

PROJET DE LOI

ENTITLED

The Sexual Offences (Bailiwick of Guernsey) Law, 2020

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PROJET DE LOI

ENTITLED

The Sexual Offences (Bailiwick of Guernsey) Law, 2020

THE STATES, in pursuance of their Resolution of the 28th July, 2011^a and of the 27th February, 2020^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

SEXUAL OFFENCES

CHAPTER I

KEY DEFINITIONS

Key interpretative provisions.

1. (1) The following key definitions 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).

^a Article IX of Billet d'État No. XIII of 2011.

^b Article VII of Billet d'État No. V of 2020.

(4) "**Image**", except in relation Chapter XII (pornography and disclosure of sexual images) -

(a) means a moving or still image (produced by any means), and

(b) includes an image produced by any means such as drawing 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 (Bailiwick of Guernsey) Law, 2010^c.

(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 (including any bodily fluid),

(b) with anything else,

^c Order in Council No. XV of 2011; as amended by Ordinance No. IX of 2016 and No. I of 2017.

(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.

(11) Where an offence is only committed where an act or activity takes place "for the purpose of obtaining sexual gratification" or "humiliating, distressing or alarming" a person, it is irrelevant whether the purpose is to obtain sexual gratification or humiliating, distressing or alarming a person at the time of the act or activity, or at a later time.

(12) For the avoidance of doubt -

(a) "**activity**" includes communication,

(b) "**communication**" includes (but is not limited to) electronic communication, and

(c) unless the contrary intention appears, it is not relevant whether a response is made to any communication.

(13) For the purposes of an offence committed by a person ("**A**") causing or inciting another person ("**B**") to do any thing or engage in any activity -

- (a) the causing or inciting may itself take place through any activity, and
- (b) any reference to B in this Law is a reference to a person whether or not they are physically present in the Bailiwick, and A may be convicted and punished for that offence accordingly.

Meaning of "sexual".

2. For the purposes of this Part (except sections 26, 65 and 99), 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.

CHAPTER II
CONSENT

Meaning of "consent".

3. For the purposes of this Part, a person consents if that person -

- (a) agrees by choice, and
- (b) has the freedom and capacity to make that choice.

Evidential presumptions about consent.

4. (1) If in proceedings for an offence to which this section applies it is proved that -

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

the complainant ("B") is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether B consented, and A is to be taken not to have reasonably believed that B consented unless sufficient evidence is adduced to raise an issue as to whether A 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 B or causing B to fear that immediate violence would be used against B,
- (b) any person was, at the time of the relevant act or immediately before it began, causing B to fear that violence was being used, or that immediate violence would be used, against another person,

- (c) B was, and A was not, unlawfully detained at the time of the relevant act,
- (d) B was asleep or unconscious at the time of the relevant act,
- (e) because of B's disability (whether permanent or temporary), B would not have been able at the time of the relevant act to communicate to A whether B consented,
- (f) any person had administered to or caused to be taken by B, without B's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling B to be stupefied or overpowered at the time of the relevant act, and
- (g) B had voluntarily consumed alcohol or taken a substance which, having regard to when it was consumed or taken, was capable of causing or enabling B to be overpowered, stupefied or otherwise incapable of giving consent (as the case may be) 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.

Conclusive presumptions about consent.

5. (1) If in proceedings for an offence to which this section applies it is proved that the defendant ("A") 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 ("B") did not consent to the relevant act, and

(b) that A did not believe that B consented to the relevant act.

(2) The circumstances are that -

(a) A intentionally deceived B as to the nature or purpose of the relevant act, and

(b) A intentionally induced B to consent to the relevant act by impersonating a person known personally to B.

Relevant acts for the purposes of presumptions.

6. In relation to an offence to which sections 4 and 5 apply, references in those sections to the relevant act, to the defendant ("A") and to the complainant ("B") are to be read as follows -

Offence

An offence under section 11 (rape).

Relevant act

A intentionally penetrating, with his penis, the vagina, anus or mouth of B.

An offence under section 12 (assault by penetration).	A intentionally penetrating, with a part of A's body or anything else, the vagina, anus or mouth of B, where the penetration is sexual.
An offence under section 13 (sexual assault).	A intentionally touching B, where the touching is sexual.
An offence under section 14 (sexual coercion).	A intentionally causing B to engage in an activity, where the activity is sexual.

*CHAPTER III
EXCEPTIONS*

Exception for spouses and civil partners: Chapters VII, VIII and IX.

7. (1) Conduct by a person ("A") which would otherwise be an offence under Chapter VII (Familial child sex offences), VIII (Offences involving an abuse of a position of trust) or IX (Offences by careworkers against persons with a mental disorder) against another person ("B") is not an offence under the relevant Chapter if at the time -

- (a) B is 16 or over, and
- (b) A and B are lawfully married or civil partners of each other.

(2) In proceedings for such an offence, it is for A to prove that A and B were at the time lawfully married or civil partners of each other.

Pre-existing sexual relationships: Chapter VII.

8. (1) Conduct by a person ("A") which would otherwise be an offence under Chapter VII (Familial child sex offences) against another person ("B") is not an offence under that Chapter if -

- (a) the relation of A to B is not within section 30(2),
- (b) it would not be within section 30(2) if section 12(1) of the Adoption (Guernsey) Law, 1960^d did not apply, and
- (c) immediately before the relation of A to B first became such as to fall within section 30, 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 Chapter VII, it is for A to prove the matters mentioned in subsection (1)(a) to (c).

Pre-existing sexual relationships: Chapters VIII and IX.

9. (1) Conduct by a person ("A") which would otherwise be an offence under Chapter VIII (Offences involving an abuse of a position of trust) against another person ("B") is not an offence under that Chapter if, immediately before the position of trust arose, a sexual relationship existed between A and B.

^d Ordres en Conseil Vol. XVIII, p.192. There are amendments to this Law not relevant to this enactment.

(2) In proceedings for an offence under Chapter VIII, it is for A to prove that such a relationship existed at that time.

(3) Conduct by a person ("A") which would otherwise be an offence under Chapter IX (Offences by careworkers against persons with a mental disorder) against another person ("B") is not an offence under that Chapter if, immediately before A became involved in B's care in a way that falls within an Ordinance made under section 40, a sexual relationship existed between A and B.

(4) In proceedings for an offence under Chapter IX, it is for A to prove that such a relationship existed at that time.

(5) Subsections (1) and (3) do not apply if at that time sexual intercourse between A and B would have been unlawful.

CHAPTER IV NON-CONSENSUAL OFFENCES

Interpretation of this Chapter.

10. (1) For the purposes of this Chapter, the presumptions set out in sections 4 and 5 apply.

(2) In determining whether a belief is reasonable for the purposes of section 11(c), 12(d), 13(d) and 14(d), regard is to be had to any steps A has taken to ascertain whether B consents and any knowledge that A has in relation to B.

Rape.

11. A person ("A") commits an offence if -

- (a) A intentionally penetrates the vagina, anus or mouth of another person ("B") with A's penis,
- (b) B does not consent to the penetration, and
- (c) A does not reasonably believe that B consents.

Assault by penetration.

