to B or to a third party (C) (for example where C is B's pimp) or where A knows that another person (D) has paid for the services or promised such payment. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over) However, where B is under 13, A will commit the offence regardless of any reasonable belief he may have about B's age. Subsection (2) defines payment widely. It covers not only a payment of money but any financial advantage. This includes the discharge of an obligation to pay (for example, B owes A a debt for a car but A agrees to waive the debt if B provides him with sexual services) and the

provision of goods or services gratuitously or at a discount (for example, where A provides drugs to B at no or reduced cost on condition that B provides sexual services to A).

Section 48: Causing or inciting child prostitution or pornography

95. Section 48 makes it an offence for a person (A) intentionally to cause or incite a child under 18 (B) into prostitution or involvement in pornography anywhere in the world. The offence is aimed at persons who recruit into prostitution or pornography (whether on a one-off basis or longer term) those who are not involved or not currently involved in it. This could be where A makes a living from the prostitution of others and encourages new recruits to work for him or another (whether those recruits do actually then engage in prostitution or not). It could also cover the situation where A and B live together and A compels B to become involved in pornography, for example in order to pay their rent, or for any other reason. Unlike the prostitution offence at section 53, there is no requirement that the causing or inciting of a child prostitute must be done for gain. The prostitution or pornography can take place, or be intended to take place, in any part of the world. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over). However, where B is under 13, A will commit the offence regardless of any reasonable belief he may have about B's age. The terms "pornography" and "prostitute" are defined in section 51.

Section 49: Controlling a child prostitute or a child involved in pornography

96. Section 49 makes it an offence for a person (A) intentionally to control any of the activities of a child (B) that relate to the child's prostitution or involvement in pornography in any part of the world. The offence is committed even if B's activities in relation to prostitution or pornography are controlled for part of the time by another person. An example of the behaviour that might be caught by this offence is where A requires or directs B to charge a certain price or to use a particular hotel for her sexual services or to pose for a certain photographer and B complies with this request or direction. The prostitution or pornography can take place in any part of the world. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over). However, where B is under 13, A will commit the offence regardless of any belief he may have about B's age. The terms "pornography" and "prostitution" are defined in section 51.

Section 50: Arranging or facilitating child prostitution or pornography

97. Section 50 makes it an offence for a person (A) to arrange or facilitate the involvement of a child (B) in prostitution or pornography in any part of the world. This offence would cover for example, delivering B to a place where he will be used to make pornography or making arrangements for B's prostitution to take place in a particular room. Where B is 13 or over, the offence will not be committed where A reasonably believes that B is 18 or over. (It will be for the prosecution to prove that A does not reasonably believe that B is 18 or over). However, where B is under 13, A will commit the offence regardless of any reasonable belief he may have about B's age. The terms "pornography" and "prostitution" are defined in section 51.

Section 51: Sections 48 to 50: Interpretation

98. Section 51 defines the terms "pornography", "prostitute" and "prostitution" as used in sections 48 to 50.

Section 52: Causing or inciting prostitution for gain

99. Section 52 makes it an offence for a person (A) intentionally to cause or incite a person (B) into prostitution anywhere in the world where A does so for or in expectation of gain for himself or for a third party. Although this offence is not specifically limited to where B is aged 18 or over, it is aimed at cases where B is an adult, as the offence at section 48 specifically covers cases where B is under 18. Although prostitution by adults aged 18 or over is not an offence in itself, this offence is intended to cover those who, for gain, recruit others into prostitution, whether this be by the exercise of force or otherwise. The terms “prostitute” and “gain” are defined at section 54.

Section 53: Controlling prostitution for gain

100. Section 53 makes it an offence for a person (A) intentionally to control another person's activities relating to prostitution, in any part of the world, where A does so for, or in the expectation of, gain for himself or a third party. This offence covers the same behaviour as section 49, but is limited to prostitution. Although this offence is not specifically limited to cases where the person controlled is aged 18 or over, it is aimed at those cases, as the offence at section 49 specifically covers cases where the person controlled is under 18. The terms “prostitution” and “gain” are defined at section 54.

Section 54: Sections 52 and 53: interpretation

101. Section 54 provides definitions for the terms “gain”, “prostitute” and “prostitution” as used in sections 52 and 53. Subsection (1) defines “gain” as any financial advantage, including the discharge of a debt or obligation to pay, or the provision of goods or services (including sexual services) for free, or at a discount. The reference to “sexual services” would cover someone who controls the activities of a number of women in prostitution, where the gain he derives from them is their engaging in sexual intercourse with him. It also covers the goodwill of any person likely to bring such a financial advantage. So in relation to the offence at section 52, for example, this would cover A inciting B to work as a prostitute for C, where A expects this will lead to C providing him (A) with cheap drugs at a later date. The definitions of “prostitute” and “prostitution” as used in sections 52 and 53 are those set out in section 51.

Section 55: Penalties for keeping a brothel used for prostitution

102. Section 55 amends the Sexual Offences Act 1956 to create a new offence of keeping a brothel used for prostitution. The new offence is triable either way with a maximum penalty on indictment of 7 years imprisonment.

Section 56: Extension of gender-specific prostitution offences

103. Section 56 introduces Schedule 1 (extension of gender-specific prostitution offences) to the Act. Schedule 1 widens the offences of “permitting the premises to be used for prostitution” (at section 35 of the Sexual Offences Act 1956), “loitering or soliciting for purposes of prostitution” and the provisions relating to cautions for this offence (at sections 1 and 2 of the Street Offences Act 1959), “kerb crawling” and “persistent soliciting of women for the purpose of prostitution” (at sections 1 and 2 of the Sexual Offences Act 1985), otherwise unchanged by this Act, to cover all people involved, irrespective of their gender.

Section 57: Trafficking into the UK for sexual exploitation

104. Section 57 makes it an offence for a person (A) intentionally to arrange or facilitate the arrival into the UK of a person (B), where A intends to do anything that would result in the commission of a relevant offence involving B, or believes that another person is likely to do something to, or in respect of, B that would result in the commission of a relevant offence involving B. In both cases,

the relevant offence must take place after B's arrival in the UK but may take place anywhere in the world. "Relevant offence" is defined at subsection (1) of section 60.

105. This section re-enacts with amendments the offence in section 145 of the Nationality, Asylum and Immigration Act 2002.

106. A may intend the relevant offence to be committed, or believe that it is likely to be committed, in any part of the world. This is to ensure that an offence will be committed where, for example, A traffics B into the UK as an interim destination but intends to traffic B on to another country so he can be subjected to a sexual offence there.

107. A may intend to commit the relevant offence himself, or believe that another person will do so. So for example, it will be an offence for A to make arrangements to bring B into the UK believing that C will then, for gain, force B into prostitution in Germany (causing prostitution for gain will be a relevant offence). It is A's belief that is important, so the offence would still be committed if C never actually caused B to work as a prostitute.

108. A will only commit the offence if he intends that B should be the victim of an offence committed by A, or believes that B will be the victim of an offence committed by C. This will ensure that airline companies, road hauliers etc who are transporting someone without any such intent or belief are not captured. The offence is intended, however, to cover A if he is part of the enterprise of trafficking for sexual exploitation even if he is one link in a chain of people helping to traffic B.

Provided A has the necessary intent or belief, the section will cover, for example, his recruiting B in B's country of origin, his making arrangements for transport and food for B's journey, his forging of immigration documents for B and his other involvement in bringing B to the UK.

Section 58: Trafficking within the UK for sexual exploitation

109. Section 58 makes it an offence for a person (A) intentionally to arrange or facilitate travel within the UK of a person (B) where A intends to do anything to, or in respect of, B that would result in the commission of a relevant offence involving B, or where he believes that another person is likely to do something to, or in respect of, B that would result in the commission of a relevant offence involving B. In both cases, the relevant offence must take place during or after the journey but may take place anywhere in the world. "Relevant offence" is defined at subsection (1) of section 60. This offence is intended to apply both to UK nationals who are moved from one place to another in the UK to be sexually exploited as well as to others, including foreign nationals, who are, for example, trafficked to London from central Europe and then moved from London to another part of the UK to be sexually exploited.

Section 59: Trafficking out of the UK for sexual exploitation

110. Section 59 makes it an offence for a person (A) intentionally to arrange or facilitate the departure from the UK of a person (B) where A intends to do anything to, or in respect of, B that would result in the commission of a relevant offence involving B or A believes that another person is likely to do something to, or in respect of, B that would result in the commission of a relevant offence involving B. In both cases, the relevant offence must take place after B's departure and may take place anywhere in the world. "Relevant offence" is defined at subsection (1) of section 60

111. The offence is designed to cover the situation where B is in the UK, either because he is ordinarily resident here or because he has been trafficked here, but is then trafficked by A to another part of the world to be subjected to a sex offence.

Section 60: Sections 57 to 59: **interpretation and jurisdiction**

112. Section 60 gives, for the purposes of the above sections, the definition of “relevant offence”. The definition includes acts done outside England and Wales and Northern Ireland which, if they had been done in either of those territories, would constitute an offence under Part 1 of the Bill or under section 1(1)(a) of the Protection of Children Act 1978 (or the equivalent offences in Northern Ireland). It is irrelevant for the purposes of this definition whether the act in question also constitutes an offence in the country in which it is carried out.

