



# Sex Offenders Act 1997

## 1997 CHAPTER 51

An Act to require the notification of information to the police by persons who have committed certain sexual offences; to make provision with respect to the commission of certain sexual acts outside the United Kingdom; and for connected purposes. [21st March 1997]

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 I

#### NOTIFICATION REQUIREMENTS FOR SEX OFFENDERS

#### **1 Sex offenders subject to notification requirements**

- (1) A person becomes subject to the notification requirements of this Part if, after the commencement of this Part—
  - (a) he is convicted of a sexual offence to which this Part applies;
  - (b) he is found not guilty of such an offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence; or
  - (c) in England and Wales or Northern Ireland, he is cautioned by a constable in respect of such an offence which, at the time when the caution is given, he has admitted.
- (2) A person becomes subject to those requirements if, at that commencement—
  - (a) he has been convicted of a sexual offence to which this Part applies but has not been dealt with in respect of the offence; or

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- (b) he has been found not guilty of such an offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence, but has not been dealt with in respect of the finding.
- (3) A person becomes subject to those requirements if, at that commencement—
- (a) he is serving a sentence of imprisonment or a term of service detention, or is subject to a community order, in respect of a sexual offence to which this Part applies;
  - (b) he is subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of such an offence;
  - (c) he is detained in a hospital, or is subject to a guardianship order, having been convicted of such an offence; or
  - (d) he is detained in a hospital, having been found not guilty of such an offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence;
- and a person who would fall within paragraph (a), (c) or (d) above but for the fact that, at that commencement, he is unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, shall be treated as falling within that paragraph.
- (4) A person falling within subsections (1) to (3) above shall continue to be subject to those requirements for the period set out opposite a person of his description in the second column of the following Table.

TABLE

<i>Description of person</i>	<i>Applicable 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
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
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	A period of 10 years beginning with the relevant date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	A period of 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	A period of 7 years beginning with that date
A person of any other description	A period of 5 years beginning with that date

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- (5) Subsection (6) below applies where a person falling within subsection (1)(a), (2)(a) or (3)(a), (b) or (c) above is or has been sentenced, in respect of two or more sexual offences to which this Part applies—
- (a) to consecutive terms of imprisonment; or
  - (b) to terms of imprisonment which are partly concurrent.
- (6) Subsection (4) above shall have effect as if the person 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 concurrent terms, is equal to the aggregate of those terms after making such deduction as may be necessary to secure that no period of time is counted more than once.
- (7) Where a person found to be under a disability, and to have done the act charged against him in respect of a sexual offence to which this Part applies, is subsequently tried for the offence, the finding, and any order made in respect of the finding, shall be disregarded for the purposes of this section.
- (8) In this Part “the relevant date” means—
- (a) in a case of a person falling within subsection (1)(a), (2)(a) or (3)(a) to (c) above, the date of the conviction;
  - (b) in a case of a person falling within subsection (1)(b), (2)(b) or (3)(d) above, the date of the finding;
  - (c) in a case of a person falling within subsection (1)(c) above, the date of the caution.
- (9) Schedule 1 to this Act (which lists the sexual offences to which this Part applies) shall have effect.

## **2 Effect of notification requirements**

- (1) A person who is subject to the notification requirements of this Part shall, before the end of the period of 14 days beginning with the relevant date or, if later, the commencement of this Part, notify to the police the following information, namely—
- (a) his name and, where he also uses one or more other names, each of those names; and
  - (b) his home address.
- (2) A person who is subject to those requirements shall also, before the end of the period of 14 days beginning with—
- (a) his using a name which has not been notified to the police under this section;
  - (b) any change of his home address; or
  - (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 this section,
- notify that name, the effect of that change or, as the case may be, the address of those premises to the police.
- (3) A notification given to the police by any person shall not be regarded as complying with subsection (1) or (2) above unless it also states—
- (a) his date of birth;