12. A person ("A") commits an offence if -

- (a) A intentionally penetrates the vagina, anus or mouth of another person ("B") with -
 - (i) a part of A's body other than A's penis, or
 - (ii) anything else,
- (b) the penetration is sexual,
- (c) B does not consent to the penetration, and
- (d) A does not reasonably believe that B consents.

Sexual assault.

13. A person ("A") commits an offence if -

- (a) A 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.

Sexual coercion.

14. A person ("A") commits an offence if -

- (a) A 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.

Penalties.

15. (1) A person guilty of an offence under section 11 or 12 is liable, on conviction on indictment, to imprisonment for life.

(2) A person guilty of an offence under section 13 is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

(3) A person guilty of an offence under section 14, 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.

(4) A person guilty of an offence under section 14, if the activity did not involve penetration as set out in subsection (3), is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER V
NON-CONSENSUAL OFFENCES AGAINST CHILDREN UNDER 13

Rape of a child under 13.

16. A person ("A") commits an offence if -

- (a) A intentionally penetrates the vagina, anus or mouth of another person ("B") with A's penis, and
- (b) B is under 13.

Assault of a child under 13 by penetration.

17. A person ("A") commits an offence if -

- (a) A intentionally penetrates the vagina, anus or mouth of another person ("B") with -
 - (i) a part of A's body other than A's penis, or
 - (ii) anything else,
- (b) the penetration is sexual, and
- (c) B is under 13.

Sexual assault of a child under 13.

18. A person ("A") commits an offence if -

- (a) A intentionally touches another person ("B"),
- (b) the touching is sexual, and
- (c) B is under 13.

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

19. A person ("A") commits an offence if -
- (a) A intentionally causes or incites another person ("B") to engage in an activity,
 - (b) the activity is sexual, and
 - (c) B is under 13.

Penalties.

20. (1) A person guilty of an offence under section 16 or 17 is liable, on conviction on indictment, to imprisonment for life.

(2) A person guilty of an offence under section 18 is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 19, 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.

(4) A person guilty of an offence under section 19, if the activity did not involve penetration as set out in subsection (3), is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

*CHAPTER VI
CHILD SEX OFFENCES*

Sexual touching of a child.

21. A person ("A") commits an offence if -

- (a) A 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.

Causing or inciting a child to engage in sexual activity.

22. A person ("A") commits an offence if -

(a) A 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.

Engaging in sexual activity in the presence of a child.

23. A person ("A") commits an offence if -

(a) A intentionally engages in an activity,

(b) the activity is sexual,

- (c) for the purpose of obtaining sexual gratification, A 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 A 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.

Causing a child to watch a sexual activity.

24. A person ("A") commits an offence if -

- (a) for the purpose of obtaining sexual gratification, A 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.

Arranging or facilitating commission of a child sex offence.

25. (1) A person ("A") commits an offence if -

- (a) A intentionally arranges or facilitates something that A 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 16 to 19 or 21 to 24.

(2) Notwithstanding subsection (1), A does not commit an offence under this section if -

- (a) A arranges or facilitates something that A believes another person will do, but that A 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 A acts.

(3) For the purposes of subsection (2), A acts for the protection of a child if A 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.

Sexual communication with a child.

26. (1) A person ("A") commits an offence if -
- (a) for the purpose of obtaining sexual gratification or humiliating, distressing or alarming any person, A intentionally communicates with another person ("B"),
 - (b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that 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) For the purposes of subsection (1)(b), 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 any part of the communication to be sexual, and

an activity is sexual for the purposes of paragraph (a) if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.

Grooming for sexual conduct with a child under the age of 16.

27. (1) A person aged 18 or over ("A") commits an offence if -

(a) A communicates, by words or otherwise, with -

(i) a person under 16 ("B"), or

(ii) another person ("C") under whose care, supervision or authority B is, and

(b) A intends that the communication facilitates B engaging or being involved in the commission of a relevant sexual offence by A or by another person who is 18 or over.

(2) Without limiting the generality of subsection (1)(a)(ii), the States may by Ordinance may make such provision as they see fit in relation to persons having the care or supervision of, or authority over, B.

(3) For the purposes of subsection (1)(b), A does not intend to facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 or over if, were the conduct constituting the sexual offence to occur, A or the other person would satisfy an exception, or have a defence, to that sexual offence.

(4) For the purposes of this section, it is immaterial that -

- (a) some or all of the conduct constituting an offence under this section occurred outside the Bailiwick, if B or C was, or B and C were, in the Bailiwick at the time at which that conduct occurred,
- (b) B or C was, or B and C were, outside the Bailiwick at the time at which some or all of the conduct constituting an offence under this section occurred, if A was in the Bailiwick at the time that conduct occurred, or
- (c) A, B and C were all outside the Bailiwick at the time at which some or all of the conduct constituting an offence under this section occurred, if A intended that the sexual offence would occur in the Bailiwick.

Meeting a child following communication etc.

28. (1) A person aged 18 or over ("A") commits an offence if -

- (a) A has met or communicated with another person ("B") on one or more occasions and subsequently -
 - (i) A intentionally meets B,
 - (ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or
 - (iii) B travels with the intention of meeting A in any part of the world,
 - (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,
 - (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) For the purposes of 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, and

- (b) "**relevant offence**" means -
 - (i) an offence under this Part, or
 - (ii) anything done outside the Bailiwick which is not an offence within subparagraph (i) but would be such an offence if done in the Bailiwick.

Penalties.

29. (1) A person guilty of an offence under section 21 or 22, if the touching, or the activity caused or incited (as the case may be), 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.

(2) A person guilty of an offence under section 21 or 22, if the touching, or activity caused or incited (as the case may be), did not involve penetration as set out in subsection (1), is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 23 or 24 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

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

(4) Notwithstanding subsections (1) to (3), a person under 18 who commits an offence under any of sections 21 to 24 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

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

- (5) A person guilty of an offence under section 25 is liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(6) A person guilty of an offence under section 26 is liable, on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both.

- (7) A person guilty of an offence under section 27 or 28 is liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER VII
FAMILIAL CHILD SEX OFFENCES

Interpretation of this Chapter.

30. (1) For the purposes of this Chapter, person ("A") is a "**family member**" of another person ("B") if -

- (a) one of subsection (2) to (4) applies, or
- (b) one of those subsections would apply but for section 12(1) of the Adoption (Guernsey) Law, 1960.

(2) This subsection applies if B -

- (a) is A's child, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, nephew or niece, or
- (b) is or has been A's foster child.

(3) This subsection applies 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) This subsection applies 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 that person provides care to a foster child within the meaning of the Child Protection (Guernsey) Law, 1972^e,
 - (d) "**step-parent**" includes a parent's partner, and "**stepbrother**" and "**stepsister**" include the child of a parent's partner, and
 - (e) a person is another's partner (whether they are of different genders or the same gender) if they live together as partners in an enduring family relationship.

Sexual touching of a child family member.

31. A person ("A") commits an offence if -

^e Ordres en Conseil Vol. XXIII, p.238. There are amendments to that Law which are not relevant to this enactment.