113. The section also defines the territorial extent and jurisdiction of the above sections. The offences will cover acts committed by any person in the UK. They will also cover acts committed outside the UK by any body incorporated under UK law such as a UK company, or by any of the categories of British person listed at subsection (3) of the section when abroad, irrespective of whether or not the act in question is a criminal offence under the law in the country in which it is committed.

Section 61: **Administering a substance with intent**

114. Section 61 makes it an offence for a person (A) intentionally to administer a substance or to cause any substance to be taken by another person (B) where A knows that B does not consent to taking that substance and where A intends to stupefy or overpower B so that any person can engage in sexual activity involving B.

115. The offence is intended to cover use of so-called “date rape drugs” administered without the victim's knowledge or consent, but would also cover the use of any other substance with the relevant intention. It would cover A ‘spiking’ B's drinks with alcohol where B did not know he was consuming alcohol, but it would not cover A encouraging B to get drunk so that A could have sex with B, where B knew that he was consuming alcohol.

116. The substance may be administered to B in any way, for example, in a drink (as in the example given above), by injection or by covering B's face with a cloth impregnated with the substance.

117. The offence applies both where A himself administers the substance to B, and where A causes the substance to be taken by B, for example where A persuades a friend (C) to administer a substance to B, so that A can have sex with B, because C knows B socially and can more easily slip the substance into B's drink than A can.

118. However, the intended sexual activity need not involve A. In the example given above it could be intended that C or any other person would have sex with B.

119. The term “sexual”, used in this section in the phrase “sexual activity”, is defined in section 78. The sexual activity in this offence could involve A having sexual intercourse with or masturbating B; could involve A causing B to commit a sexual act upon himself (for example, masturbation); or could involve B and a third party engaging in sexual activity together, regardless of whether the third party had administered the substance.

120. The offence would be made out where A administers the substance or causes B to take it (with the relevant intent) regardless of whether any sexual activity took place, for example because a friend of B saw what was happening and intervened to protect B.

Section 62: Committing an offence with intent to commit a sexual offence

121. Section 62 makes it an offence for a person (A) intentionally to commit any criminal offence with intent to commit any relevant sexual offence as defined in subsection (2). This offence is intended to capture the situation where A commits a criminal offence but does so with the intention of committing a subsequent sexual offence, regardless of whether or not the substantive sexual offence is committed. It would apply, for example, where A kidnaps B so that he can rape him but is caught by the police before committing the rape. It would also apply where A detained B in his flat with this intention, or assaulted B to subdue him so that he could more easily rape him. If A does commit the intended offence, he could be charged with the substantive sexual offence in addition to this offence.

Section 63 Trespass with intent to commit a sexual offence

122. Section 63 makes it an offence for A to intend to commit a “relevant sexual offence” (defined at subsection (2) of section 62) whilst he is on any premises where he is a trespasser, either knowing, or being reckless as to whether, he is trespassing. A person is a trespasser if he is on any premises without the owner's or occupier's consent, or other lawful excuse. This offence is intended to capture, for example, the situation where a person (A) enters a building owned by B, or goes into B's garden or garage without B's consent, and he intends to commit a sexual offence against the occupier. The offence applies regardless of whether or not the substantive sexual offence is committed. A will commit the offence if he has the intent to commit a relevant sexual offence at any time while he is a trespasser. The intent is likely to be inferred from what the defendant says or does to the intended victim (if there is one) or from items in possession of the defendant at the time he commits the trespass (for example, condoms, pornographic images, rope etc.). A separate offence is needed to cover trespass (as opposed to relying on section 62) because trespass is a civil tort and not a criminal offence.

Section 64: Sex with an adult relative: penetration**Section 65: Sex with an adult relative: consenting to penetration**

123. Section 64 makes it an offence for a person (A) aged 16 or over intentionally to penetrate sexually a relative (B) who is aged 18 or over if he knows or could reasonably have been expected to know that B is his relative. Section 65 makes it an offence for a person (A) aged 16 or over to consent to being penetrated sexually by a relative (B) aged 18 or over if he knows or could reasonably have been expected to know that B is his relative. For either offence to be committed the penetration must be “sexual”, as defined at Section 78. This requirement ensures that penetration for some other purpose, for example where one sibling helps another to insert a pessary for medical reasons, is not caught by this offence. Subsection (2) of each section defines “relative” for the purposes of each offence.

124. Adoptive relatives are excluded from each offence. Paragraph 47 of Schedule 6 makes a consequential amendment to the Adoption and Children Act 2002, to the effect that the provision in the 2002 Act that makes an adoptive child a child of the adoptive parents does not apply in relation to these offences. So, for example, it will not be an offence under either of these sections for an adoptive brother and sister aged over 18 to have sexual intercourse.

125. The effect of subsection (3) of each section is that, unless A shows from the evidence that there is an arguable case as to whether or not he knew or could reasonably have been expected to know that B is his relative, it is presumed that he did know or could reasonably have been expected to know it.

Section 66: Exposure

126. Section 66 makes it an offence for a person intentionally to expose his genitals where he intends that someone will see them and be caused alarm or distress. It is not necessary for A's genitals to have been seen by anyone or for anyone to have been alarmed or distressed. For example, if a person exposes his genitals to some passers-by, he may (depending on his state of mind) commit the offence regardless of whether they actually see his genitals or whether they have been alarmed or distressed by seeing them.

Section 67: Voyeurism

127. Section 67 makes it an offence, under subsection (1) for a person, (A), to observe, for the purpose of his own sexual gratification, another person doing a private act, for instance by looking through a window or peephole at someone having sexual intercourse, where A knows the person observed does not consent to being looked at for this purpose.

128. Subsection (2) covers a person (A) operating equipment with the intention of enabling another person, for his sexual gratification, to observe a third person (B), doing a private act, where A knows that B does not consent to being so viewed. This would cover, for example, a landlord (A) operating a webcam to allow people on the internet for their sexual gratification to view live images of his tenant (B) getting undressed, if A knew that B did not consent to this.

129. Subsection (3) covers a person (A) recording another person (B) doing a private act with the intention of looking at the recording for his own sexual gratification, or intending other people to look, for their sexual gratification, at the recording, and where he knows that B does not consent to the recording of that act with that intention. This would therefore cover the person (A) who secretly films someone (B) masturbating in B's bedroom to show to others for their sexual gratification. Proof that the intention was the sexual gratification of others could be derived from, for example, the fact that the image was posted on a pornographic website, or in a pornographic magazine. A will be caught by the offence whether or not those looking at the image know that the person filmed did not consent to being filmed with that intention.

130. Subsection (4) would cover someone who, for example, drilled a spy-hole or installed a two-way mirror in a house with the intention of spying on someone for sexual gratification or allowing others to do so. A would be caught even if the peephole or mirror was discovered before it was used.

Section 68: Voyeurism: interpretation

131. Section 68 defines "private act", and "structure" for the purposes of section 67.

Section 69: Intercourse with an animal

132. Section 69 makes it an offence for a man intentionally to penetrate the vagina or anus of a living animal with his penis where he knows or is reckless as to whether that is what he is penetrating. The reference to vagina or anus in this context is further explained at subsection (8) of section 79. Subsection (2) of section 69 makes it an offence for a person intentionally to cause or allow her vagina or his or her anus to be penetrated by the penis of a living animal where he or she knows or is reckless as to whether that is what is doing the penetrating. This offence is related solely to penile penetration in relation to animals and does not replace existing legislation covering cruelty to animals.

Section 70: Sexual penetration of a corpse

133. Section 70 makes it an offence for a person (A) intentionally to penetrate any part of the body of a dead person (B) with his penis, any other body part (for example his finger), or any other object, where that penetration is sexual. The offence is committed when A knows or is reckless as to whether he is penetrating any part of a dead body. This is intended to cover when A knows he is penetrating a dead body, for example in a mortuary, or where A is reckless as to whether B is alive or dead. It will not cover situations where A penetrates B fully believing B to be alive, but in fact B is dead, or where B unexpectedly dies during intercourse. The penetration must be sexual. A definition of sexual is given in section 78. This is to exclude legitimate penetration of corpses, for example that which occurs during an autopsy.

Section 71: Sexual activity in a public lavatory

134. Section 71 makes it an offence intentionally to engage in sexual activities in a public lavatory. Subsection (1)(a) defines a public lavatory. The term “sexual” for the purposes of this clause is defined in subsection (2). A definition distinct from that in section 78 is used in section 71 so as to include only sexual activities that a reasonable person would take to be sexual without knowledge of the purpose of the person carrying out the activity.

Section 72: Offences outside the United Kingdom

135. Subsection (1) of section 72 makes it an offence in England and Wales and Northern Ireland for a British citizen or UK resident (subject to subsection (2)) to commit certain acts overseas against a child under 16 (or, in Northern Ireland, under 17). The date referred to in subsection (2) is the commencement date of Part 2 of the Sex Offenders Act 1997, which this section re-enacts. The act done must amount to a sexual offence listed in Schedule 2 and must also amount to an offence in the country where it was committed. The exact description of the offence does not need to be the same in both countries. For example, the provisions could apply to someone who raped a child in another country although that offence was described differently under the law in that country. Subsection (4) provides that the defendant can require the prosecution to prove that what was done was an overseas offence.

Section 73: Exceptions to aiding, abetting or counselling

136. Section 73 provides that, in certain defined circumstances, a person is not guilty of aiding, abetting or counselling a sexual offence under sections 5, 6 and 7 (offences against children under 13), section 9 (sexual activity with a child), section 13 (where the offence would be an offence under section 9 if the offender were over 18) and sections 16, 25, 30, 34 and 38 (where the victim is a child under 16).

