

This factsheet summarises the legal position in relation to the age of sexual consent in Northern Ireland, and outlines the new sexual offences legislation in light of the revision of sexual offences legislation in Northern Ireland.

Key facts

- The age of sexual consent has been reduced from 17 to 16 years of age.
- There is no longer a statutory duty to report to the police cases of sexual activity involving a young person aged 13 to 16 years old, where the other person is under 18 years of age.
- There is now a new set of offences to protect persons with a mental disorder from sexual abuse.

The Sexual Offences (Northern Ireland) Order 2008

The Sexual Offences (Northern Ireland) Order 2008, which was approved by Parliament in June 2008 came into force on 2nd February 2009. It incorporated significant changes to the law in relation to sexual offences in Northern Ireland, better protection for young people from sexual abuse and exploitation and seeks to clarify issues surrounding consent in sexual assault cases and rape. Key elements included:

- lowering the age of sexual consent from 17 years of age to 16 years of age
- a set of offences to protect persons with a mental disorder
- new offences of kerb crawling and soliciting for prostitution
- tighter penalties for keeping a brothel
- more clarity on the abuse of positions of trust offences
- gender neutrality.

All sexual activity with a young person of either gender under the age of 16 is now illegal, even if both parties are under 16 – this is the same as the rest of the UK. Prior to 2008, it was only sexual intercourse that fell within the definition of ‘unlawful carnal knowledge’ and this offence only applied to intercourse with girls under 17. Now the offence covers all sexual activity and is gender neutral.

The maximum penalties for offences have been reviewed to ensure they reflect the seriousness of the behaviour(s) involved.

Consent

The age of consent for heterosexual and non-heterosexual sex is 16 years of age.

Sexual activity	Age of consent
Heterosexual sex	16 years
Sexual intercourse between men	16 years
Lesbian sex	16 years
Heterosexual anal sex	16 years

Non-consensual sexual offences

It is an offence of sexual assault for a person intentionally to touch another person sexually without reasonable belief that they consented. Touching covers all physical contact, whether with a part of the body or anything else, or through clothing. Sexual is defined as:

- a reasonable person would always consider it to be so, or

- if a reasonable person may consider it to be sexual, depending on the circumstances and intention.

The maximum penalty for sexual assault and for causing a person to engage in sexual activity without consent is ten years imprisonment.

It is an offence for a man intentionally to penetrate with his penis the vagina, anus or mouth of another person without that person's consent if he does not reasonably believe that he/she consents. The maximum penalty is life imprisonment.

Offence	Maximum Penalty
Rape (Article 5)	Life imprisonment
Assault by penetration (Article 6)	Life imprisonment
Sexual assault (Article 7)	10 years imprisonment
Causing a person to engage in sexual activity without consent (Article 8)	10 years imprisonment
Causing a person to engage in sexual activity without consent, where penetration is involved (Article 8)	Life imprisonment

Sexual offences against children under 13 years of age

It is an offence to engage in any sexual activity with a child aged under 13 years of age, with a maximum penalty of 14 years imprisonment. Where the sexual activity involves penetration, the maximum penalty is life imprisonment.

Offence	Maximum Penalty
Rape of a child under 13 (Article 12)	Life imprisonment
Assault of a child under 13 by penetration (Article 13)	Life imprisonment
Sexual assault of a child under 13 (Article 14)	14 years imprisonment
Causing or inciting a child under 13 to engage in sexual activity (Article 15)	14 years imprisonment
Causing or inciting a child under 13 engage in sexual activity, where penetration is involved (Article 15)	Life imprisonment

Sexual offences against children under 16 years of age

It is an offence for person aged eighteen or over to:

Offence	Maximum Penalty
Engage in sexual activity with a child (Article 16)	14 years imprisonment
Cause or incite a child to engage in sexual activity (Article 17)	14 years imprisonment
Engage in sexual activity in the presence of a child (Article 18)	10 years imprisonment
Cause a child to watch a sexual act (Article 19)	10 years imprisonment
Arrange or facilitate the commission of a child sex offence (Article 21)	14 years imprisonment
Meet a child following sexual grooming (Article 22)	10 years imprisonment

It is also an offence under Article 20, for persons under the age of 18 to engage in any activity that would be an offence under Articles 16-19 if that person was aged 18 or over. This offence carries with it a maximum penalty of 5 years imprisonment.

Offence	Maximum Penalty
Sexual offences against children committed by children or young persons (Article 20)	5 years imprisonment.

Removing the duty to report evidence of sexual activity between young people

Section 5 of the Criminal Law Act (Northern Ireland) 1967 places a duty on everyone to report to the police information they may have about the commission of a relevant offence (offence with a maximum sentence of five years or more). This would then mean under the new Sexual Offences Order that everyone would have a duty to report evidence of sexual activity taking place involving a young person under the age of 16. As a result, this section has now been amended under Article 79 of the Sexual Offences Order, meaning that there is no statutory duty to report to the police cases of sexual activity involving a young person aged 13 to 16 years old, where the other person is under 18 years of age, and where the sexual activity is mutually agreed and non-exploitative. This exclusion does not apply to information about offences against children under 13, which must still be reported.