- (a) A intentionally touches a family member ("**B**"),
- (b) the touching is sexual,
- (c) A knows or could reasonably be expected to know that B is a family member, and
- (d) either -
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.

Inciting a child family member to engage in sexual touching.

32. A person ("**A**") commits an offence if -

- (a) A intentionally incites another person ("**B**") to touch, or allows B to touch, A,
- (b) the touching is sexual,
- (c) A knows or could reasonably be expected to know that B is a family member, and
- (d) either -
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or

- (ii) B is under 13.

Penalties.

33. (1) A person guilty of an offence under section 31 or 32, 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.

(2) A person guilty of an offence under section 31 or 32, if the touching did not involve penetration as set out in subsection (1), is liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both,
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Notwithstanding subsections (1) and (2), a person under 18 who commits an offence under section 31 or 32 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

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

CHAPTER VIII
OFFENCES INVOLVING AN ABUSE OF A POSITION OF TRUST

Interpretation of this Chapter.

34. (1) For the purposes of this Chapter, a person ("A") is in a "**position of trust**" in relation to another person ("B") if any condition specified by an Ordinance made under subsection (2) is met.

(2) The States may by Ordinance make such provision as they think fit in relation to positions of trust for the purposes of this Chapter.

(3) In proceedings for an offence under this Chapter, it is to be taken that A knew or could reasonably have been expected to know of the circumstances by virtue of which A was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know of those circumstances.

(4) Where in proceedings for an offence under this Chapter it is proved that B was under 18, A is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether A reasonably believed it.

Position of trust: sexual touching of a child.

35. A person aged 18 or over ("A") commits an offence if -

- (a) A intentionally touches another person ("B"),
- (b) the touching is sexual,
- (c) A is in a position of trust in relation to B in accordance with section 34,
- (d) A knows or could reasonably be expected to know of the circumstances by virtue of which A is in that 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.

Position of trust: causing or inciting a child to engage in sexual activity.

36. A person aged 18 or over ("A") commits an offence if -

- (a) A 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 in accordance with section 34,
- (d) A knows or could reasonably be expected to know of the circumstances by virtue of which A 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.

Position of trust: engaging in sexual activity in the presence of a child.

37. A person aged 18 or over ("A") commits an offence if -

- (a) A intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, A 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 A is engaging in it,
- (d) A is in a position of trust in relation to B in accordance with section 34,
- (e) A knows or could reasonably be expected to know of the circumstances by virtue of which A 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.

Position of trust: causing a child to watch a sexual act.

38. (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 in accordance with section 34,
- (d) A knows or could reasonably be expected to know of the circumstances by virtue of which A is in that 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.

Penalties.

39. A person guilty of an offence under this Chapter is liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 of the uniform scale, or both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

*CHAPTER IX
OFFENCES BY CAREWORKERS AGAINST PERSONS
WITH A MENTAL DISORDER*

Interpretation of this Chapter.

40. (1) For the purposes of this Chapter, a person ("A") is involved in the care of another person ("B") in a way that falls within this section if any condition specified by an Ordinance made under subsection (2) is met.

(2) The States may by Ordinance make such provision as they think fit in relation to careworkers for the purposes of this Chapter.

(3) Where in proceedings for an offence under this Part, it is proved that B had a mental disorder, it is to be taken that A knew or could reasonably have been expected to know that B 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.

Careworkers: sexual touching of a person with a mental disorder.

41. A person ("A") commits an offence if -

- (a) A 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 is in accordance with section 40.

Careworkers: causing or inciting a person with a mental disorder to engage in sexual activity.

42. A person ("A") commits an offence if -
- (a) A 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,
 - (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 is in accordance with section 40.

Careworkers: engaging in sexual activity in the presence of a person with a mental disorder.

43. A person ("A") commits an offence if -
- (a) A intentionally engages in an activity,
 - (b) the activity is sexual,
 - (c) for the purpose of obtaining sexual gratification, A 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 is in accordance with section 40.

Careworkers: causing a person with a mental disorder to watch a sexual act.

44. A person ("A") commits an offence if -

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ("B") to -
 - (i) watch a third person engaging in an activity, or
 - (ii) 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 is in accordance with section 40.

Penalties.

45. (1) A person guilty of an offence under section 41 or 42 which 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 a term of imprisonment not exceeding 14 years.

(2) A person guilty of an offence under section 41 or 42 and which did not involve penetration as set out in subsection (1), is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on

the uniform scale, or both,

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

(3) A person guilty of an offence under section 43 or 44 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

CHAPTER X

OFFENCES AGAINST PERSONS WITH MENTAL DISORDERS IMPEDING CHOICE

Interpretation of this Chapter.

46. For the purposes of sections 47(c), 48(c), 49(d) and 50(c), a person ("B") is unable to refuse another person ("A") because of or for a reason related to a mental disorder if -

(a) B lacks capacity to choose whether to agree to the touching or any other form of activity (whether because B lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or

(b) B is unable to communicate such a choice to A.

Sexual touching with a person having a mental disorder impeding choice.

47. A person ("A") commits an offence if -

- (a) A 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.

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

48. A person ("A") commits an offence if -

- (a) A 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.

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

49. A person ("A") commits an offence if -

- (a) A intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, A 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 B 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.

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

50. A person ("A") commits an offence if -

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ("B") to -
 - (i) watch a third person engaging in an activity, or
 - (ii) 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.

Penalties.

51. (1) A person guilty of an offence under section 47 or 48 if 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

- (d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(2) A person guilty of an offence under section 47 or 48 if the offence did not involve penetration as set out in subsection (1), is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) A person guilty of an offence under section 49 or 50 is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER XI

USING IMPROPER MEANS IN RELATION TO PERSONS WITH A MENTAL DISORDER

Interpretation of this Chapter.

52. For the purposes of this Chapter -

(a) **"improper means"** includes -

(i) any inducement offered or given,

(ii) any threat made, and

(iii) any deception practised, and

(b) for the avoidance of doubt, the improper means do not need to have been used immediately before the activity set out in section 53(a), 54(a), 55(a) or 56(a) took place.

Improper means to procure sexual touching with person with a mental disorder.

53. A person ("A") commits an offence if -

(a) with the agreement of another person ("**B**"), A intentionally touches B,

(b) the touching is sexual,

(c) A obtains B's agreement by improper means 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.

Causing a person with a mental disorder to engage in or agree to engage in sexual activity by improper means.

54. A person ("A") commits an offence if -

- (a) by using improper means for that purpose, A 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.

Engaging in sexual activity in the presence of a person with a mental disorder, procured by improper means.

55. A person ("A") commits an offence if -

- (a) A intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purposes of obtaining sexual gratification, A 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 obtains B's agreement to be present or in the place referred to in paragraph (c)(i) by improper means for that purpose,
- (e) B has a mental disorder, and
- (f) A knows or could reasonably be expected to know that B has a mental disorder.

Causing a person with a mental disorder to watch a sexual act by improper means.

56. A person ("A") commits an offence if -

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person ("B") to -
 - (i) watch a third person engaging in an activity, or
 - (ii) look at an image of any person engaging in an activity, and
- (b) the activity is sexual,
- (c) A obtains B's agreement by improper means for that purpose to watch or look,

- (d) B has a mental disorder, and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

Penalties.