137. The exception applies where the person is acting for the purpose of protecting a child from pregnancy or sexually transmitted infection, for the purpose of protecting the physical safety of a child, or for the purpose of promoting a child's emotional well-being. In this last case, however, the exception only applies where the person provides advice.

138. In all cases, the person must not be causing or encouraging the commission of an offence or a child's participation in it. Nor must the person be acting for the purpose of obtaining sexual gratification. So a person who was providing advice to a child under 16 about sexual health or contraception, in order to protect the child from becoming pregnant would not fall within the exception if he was at the same time meaning to encourage the child to have sex or was giving that advice in order to get sexual gratification for himself.

Section 74: “Consent”

139. Section 74 defines “consent” for the purposes of this Part. This definition is relevant to many sections in the Part including, for example, the offence of rape (section 1). The section refers to a person's capacity to make a choice. A person might not have sufficient capacity because of his age or because of a mental disorder.

Section 75: Evidential presumptions about consent

140. This section applies to the offences of rape (section 1), assault by penetration (section 2), sexual assault (section 3) and causing a person to engage in sexual activity without consent (section 4). The section provides for presumptions that may be challenged by the defendant. The presumptions arise in the circumstances described in subsection (2). The difference between paragraphs (a) and (b) of subsection (2) is that paragraph (a) covers violence and threats of violence used against the complainant whereas paragraph (b) covers violence and threats of violence used against a person other than the complainant. The violence or threat must occur either at the time of the relevant act or immediately before it began.

141. The effect of subsection (3) is that where, for example, the relevant act for which the person is being prosecuted is penetration, but the penetration is the culmination of a series of sexual activities, then if the violence or threat occurred immediately before the first sexual activity (as opposed to before the penetration), the presumptions still arise.

142. Where the prosecution proves that the defendant did a relevant act (as defined in section 77), that the circumstances described in subsection (2) existed and that the defendant knew that those circumstances existed, the complainant will be presumed not to have consented to the relevant act and the defendant will be presumed not to have reasonably believed that the complainant consented. In order for these presumptions not to apply, the defendant will need to satisfy the judge from the evidence that there is a real issue about consent that is worth putting to the jury. In practice (although this is not mentioned in the Act) the evidence produced may be from evidence that the defendant himself gives in the witness box, or from evidence given on his behalf by a defence witness, or resulting from evidence given by the complainant during cross-examination. If the judge is satisfied that there is sufficient evidence to justify putting the issue of consent to the jury, he will so direct; if not, he will direct the jury to find the defendant guilty.

Section 76: Conclusive presumptions about consent

143. This section creates conclusive presumptions about lack of consent and the absence of belief in consent in situations where the defendant deceived the complainant into sexual activity. Subsection (2)(a) covers the situation where, for example, the defendant intentionally tells the complainant that digital penetration of her vagina is necessary for medical reasons when in fact it is for his sexual gratification. Subsection (2)(b) covers the situation where, for example, the defendant impersonates the complainant's partner and thereby causes the complainant to consent to the relevant act. Where the prosecution prove that the defendant did a relevant act (as defined in section 77) and that any of the circumstances described in subsection (2) existed, it is conclusively presumed that the complainant did not consent to the relevant act and that the defendant did not believe that the complainant consented to the relevant act. The defendant will therefore be convicted.

Section 77: Sections 75 and 76: relevant acts

144. Section 77 defines the relevant acts to which the provisions in sections 75 and 76 apply.

Section 78: “Sexual”

145. Section 78 defines “sexual” for the purposes of this Part. This definition is relevant to many of the offences under this Part. For example, section 2(1)(b) refers to penetration which is sexual and section 3(1)(b) refers to touching which is sexual.

146. There are two alternative limbs to the definition of “sexual” in section 78. Paragraph (a) covers activity that the reasonable person would always consider to be sexual because of its nature, such as sexual intercourse. Paragraph (b) covers activity that the reasonable person would consider, because of its nature, may or may not be sexual depending on the circumstances or the intentions of the person carrying it out, or both: for example, digital penetration of the vagina may be sexual or may be carried out for a medical reason. Where the activity is, for example, oral sex, it seems likely that the reasonable person would only need to consider the nature of the activity to determine that it is sexual. But where it is digital penetration of the vagina, the reasonable person would need to consider the nature of the activity (it may or may not be sexual), the circumstances in which it is carried out (eg a doctor's surgery) and the purpose of any of the participants (if the doctor's purpose is medical, the activity will not be sexual; if the doctor's purpose is sexual, the activity also is likely to be sexual).

147. If, from looking at the nature of the activity, it would not appear to the reasonable person that the activity might be sexual, the activity does not meet the test in either paragraph (a) or (b), even if a particular individual may obtain sexual gratification from carrying out the activity. The effect of this is that obscure fetishes do not fall within the definition of sexual activity.

Section 79: General interpretation

148. Section 79 gives a number of definitions relevant to offences in this Part. Subsection (2) is needed so that where, for example, a person consents at the time of entry to penetration, but then withdraws his consent and the penetration continues, the person penetrating may be guilty of rape or assault by penetration.

Part 2: Notification and Orders

Section 80: Persons becoming subject to notification requirements

149. Sections 80 to 92 re-enact, with amendments, Part 1 of the Sex Offenders Act 1997 (the 1997 Act), which established a requirement on sex offenders to notify certain personal details to the police. This process is commonly known as “registration”, and often referred to loosely as creating a “sex offenders' register”. Sections 80 and 81 set out the persons who are required to comply with the notification requirements. Such a person is referred to as a “relevant offender” (subsection (2)).

150. Subsection (1) provides that notification requirements apply to a person who is dealt with by a court, in any of the ways specified in the subsection (which include conviction), in respect of an offence specified in Schedule 3. The offences in Schedule 3 are exclusively sexual offences, and include the offences that were listed in the corresponding section of Schedule 1 of the 1997 Act. In relation to England, Wales and Northern Ireland, Schedule 3 also includes various offences under Part 1 of this Act. A number of the offences in Schedule 3 are subject to age and sentence thresholds beneath which the offence will not trigger the notification requirements.

151. In relation to section 80 (and Part 2 generally) a “conviction” includes a conviction after commencement which results in a conditional but not an absolute discharge: section 134 provides that in relation to an order for a conditional discharge, the legislation that deems a conviction with an absolute or conditional discharge not to be a conviction, does not apply in relation to this Part

of the Act. The term “convicted” as it applies to mentally disordered offenders is explained at section 135(1) and (2). The reference at subsection (1)(c) is further explained at section 135(3).

152. Subsection (1)(d) refers to a person who is cautioned for a relevant offence. Section 133 provides that the term “caution” includes a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (the 1998 Act). These reprimands and warnings are given to young offenders.

Section 81: Persons formerly subject to Part 1 of the Sex Offenders Act 1997

153. Section 81 provides that, on commencement of this Part of the Act, offenders previously subject to the notification requirements of the 1997 Act by virtue of a conviction, relevant finding or caution for an offence listed in Schedule 3 of this Act, will be subject to the notification requirements of this Part unless their period of notification ended before commencement. Subsections (3) to (6) replicate the partially retrospective provisions of the 1997 Act, so that, save in specified circumstances, convictions, findings and cautions that pre-date 1 September 1997 (the date of commencement of the 1997 Act) will not trigger the notification requirements. Subsections (7) and (8) relate to persons who immediately before commencement of this Part were subject to a sex offender order or an interim sex offender order in England, Wales, Northern Ireland or Scotland, or a restraining order in England and Wales. These orders all impose the notification requirements under the 1997 Act. Such persons will, from commencement, become subject to the notification requirements of this Part of this Act until the order ceases to have effect.

Section 82: The notification period

154. Section 82 sets out the period during which a relevant offender will be subject to the notification requirements. In the most serious cases, as reflected in the sentence passed for the offence, the person will be subject to the requirements for an indefinite period, which means the rest of his life. In less serious cases, the offender will be subject to the requirements for a fixed period. For example, where after commencement a person is cautioned for a relevant offence, the notification period is two years.

155. The notification period starts from the date of conviction, finding or caution. This is called the ‘relevant date’ (subsection (6)). The ‘relevant date’ in relation to offences in Schedule 3 that are subject to sentence thresholds is set out in section 132.

156. Subsection (2) provides that, where an adult would be subject to the notification requirements for a determinate period (that is ten, seven, five or two years), that period will be halved in the case of an offender who is under 18 on the relevant date (that is, the date of conviction, relevant finding or reprimand or final warning).

157. Subsections (3) and (4) set out how to calculate the notification period where an offender is sentenced for more than one Schedule 3 offence and these sentences are terms of imprisonment running consecutively or partly concurrently. Where the terms are consecutive, they are to be added together. For example, where an offender is sentenced to 3 months' imprisonment for one relevant offence and 10 months' imprisonment for another such offence, to run consecutively, the sentence would be treated as 13 months' imprisonment for the purposes of working out the notification period (in this case, 10 years). Terms will be partly concurrent when they are imposed on different occasions. An example would be where an offender is sentenced to 10 years' imprisonment for a Schedule 3 offence, and 6 years into this term he is sentenced to 12 years' imprisonment for a second Schedule 3 offence. Where this is the case, the notification period is based on the combined length of the terms minus any overlapping period. In the example given, the combined length of

the sentences would be 22 years and the overlapping period would be the remaining 4 years of the 10-year sentence. So the sentence for the purposes of working out the notification period would be 18 years.

