

CONSULTATION DRAFT

SEXUAL OFFENCES (JERSEY) LAW 201-

Explanatory Note

This Law makes new provision on sexual offences, replacing most but not all of the existing statutory and customary law offences, and creating new offences as well as amending provisions on sexual offences in other legislation. The Law is not a complete code of sexual offences (in particular it does not cover indecent images, and it preserves the customary law offence of indecent assault), but it does contain much of the relevant law. In particular it covers rape and other offences that depend on the victim not consenting; offences by adults against children aged 12 or younger; offences by adults against children aged 13, 14, or 25 where the adult does not reasonably believe the child is aged 16 or over; other offences against children aged 15 or younger; offences involving abuse of trust against children aged 16 or 17; prostitution offences; and female genital mutilation. It also amends the Protection of Children (Jersey) Law 1994, in respect of indecent images of children, but does not attempt to codify those provisions into this Law.

Part 1 contains interpretative and general provisions.

Article 1 contains general interpretation provisions. The Interpretation (Jersey) Law 1954 also contains relevant general definitions, such as that “act” includes an omission. For the sake of clarity “adult” is defined as a person aged 18 or older, and “child” as a person aged 17 or younger. An act (including penetration, touching or communication) is treated as “sexual” if a reasonable person would, in all the circumstances of the case, consider it to be sexual. Penetration is treated as a continuing act from entry to withdrawal. “Touching” includes, as well as acts normally treated as touching, the acts of ejaculating semen, or emitting urine or saliva, onto another person. References to body parts include those that are surgically constructed (for gender reassignment or otherwise). References to ages are defined to include the whole of a year in which the person is a certain number of years old, so for example a person “aged 13, 14 or 15” is a child who has had his or her 13th, but not 16th, birthday.

Article 2 makes special provision for the interpretation of “consent”. Consent is defined as free agreement. A list of cases is set out in which agreement cannot be treated as free (without limiting other circumstances in which it might not be seen as free). Those are cases of violence (or the threat of violence), unlawful detention, deception (as to the nature or purpose of the act), and impersonation.

Consent is also absent if the person is asleep, unconscious, rendered incapable of consenting by alcohol (or any other substance), or otherwise lacks capacity to consent under the Capacity and Self-Determination (Jersey) Law 2016. This applies both at the time when consent is given and at the time of the act for which the consent is given. So if a person gives consent, while awake, conscious and capable, for an act to take place once that person has become asleep, unconscious or incapable, that will not count as consent to that act for these purposes. The rule on alcohol and other substances applies whether or not the person has voluntarily consumed the alcohol or other substance.

Consent has to be given by the person concerned to the act concerned. So the accused cannot rely, without more, on an expression or indication by another person of the consent of the person concerned, or on consent being given by another person on his or her own behalf to the act concerned. Nor can the accused rely, without more, on the person concerned having consented to a different act.

If consent is given, it can be taken back at any time before the act for which it was given, and if the act then takes place it does so without consent. An act (including penetration) for which consent is given can be a continuing act, and in that case the consent can be taken back at any time during the act. If that happens, and the act continues, then it does so without consent.

Article 3 makes special provision for the interpretation of “reasonable belief” as used in relation to consent, age or the absence of exploitation. The question is to be determined (by the jury or Jurats as a factual issue) having regard to all the circumstances, including in particular whether the accused had taken any steps to ascertain the position, and what those were.

Article 4 makes provision for jury trials, mixed indictments, alternative charges and accessories.

Paragraph (1) provides for the offences in Parts 2, 3 and 4 to be triable by jury, if the defendant chooses. Otherwise, as statutory offences rather than customary law offences, they would not be triable by jury.

Paragraph (2) provides for the Royal Court to decide whether cases should be treated as eligible for jury trial when an indictment contains both sorts of offences.