57. (1) A person guilty of an offence under section 53 or 54 which 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.

(2) A person guilty of an offence under section 53 or 54 which did not involve penetration as set out in subsection (1), is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (3) A person guilty of an offence under section 52 or 53 is liable -
 - (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

CHAPTER XII
PORNOGRAPHY AND DISCLOSURE OF SEXUAL IMAGES

Interpretation of this Chapter.

58. (1) For the purposes of this Chapter -
- (a) "**image**" means -
 - (i) a moving or still image (produced by any means), or
 - (ii) data (stored by any means) which is capable of conversion into an image within subparagraph (i), and
 - (b) an image is an "**extreme image**" if it -

- (a) falls within subsection (2) or (3), and
- (b) is grossly offensive, disgusting or otherwise of an obscene character.

(2) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following -

- (a) an act which threatens a person's life,
- (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,
- (c) an act which involves sexual interference with a human corpse, or
- (d) a person penetrating the vagina, anus or mouth of an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(3) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following -

- (a) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another person with that other person's penis, or

- (b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another person with a part of that other person's body or anything else,

and a reasonable person looking at the image would think that the persons were real.

(4) For the purposes of this section harm inflicted on a person is "**non-consensual**" harm if -

- (a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself, or
- (b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

(5) For the purposes of this Chapter and subject to subsection (6), an image is pornographic if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(6) Where an image forms part of a series of images found in a person's possession, the question whether the image is pornographic is to be determined by reference to -

- (a) the image itself, and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(7) Without limiting the generality of subsection (6), where -

(a) an image forms an integral part of a narrative constituted by a series of images, and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

Possession of extreme pornographic images.

59. A person ("A") commits an offence if A possesses an image ("**an extreme pornographic image**"), which is -

(a) an extreme image, and

(b) pornographic.

Exclusion of classified films etc.

60. (1) Section 59 does not apply to an image (an "**excluded image**") which forms part of a series of images contained in a recording of the whole or part of a classified work.

(2) Notwithstanding subsection (1), an image described in that subsection is not an excluded image if -

- (a) it is contained in a recording of an extract from a classified work, and
- (b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(3) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (2)(b) is to be determined by reference to -

- (a) the image itself, and
- (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(4) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to -

- (a) a defect caused for technical reasons or by inadvertence on the part of any person, or
- (b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

- (5) In this section -

"**classified work**" means a video work in respect of which a classification certificate has been issued (whether before or after the commencement of this section) for the purposes of the Video Recordings Act 1984^f, and "**classification certificate**" and "**video work**" have the same meanings as in that Act,

"**extract**" includes an extract consisting of a single image, and

"**recording**" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

Defence: general.

61. Where a person ("A") is charged with an offence under section 59, it is a defence for A to prove -

^f An Act of the Westminster Parliament, c. 39.

- (a) that A had a legitimate reason for being in possession of the image concerned,
- (b) that A had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image, or
- (c) that A -
 - (i) was sent the image concerned without any prior request having been made by or on behalf of A, and
 - (ii) did not keep it for an unreasonable time.

Defence: participation in consensual acts.

62. (1) Subsection (2) applies where -

- (a) a person ("A") is charged with an offence under section 59, and
- (b) the offence relates to an image that portrays an act or acts within section 58(2)(a) to (c) or (3) (but does not portray an act within section 58(2)(d)).

(2) It is a defence for A to prove -

- (a) that A directly participated in the act or any of the acts portrayed, and

- (b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and
- (c) if the image portrays an act within -
 - (i) section 58(2)(c), that what is portrayed as a human corpse was not in fact a corpse, or
 - (ii) section 58(3), that what is portrayed as non-consensual penetration was in fact consensual.

Penalties.

63. (1) A person guilty of an offence under section 59 if the offence relates to an image that portrays any relevant act (with or without other acts), is liable

-

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the uniform scale or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or a fine or both.

(2) A person guilty of an offence under section 59, if the offence relates to an image that does not portray any relevant act, is liable on summary

conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding level 5 on the uniform scale, or both.

(3) In this section, "**relevant act**" means an act within section 58(2)(a) or (b), or (3)(a) or (b).

Special rules relating to providers of information society services.

64. The States may by Ordinance make such provision as they think fit in connection with the operation of this Chapter in relation to persons providing information society services.

Disclosing private sexual photographs and films with intent to cause distress.

65. (1) Subject to subsection (2), a person ("**A**") commits an offence if -

- (a) A discloses a private sexual photograph or film,
- (b) an individual appears in that photograph or film ("**B**"),
and
- (c) the disclosure is made to a person other than B -
 - (i) without B's consent, and
 - (ii) with the intention of humiliating, distressing or alarming B or another.

(2) For the purposes of subsection (1), A is not to be taken to have disclosed a photograph or film with the intention of humiliating, distressing or

alarming a person merely because that was a natural and probable consequence of the disclosure.

- (3) It is a defence for A to -
 - (a) prove that A reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime,
 - (b) show that -
 - (i) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and
 - (ii) A reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest, or
 - (c) show that -
 - (i) A reasonably believed that the photograph or film had previously been disclosed for reward, whether by B or another person, and
 - (ii) A had no reason to believe that the previous disclosure for reward was made without the consent of B.

(4) A is taken to have shown the matters mentioned in subsection (3)(b) or (c) if -

(a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

(5) For the purposes of this section -

(a) "**consent**" to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and

(b) "**publication**" of journalistic material means disclosure to the public at large or to a section of the public.

(6) A photograph or film is private if it shows something that is not of a kind ordinarily seen in public.

(7) A photograph or film is sexual if -

(a) it shows all or part of an individual's exposed genitals,

(b) it shows something that a reasonable person would consider to be sexual because of its nature, or

- (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.
- (8) The photograph or film is not private and sexual if -
- (a) it does not consist of or include a photographed or filmed image that is itself private and sexual,
 - (b) it is only private or sexual by virtue of its alteration, or combination with any other image or anything else, or
 - (c) it is only by virtue of its alteration or combination with any other image or anything else that B is shown as part of, or with, whatever makes the photograph or film private and sexual.
- (9) A person guilty of an offence under this section is liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years months or a fine not exceeding level 5 on the uniform scale, or both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine, or both.

CHAPTER XIII
SEXUAL EXPLOITATION OF CHILDREN

Interpretation of this Chapter.

66. For the purposes of this Chapter -

- (a) a person ("**B**") is sexually exploited if -
 - (i) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person, or
 - (ii) an indecent image of B is recorded,

and "**sexual exploitation**" is to be interpreted accordingly, and

- (b) "**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.

Paying for sexual services of a child.

67. A person ("**A**") commits an offence if -

- (a) A intentionally obtains for A's own benefit the sexual services of another person ("**B**"),
- (b) before obtaining those services, A 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.

Causing or inciting sexual exploitation of a child.

68. A person ("A") commits an offence if -

- (a) A intentionally causes or incites another person ("B") to be sexually exploited 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.

Controlling a child in relation to sexual exploitation.