158. Subsection (5) relates to the situation where there is an initial finding that a person is under a disability and has done the act charged and he is later tried for the offence. An example would be where such a finding was made, the person was admitted to hospital under a restriction order and the notification requirements would therefore apply for an indefinite period. Where such a person was subsequently tried for the offence, the indefinite notification period will cease to apply as from the end of the trial. If the person is convicted and sentenced to, say, 12 months' imprisonment for the offence, the new notification period would be 10 years, starting from the date of the conviction. If the person is acquitted at trial, the person ceases to be subject to the notification requirements in respect of that matter.

Section 83: Notification requirements: initial notification

159. Section 83 sets out the information the offender needs to supply to the police when he first makes a notification and the time scales within which he is required to provide that information.

160. Subsection (2) relates to a case where someone who is dealt with by a court in one of the ways specified at subsection 80(1) is, at the date of being so dealt with, already subject to the notification requirements by virtue of an earlier conviction or finding or caution in respect of a Schedule 3 offence. If, in these circumstances, at the date of being dealt with by the court, the person has complied with subsection (1) in respect of the earlier conviction or finding or caution, he does not need to notify his details again in accordance with subsection (1). This is only the case, however, where the notification period in respect of the earlier conviction, finding or caution lasts throughout the period specified at subsection (1) (as extended in accordance with subsection (6) — see below — if appropriate).

161. Subsection (4) makes similar provision in respect of persons who are already subject to the notification requirements at the time when a notification order (as defined in section 97) is made.

162. Subsection (3) provides that the obligation imposed by subsection (1) does not apply to a person who, on commencement, in relation to a pre-commencement conviction, finding, caution or order, has complied with the obligation to notify his name and address to the police under section 2(1) of the 1997 Act. Where a person subject to the requirements of the 1997 Act has not complied with section 2(1) of that Act, he must, under subsection (1), notify the police of the details in subsection (5) within 3 days of commencement of Part 2 of the Act.

163. The details in subsection (5) include the offender's home address. The term 'home address' is defined in subsection (7). This provides that where an offender is homeless or has no fixed abode his 'home address' means an address or location where he can be regularly found. This might, for example, be a shelter, a friend's house, a caravan or a park bench.

164. In calculating the period within which an offender must give notification under subsection (1), any time when the offender meets the conditions specified in subsection (6) — for instance, any time when he is serving a sentence of imprisonment — does not count.

Section 84: Notification requirements: changes

165. Section 84 sets out the requirements on a relevant offender to notify the police of changes to notified details. Under subsection (1)(c) an offender must notify the police within 3 days, of the address of any premises he has stayed at within the UK, besides his home address, for a 'qualifying

period'. This place might be a friend or relative's house or a hotel where he has stayed. A qualifying period is defined at subsection (6) and is a period of 7 days, or two or more periods, in any twelve months, which taken together amount to 7 days.

166. Subsection (2) allows an offender to notify the police of any change to his notified details (his name, address or having stayed away from home for 7 or more days) in advance of such change. The advance notification must give a date when the change is expected to occur.

167. Subsections (3) and (4) deal with the scenario in which the change does not take place as notified in advance. As long as the change takes place no earlier than 2 days before the date notified or no later than 3 days after the date notified, the offender need not update the police as to the actual date on which the change took place. However, where the change takes place outside this period, the person must notify the change in accordance with subsection (1), that is, within 3 days of the actual change. And, where the change takes place 3 days or more after the date specified, the person must also notify the police (within 6 days of the date specified) that the information he notified in advance is no longer correct.

168. The effect of subsection (5) is that time when an offender is in custody, detained or abroad (as provided at subsection (6) of section 83), will be disregarded for the purpose of determining the 3 day period specified in subsection (1) and the 6 day period specified in subsection (4)(b).

Section 85: Notification requirements: periodic notification

169. Section 85 provides (at subsection (1)) that an offender must re-notify the police of the details set out in subsection (5) of section 83 within one year after each of the specified events, unless during this period he re-notifies, because of a change of circumstances, under section 84.

170. The specified events are:

- the commencement of this Part of the Act;
- any notification the offender has given under subsection (1) of section 83 or 85; and
- any earlier notification the offender has given under subsection (1).

171. Commencement will only be a trigger for this periodic notification requirement where a person is exempt from complying with subsection (1) of section 83 by reason of subsection (2), (3) or (4) of section 83 (i.e., where the person has complied with an earlier initial notification requirement).

172. This means that where a person becomes subject to the notification requirements for the first time and does not change his name or address and does not stay away from home for 7 days or more, he will have to re-notify within a year of his initial notification and annually thereafter. Where a person does notify his having stayed away from home for 7 days, for example, he will have to re-notify the police of the information set out in subsection (5) of section 83 within a year of giving the notification of having stayed away from home. And, if within that year he notifies another period spent away from home, or a change of name or address, the re-notification of the details set out in section 83(5) will be put back to a year after that latter notification.

173. Subsection (3) provides that where a relevant offender is detained or abroad in the ways provided at subsection (4) at the time the periodic notification requirement falls due, the person may give that notification up to 3 days after he is released from the detention specified in subsection (4) or returns to the UK.

Section 86: Notification requirements: travel outside the United Kingdom

174. Subsection (1) of section 86 provides a power for the Secretary of State to make regulations setting out notification requirements for relevant offenders who leave the UK or for any description

of such offenders (for example those intending to leave the UK for a specified period). The regulations would oblige such persons to notify certain details concerning their travel plans to the police.

175. Subsection (4) might be used for example to make provision for young offenders to notify for a different period of foreign travel than do other offenders

176. These regulations are subject to the affirmative resolution procedure (section 138(2)). For Scotland, the regulations will be made by Scottish Ministers and laid before the Scottish Parliament.

Section 87: Method of notification and related matters

177. Section 87 describes how and where an offender is required to notify information to the police under the sections relating to initial notification, change of details and periodic notification. It provides a power for the Secretary of State to make regulations specifying the police stations at which an offender may notify the police of the relevant information. For Scotland the regulations will be made by Scottish Ministers and laid before the Scottish Parliament. The regulations will prescribe one or more police stations for each police area and where more than one has been prescribed for a particular offender's area, that offender may notify at any one of them. The term 'local police area' is defined in subsection (3) of section 88. Where the notification relates to having stayed away from a home address for 7 days or more or to a prospective change of address, the offender may use a police station within the police area of that other address (subsection (2)). When making a notification, other than a notification of foreign travel, the police may take the person's fingerprints and/or a photograph (subsection (4)). The term "photograph" is explained at subsection (2) of section 88 and, because subsection (4)(b) of section 87 refers to a photograph of any part of the person, it will include an iris scan.

Section 88: Section 87: interpretation

178. Subsection (3) of section 88 defines "local police area". Subsection 3(b) and (c) deal with cases where the offender has no home address (as defined in subsection (7) of section 83). He may have no home address because for example he spends most of his time abroad and only returns to the UK occasionally, or because he is itinerant.

Section 89: Young offenders: parental directions

179. Section 89 provides that, in the case of a young offender, the court may direct a person with parental responsibility for the offender to comply with the notification requirements in place of the offender until either the offender attains the relevant age (18 in England, Wales and Northern Ireland and where the offender is dealt with by a service court; 16 in Scotland) or until an earlier date specified by the court. The court may make the direction at the time it deals with the offender in respect of an offence or finding which triggers the notification requirements, or when it makes an order which imposes those requirements. Subsections (4) and (5) also allow the police to apply to the court for a parental direction to be made. This will cover cases where the court, for whatever reason, did not make a direction at the stage referred to above but an order now seems appropriate. It will also cover cases where the young offender has received a reprimand or final warning for a Schedule 3 offence.

Section 90: Parental directions: variations, renewals and discharges

180. Section 90 provides that a court may vary, renew or discharge a parental direction. This may be required where, for example, there is a direction that the father notifies on behalf of the young offender and the father subsequently becomes divorced from the mother and the offender goes to

live with the mother. Or an order may need to be discharged where, for example, the parent can no longer control the young offender and is unable to ensure that he attends with the parent to notify. In these circumstances the court may consider that the liability for his failure to attend should revert to the young offender himself. Subsections (2)(e) and (3)(a) and (b) draw an explicit distinction between parental directions imposed by criminal courts and civil courts in Scotland in terms of the procedures and circumstances where such directions can be varied, renewed and discharged in Scotland.

Section 91: Offences relating to notification

181. Subsection (3) provides that the offence of failing to give a notification continues throughout the period during which the required notification is not given. An offender cannot be prosecuted more than once for the same failure. However, if an offender fails to comply with a requirement, is convicted for this offence and then fails to comply again in respect of the same requirement, he commits a new offence and may be prosecuted again.

182. An offence will not be committed where the person has a “reasonable excuse” for failure to comply with a notification requirement. This might be, for example, where an offender does not provide the information in the required time scale because he is in hospital following an accident. In respect of an offence relating to subsection (2)(b) of section 89 a reasonable excuse might be that the parent took all reasonable steps to persuade the young offender to accompany him to the police station.

