

This factsheet summarises the legal position on the age of sexual consent in Northern Ireland and also outlines the new Northern Ireland sexual offences legislation.

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, 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 2 February 2009. It incorporated significant changes to the law in relation to sexual offences in Northern Ireland, offered young people better protection from sexual abuse and exploitation, and clarified issues surrounding consent in cases of sexual assault and rape. Key elements included:

- lowering the age of sexual consent from 17 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;
- clarity on offences involving the abuse of positions of trust.

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.

Sexual activity	Age of consent
Heterosexual sex	16 years
Sexual intercourse between men (MSM)	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:

- if a reasonable person would always consider it to be so;
- 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 10 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 to 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 a person aged 18 or over to do the following:

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 five 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 placed 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 (Northern Ireland) Order that everyone would have a duty to report evidence of sexual activity 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 (Northern Ireland) Order, meaning there is no statutory duty to report to the police cases of sexual activity involving a young person aged 13 to 16 years, 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 detail 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 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 is identical to that prohibited by the child sex offences in Articles 16–19.

Roles that constitute a position of trust are set out in Article 28. They include:

- institutions looking after young people who are detained under a court order or enactment (eg young offenders institution);
- accommodation provided by Health and Social Care Trusts (HSCTs) 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;

THESE FACTS

- a person who looks after the young person on an individual basis as a personal advisor, appointed under relevant legislation (eg when a young person leaves HSCT 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;
- 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 when:

- 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 five 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 seven 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/her 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 expectation of, gain for himself/herself or a third party. The maximum penalty is seven years imprisonment.

It is an offence to keep a brothel used for prostitution (a brothel is a building people use to engage in sexual activity with prostitutes). 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 imprisonment
Controlling prostitution for gain (Article 63)	7 years imprisonment
Keeping a brothel used for prostitution (Article 64)	7 years imprisonment

Further information

The Northern Ireland Office (NIO) has issued explanatory guidance on the Sexual Offences (Northern Ireland) Order 2008, which is available to access online at the NIO website:

[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

Abortion

Relationships and sexuality education in schools

Sexual health and people with learning disabilities

Sexual behaviour and young people

Sexual orientation

Sexually transmitted infections

Teenage pregnancy

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

or

3rd Floor,
67 Carlisle Road,
Londonderry BT48 6JL

Tel: (028) 7126 0016

Email: derry@fpa.org.uk

© FPA, 2010. Registered Charity No. 250187.

Factsheet last updated August 2010.

Published by *Sexual Health Information*, a partnership between **FPA** in Northern Ireland and the **Public Health Agency**