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- (b) his name on the relevant date and, where he used one or more other names on that date, each of those names; and
  - (c) his home address on that date.
- (4) For the purpose of determining any period for the purposes of subsection (1) or (2) above, there shall be disregarded any time when the person in question—
- (a) is remanded in or committed to custody by an order of a court;
  - (b) is serving a sentence of imprisonment or a term of service detention;
  - (c) is detained in a hospital; or
  - (d) is outside the United Kingdom.
- (5) A person may give a notification under this section—
- (a) by attending at any police station in his local police area and giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station; or
  - (b) by sending a written notification to any such police station.
- (6) Any notification under this section shall be acknowledged; and an acknowledgment under this subsection shall be in writing and in such form as the Secretary of State may direct.
- (7) In this section—
- “home address”, in relation to any person, means the address of his home, that is to say, his sole or main residence in the United Kingdom or, where he has no such residence, premises in the United Kingdom which he regularly visits;
  - “local police area”, in relation to any person, means the police area in which his home is situated;
  - “qualifying period” means—
    - (a) a period of 14 days; or
    - (b) two or more periods, in any period of 12 months, which (taken together) amount to 14 days.
- (8) The definition of “local police area” in subsection (7) above shall apply as if Northern Ireland were a police area.

### **3 Offences**

- (1) If a person—
- (a) fails, without reasonable excuse, to comply with section 2(1) or (2) above; or
  - (b) notifies to the police, in purported compliance with section 2(1) or (2) above, any information which he knows to be false,
- he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding six months, or to both.
- (2) A person commits an offence under subsection (1)(a) above on the day on which he first fails, without reasonable excuse, to comply with section 2(1) or (2) above and continues to commit it throughout any period during which the failure continues; but a person shall not be prosecuted under that provision more than once in respect of the same failure.

- (3) 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.

#### **4 Young sex offenders**

- (1) Subject to the provisions of this section, this Part applies to—
- (a) a period of detention which a person is liable to serve under 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) 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;
  - (d) a sentence of detention in a young offender institution, a young offenders institution or a young offenders centre;
  - (e) a sentence under a custodial order within the meaning of section 71AA of the Army Act 1955 or the Air Force Act 1955 or section 43AA of the Naval Discipline Act 1957;
  - (f) a sentence of detention under section 53 of the Children and Young Persons Act 1933, section 208 of the Criminal Procedure (Scotland) Act 1995 or section 73 of the Children and Young Persons Act (Northern Ireland) 1968;
  - (g) a sentence of custody for life under section 8 of the Criminal Justice Act 1982; and
  - (h) a sentence of detention, or custody for life, under section 71A of the Army Act 1955 or the Air Force Act 1955 or section 43A of the Naval Discipline Act 1957,

as it applies to an equivalent sentence of imprisonment; and references in this Part to prison or imprisonment shall be construed accordingly.

- (2) In the case of a person who is under 18 on the relevant date, section 1(4) above shall have effect as if for any reference to a period of 10 years, 7 years or 5 years there were substituted a reference to one-half of that period.
- (3) In the case of a person falling within section 1(1)(a) or (b) above who is under the relevant age on the relevant date, the court may direct that, until he attains that age, sections 2 and 3 above shall have effect as if an individual having parental responsibility or, in Scotland, parental responsibilities for him—
- (a) were authorised to comply on his behalf with the provisions of section 2 above; and
  - (b) were liable in his stead for any failure to comply with those provisions;
- and in this subsection “the relevant age” means 18 in England and Wales and Northern Ireland and 16 in Scotland.
- (4) In the case of a person who is under 18, section 3(1) above shall have effect as if the words “or to imprisonment for a term not exceeding six months, or to both” were omitted.

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## 5 Certificates for purposes of Part I

- (1) Subsection (2) below applies where, on any date after the commencement of this Part, a person—
- (a) is convicted of a sexual offence to which this Part applies;
  - (b) is found not guilty of such an offence by reason of insanity; or
  - (c) is 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 so 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 a sexual offence to which this Part applies; and
  - (b) certifies those facts (whether at the time or subsequently),
- the certificate shall, for the purposes of this Part, be evidence or, in Scotland, sufficient evidence of those facts.
- (3) Subsection (4) below applies where, on any date after the commencement of this Part, a person is in England and Wales or Northern Ireland cautioned by a constable in respect of a sexual offence to which this Part applies and which, at the time when the caution is given, he has admitted.
- (4) If the constable—
- (a) informs the person that he has been cautioned on that date and that the offence in question is a sexual offence to which this Part applies; and
  - (b) certifies those facts (whether at the time or subsequently) in such form as the Secretary of State may by order prescribe,
- the certificate shall, for the purposes of this Part, be evidence of those facts.
- (5) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section “court” includes a court-martial, a Standing Civilian Court and a disciplinary court ordered under the Naval Discipline Act 1957.