Section 92: Certificates for the purposes of Part 2

183. Section 92 provides that when a court convicts or makes a relevant finding in respect of a person in relation to a Schedule 3 offence, or when a person is cautioned by the police, the court or police officer may issue a certificate that will be evidence of the conviction or finding or caution for a relevant offence and of the notification requirements which follow from it. Subsection (4) provides a power for the Secretary of State to prescribe by order the form certificate that will need to be issued by a police officer when a caution is given. These regulations will be subject to the negative resolution procedure (section 138(3)). Whilst the Regulations are in respect of cautions in England and Wales, a certificate made as a result of a caution will be sufficient evidence of that fact in a Scottish court.

Section 93: Abolished homosexual offences

184. Section 93 gives effect to Schedule 4 to the Act. Schedule 4 introduces a procedure whereby the Secretary of State may remove the notification requirement from offenders convicted of buggery and indecency between men (sections 12 and 13 of the Sexual Offences Act 1956) or convicted of attempting, inciting or conspiring to commit these offences or of aiding, abetting, counselling or procuring the commission of the offences. This procedure is necessary because in some cases, a man will be subject to the notification requirements in relation to consensual homosexual activity with a man who was aged 16 or over at the time of the offence.

Section 94: Part 2: supply of information to Secretary of State etc. for verification

185. Sections 94 and 95 provide the power to enable the police to verify that an offender has notified the correct details in compliance with sections 83, 84 and 85 of this Act or with the relevant sections of the Sex Offenders Act 1997, and that he is not omitting any details (such as another name or address he uses). This will be done by comparing the details provided at notification against information the offenders will have provided to certain bodies performing Government functions.

186. Subsection (3) describes the police, and policing organisations having the power to supply this information. Subsections (2) and (8) describe the bodies to whom the information may be supplied. These are those bodies which perform social security, child support, employment and training functions on behalf of the Secretary of State for the Department of Work and Pensions (DWP) and the equivalent Northern Ireland Department, those who perform functions in relation to passports on behalf of the Home Secretary, and those who perform functions under Part 3 of the Road Traffic Act 1988 on behalf of the Secretary of State for the Department of Transport (i.e. the Driver and Vehicle Licensing Agency) or Part 2 of the Road Traffic (Northern Ireland) Order 1981. By virtue of subsection (2)(c), section 94 also allows for the supply of information to persons providing services to the Secretary of State in connection with these functions i.e. an executive agency or private company.

187. By virtue of subsection (1), the details the police may provide to these bodies are an offender's date of birth, national insurance number, any names he has notified, and his home address and any other addresses notified. This information may have been supplied by an offender at his initial notification, when notifying a change, or at his periodic notification.

188. Subsection (4) provides that this information may only be shared for the purpose of verifying that the information supplied to the police etc. by the offender is accurate and for the purpose of compiling a report of the comparison. It could not, for example, be used by DWP to pursue someone for a child support payment.

189. This section applies to Northern Ireland, the only difference being that the police may supply information to the Department for Social Development, the Department of the Environment or the Department for Employment and Learning in Northern Ireland or to a person providing services to these Departments in connection with a "relevant function".

190. Subsection (6) provides that any transfer of data must comply with the Data Protection Act 1998.

Section 95: Part 2: supply of information by Secretary of State etc.

191. Section 95 provides that the report compiled under subsection (4)(b) of section 94 may be provided to the police (and the police organisations stated in subsection (2)). The police may retain the information and use it in the prevention, detection, investigation or prosecution of offences but for no other purpose. This would include an offence under section 91 of failing to comply with the notification requirements or by providing false information at notification (Subsection (4)). In addition, the information may be used to prevent, detect, investigate or prosecute other offences: for example, information that identified the possible whereabouts of an offender who was wanted for robbery could be used by the police in investigating that offence.

Section 96: Information about release or transfer

192. This section re-enacts, with amendments, section 5B of the 1997 Act. Section 96 allows the Secretary of State to make regulations requiring those who are responsible for an offender while he is in detention (as defined in subsection (1)) to notify other relevant authorities of his release or transfer to another institution. The regulations may define the person responsible for the offender (for example, the Chief Executive of a hospital) and the person who must be informed about release and transfer. An example might be the governor of a prison being required to inform the local chief officer of police when a relevant offender is about to be released from his prison. These regulations will be subject to the negative resolution procedure (section 138(3)). For Scotland, the regulations will be made by Scottish Ministers and laid before the Scottish Parliament.

Section 97: Notification orders: applications and grounds

193. Section 97 provides a power for the police to apply to the magistrates' court for an order making an offender who has been convicted, cautioned or had a relevant finding made against him, in respect of a "relevant offence" (defined in subsection (1) of section 99) abroad, subject to the notification requirements.

194. The chief officer of police may apply for an order if the defendant resides in his police area or the chief officer believes that the person is currently in or is intending to come to his police area. The "intending to come to" limb will cover for example a person who is in France but who the chief officer of Kent believes has plans to arrive at Dover within the next few days. A notification order might, for example, be sought in respect of a UK citizen who has been convicted of a sexual offence overseas and who is deported to the UK on release from prison abroad. The police could also apply for a notification order in respect of a foreign citizen who the police know has been convicted of a sex offence in his or her own country and who comes to the UK.

195. The provisions in subsection (3) reflect the partially retrospective arrangements that apply in respect of the application of the notification requirements to people with convictions etc. in the UK (see section 81). The relevant conviction, finding or caution abroad must have taken place on or after 1 September 1997, which was the commencement date for the 1997 Act. Findings or convictions that occurred before that date will only be a trigger for a notification order where the person had yet to be dealt with on 1 September 1997 or was still serving a sentence or was subject to supervision or otherwise detained in respect of that offence on that date.

196. The effect of subsection (4) is that an order may not be made where the notification period (the period for which an offender is to be subject to the notification requirements), calculated from the date of conviction or finding or caution abroad, has expired. So where, for example, a person is cautioned abroad after commencement for a relevant offence (the notification period for a post-commencement caution is 2 years), the court may not make a notification order against that person if he comes to the UK more than 2 years after receiving the caution. Clause 103 provides certain modifications to clause 99 to ensure that the provisions contained therein reflect Scottish procedures, practices and references.

Section 98: Notification orders: effect

197. Section 98 provides that where an order is made, the offender will become subject to the notification requirements for the period set out in section 82 that applies to the sentence he received abroad. This period will run from the date of conviction or finding or caution abroad. So for example, if a person was convicted abroad of an offence equivalent to the domestic offence of sexual assault and sentenced to 6 months' imprisonment, the notification period for the sentence of 6 months would be 7 years. If the offender did not come to the UK until 5 years after the conviction, the notification requirements imposed under a notification order would only last for the remaining 2 of the 7 years since the date of conviction.

198. The provisions of subsection (3) modify the notification provisions as they apply to people subject to notification orders.

199. The effect of subsection (4) is that for people subject to notification orders, the initial obligation to provide details to the police will be within 3 days of the date of service of the order, and (subject to the other provisions in section 85 relating to annual notification) annually thereafter.

Section 99: Sections 97 and 98: relevant offences

200. A relevant offence for the purposes of a notification order is an act constituting an offence abroad, which would also have amounted to one of the offences set out in Schedule 3 had it been committed in the UK. The defendant may require the police to show that his offence if committed in the UK would have constituted an offence listed in Schedule 3. Otherwise, this is deemed to be accepted.

Section 100: Interim notification orders

201. Section 100 allows the police to apply for an interim notification order pending the application for a main order being heard. This may be, for example, because papers need to be obtained from a foreign country before the main application for a notification order can be determined. Subsections (5) and (6) provide that the offender will be subject to the notification requirements during the period of the interim notification order, with the notification period starting from the date of service of the order, as opposed to the date of the conviction etc. This means, for example, that the defendant will have to comply with the initial notification requirement (at section 83(1)) within 3 days of the service of the order, unless the period for compliance is extended to take into account any period during which the offender meets the conditions set out in section 83(6).

Section 101: Notification orders and interim notification orders: appeals

202. Section 101 allows the offender to appeal to the Crown Court against the making of an interim or full notification order.

Section 102: Appeals in relation to notification orders and interim notification orders: Scotland

203. Section 102 allows the offender to appeal against the making of an interim or full notification order in accordance with normal civil procedures. It also makes clear that where an appeal has been taken against an interlocutor any order can continue to have effect pending the appeal.

Section 103: Sections 97 to 100: Scotland

204. Section 103 applies the notification order power to Scotland, subject to certain modifications. The procedure for the notification order mirrors the existing procedure for sex offender orders, so these modifications ensure that the procedure is consistent with this and with Scottish civil procedure. The police will apply for a notification order by summary application and a record of evidence is required to be kept by the clerk. This procedure is similar to that required for sex offender orders.

Section 104: Sexual offences prevention orders: applications and grounds

205. Section 104 states the circumstances in which a sexual offences prevention order may be made against an offender. Sexual offences prevention orders are civil preventative orders designed to protect the public from serious sexual harm. These orders replace, with amendments, restraining orders and sex offender orders (provisions in relation to which are found at section 5A of the 1997 Act and sections 2 to 4 and section 20 of the 1998 Act respectively in relation to England, Wales and Scotland, and at Article 6 and 6A of the Criminal Justice (Northern Ireland) Order 1998).