Abuse of position of trust offences

The following articles provide that it is an offence for a person aged 18 or over in a position of trust to behave in sexual ways in relation to a young person aged under 18:

- Article 23: Abuse of position of trust: sexual activity with a child
- Article 24: Abuse of position of trust: causing or inciting a child to engage in sexual activity
- Article 25: Abuse of position of trust: sexual activity in the presence of a child
- Article 26: Abuse of position of trust: causing a child to watch a sexual act.

The behaviour prohibited in each of the above Articles is identical to that prohibited by the child sex offences in Articles 16-19.

Roles which constitute a position of trust are set out in Article 28. Positions of trust include:

- Institutions looking after young people who are detained under a court order or enactment (e.g. young offenders institution).
- Accommodation provided by Health and Social Care Trusts (HSC Trust) and voluntary organisations under statutory provision.
- Hospitals (including private hospitals)
- Independent clinics
- Residential care homes
- Community homes
- Voluntary homes
- Children's homes
- Residential family centres
- Educational institutions
- Legal guardian as set out in the Children (Northern Ireland) Order 1995
- A person who has regular, unsupervised contact with a young person as part of local authority provision of accommodation to young people who are in need or 'looked after', under police protection, on remand or in custody.
- A person who has regular, unsupervised contact with a young person as a person who regularly reports to the court regarding the young person's welfare.
- A person who looks after the young person on an individual basis as a personal advisor, appointed under relevant legislation (e.g. when a young person leaves HSC Trusts' care).
- A person who looks after a young person in an official capacity when the young person is subject to a care order, supervision order or education supervision order.

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- A person who looks after or supervises a young person on an individual basis after the young person's release from detention or in pursuance of a youth conference or court order.

There are exceptions when the positions of trust offences do not apply (Articles 30 and 31). These exceptions are where:

- The person is legally married to or is a civil partner of the young person
- A lawful sexual relationship existed before the position of trust arose.

All offences against young persons under the age of 18 where there is a position of trust carry with them a maximum penalty of 5 years imprisonment.

Offences committed against persons with a mental disorder

'Mental disorder' is defined as having 'the meaning given by Article 3 of the Mental Health (Northern Ireland) Order 1986'. In the 1986 Order, mental disorder means 'mental illness, mental handicap and any other disorder or disability of mind'.

These offences come under three categories: where the victim is:

- unable to agree to the sexual activity because of a mental disorder which impedes their choice
- persuaded to engage in or watch a sexual act by means of an inducement offered or given, a threat made or a deception practiced for that purpose
- in a relationship of care.

Offences against a person with a mental disorder impeding choice

It is an offence intentionally to touch someone sexually when that person, because of, or for a reason related to, a mental disorder is unable to refuse. The maximum penalty is 14 years imprisonment. If the sexual activity involves penetration, the maximum penalty is life imprisonment.

It is an offence intentionally to cause or incite someone to engage in a sexual activity when that person, because of, or for a reason related to, a mental disorder is unable to refuse. The maximum penalty is 14 years imprisonment. If the sexual activity involves penetration, the maximum penalty is life imprisonment.

It is an offence to engage in sexual activity for the purposes of sexual gratification in the presence of someone, or in a place from which that person can observe them, when that person, because of, or for reasons related to, a mental disorder is unable to refuse. The maximum penalty is 10 years imprisonment.

It is an offence for a person, for the purposes of his own sexual gratification, to cause a person to watch a sexual act, or to look at an image of any person engaging in sexual activity, when that person because of, or for reasons related to, a mental disorder is unable to refuse. The maximum penalty is 10 years imprisonment.

Offence	Maximum Penalty
Sexual activity with a person with a mental disorder impeding choice (Article 43)	14 years imprisonment
Sexual activity with a person with a mental disorder impeding choice, involving penetration (Article 43)	Life imprisonment
Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity (Article 44)	10 years imprisonment

Engaging in sexual activity in the presence of a person with a mental disorder impeding choice (Article 45)	10 years imprisonment
Causing a person with a mental disorder impeding choice to watch a sexual act (Article 46)	10 years imprisonment

Inducements, threats or deceptions to persons with a mental disorder

It is an offence to cause a person with a mental disorder to engage in or agree to engage in sexual activity when their agreement is obtained through an inducement offered or given, a threat made or a deception practiced. The maximum penalty is 14 years imprisonment. If penetration is involved, the maximum penalty is life imprisonment.

It is an offence to engage in a sexual act, for the purposes of sexual gratification, in the presence of a person with a mental disorder when their agreement to be present is obtained by an inducement, threat or deception. The offence is only committed where the offender knows or believes that the victim is aware of the sexual activity or intends him/her to be aware of it. The maximum penalty is 10 years imprisonment.

It is an offence for a person to cause a person with a mental disorder to watch a sexual act or to look at an image of someone engaging in a sexual act for sexual gratification where their agreement was obtained by an inducement, threat or deception. The maximum penalty is 10 years imprisonment.