## 6 Interpretation of Part I

- (1) In this Part—
- “admitted to a hospital” means admitted to a hospital under—
- (a) section 37 of the Mental Health Act 1983, section 57(2)(a) or 58 of the Criminal Procedure (Scotland) Act 1995 or Article 44 or 50A(2) 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 made under subsection (3) of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957;
- “community order” means—

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- (a) a community order within the meaning of Part I of the Criminal Justice Act 1991;
- (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, a probation order under section 1 of the Probation Act (Northern Ireland) 1950 or a community service order under Article 7 of the Treatment of Offenders (Northern Ireland) Order 1976; or
- (d) a community supervision order under paragraph 4 of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957;

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

- (a) Part III of the Mental Health Act 1983, section 71 of the Mental Health (Scotland) Act 1984, Part VI 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 made under subsection (3) of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957;

“guardianship order” means a guardianship order under section 37 of the Mental Health Act 1983, section 58 of the Criminal Procedure (Scotland) Act 1995 or Article 44 of the Mental Health (Northern Ireland) Order 1986;

“parental responsibility” has the same meaning as in the Children Act 1989 or the Children (Northern Ireland) Order 1995, and “parental responsibilities” has the same meaning as in Part I of the Children (Scotland) Act 1995;

“the relevant date” has the meaning given by section 1(8) above;

“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 or Article 50A(3) (b) of the Mental Health (Northern Ireland) Order 1986; or
- (c) a direction under subsection (2) of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957;

“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) In this Part any reference to a conviction includes—

- (a) a reference to a finding in summary proceedings, where the court makes an order under section 37(3) of the Mental Health Act 1983, section 58(3) of the Criminal Procedure (Scotland) Act 1995 or Article 44(4) of the Mental Health (Northern Ireland) Order 1986, that the accused did the act charged; and

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- (b) a reference to a finding in summary proceedings in Scotland, where the court makes an order under section 246(3) of the Criminal Procedure (Scotland) Act 1995 discharging the accused absolutely, that the accused committed the offence;
- and cognate references shall be construed accordingly.
- (3) In this Part any 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 a sexual offence to which this Part applies includes a reference to his being or having been found—
    - (a) unfit to be tried for such an offence;
    - (b) to be insane so that his trial for such an offence cannot or could not proceed; or
    - (c) unfit to be tried and to have done the act charged against him in respect of such an offence.
  - (4) In subsection (1) above—
    - (a) any reference to admission or detention under Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, 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; and
      - (ii) a reference to a restriction order treated as made by paragraph 2(1) of that Schedule;
    - (b) any reference to admission or detention under any provision of Part VI 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; and
      - (ii) a reference to a restriction order made under section 178(1) or 379(1) of that Act; and
    - (c) any reference to admission or detention under regulations made under subsection (3), and the reference to a direction under subsection (2), of section 116B of the Army Act 1955 or the Air Force Act 1955 or section 63B of the Naval Discipline Act 1957 include respectively—
      - (i) a reference to admission or detention; and
      - (ii) a reference to a direction, under section 46 of the Mental Health Act 1983, section 69 of the Mental Health (Scotland) Act 1984 or Article 52 of the Mental Health (Northern Ireland) Order 1986.

## PART II

### SEXUAL OFFENCES COMMITTED OUTSIDE THE UNITED KINGDOM

#### 7 **Extension of jurisdiction: England and Wales and Northern Ireland**

- (1) Subject to subsection (2) below, 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,  
shall constitute that sexual offence under the law of that part of the United Kingdom.
- (2) No proceedings shall by virtue of this section be brought against any person unless he was at the commencement of this section, or has subsequently 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) below, the condition in subsection (1)(a) above shall be taken to be satisfied unless, not later than rules of court may provide, the defence serve 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 their opinion satisfied;
  - (b) showing their grounds for that opinion; and
  - (c) requiring the prosecution to show that it is satisfied.
- (5) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4) above.
- (6) In the Crown Court the question whether the condition is satisfied is to be decided by the judge alone.
- (7) Schedule 2 to this Act (which lists the sexual offences to which this section applies) shall have effect.

## **8 Extension of jurisdiction: Scotland**

After section 16A of the Criminal Law (Consolidation) (Scotland) Act 1995 there shall be inserted the following section—

### **“16B Commission of certain sexual acts outside the United Kingdom**

- (1) Subject to subsection (2) below, 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 listed sexual offence if it had been done in Scotland,
- shall constitute that sexual offence.
- (2) No proceedings shall by virtue of this section be brought against any person unless he was at the commencement of this section, or has subsequently 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 subsection (1) above, however it is described in that law.

