

CAUSING A PERSON TO ENGAGE IN SEXUAL ACTIVITY WITHOUT CONSENT

Sexual Offences (NI) Order 2008

8. - (1) A person (A) commits an offence if—
- (a) he intentionally causes another person (B) to engage in an activity,
 - (b) the activity is sexual,
 - (c) B does not consent to engaging in the activity, and
 - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.8(4)-(5)

(1) Where the activity involved penetration of V's anus or vagina; penetration of V's mouth with a person's penis; penetration of a person's anus or vagina with a part of V's body or by V with anything else; or penetration of a person's mouth with V's penis:

Indictment only: Life imprisonment (Discretionary)

(2) Any other activity:

Indictment: 10yrs imprisonment

Summary: 6mths imprisonment and/or statutory maximum fine (£5,000).

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	Community Order + Compensation Order	Fine to 2 months Custody + Compensation Order
Contact between part of the victim's body and the offender's clothed genitalia	Community Order + Compensation Order	Fine to 6 months Custody + Compensation Order
Contact between part of the victim's body and the naked genitalia of the offender or second victim	4 months custody + Compensation Order	3 - 6 months custody + Compensation Order

Examples of Possible Aggravating Factors of Offence

1. More than one offender acting together
2. Abuse of trust
3. Offence motivated by prejudice (race, religion, sexual orientation, physical disability)
4. Prolonged activity or contact
5. Victim targeted, groomed, exploited
6. Use of drugs, alcohol, or other substance to facilitate the offence
7. Number of victims
8. Negative impact on the victim(s)
9. Vulnerability of the victim

Examples of Possible Mitigating Factor of Offence

1. Youth and immaturity of offender
2. Minimal or fleeting contact
3. Both the offender and victim are teenagers similar in age

Relevant Cases:

NI Cases:

N/A

English Cases:

R v Corran [2005] EWCA Crim 192

R. v Kizlaite & Anor [2006] EWCA Crim 1492

R v Ayeva [2009] EWCA Crim 2640

R v Brough [2007] 1 Cr App R(S) 55

Notes:

1. This offence is similar in concept to the now repealed offence of 'gross indecency towards a child' (contrary to s.22 of the Children and Young Persons Act (NI) 1968) with the main difference being the offence can be committed against an adult.
2. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply.
3. 'Children Barred List' and 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.