69. A person ("A") commits an offence if -

- (a) A intentionally controls any of the activities of another person ("B") relating to B's sexual exploitation 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.

Arranging or facilitating sexual exploitation of a child.

70. A person ("A") commits an offence if -

- (a) A intentionally arranges or facilitates the sexual exploitation 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.

Penalties.

71. (1) A person guilty of an offence under section 67 against a person under 13, 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,

is liable on conviction on indictment to imprisonment for life.

(2) Unless subsection (1) applies, a person guilty of an offence under section 67 against a person under 16 is liable 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.

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

(3) A person guilty of an offence under section 67 against a person under 16 where the offence did not involve penetration as set out in subsection (2) is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale or both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) A person guilty of an offence under section 67 where subsections (1) to (3) do not apply is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the uniform scale or both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(5) A person guilty of an offence under section 68, 69 or 70 is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

*CHAPTER XIV
PAEDOPHILE MATERIALS*

Possession of prohibited item.

72. (1) A person ("A") commits an offence if A is in possession of any item that contains advice or guidance about abusing children sexually (a "**prohibited item**").

(2) It is a defence for A -

(a) to prove that A had a legitimate reason for being in possession of the item,

(b) to prove that -

(i) A had not read, viewed or (as appropriate) listened to the item, and

(ii) A did not know, and had no reason to suspect, that it contained advice or guidance about abusing children sexually, or

(c) to prove that -

(i) the item was sent to A without any request made by A or on A's behalf, and

(ii) A did not keep it for an unreasonable time.

(3) Schedule 1 of this Law shall apply in relation to prohibited items as it applies in relation to indecent images of children within the meaning of Part II.

(4) The States may by Ordinance make such provision as they think fit in connection with the operation of this section in relation to persons providing information society services.

(5) In this section -

"abusing children sexually" means doing anything that constitutes -

- (a) an offence under this Part against a person under 16,
- (b) an offence under Part II of this Law involving indecent images (but not pseudo-photographs),
or
- (c) doing anything outside the Bailiwick that would constitute such an offence if done in the Bailiwick,

"item" includes anything in which information of any description is recorded, and

"prohibited item" means an item within subsection (1).

Possession of a child sex doll.

73. (1) A person ("A") commits an offence if A has in his possession a doll ("**a child sex doll**") which -

- (a) fully or partially has the appearance of a child, and
- (b) has been made or adapted for the purposes of sexual activity of any description.

(2) It is a defence for A charged with an offence under this section to prove that A had a legitimate reason for being in possession of the child sex doll.

(3) Schedule 1 of this Law shall apply in relation to child sex dolls as it applies in relation to indecent images of children within the meaning of Part II.

Penalties.

74. A person guilty of an offence under this Chapter is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding the statutory maximum, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

*CHAPTER XV
PROSTITUTION*

Interpretation of this Chapter.

75. For the purposes of -

- (a) sections 76, 77 and 78, "**gain**" means -

- (i) 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
 - (ii) the goodwill of any person which is or appears likely, in time, to bring financial advantage, and
- (b) section 78 -
 - (i) any reference to a person in a street or public place includes a person in a vehicle in a street or public place, and
 - (ii) "**street**" includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street, and any ground adjoining and open to a street, shall be treated as forming part of the street, and
- (c) this Chapter -
 - (i) "**prostitute**" means a person ("**B**") 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 B or a third person, and
"prostitution" is to be interpreted accordingly,
and

- (ii) "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.

Causing or inciting prostitution for gain.

76. A person ("A") commits an offence if -

- (a) A intentionally causes or incites another person to become a prostitute in any part of the world, and
- (b) A does so for or in the expectation of gain for A or a third person.

Controlling prostitution for gain.

77. A person ("A") commits an offence if -

- (a) A intentionally controls any of the activities of another person ("B") relating to B's prostitution in any part of the world, and
- (b) A does so for or in the expectation of gain for A or a third person.

Soliciting.

78. A person ("A") commits an offence if in a street or public place A solicits another person ("B") for the purpose of obtaining B's sexual services as a prostitute.

Paying for sexual services of a prostitute subjected to exploitation.

79. (1) A person ("A") commits an offence if -

- (a) A makes or promises payment for the sexual services of a prostitute ("B"),
- (b) a third person ("C") has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and
- (c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

(2) For the avoidance of doubt, it is irrelevant for the purposes of this section -

- (a) where in the world the sexual services are to be provided,
- (b) whether those services are provided, and
- (c) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

(3) For the purposes of this section, C engages in exploitative conduct if -

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or

(b) C practises any form of deception.

Penalties.

80. (1) A person guilty of an offence under section 76 or 77 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the uniform scale, or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(2) A person guilty of an offence under section 78 or 79 is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

*CHAPTER XVI
TRAFFICKING*

Interpretation of this Chapter.

81. (1) For the purposes of this Chapter, unless the contrary intention appears -

"aircraft" includes hovercraft,

"captain" means master of a ship or commander of an aircraft,

"land vehicle" means any vehicle other than a ship or aircraft,
and

"ship" includes every description of vessel used in navigation.

(2) For the purposes of section 82 -

"country" includes any territory or other part of the world,

"relevant offence" means -

(a) an offence under this Part or under section
105(1)(a), or

(b) anything done outside the Bailiwick which is not
an offence within paragraph (a) but would be if
done in the Bailiwick, and

"UK national" means -

(a) a British citizen,

- (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981⁸ and who has the right of abode in the United Kingdom, or
- (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

(3) For the purposes of sections 83 and 84, a "**relevant vehicle**" is a vehicle which was -

- (a) owned by the convicted person ("A") at the time the offence was committed,
- (b) owned by a company, of which A was a director, secretary or manager at that time,
- (c) in the possession of A under a hire purchase agreement at that time,
- (d) in the possession of a company, of which A was a director, secretary or manager at that time, under a hire purchase agreement,
- (e) if the vehicle is a land vehicle, being driven by A in the course of the commission of the offence, or

⁸ An Act of the Westminster Parliament, c. 61.

- (f) if the vehicle is a ship or aircraft -
 - (i) being chartered by A at the time the offence was being committed, or
 - (ii) under the command of A as captain while the offence was being committed,

and which the police officer or customs officer concerned has reasonable grounds for believing could, on conviction of A for the offence for which A was arrested, be the subject of an order for forfeiture made under section 83.

- (4) For the purposes of sections 83 and 84 -

"**court**" means -

- (a) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard, the Magistrate's Court, and
- (b) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings, and

a reference to being an "**owner**" of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

Trafficking people for sexual exploitation.

82. (1) A person ("A") commits an offence if A intentionally arranges or facilitates -

- (a) the arrival in, or entry into, the Bailiwick or another country of another person ("B"),
- (b) the departure of B from the Bailiwick or another country, or
- (c) the travel of B within the Bailiwick or another country,

with a view to the sexual exploitation of B.

(2) For the purposes of subsection (1)(a) and (b), A's arranging or facilitating is with a view to the sexual exploitation of B if -

- (a) A intends to do anything to or in respect of B, or
- (b) A believes that another person is likely to do something to or in respect of B,

after B's arrival, entry or departure (as the case may be) but in any part of the world, which if done will involve the commission of a relevant offence.