206. A court may make a sexual offences prevention order:

- when it deals with a person in respect of an offence listed at Schedule 3 or Schedule 5 to the Act, or, in the case of a mentally incapacitated offender, deals with him in respect of a finding relating to such an offence; or
- (in the case of a magistrates' court) when an application for such an order is made to it by a chief officer of police in respect of a person, and it is satisfied that:
 - the person has been dealt with by a court in respect of an offence listed in Schedule 3 (other than at paragraph 60) or at Schedule 5; or has been dealt with by a court abroad in respect

of an act which was an offence under the law of that territory and which would, if committed in any part of the UK, have constituted an offence listed in Schedule 3 (other than at paragraph 60) or at Schedule 5; and that the person's behaviour, since the date on which he was first dealt with in this way, means it is necessary to make the order “for the purpose of protecting the public or any particular members of the public from serious sexual harm from the offender”.

207. A chief officer of police may only make an application to a magistrates' court as described above if two conditions are met. These conditions are:

that the person has been dealt with in respect of an offence listed at Schedule 3 (other than at paragraph 60 of that Schedule) or at Schedule 5, or has been dealt with abroad in respect of an act which constituted an offence under the law of the territory in question, and which would, if committed in the UK, have constituted an offence listed at Schedule 3 (other than at paragraph 60) or at Schedule 5; and

that the person's behaviour, since the first date on which he was dealt with in this way (this will be relevant if for example an offender has been convicted of several offences listed in Schedule 3), gives rise to reasonable cause to believe that it is necessary for such an order to be made.

208. The offences in Schedule 3 are all sexual offences, some of which are subject to thresholds in relation to age and sentence, below which the offence will not trigger a sexual offences prevention order. The offences in Schedule 5 are violent offences and various offences under this Act relating to trafficking and prostitution and child pornography. Schedule 5 includes murder as well as all the offences in Schedule 15 of the Criminal Justice Act 2003, which relates to the provisions in that Act dealing with “dangerous offenders”.

209. In its application to Scotland, section 104 essentially allows a chief constable to make an application for such an order in respect of persons convicted in the UK of a sexual offence set out in Schedule 3 (other than at paragraph 60 of that Schedule) or, where the person has a conviction from England, Wales or Northern Ireland, in respect of offences set out in paragraphs 1 to 63 of Schedule 5.

210. The term “protecting the public in the United Kingdom or any particular members to the public from serious sexual harm from the defendant” is defined in subsection (3) of section 106. The court may be satisfied of this necessity either by the circumstances of the offence or from other evidence of the defendant's behaviour.

211. An example of when the police might apply for a sexual offences prevention order is as follows. An offender has a conviction for sexual activity with a child and has been released after his term of imprisonment. Following his release he behaves in a way that suggests he is likely to offend again, for example by loitering around schools or inviting children back to his house. An application for a sexual offences prevention order is to be made by complaint. This is a civil procedure and the relevant procedure is set out at sections 51 to 57 of the Magistrates' Courts Act 1980.

Section 105: SOPOs: further provision as respects Scotland

212. Section 105 does not affect the power set out at section 104. But it makes further specific provision for a sheriff in Scotland to grant a sexual offences prevention order on the application of a chief constable in certain circumstances.

213. A chief constable may apply to a sheriff for an order under section 105 where he believes that a person is in, or is intending to come to the area of his police force, and that either:

the person has been dealt with by a court in respect of an offence which comes within paragraph 60 of Schedule 3, in that in dealing with him, the court determined that there was a “significant sexual aspect” to his behaviour; or
the person was dealt with by a court, before the commencement of this Part, in respect of an offence other than one listed at paragraphs 36 to 59 of Schedule 3, and it is likely that, had he been so dealt with after commencement, the court would have determined that his behaviour in committing the offence had a “significant sexual aspect; and
that the person's behaviour, since he was dealt with in respect of the offence, has been such that there is reasonable cause to believe that such an order is necessary.

214. The sheriff may make an order under section 105 if he believes that it is necessary to do so to protect the public or any members of the public from serious sexual harm, and (in the case of a person who was dealt with in respect of an offence before the commencement of this Part) if he believes that there was a significant sexual aspect to the person's behaviour in committing the offence.

Section 106:Section 104: **supplemental**

215. Subsection (5) to subsection (7) define the term ‘qualifying offender’ which applies in relation to orders made against offenders living in the community. This includes those who have a conviction, finding or caution for an offence overseas that is equivalent to one of the offences in Schedules 3 or 5.

Section 107: **SOPOs: effect**

216. Subsection (1) of section 107 explains what an order does and for how long it lasts. An order may prohibit the offender from doing anything specified in it. Subsection (2) provides that the prohibitions contained within an order must be necessary “for the purpose protecting the public or any particular members of the public from serious sexual harm from the defendant”. This phrase is defined in section 106(3). Prohibitions could include, for example, preventing an offender from contacting his victims or from taking part in sporting activities that involve close contact with children or from living in a household with girls under 16.

217. The order must last for a minimum period of five years (subsection 1(b)). The period must be specified in the order but it may be an indefinite period and the period specified will not prevent a further order being made. However, subsection (6) operates to ensure an offender cannot be subject to more than one sexual offences prevention order at any one time.

218. Subsection (3) provides that where an order is made against an offender who is already subject to the notification requirements, but the notification period applicable to him would end during the currency of the order, he is to remain subject to the notification requirements for the duration of the order. If the notification period attaching to a relevant conviction, finding or caution lasts for longer than the order, the offender will remain subject to the notification requirements for that longer period.

219. Subsection (4) provides that where the offender is not subject to the notification requirements at the time an order is made, he will become subject to the notification requirements for the duration of the order.

220. The effect of subsection (5) is that the notification period runs from the date of service of the order (not from the date of the relevant conviction, caution or finding). This means, for example,

that the defendant will have to comply with the initial notification requirement (at section 83(1)) within 3 days of the service of the order.

Section 108: SOPOs: variations, renewals and discharges

221. Section 108 enables either the offender subject to the order or the various chief officers of police listed in subsection (2) to apply for an order to be varied, renewed or discharged.

222. The defendant might, for example, seek to vary an order if he finds the prohibitions are operating on him unduly harshly. He might apply for a discharge if he intended to emigrate. A chief officer of police who believes the defendant is moving to his area might apply for a variation if, for example, the order was made when the defendant was living in another part of the country and only restricted the defendant's behaviour in that original area.

223. It may also be necessary to seek a renewal of an order at the time an existing order expires, where there is evidence that the defendant still requires the measures of restraint imposed in the original order.

224. Subsection (8) provides that the procedure in this section will apply where variations, renewals and discharges are sought in respect of restraining orders and sex offender orders made prior to the commencement of this Part of the Act.

Section 109: Interim SOPOs

225. Section 109 allows the police to apply for an interim sexual offences prevention order where an application has been made for a full order in respect of an offender living in the community. The purpose is to enable prohibitions to be placed on the offender's behaviour and to ensure that he will be subject to the notification requirements pending the application for the full order being determined. The interim order will be for a fixed period and will cease to have effect at the end of that period or, if earlier, when a decision is made on the full order.

226. The effect of subsection (5) is that the defendant will be subject to the notification requirements for the duration of the order, with the notification period to run from the date of service of the order. This means, for example, that the defendant will have to comply with the initial notification requirement (at section 83(1)) within 3 days of the service of the order.

Section 110: SOPOs and interim SOPOs: appeals

227. Section 110 provides for appeals against the making of an order or an interim order. The appeals process should be used where the offender is challenging the fact that an order has been imposed.

228. Subsections (1) and (2) explain the process by which an appeal should be brought depending on the circumstances in which the order was made. Where an order was imposed on the court's dealing with an offender for an offence listed in Schedule 3 or Schedule 5, the offender should follow the usual appeal process that would apply if he were appealing against sentence. So, where the order was made in the Crown Court, the appeal against the order should be made to the Court of Appeal. Where the order was made in the magistrates' court or the youth court, the appeal is to the Crown Court.

229. Where the order was made following an application by the police in respect of an offender in the community, the appeal will lie to the Crown Court.

230. Subsection (5) relates to orders made by the Crown Court following an appeal against an order imposed on an offender in the community. It provides that the order made by the Crown Court is

to be treated as if it was made by the magistrates' court that imposed the original order, for the purposes of determining where any application for variation, renewal or discharge should be heard (under section 108 or 109).

Section 111: Appeals in relation to SOPOs and interim SOPOs: Scotland

231. Section 111 allows an offender in Scotland to appeal against the making of an interim or full order in accordance with normal civil procedures operating in Scotland. It also makes clear that where an appeal has been made the order can continue to have effect pending the appeal.

Section 112: Sections 104 and 106 to 109: Scotland

232. Section 112 sets out how sections 104 and 106 to 109 are to be read for Scotland. The effect is that the procedure for SOPOs in Scotland mirrors that for notification orders and foreign travel orders in Scotland. So the procedures are consistent with each other and with Scottish civil procedure. Accordingly, a chief constable will apply for a SOPO by summary application and a record of evidence will be required to be kept by the clerk.

Section 113: Offence: breach of SOPO or interim SOPO

233. Failure, without reasonable excuse, to comply with any prohibition in a sexual offences prevention order or an interim sexual offences prevention order is a criminal offence. Breach of any restraining order or sex offender order will also be an offence under this section.

Section 114: Foreign travel orders: applications and grounds

234. Section 114 provides for a new civil, preventative order, the foreign travel order. The foreign travel order will enable the courts to prohibit persons who are “qualifying offenders” (essentially, those dealt with in respect of certain sexual offences against a child under 16 (either in this country or abroad)) from travelling abroad where and so far as it is necessary to do so to protect a child or children from serious sexual harm outside the United Kingdom.