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- (4) Subject to subsection (5) below, the condition in subsection (1)(a) above shall be taken to be satisfied unless, not later than may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice—
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion satisfied;
  - (b) setting out the grounds for that opinion; and
  - (c) requiring the prosecutor to prove that it is satisfied.
- (5) The court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under subsection (4) above.
- (6) In proceedings on indictment, the question whether the condition is satisfied is to be decided by the judge alone.
- (7) Subject to subsection (8) below, in this section “listed sexual offence” means any of the following—
- (a) rape of a girl under the age of 16;
  - (b) indecent assault of a person under the age of 16;
  - (c) lewd, indecent or libidinous behaviour or practices;
  - (d) shamelessly indecent conduct involving a person under the age of 16;
  - (e) sodomy with or against a boy under the age of 16;
  - (f) an offence under section 5(1) or (2) of this Act (unlawful sexual intercourse with a girl under the age of 13);
  - (g) an offence under section 5(3) of this Act (unlawful sexual intercourse with a girl under the age of 16);
  - (h) an offence under section 6 of this Act (indecent behaviour towards a girl between the age of 12 and 16);
  - (i) an offence under section 13(5) or (6) of this Act where the homosexual act involves a person under the age of 16 (prohibition on certain homosexual acts); and
  - (j) an offence under section 52 of the Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children).
- (8) “Listed sexual offence” includes—
- (a) any conspiracy or incitement to commit any such offence; and
  - (b) any offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (aiding and abetting etc. the commission of statutory offences) relating to any offence mentioned in subsection (7)(f) to (j) above.”

### PART III

#### SUPPLEMENTAL

## 9 The Channel Islands and the Isle of Man

- (1) Her Majesty may by Order in Council make provision for extending Part I of this Act, with such exceptions or modifications as may be specified in the Order, to any of the Channel Islands or the Isle of Man.

- (2) The Secretary of State may by order provide that Part I of this Act shall apply, with such modifications as may be specified in the order, to any sexual offences so specified which—
  - (a) are offences under the law of any of the Channel Islands or the Isle of Man; and
  - (b) correspond to any of the offences listed in Schedule 1 to this Act.
- (3) An order under subsection (2) above may make such consequential, incidental, supplementary and transitional provision as the Secretary of State considers appropriate.
- (4) The power to make such an order shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **10 Short title, commencement and extent**

- (1) This Act may be cited as the Sex Offenders Act 1997.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes and for different areas.
- (3) Nothing in section 7 or 8 above applies to any act done before the commencement of that section.
- (4) This Act, except section 8 above, extends to England and Wales and Northern Ireland.
- (5) Part I of this Act, section 8 above and this section extend to Scotland.

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## SCHEDULES

### SCHEDULE 1

Section 1(9).

#### SEXUAL OFFENCES TO WHICH PART I APPLIES

##### *Offences in England and Wales*

- 1 (1) This Part of this Act applies to the following sexual offences under the law of England and Wales, namely—
- (a) offences under the following provisions of the Sexual Offences Act 1956—
    - (i) section 1 (rape);
    - (ii) section 5 (intercourse with a girl under 13);
    - (iii) section 6 (intercourse with a girl between 13 and 16);
    - (iv) section 10 (incest by a man);
    - (v) section 12 (buggery);
    - (vi) section 13 (indecenty between men);
    - (vii) section 14 (indecent assault on a woman);
    - (viii) section 15 (indecent assault on a man);
    - (ix) section 16 (assault with intent to commit buggery);
    - (x) section 28 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16);
  - (b) an offence under section 1(1) of the Indecency with Children Act 1960 (indecent conduct towards young child);
  - (c) an offence under section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse);
  - (d) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children);
  - (e) an offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions); and
  - (f) an offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photographs of children).
- (2) In sub-paragraph (1) above—
- (a) paragraph (a)(iii), (v) and (vi) does not apply where the offender was under 20;
  - (b) subject to sub-paragraph (3) below, paragraph (a)(iv) to (ix) does not apply where the victim of or, as the case may be, the other party to the offence was 18 or over; and
  - (c) paragraph (e) does not apply where the prohibited goods did not include indecent photographs of persons who were under the age of 16.