(3) For the purposes of subsection (1)(c), A's arranging or facilitating is with a view to the sexual exploitation of B if -

- (a) A intends to do anything to or in respect of B, or

- (b) A 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.

(4) A person who is a UK national commits an offence under this section regardless of -

- (a) where the arranging or facilitating takes place, or
- (b) which country is the country of arrival, entry, departure or travel (as the case may be).

(5) A person who is not a UK national commits an offence under this section if -

- (a) any part of the arranging or facilitating takes place in the Bailiwick, or
- (b) the Bailiwick is the place of arrival, entry, departure or travel (as the case may be).

(6) A person guilty of an offence under this section is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both,

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Forfeiture of relevant vehicle.

83. (1) Where a person is convicted on indictment of an offence under section 82, the court may order the forfeiture of a relevant vehicle used or intended to be used (as the case may be) in connection with the offence.

(2) Where a person ("C") who claims to have an interest in a relevant vehicle applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless C has been given an opportunity to make representations.

Detention of relevant vehicle.

84. (1) If a person ("D") has been arrested for an offence under section 82, a police officer or a customs officer may detain a relevant vehicle -

- (a) until a decision is taken as to whether or not to charge A with that offence,
- (b) if D has been charged, until he is acquitted, the charge against D is dismissed or the proceedings are discontinued, or
- (c) if D has been charged and convicted, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A person ("E") who is not D may apply to the court for the release of a relevant vehicle on the grounds that -

- (a) E owns the relevant vehicle,
- (b) E was, immediately before the detention of the relevant vehicle, in possession of it under a hire-purchase agreement, or
- (c) E is a charterer of the ship or aircraft which is the relevant vehicle.

(3) The court to which an application is made under subsection (2) may, on such security or surety being tendered as it considers satisfactory, release the relevant vehicle on condition that it is made available to the court if -

- (a) E is convicted, and
- (b) an order for its forfeiture is made under section 83.

CHAPTER XVII
PREPARATORY OFFENCES

Interpretation of this Chapter.

85. For the purposes of this Chapter, "**premises**" includes a structure or part of a structure.

Committing an offence with intent to commit a sexual offence.

86. A person ("A") commits an offence under this section if A commits any offence, including (but not limited to) kidnap or false imprisonment, with the intention of committing a relevant sexual offence.

Administering a substance with intent.

87. (1) A person ("A") commits an offence if A 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.

Trespass with intent to commit a sexual offence.

88. A person ("A") commits an offence if -

- (a) A is a trespasser on any premises,
- (b) A intends to commit a relevant sexual offence on the premises, and
- (c) A knows that, or is reckless as to whether, A is a trespasser.

Penalties.

89. (1) A person guilty of an offence under section 86 is liable on conviction on indictment, where the offence committed is kidnap or false

imprisonment, to imprisonment for life.

(2) A person guilty of an offence under section 86 is liable, where the offence committed is not kidnap or false imprisonment -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

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

(3) A person guilty of an offence under section 87 or 88 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

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

CHAPTER XVIII
FAMILIAL ADULT SEX OFFENCES

Interpretation of this Chapter.

90. (1) For the purposes of this Chapter -

(a) the ways that a person ("A") may be related to another person ("B") are -

- (i) as parent, grandparent, son, daughter, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece,
 - (ii) as one of those persons listed in paragraph (i) but for the effect of section 12(1) of the Adoption (Guernsey) Law, 1960, and
- (b) for the avoidance of doubt -
- (i) "**parent**" includes an adoptive parent,
 - (ii) "**son**" and "**daughter**" include an adopted son or daughter respectively,
 - (iii) "**aunt**" means the sister or half-sister of a person's parent, and "**uncle**" has a corresponding meaning, and
 - (iv) "**nephew**" means the child of a person's brother or sister, and "**niece**" has a corresponding meaning.

(2) Where in proceedings for an offence under this Chapter it is proved that A was related to B in any of the ways set out in subsection (1), it is to be taken that A knew or could reasonably have been expected to know that A was related in that way unless sufficient evidence is adduced to raise an issue as to whether A knew or could reasonably have been expected to know that A was.

Sexual penetration involving an adult relative.

91. (1) A person aged 16 or over ("A") commits an offence if -
- (a) A intentionally penetrates -
 - (i) the vagina or anus of another person ("B") with a part of A's body or anything else, or
 - (ii) B's mouth with A's penis,
 - (b) the penetration is sexual,
 - (c) B is 18 or over,
 - (d) A is related to B in a way mentioned in section 90(1), and
 - (e) A knows or could reasonably be expected to know that A is related to B in that way.
- (2) A person aged 16 or over ("A") commits an offence if -
- (a) another person ("B") penetrates -
 - (i) A's vagina or anus with a part of B's body or anything else, or
 - (ii) A's mouth with B's penis,

- (b) A consents to the penetration,
- (c) the penetration is sexual,
- (d) B is 18 or over,
- (e) A is related to B in a way mentioned in section 90(1), and
- (f) A knows or could reasonably be expected to know that A is related to B in that way.

Penalties.

92. A person guilty of an offence under this Chapter is liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

*CHAPTER XIX
OTHER OFFENCES*

Interpretation of this Chapter.

93. For the purposes of this Chapter, a person is doing "**a private act**" if -
- (a) the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and

- (b) any of the following subparagraphs applies -
 - (i) the person's genitals, buttocks or breasts are exposed or covered only with underwear,
 - (ii) the person is using a lavatory, or
 - (iii) the person is doing a sexual act that is not of a kind ordinarily done in public.

Voyeurism towards a child.

94. (1) A person ("A") commits an offence if for a purpose mentioned in subsection (7), A observes a child who has not attained the age of 16 years ("B") doing a private act.

(2) A person ("A") commits an offence if A operates equipment with the intention of enabling A or another person ("C") to observe, for a purpose mentioned in subsection (8), a child who has not attained the age of 16 years ("B") doing a private act.

- (3) A person ("A") commits an offence if -
 - (a) A records a child who has not attained the age of 16 years ("B") doing a private act, and
 - (b) A does so with the intention that A or a third person ("C") will, for a purpose mentioned in subsection (8), look at an image of B doing the act.

(4) A person ("A") commits an offence if A operates equipment beneath the clothing of a child who has not attained the age of 16 years ("B") with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (8), to observe -

- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
- (b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(5) A person ("A") commits an offence if A records an image beneath the clothing of a child who has not attained the age of 16 years ("B") of -

- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
- (b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (8), will look at the image.

(6) A person ("A") commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit any offence under subsections (1) to (5).

- (7) The purposes referred to in subsection (1) are -
 - (a) obtaining sexual gratification, and
 - (b) humiliating, distressing or alarming B.

- (8) The purposes referred to in subsections (2) to (5) are -
 - (a) obtaining sexual gratification (whether for A or C), and
 - (b) humiliating, distressing or alarming B.

Voyeurism.