235. A foreign travel order may be made on application by the police to a magistrates' court and, if made, will place a prohibition on a sex offender from travelling abroad either to a named country or countries, to anywhere in the world other than a named country or to anywhere in the world.

236. The police may apply for a foreign travel order at the same time as a sexual offences prevention order or separately.

237. The term “qualifying offender” is defined at section 116. “Appropriate date” is defined in subsection (5) of section 115 and means the first date on which the offender was dealt with in respect of an offence in subsection (1) or (3) of section 116. The phrase “the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom” is defined in section 115(2).

238. Subsection (3) sets out the circumstances in which the court may make an order.

Section 115: Section 114: interpretation

239. Section 115 defines certain terms used in section 114. Subsection (6) provides that, in the application of sections 115 and 116 to Northern Ireland, any reference to a child under 16 is to be taken to mean a child under 17.

Section 116: Section 114: qualifying offenders

240. Section 116 defines “qualifying offenders” for the purposes of a foreign travel order. Subsection (1) states that a “qualifying offender” is a person convicted of an offence listed at subsection (2), or found not guilty of it by reason of insanity, or found to be under a disability and to have done the act charged in respect of it, or cautioned in respect of it.

241. Subsection (2)(a) lists a number of offences from Schedule 3 that deal with taking, making and distributing indecent photographs, or pseudo-photographs, of children under 16. Subsection (2)(b) refers to the offence of trespassing with intent to commit a sexual offence, where the intended offence was against a person under 16. Subsection (2)(c) refers to service offences which correspond to certain civilian sexual offences listed in Schedule 3. Subsection (2)(d) refers to an offence within any other paragraph of Schedule 3, where the victim was under 16.

242. Subsection (3) provides that a person also becomes a ‘qualifying offender’ if he is convicted of a ‘relevant offence’ committed outside the UK, or found not guilty of such an offence by reason of insanity, or found to have been under a disability and to have done the act charged in respect of such an offence, or cautioned in respect of such an offence. Whether he was so dealt with before or after the commencement of this Part of this Act is irrelevant.

243. A ‘relevant offence’ in this context is defined in subsection (4) as an act that was an offence in the country where it was committed, and which would have fallen within subsection (2) had it been committed in any part of the United Kingdom.

244. Subsection (5) provides that if the law of the foreign country in which an act is committed provides that it is to be punishable, then that act is an offence under the law of that country, however it is described in that law.

245. Subsection (6) and subsection (7) relate to the procedures to be adopted in satisfying the court that an act committed in a country other than the UK would have constituted an offence within subsection (2) if it had been done in any part of the UK. Subsection (6) provides that, unless the defendant serves a notice on the prosecution, (in the manner specified), requesting that the prosecution proves this to be the case, it will be assumed that the act would have constituted an offence within subsection (2) if done in any part of the UK. Subsection (7) permits the court to allow the defendant to require such proof from the prosecution even if he has failed to serve a notice as required by subsection (6).

Section 117: Foreign travel orders: effect

246. Section 117 sets out the effect of a foreign travel order. Subsection (1) provides that the duration of the order will not exceed six months and will be specified in the order. Subsection (2) provides that the order may prohibit the subject from travelling to a country outside the UK named in the order (such as Thailand and Malaysia); or from travelling to any country outside the UK that is not named in the order (for example, this may be needed where the offender is banned from travelling anywhere in the world other than to a named country which he may need to visit for family reasons); or from travelling to any country outside the UK (where the offender is such a risk to children that a universal ban is required). Subsection (4) provides that if, while a foreign travel order is in force, the defendant is not a ‘relevant offender’ i.e. is not subject to the notification requirements of this Part of the Act, he must comply with any regulations made under section 86(1) (i.e. regulations imposing notification requirements relating to foreign travel). In practice, however, in the vast majority of cases the offender is likely already to be subject to all of the notification requirements by virtue of his conviction for a sexual offence against a child.

Section 118: Foreign travel orders: variations, renewals and discharges

247. Section 118 sets out provisions permitting the variation, renewal or discharge of a foreign travel order. A defendant may wish to apply for a variation of an order if for example the order prohibits him from travelling to Romania but during the course of the order he has to attend an urgent business meeting in Romania. The police may wish to apply for a renewal of an order if, on the expiry of the previous order, they still have cause to believe that the defendant poses a risk of serious sexual harm to children abroad. Subsection (5) provides that an application for variation, renewal or discharge may be made to the court which made the original order; or to a magistrates' court in the area where the subject of the order resides (this will probably generally be the case where the subject of the order is making the application); or to any magistrates' court in the police area of the chief officer making the application. Subsection (3) provides that the court that hears the application must hear any person mentioned in subsection (2) who wishes to be heard. Having done so, it may make any order it considers appropriate in the light of the restrictions in subsection (4). Subsection (4) provides that any additional prohibitions imposed on the subject must be necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant.

Section 119: Foreign travel orders: appeals

248. This section provides a right of appeal to the Crown Court against the making of a foreign travel order. Subsection (1) provides that such an appeal may be against either the making of an order, or against the making of an order varying, renewing or discharging a foreign travel order, or against the refusal to make such an order. Subsection (3) provides that any order made by the Crown Court, on an appeal against the making of a foreign travel order, will be deemed to be an order of the magistrates' court for the purposes of subsequent applications to vary, renew or discharge the order.

Section 120: Appeals in relation to foreign travel orders: Scotland

249. Section 120 sets out the appeals mechanism for such orders in Scotland. It also provides that during such an appeal the foreign travel order will remain in force.

Section 121: Sections 114 to 118: Scotland

250. This clause sets out the manner in which the foreign travel order regime is to apply in Scotland. The procedures for the foreign travel order mirror the proposed procedure for notification orders in Scotland so as to ensure that the procedures are consistent with each other and with Scottish civil procedure. Accordingly in subsection (1) the chief constable is required to apply for a foreign travel order by summary application.

Section 122: Offence: breach of foreign travel order

251. Section 122 makes it an offence for the offender to breach any prohibition contained within a foreign travel order without reasonable excuse. Subsection (3) provides that a court cannot make a conditional discharge (or a probation order in Scotland) where someone is convicted of this offence.

Section 123: Risk of sexual harm order: applications, grounds and effects

252. This and the following seven sections relate to a civil, preventative order for which the police can apply to a magistrates' court in respect of a person over the age of 18, if that person has on at least two occasions engaged in sexually explicit conduct or communication with a child or children, and as a result there is reasonable cause to believe that the order is necessary to protect a child or children from harm arising out of future such acts by him. The defendant may or may not have a

conviction for a sexual (or any other) offence. The child or children to be protected must be under 16 (section 124(3)) or, for the purpose of the application of the section to Northern Ireland, 17 (section 124(8)).

253. Subsection (1) explains the circumstances in which a risk of sexual harm order may be made. The acts in subsection (3) which constitute the trigger behaviour for an order all involve explicitly sexual communication or conduct with or towards a child. The terms “image” and “sexual activity” are defined and an explanation is given in section 124(6) of when a communication is sexual. The types of behaviour at (3)(a) and (b) may amount to a criminal offence, for example under sections 10 to 13. However the trigger behaviour need not amount to criminal conduct. Subsection (3)(c) would cover a person giving condoms or a sex toy to a child. Subsection (3)(d) would cover a person sending pornographic images to a child over the Internet or describing the sexual acts he would like to carry out on the child. An order will not be made unless the court is satisfied (under subsection (4)(b)) that further such acts would cause a child or children physical or psychological harm (section 124(2)).

Section 124: Section 123: **interpretation.**

254. The definition of “image” at subsection (4) includes photographs, cartoon strips, email attachments and drawings. The use of the words “but regardless of any person's purpose” in subsections (5) to (7) means that an activity, or communication, or image, will only be “sexual” for the purposes of section 123 if a reasonable person, purely from the nature and circumstances of the activity, communication or image, would consider it to be sexual, without having to enquire into the motive behind it. This catches activities or communications or images that, in all the circumstances, are explicitly or overtly sexual, for example a pornographic film or a description of oral sex. However, where for example a double entendre is used in communication, the reasonable person might have to consider the speaker's motive before he could decide whether the communication was sexual. So the use of the double entendre would not be “sexual” communication, for the purposes of section 123, as the term is defined in subsection (6).

Section 125: **RSHOs: variations, renewals and discharges**

255. Section 125 provides for variations, renewals and discharges of risk of sexual harm orders. The procedure here is the same as that used to vary, renew or discharge a sexual offences prevention order imposed on an offender in the community (the application is by complaint to a magistrates' court), and is explained in the notes to section 108. (As the risk of sexual harm order is a new order, not a re-enactment, there is no equivalent provision to section 108(8)).

Section 126: **Interim RSHOs**

256. This section allows the police to apply for an interim risk of sexual harm order where an application has been made for a full order in respect of a defendant, but has not yet been determined. The interim order will be for a fixed period and will cease to have effect at the end of that period or, if earlier, when a decision is made on the full order.

Section 127: **RSHOs and Interim RSHOs : appeals**

257. The appeals process set out in this section is to be used where the defendant is challenging the imposition of an order. Subsection (3) provides that an order made by the Crown Court on an appeal against the granting of an order or interim order (other than an order in which the Crown Court orders that the application for an order or interim order be re-heard by a magistrates' court) is to be treated, for the purposes of determining where any application for variation, renewal or

discharge of the order should be heard, as if it were made by the magistrates' court which made the original order (under sections 125(7) or 126(5)).