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- (3) Sub-paragraph (2)(b) above does not prevent the application of sub-paragraph (1)(a)(vii) or (viii) above in any case where, in respect of the offence or finding, the offender—
- (a) is or has been sentenced to imprisonment for a term of 30 months or more; or
  - (b) is or has been admitted to a hospital subject to a restriction order.
- (4) For the purposes of sub-paragraph (2)(c) above—
- (a) section 7 of the Protection of Children Act 1978 (interpretation) shall apply as it applies for the purposes of that Act; and
  - (b) a person shall be taken to have been under the age of 16 at any time if it appears from the evidence as a whole that he was under that age at that time.

### *Offences in Scotland*

- 2 (1) This Part of this Act applies to the following sexual offences under the law of Scotland, namely—
- (a) the following offences—
    - (i) rape;
    - (ii) clandestine injury to women;
    - (iii) abduction of a woman or girl with intent to rape;
    - (iv) assault with intent to rape or ravish;
    - (v) indecent assault;
    - (vi) lewd, indecent or libidinous behaviour or practices;
    - (vii) shameless indecency; and
    - (viii) sodomy;
  - (b) an offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions);
  - (c) offences under—
    - (i) section 52 of the Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children); and
    - (ii) section 52A of that Act (possession of indecent images of children);
  - (d) offences under the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995—
    - (i) section 1 (incest);
    - (ii) section 2 (intercourse with a step-child);
    - (iii) section 3 (intercourse with child under 16 by person in position of trust);
    - (iv) section 5 (unlawful intercourse with girl under 16);
    - (v) section 6 (indecent behaviour towards girl between 12 and 16);
    - (vi) section 8 (abduction of girl under 18 for purposes of unlawful intercourse);
    - (vii) section 10 (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); and
    - (viii) subsection (5) of section 13 (homosexual offences).
- (2) In sub-paragraph (1) above—

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- (a) subject to sub-paragraph (3) below, paragraphs (a)(iii) to (v) and (vii) and (d)(i) and (ii) do not apply where every person involved in the offence other than the offender was 18 or over;
  - (b) paragraphs (a)(viii) and (d)(viii) above do not apply where every person involved in the offence, other than the offender, was 18 or over and was a willing participant;
  - (c) paragraph (b) does not apply where the prohibited goods did not include indecent photographs of persons who were under the age of 16;
  - (d) paragraph (a)(viii) does not apply where the offender was under 20 and every other person involved in the offence was a willing participant;
  - (e) paragraph (d)(iv) does not apply in the case of an offence in contravention of subsection (3) of section 5 (unlawful sexual intercourse with a girl over 13 but under 16) where the offender was under 20; and
  - (f) paragraph (d)(viii) does not apply where the offender was under 20 and—
    - (i) where the offence involved an act of sodomy contrary to subsection (5) of section 13, every other person involved in the offence was a willing participant; or
    - (ii) the offence involved an act of gross indecency or shameful indecency contrary to the said subsection (5).
- (3) Sub-paragraph (2)(a) above does not prevent the application of sub-paragraph (1)(a)(iii) to (v) above in any case where, in respect of the offence or finding, the offender—
- (a) is or has been sentenced to imprisonment for a term of 30 months or more; or
  - (b) is or has been admitted to a hospital subject to a restriction order.
- (4) For the purposes of sub-paragraph (2)(c) above—
- (a) subsections (2) to (2C) and (8) of section 52 of the Civic Government (Scotland) Act 1982 shall apply as they apply for the purposes of that section; and
  - (b) a person shall be taken to have been under the age of 16 at any time if it appears from the evidence as a whole that he was under that age at that time.

#### *Offences in Northern Ireland*

- 3 (1) This Part of this Act applies to the following sexual offences under the law of Northern Ireland, namely—
- (a) an offence of rape;
  - (b) offences under—
    - (i) section 52 of the Offences against the Person Act 1861 (indecent assault upon a female person);
    - (ii) section 61 of that Act (buggery); and
    - (iii) section 62 of that Act (assault with intent to commit buggery or indecent assault upon a male person);
  - (c) offences under—
    - (i) section 4 of the Criminal Law Amendment Act 1885 of unlawful carnal knowledge of a girl under 14; and
    - (ii) section 5 of that Act of unlawful carnal knowledge of a girl under 17;
  - (d) an offence under section 11 of that Act (committing, or being party to the commission of, or procuring or attempting to procure the commission of, any act of gross indecency with another male);