95. A person ("A") commits an offence if -
- (a) for a purpose mentioned in subsection (7), A observes another person ("B") doing a private act,
 - (b) B does not consent to being observed doing a private act, and
 - (c) A does not reasonably believe that B consents to being observed doing a private act.
- (2) A person ("A") commits an offence if -
- (a) A operates equipment with the intention of enabling A or another person ("C") to observe, for a purpose

mentioned in subsection (8), a third person ("B") doing a private act, and

(b) B does not consent to A's operating equipment with that intention, and

(c) A does not reasonably believe that B consents to A's operating equipment with that intention.

(3) A person ("A") commits an offence if -

(a) A records another person ("B") doing a private act,

(b) A does so with the intention that A or a third person ("C") will, for a purpose mentioned in subsection (8), look at an image of B doing the act,

(c) B does not consent to A's recording the act with that intention, and

(d) A does not reasonably believe that B consents to A's recording the act with that intention.

(4) A person ("A") commits an offence if -

(a) A uses equipment with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (8), to observe beneath the outer clothing of another person ("B") -

- (i) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (ii) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible,
 - (b) B does not consent to A's operating equipment with that intention, and
 - (c) A does not reasonably believe that B consents to A's operating equipment with that intention.
- (5) A person ("A") commits an offence if -
- (a) A records an image of -
 - (i) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (ii) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (8), will look at the image,

(b) B does not consent to A's recording an image with that intention, and

(c) A does not reasonably believe that B consents to A's recording an image with that intention.

(6) A person ("A") commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit any offence under subsections (1) to (5).

(7) The purposes referred to in subsection (1) are -

(a) obtaining sexual gratification, and

(b) humiliating, distressing or alarming B.

(8) The purposes referred to in subsections (2) to (5) are -

(a) obtaining sexual gratification (whether for A or C), and

(b) humiliating, distressing or alarming B.

Exposure.

96. A person ("A") commits an offence if -

(a) A intentionally exposes A's genitals, and

(b) A intends that another person will see them and be caused alarm or distress.

Intercourse with an animal.

97. (1) A person ("A") commits an offence if -
- (a) A intentionally performs an act of penetration with A's penis,
 - (b) the penetration is of the vagina or anus of a living animal, and
 - (c) A 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.

Sexual penetration of a corpse.

98. A person ("A") commits an offence if -
- (a) A intentionally performs an act of penetration with a part of A's body or anything else,

- (b) the penetration is of a part of the body of a dead person,
- (c) A knows that, or is reckless as to whether, that is what is penetrated, and
- (d) the penetration is sexual.

Sexual activity in a public lavatory.

99. (1) A person ("A") commits an offence if -

- (a) A 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) A 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.

Penalties.

100. (1) A person guilty of an offence under section 94 is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(2) A person guilty of an offence under section 95, 96, 97, 98 or 99 is liable on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 5 on the uniform scale, or both.

*CHAPTER XX
SUPPLEMENTARY*

Exceptions to aiding, abetting and counselling.

101. (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 that person 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 Chapter V (non-consensual offences against children under 13),
- (b) an offence under section 21 (sexual touching of a child),
- (c) an offence under any of sections 31, 35, 41, 47 and 53 (sexual touching) 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.

PART II

PROTECTION OF CHILDREN

CHAPTER I

HARMFUL PUBLICATIONS

Harmful publications.

102. (1) Subject to subsection (2), it is an offence for a person ("A") to -
- (a) print,
 - (b) publish,
 - (c) sell,
 - (d) let on hire, or

- (e) for the purposes of selling or letting on hire, have in A's possession,

a corrupting publication.

(2) Where A is charged with an offence under subsection (1) in respect of -

- (a) selling,
- (b) letting on hire, or
- (c) for the purpose of selling it or letting it on hire, having in A's possession,

a corrupting publication, it shall be a defence for A to prove that A had not examined the contents of the work and had no reasonable cause to suspect that it was a corrupting publication.

(3) For the purposes of this section, a "**corrupting publication**" is any book, magazine, video or photographic film or other like work which is of a kind likely to fall into the hands of persons under 18 and consists wholly or mainly of stories told in pictures, words or sounds (with or without the addition of written matter) being stories portraying -

- (a) the commission of a crime, or
- (b) an act of violence or cruelty, or

- (c) an incident of a repulsive or horrible nature, or
- (d) human sexual activity,

in such a way that the work as a whole would tend to corrupt a person under 18 into whose hands it might fall.

Penalties.

103. A person is guilty of an offence under section 102 is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or a fine not exceeding level 4 on the uniform scale or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.

CHAPTER II
INDECENT IMAGES

Interpretation of this Chapter.

104. (1) For the purposes of this Chapter, an image includes -

- (a) the positive and negative version of a photograph,
- (b) a copy of a photograph,
- (c) a photograph comprised in a film,

- (d) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph,
- (e) any form of video recording, and
- (f) a pseudo-photograph.

(2) An image shall, if it shows a child and is indecent, be treated for all purposes of this Chapter as an indecent image of a child.

(3) For the purposes of subsection (1), "**pseudo-photograph**" means an image, whether made by computer graphics or otherwise, which appears to be a photograph, and includes -

- (a) a copy of a pseudo-photograph, and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

(4) If -

- (a) the impression conveyed by a pseudo-photograph is that the person shown is a child, or
- (b) the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult,

the pseudo-photograph shall be treated for all purposes of this Chapter as showing a child.

(5) For the purposes of this Chapter, "**child**" means a person aged under 16.

Taking, making and distributing etc. indecent images of children.

105. (1) Subject to section 106, it is an offence for a person ("A") -
- (a) to take, or permit to be taken or to make, any indecent image of a child, or
 - (b) to distribute or show such indecent images, or
 - (c) to have in A's possession such indecent images, with a view to their being distributed or shown by A or others, or
 - (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent images, or intends to do so.

(2) For the purposes of subsection (1), A is to be regarded as distributing an indecent image if A parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) Where A is charged with an offence under subsection (1)(b) or

(c) of this section, it shall be a defence for A to prove that -

- (a) A had a legitimate reason for distributing or showing the image, or having it in A's possession (as the case may be), or
 - (b) A had not seen the image and did not know, nor had any cause to suspect it to be indecent.
- (4) Where A is guilty of an offence under this section, A is liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.

Exception for criminal proceedings, investigations etc.

106. (1) In proceedings for an offence under section 105(1)(a) of making an indecent image of a child, a person ("A") is not guilty of the offence if A proves that

-

- (a) it was necessary for A 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 A was a member of a

relevant security service and it was necessary for A to make the image for the exercise of any of the functions of that service, or

- (c) at the time of the offence charged A was a member of GCHQ, and it was necessary for A to make the image for the exercise of any of the functions of GCHQ.

- (2) In subsection (1) -

"GCHQ" has the same meaning as in the Intelligence Services Act 1994^h, and

"relevant security service" means -

- (a) the Security Service, which has the same meaning as in the Security Service Act 1989ⁱ, or
- (b) the Secret Intelligence Service which has the same meaning as in the Intelligence Services Act 1994.

Possession of indecent images of children.

107. (1) It is an offence for a person ("A") to have any indecent image of a child in A's possession.

^h An Act of the Westminster Parliament, c. 13.

ⁱ An Act of the Westminster Parliament, c.5.