Section 128: Offence: breach of RSHO or Interim RSHO

258. It is a criminal offence to breach a risk of sexual harm order or interim risk of sexual harm order unless the defendant has a reasonable excuse for doing so.

Section 129: Effect of a conviction etc. of an offence under section 128

259. Subsection (2) relates to a defendant who is already a “relevant offender” (that is, subject to the notification requirements of this Part — see section 80) when convicted of an offence under section 128, or cautioned in respect of such an offence, or 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. Such a person will remain subject to the notification requirements for the duration of the “relevant order” (defined in subsection (5)). That is, he will remain subject to the notification requirements for the duration of the risk of sexual harm order that he breached, or if he breached an interim order, either for the duration of that order, or if a main order is made, the duration of the main order. However, if the notification period (see section 82) which originally applied to the person lasts for longer than the order, the person remains subject to the notification requirements until the end of that longer period.

260. Subsection (3) relates to those defendants who are not already subject to the notification requirements when convicted of an offence under section 128. Such a person will become subject to notification requirements as a result of that offence until the relevant order (explained above) ceases to have effect.

261. For the purpose of the notification requirements, the “relevant date” (see section 83) is the date when the person is convicted of the section 128 offence, or the date when he is cautioned in respect of it or when the relevant finding in respect of it is made. This means, for example, that the person must comply with the initial notification requirement (at section 83(1)) within 3 days of that conviction, caution, or finding.

Section 130: Power to amend Schedules 3 and 5

262. Section 130 allows the Secretary of State to amend by statutory instrument the list of offences in Schedules 3 and 5 and any of the age or sentence thresholds that apply to those offences. The offences listed in Schedule 3 trigger, providing the thresholds are met, the notification requirements of this Part of the Act. They can also be used, where the victim was under 16, to apply for a foreign travel order. The offences in Schedule 3 and Schedule 5 can trigger a sexual offences prevention order. Any amendment to Schedules 3 or 5, by adding an offence to them, will not extend the notification requirements of this Part retrospectively by, for example, making persons convicted of an offence added to Schedule 3 subject to the notification requirements, where they were convicted of that offence before the amendment was made. Subsection (3) provides, however, that it will be possible, where a new offence is added, for the police to apply for a sexual offences prevention order or an interim order or a foreign travel order in respect of an offender convicted or cautioned of that offence, or in respect of whom a relevant finding has been made relating to that offence, before the date of the amendment. The amending order will be subject to the affirmative resolution procedure (section 138(2)). For Scotland, the statutory instrument will be made by Scottish Ministers and laid before the Scottish Parliament.

Section 131: Young offenders: application

263. Young offenders are not sentenced to periods of imprisonment in the same way as adults. Section 131 therefore lists the sentences and periods of detention applicable to young offenders that should be considered as equivalent to a sentence of imprisonment for the purposes of working out the notification period and other purposes (e.g. section 81(3)(b)).

Section 132: Offences with thresholds

264. Section 132 provides that where an offence in Schedule 3 has a sentence (or other disposal, e.g. hospital order) threshold (“a sentencing condition”), the offender is to be regarded as having been convicted of that offence, or as having had a finding relating to that offence made in respect of him, only when the sentencing condition is met. This applies only to Part 2 of the Act. Establishing the date of a conviction or finding is important because it triggers the date when the notification requirements start to apply to the offender. For example, under section 83, an offender is required to make an initial notification at a police station within 3 days of the date of his conviction or finding for a relevant offence. In the case of offences with sentencing conditions, the notification requirements will only apply where the conditions are met and this will not be known until the offender is dealt with by the court. This could be some time after the conviction or finding in question. For example, a 25 year old who is convicted of sexual assault against a 20 year old woman would not be required to ‘register’ until he was sentenced to imprisonment for that offence or given an 12 month community sentence in respect of it by the court. Subsection (3) to subsection (6) cover foreign convictions and findings. These are relevant when determining whether to make a notification order and may be relevant in deciding whether to make a sexual offences prevention order or a foreign travel order. The effect of the subsections is the same as that of subsection (3) on convictions and findings in the United Kingdom, i.e. the date of the conviction or finding will be the date when the relevant sentencing conditions for the offence are met.

265. The offences in Schedule 5 (offences in relation to which which a sexual offences prevention order can be made) do not currently have sentencing conditions. However subsection (4) of section 130 provides a power which will enable the Secretary of State to amend sentencing conditions for offences in Schedules 3 and 5 in future. Subsection (8) of section 132 therefore extends the provisions to cover Schedule 5.

Section 133:Part 2: General interpretation

266. Section 133 defines certain terms used in this Part of the Act.

Section 134: Conditional discharges and probation orders

267. Section 134 provides that various provisions in other legislation to the effect that a conviction with absolute or conditional discharge is deemed not to be a conviction are not to apply for the purposes of this Part of the Act in relation to orders for conditional discharge made in respect of a post-commencement conviction.

Section 135: Interpretation: mentally disordered offenders

268. Section 135 clarifies how the provisions in this Part apply in respect of mentally disordered offenders.

Section 136:Part 2: Northern Ireland

269. This section makes a series of minor referential modifications necessary for the application and operation of Part 2 in Northern Ireland.

Part 3: General

Section 137: Service courts

270. Section 137 makes the modifications needed for provisions in Part 2 of the Act relating to court orders, convictions, findings, offences and proceedings to apply in the context of service courts (that is, courts-martial and Standing Civilian Courts) as well as in civilian courts. Service courts have jurisdiction to try all offences equivalent to an England and Wales criminal offence, including the most serious, committed outside the UK, and most such offences committed within the UK, by persons subject to Service law. These persons include Service personnel and, in limited circumstances, some groups of civilians, such as dependants or civil servants accompanying the Services overseas. Section 137 makes clear, for example, that if a person is convicted of a serious sexual offence by a court-martial, that person will be subject to the notification requirements. It also enables Service courts to impose sexual offences prevention orders at the time of sentencing in the same way as civilian courts. Where a Service court is satisfied that the test set out in section 104(1)(b) is met, namely that a sexual offences prevention order is necessary for the purposes of protecting the public in the UK from serious sexual harm, that court will be able to impose such an order in the same way as a civilian court. However, section 137 provides Service courts with the power to impose a sexual offences prevention order only when dealing with an offender in respect of an offence listed in Schedule 3 or 5 and not following an application by the police.

Clause 141: Commencement

271. Clause 141 establishes a power for the Secretary of State to make a statutory instrument setting out how the measures included in this Act will come into force. Subsection (2) sets out what such an order may contain. It allows provision to be made for different parts of the Act to commence at different times. It also allows for the order to contain transitional provisions. Those provisions of the Act that are within the devolved competence of the Scottish Parliament will be commenced by the Scottish Ministers.

COMMENCEMENT

272. The provisions of the Act will come into force on such days that the Secretary of State or (where applicable) the Scottish Ministers specify by order under section 141.

HANSARD REFERENCES

Stage	Date	Hansard reference
Introduction (Lords)	28th January 2003	Vol. 643 Part No. 35 Col. 1012
Second Reading	13th February 2003	Vol. 644 Part No. 45 Col. 771–810 & 842–882
Committee day 1	31st March 2003	Vol. 646 Part No. 73 Col. 1048–1110 & 1127–1156
Committee day 2	1st April 2003	Vol. 646 Part No. 74 Col. 1170–1247 & 1255–1304
Committee day 3	10th April 2003	Vol. 647 Part No. 81 Col. 348–370 & 385–420
Committee day 4	28th April 2003	Vol. 647 Part No. 82 Col. 525–566
Committee day 5	13th May 2003	Vol. 648 Part No. 91 Col. 164–228
Committee day 6	19th May 2003	Vol. 648 Part No. 95

(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)

Stage	Date	Hansard reference
		Col. 549–682
Report day 1	2nd June 2003	Vol. 648 Part No. 99 Col. 1049–1114 & 1131–1154
Report day 2	9th June 2003	Vol. 649 Part No. 104 Col. 11–25 & 47–116
Third Reading	17th June 2003	Vol. 649 Part No. 110 Col. 669–751
Introduction (Commons)	18th June 2003	
Second Reading	15th July 2003	Vol. 409 Part No. 129 Col. 177–252
Standing Committee B	9th September 2003	Col. 1–38
Standing Committee B	9th September 2003	Col. 39–92
Standing Committee B	11th September 2003	Col. 93–126
Standing Committee B	11th September 2003	Col. 127–168
Standing Committee B	16th September 2003	Col. 169–202
Standing Committee B	16th September 2003	Col. 203–246
Standing Committee B	18th September 2003	Col. 247–280
Standing Committee B	18th September 2003	Col. 281–314
Standing Committee B	14th October 2003	Col. 315–362
Standing Committee B	14th October 2003	Col. 363–410
Report and Third Reading	3rd November 2003	Vol. 412 Part no. 151 Col. 544–637
LCCA	13th November 2003	Vol. 654 Part No. 169 Col. 1605–1667
CCLM	18th November 2003	Vol. 413 Part No. 160 Col. 625–642
LCCM	18th November 2003	Vol. 654 Part No. 172 Col. 1911–1924
Royal Assent (Commons)	20th November 2003	Vol. 413 Col. 1037
Royal Assent (Lords)	20th November 2003	Vol. 654 Col. 2114