

CAUSING OR INCITING A CHILD TO ENGAGE IN SEXUAL ACTIVITY

Sexual Offences (NI) Order 2008

17. - (1) A person aged 18 or over (A) commits an offence if—
- (a) he 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.

Maximum Sentence:

Sexual Offences (NI) Order 2008, Art.17(2)-(3)

(1) Where the activity caused or incited 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: 14 years imprisonment

(2) Any other activity:

Indictment: 14 years imprisonment

Summary: 6 months 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>
Causing/inciting contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)	2 months Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order
Causing/inciting contact between part of the victim's body and the offender's clothed genitalia	3 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order
Causing/inciting contact between part of the victim's body and the naked genitalia of the offender or second victim	4 months custody + Compensation Order	Community Order to 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. Sustained attack
5. Negative impact on the victim(s)
6. More than one victim
7. Victims targeted, groomed, exploited
8. Physical or mental harm caused
9. Substantial age gap

Examples of Possible Mitigating Factor of Offence

1. Closeness in age between the victim and the offender
2. Mutual consenting experimentation between teenagers
3. Single isolated incident with minimal or fleeting contact

Relevant Cases:

NI Cases:

R v SG [2010] NICA 32
R v Hume [2006] NICC 18
R v JC [2003] NICA 19

English Cases:

R v Price [2008] EWCA Crim 1974
R v Corran & Ors. [2005] EWCA Crim 192
R v Ayeva [2009] EWCA Crim 2640
R v Delucca [2010] EWCA Crim 710
R. v Collard [2004] EWCA Crim 1664
R v Mortimer [2010] EWCA Crim 1303

Notes:

1. This offence, along with Article 15 of the Sexual Offences (NI) Order 2008, replaced 'causing or encouraging seduction or prostitution of a girl under 17' and 'gross indecency towards a child' (contrary to sections 21 & 22 of the Children and Young Persons Act (NI) 1968).
2. The offence provides a reasonable belief defence as to the victim's age where the child is 13-15 years old.
3. The offence applies even where the child has given 'ostensible' consent to the activity.
4. Notification requirements under Part 2 of the Sexual Offences Act 2003 apply.
5. 'Children Barred List' and 'Vulnerable Adults Barred List' under the Safeguarding Vulnerable Groups (NI) Order 2007 apply.