(2) Where A is charged with an offence under subsection (1), it shall be a defence for A to prove -

- (a) that A had a legitimate reason for having the image in A's possession,
- (b) that A had not seen the image and did not know, nor had any cause to suspect, it to be indecent, or
- (c) that the image was sent to A without any prior request made by A or on A's behalf and that A did not keep it for an unreasonable time.

(3) Where A is guilty of an offence under this section, A is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding level 5 on the uniform scale, or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or both.

Evidence by spouse.

108. On a charge of an offence under section 102 or section 105(1)(a), the wife or husband of A shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether A is charged solely or jointly with any other person:

Provided that -

- (a) the wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by A, and
- (b) the failure of the wife or husband of A to give evidence shall not be made the subject of any comment by the prosecution.

Liability of company officers for offences by company.

109. (1) Where an offence committed by a body corporate under section 102, 105, or 107 is proved to have been committed with the consent or connivance of any relevant officer of the body corporate, the relevant officer as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a relevant officer of the body corporate.

(3) For the purposes of subsection (1), a "**relevant officer**" includes director, manager, secretary or other similar officer of the body corporate, and any person who was purporting to act in any such capacity.

Powers of arrest etc.

110. Schedule 1 shall have effect.

MISCELLANEOUS PROVISIONS

Amendments and repeals etc.

111. (1) Schedule 2 shall have effect.

(2) Notwithstanding subsection (1), the States may by Ordinance make such additional provision as they see fit in relation to savings and transitional provisions, including the making of consequential amendments and repeals.

(3) Subsection (2) is without prejudice to section 20 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016^j.

Interpretation.

112. (1) In this Law, unless the context otherwise requires -

"**civil partnership**" means a civil partnership which exists under the Civil Partnership Act 2004^k or equivalent legislation in force anywhere in the British Islands,

"**the E-Commerce Directive**" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), as from time to time amended or re-enacted,

^j No. V of 2018; as amended by Ordinance Nos. XXII and XXVI of 2018.

^k An Act of the Westminster Parliament, c.33.

"genitals" includes pubic area,

"Information society service" -

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
- (b) is summarised in recital 17 of the E-Commerce Directive as including any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service,

"relevant sexual offence" means any offence under Part I (including an offence of aiding, abetting, counselling or procuring such an offence),

"the States" means the States of Deliberation, and

"structure" includes a tent, vehicle or vessel or other temporary or movable structure.

(2) Unless the context requires otherwise, references in this Law to any enactment are references thereto as from time to time amended, varied, re-enacted (with or without modification), extended or applied.

(3) The States may by Ordinance amend this section.

Citation.

113. This Law may be cited as the Sexual Offences (Bailiwick of Guernsey) Law, 2020.

Commencement.

114. This Law shall come into force on such day as the States may by Ordinance appoint and such an Ordinance may appoint different days for different provisions and different purposes.

SCHEDULE 1

Section 111

POWERS OF ARREST ETC.

Power of arrest.

1. (1) A police officer may arrest without warrant a person who has committed, or whom the police officer with reasonable cause suspects of having committed, an offence under Part II.

(2) This section is without prejudice to any power of arrest conferred by law apart from this paragraph.

Search and forfeiture.

2. (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to believe that any person ("A") has in A's custody, possession or on A's premises -

- (a) any work or copy of a work to which section 102 applies,
- (b) any plate prepared for the purpose of printing copies of the said work or any other work to which section 102 applies or any video or photographic film prepared for that purpose,
- (c) any indecent image to which section 105 or 107 applies,
- (d) any prohibited item to which section 72 applies, or
- (e) any child sex doll to which section 73 applies,

the Bailiff may grant a warrant to search for and seize the same; but no warrant to search for such articles shall be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(2) Where under this section a police officer is authorised to search premises, that officer may enter and search the premises accordingly and may seize -

- (a) any copies of the work and any copies of any other work which the police officer has reasonable cause to believe to be one to which section 102 applies, and
- (b) any plate which the police officer has reasonable cause to believe to have been prepared for the purpose of printing copies of any such work as is mentioned in paragraph (a) and any video or photographic film which the police officer has reasonable cause to believe to have been prepared for that purpose,
- (c) any articles which the police officer has reasonable cause to believe to be or include indecent photographs of children taken or shown on the premises or kept there with a view to their being distributed or shown,
- (d) any prohibited items, and
- (e) any child sex doll.

(3) The court by or before which a person ("A") is convicted of an offence under section 102, 105, or 107 shall order any copies of the work in question and any plate prepared for the purpose of printing copies of that work or video or photographic film prepared for that purpose or indecent images of children being copies which have, or a plate or film which has or images which have, been found in A's possession or under A's control, to be forfeited:

Provided that an order made under this subparagraph shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

(4) The court by or before which a person ("A") is convicted of an offence under section 72 or 73 shall order any prohibited item or child sex doll which have been found in A's possession or under A's control, to be forfeited:

Provided that an order made under this subparagraph shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

SCHEDULE 2

Section 112

AMENDMENTS AND REPEALS

Amendments

1. In section 9(2) of the Theft (Bailiwick of Guernsey) Law, 1983^{**l**}, substitute "or inflicting on any person therein grievous bodily harm" for "of inflicting on any person therein any grievous bodily harm or raping any woman therein".
2. In section 11(1) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004^{**m**} -
 - (a) immediately after paragraph (f) of the definition of "sexual offence", insert the following paragraph -

"(fa) an offence under the Sexual Offences (Bailiwick of Guernsey) Law, 2020", and
 - (b) in paragraph (g), for "(f)" substitute "(fa)".
3. The Criminal Justice (Sex Offenders and Miscellaneous Provisions)

^{**l**} Ordres en Conseil Vol. XXVIII, p.5. There are amendments to that Law which are not relevant to this enactment.

^{**m**} Order in Council No. IX of 2015; as amended by Ordinance No. XXIX of 2013.

(Bailiwick of Guernsey) Law, 2013ⁿ is amended as follows -

- (a) in section 1(1)(j), substitute "," for " .",
- (b) immediately after section 1(1)(j), insert the following -
 - "(k) an offence under the Sexual Offences (Bailiwick of Guernsey) Law, 2020.",
- (c) in section 4(3)(b), for "the notifier's home address or his having stayed for a qualifying period at any residence in the Bailiwick that has not been notified to an authorised officer", substitute "any information required to be given in accordance with subsection (1)(b) to (g)", and
- (d) in section 4(8), for "Article", substitute "section".

Repeals

1. *Loi pour la punition d'inceste, 1909.*
2. *Loi relative à la protection des femmes & filles mineures, 1914.*
3. Articles 11, 12 and 51(2) of the *Loi ayant rapport à la Protection des Enfants et des Jeunes personnes, 1917.*
4. *Loi relative à la Sodomie, 1929.*

ⁿ Order in Council No. IX of 2014; as amended by Ordinances No. XI and XX of 2015, and No. IX of 2016.

5. Offences against Girls (Availability of Defences) Law, 1956.
6. Sexual Offences (Bailiwick of Guernsey) Law, 1983.
7. Protection of Children (Bailiwick of Guernsey) Law, 1985.