Offence	Maximum Penalty
Inducement etc. to procure sexual activity with a person with a mental disorder (Article 47)	14 years imprisonment
Inducement etc. to procure sexual activity with a person with a mental disorder, where the sexual activity involves penetration (Article 47)	Life imprisonment
Causing or inciting a person with a mental disorder to engage in sexual activity by inducement etc. (Article 48)	14 years imprisonment
Causing or inciting a person with a mental disorder to engage in sexual activity by inducement etc., where the sexual activity involves penetration (Article 48)	Life imprisonment
Engaging sexual activity in the presence, procured by inducement etc. of a person with a mental disorder (Article 49)	10 years imprisonment
Causing a person with a mental disorder to watch a sexual act by inducement etc. (Article 50)	10 years imprisonment

Care workers for persons with a mental disorder

It is an offence for a care worker to engage in sexual touching with a person with a mental disorder where he/she is involved in his/her care. The maximum penalty is 10 years imprisonment. If the sexual activity involves penetration, the maximum penalty is 14 years imprisonment.

It is an offence for a care worker intentionally to cause or incite another person to engage in sexual activity when that person has a mental disorder and he/she is involved in his/her care. The maximum penalty is 10 years imprisonment. If the sexual activity involves penetration, the maximum penalty is 14 years imprisonment.

It is an offence for a care worker intentionally to engage in sexual activity in the presence of a person who has a mental disorder when he/she is involved in his care. The maximum penalty is seven years imprisonment.

It is an offence for a care worker intentionally to cause a person with a mental disorder in his/her care to watch a sexual act or to look at an image of someone engaging in a sexual activity for his/her own sexual gratification. The maximum penalty is seven years imprisonment.

Offence	Maximum Penalty
Care workers: sexual activity with a person with a mental disorder (Article 51)	10 years imprisonment
Care workers: sexual activity with a person with a mental disorder, involving penetration (Article 51)	14 years imprisonment
Care workers: causing or inciting sexual activity with a person with a mental disorder (Article 52)	7 years imprisonment
Care workers: engaging in sexual activity in the presence of a person with a mental disorder (Article 53)	7 years imprisonment
Care workers: causing a person with a mental disorder to watch a sexual act (Article 54)	7 years imprisonment

Prostitution

It is an offence for a person persistently to loiter or solicit in a street or public place for the purpose of prostitution. Conduct is persistent if it takes place on two or more occasions in any period of three months.

It is an offence for a person to solicit another person (or different persons) for the purpose of prostitution, from a motor vehicle while it is in a street or public place; or in a street or public place while in the immediate vicinity of a motor vehicle that he/she has just got out of.

It is an offence for a person if in a street or public place to persistently solicit another person (or different persons) for the purpose of prostitution.

Offence	Maximum Penalty
Loitering or soliciting for purposes of solicitation (Article 59)	Fine
Kerb-crawling (Article 60)	Fine
Persistent soliciting (Article 61)	Fine

It is an offence for a person intentionally to cause or incite a person into prostitution anywhere in the world where that person does so for or in expectation of gain for himself/herself or for a third party. The prostitution itself does not need to take place for the offence to be committed. The maximum penalty is seven years imprisonment.

It is an offence for a person intentionally to control another person's activities relating to prostitution, in any part of the world, where that person does so for, or in the expectation of, gain for himself/herself or a third party. The maximum penalty is seven years imprisonment.

It is an offence to keep a brothel¹ used for prostitution. The offence covers anyone who keeps, manages, or acts or assists in the management of a brothel to which people resort for practices involving prostitution. The maximum penalty is seven years imprisonment.

Offence	Maximum Penalty
Causing or inciting prostitution for gain (Article 62)	7 years
Controlling prostitution for gain (Article 63)	7 years

¹ A brothel is a building which people use to engage in sexual activity with prostitutes.

Keeping a brothel used for prostitution (Article 64)	7 years
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Further Information

The Northern Ireland Office (NIO) has issued explanatory guidance on the Sexual Offences Order, which is available to access online at the NIO website, available at:

[http://www.nio.gov.uk/explanatory_guidance_to_the_sexual_offences_\(ni\)_order_2008.pdf](http://www.nio.gov.uk/explanatory_guidance_to_the_sexual_offences_(ni)_order_2008.pdf)

It is also available in hard copy format from:

Criminal Justice Directorate
Northern Ireland Office
Massey House
Stormont Estate
Stoney Road
Belfast
BT4 3SX

Other Northern Ireland factsheets

Teenage pregnancy
Abortion
Sexually transmitted infections
Sexual orientation
Sexual behaviour and young people
Relationships and sexuality education in schools
Sexual health and people with learning disabilities
The legal position regarding contraceptive advice and provision to young people

For further information contact FPA at:

3rd floor, Ascot House
24-31 Shaftesbury Square
Belfast
BT2 7DB
Tel: 0845 122 8687
Email: belfast@fpa.org.uk

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