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- (e) an offence under section 1 of the Punishment of Incest Act 1908 (incest by males);
  - (f) offences under—
    - (i) section 21 of the Children and Young Persons Act (Northern Ireland) 1968 (causing or encouraging seduction or prostitution of a girl under 17); and
    - (ii) section 22 of that Act (indecent conduct towards a child);
  - (g) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children);
  - (h) an offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions);
  - (i) an offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting girl under 16 to have incestuous sexual intercourse); and
  - (j) an offence under Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988 (possession of indecent photographs of children).
- (2) In sub-paragraph (1) above—
- (a) paragraphs (b)(ii), (c)(ii) and (d) do not apply where the offender was under 20;
  - (b) subject to sub-paragraph (3) below, paragraphs (b), (d) and (e) do not apply where the victim of or, as the case may be, the other party to the offence was 18 or over; and
  - (c) paragraph (h) does not apply where the prohibited goods did not include indecent photographs of persons who were under the age of 16.
- (3) Sub-paragraph (2)(b) above does not prevent the application of sub-paragraph (1)(b)(i), or sub-paragraph (b)(iii) above so far as relating to indecent assault on a male person, in any case where, in respect of the offence or finding, the offender—
- (a) is or has been sentenced to imprisonment for a term of 30 months or more; or
  - (b) is or has been admitted to a hospital subject to a restriction order.
- (4) For the purposes of sub-paragraph (2)(c) above—
- (a) Article 2(2) and (3)(b) of the Protection of Children (Northern Ireland) Order 1978 (interpretation) shall apply as it applies for the purposes of that Act; and
  - (b) a person shall be taken to have been under the age of 16 at any time if it appears from the evidence as a whole that he was under that age at that time.

#### *Offences under service law*

- 4 This Part of this Act applies to an offence under—
- (a) section 70 of the Army Act 1955;
  - (b) section 70 of the Air Force Act 1955; or
  - (c) section 42 of the Naval Discipline Act 1957,
- of which the corresponding civil offence (within the meaning of that Act) is a sexual offence to which this Part of this Act applies by virtue of paragraph 1 above.

#### *General*

- 5 (1) Any reference in paragraph 1(1), 2(1), 3(1) or 4 above to an offence includes—

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- (a) a reference to any attempt, conspiracy or incitement to commit that offence; and
  - (b) except in the case of a reference in paragraph 2(1)(a) above, a reference to aiding and abetting, counselling or procuring the commission of that offence.
- (2) Any reference in paragraph 1(2), 2(2) or 3(2) above to a person's age is a reference to his age at the time of the offence.

## SCHEDULE 2

Section 7(7).

### SEXUAL OFFENCES TO WHICH SECTION 7 APPLIES

#### *England and Wales*

- 1 (1) In relation to England and Wales, the following are sexual offences to which section 7 of this Act applies, namely—
- (a) offences under the following provisions of the Sexual Offences Act 1956—
    - (i) section 1 (rape);
    - (ii) section 5 (intercourse with girl under 13);
    - (iii) section 6 (intercourse with girl between 13 and 16);
    - (iv) section 12 (buggery);
    - (v) section 14 (indecent assault on a girl);
    - (vi) section 15 (indecent assault on a boy); and
    - (vii) section 16 (assault with intent to commit buggery);
  - (b) an offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child); and
  - (c) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).
- (2) In sub-paragraph (1)(a) above, sub-paragraphs (i) and (iv) to (vii) do not apply where the victim of the offence was 16 or over at the time of the offence.

#### *Northern Ireland*

- 2 (1) In relation to Northern Ireland, the following are sexual offences to which section 7 of this Act applies, namely—
- (a) an offence of rape;
  - (b) offences under—
    - (i) section 52 of the Offences against the Person Act 1861 (indecent assault upon a female person);
    - (ii) section 61 of that Act (buggery); and
    - (iii) section 62 of that Act (assault with intent to commit buggery or indecent assault upon a male person);
  - (c) offences under—
    - (i) section 4 of the Criminal Law Amendment Act 1885 of unlawful carnal knowledge of a girl under 14; and
    - (ii) section 5 of that Act of unlawful carnal knowledge of a girl under 17;



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- (d) an offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (indecent conduct towards a child); and
  - (e) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children).
- (2) In sub-paragraph (1) above, paragraphs (a), (b) and (c)(ii) do not apply where the victim of the offence was 16 or over at the time of the offence.

*General*

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