Paragraphs (3) to (5) ensure that the prosecution can choose the appropriate charge in a case when an act constitutes more than one offence, although the guilty person cannot be punished twice for the same act. In particular this applies when a child aged 15 or younger does not consent to a sexual act (and the defendant does not reasonably believe the child consents), as the act will amount to an offence under an Article in Part 2, as well as amounting to a second offence under the equivalent provision in Part 3 or 4 or Article 13. To take the example of an act of sexually touching a child aged 15 or younger without consent (and without reasonable belief in consent), that act will amount to 2 offences. One will be under Article 7 (sexual touching without consent), which carries a maximum penalty of imprisonment for 10 years and an unlimited fine, and for which the child’s age will be irrelevant to guilt (as opposed to sentencing). The second offence, depending on the ages of the accused and the child, will be under Part 3 or 4 or Article 13, for which the child’s consent or absence of consent will be irrelevant to guilt (as opposed to sentencing).

- (a) If the accused is an adult (someone aged 18 or older) and the child is aged 12 or younger, the second offence will be under Article 9(3) (sexual touching of a young child). That carries a maximum penalty of imprisonment for 14 years and an unlimited fine.
- (b) If the accused is an adult and the child is aged 13, 14 or 15 (and the accused does not reasonably believe the child is aged 16 or older), the second offence will instead be under Article 11(3) (sexual touching of an older child). That carries a maximum penalty of imprisonment for 10 years and an unlimited fine.
- (c) If the accused is a child (someone aged 17 or younger) then, given that the other child in the example is aged 15 or younger, the second offence will instead be under Article 13(1)(a)(i) (unlawful sexual act between children).

That carries a maximum penalty of imprisonment for 5 years and an unlimited fine.

Taking an alternative example in which the act concerned is instead the penetration of the vagina by the penis, the first offence will be under Article 5 (rape) for which the maximum imprisonment is life. The second offence will depend on the ages of the accused and the child and the other factors set out above. It will be under Article 9(1) (penile penetration of a young child) for which the maximum imprisonment is also life, Article 11(1) (unlawful sexual intercourse with an older child) for which the maximum is 10 years, or Article 13(1)(a)(i) (unlawful sexual act between children) for which the maximum imprisonment is 5 years, in each case.

The effect of paragraphs (3) to (4) is therefore to ensure, in each of these cases, that the prosecution will be entitled to choose which of the 2 offences to prosecute (weighing up the penalty, the evidence as to consent and age, and other relevant factors). The effect of paragraph (5) is to ensure that the normal rule on double punishment still applies, which is that the accused cannot be convicted of both of the offences in respect of the same act, so the prosecution will have to make the choice.

Paragraph (6) ensures that a child aged 15 or younger cannot commit any offence by being an accessory to an offence under this Law committed against that child by an adult (it therefore does not apply in the case of the offence under *Article 13*, which can only be committed by children).

Paragraphs (7) and (8) ensure that a person cannot commit any offence by being an accessory to an offence under *Article 9* or *11* (penetration or touching of children aged 15 or younger), committed by someone else, when the person is acting to protect the child's sexual health or physical safety, prevent pregnancy, or give advice for emotional well-being (rather than for their own sexual gratification or to encourage the child's sexual activity), in cases such as a doctor prescribing contraception.

Part 2 provides for non-consensual sexual offences. In each of these the offence is only committed if the other person does not consent to the act concerned, and the accused does not reasonably believe that the other person does consent. "Consent" and "reasonable belief" are defined in *Article 1* (see note above). Each of these offences can be committed by an adult or by a child of any age. But, under the Criminal Justice (Young Offenders) (Jersey) Law 1994, a child aged 9 or younger cannot be guilty of an offence. As statutory offences, there is a maximum penalty for each offence, whereas the customary law offences have no limit on the penalty.

Article 5 creates an offence of rape, effectively replacing the customary law offence (abolished by *Article 44(1)(a)* - see notes below) with a defined version that is broader in some respects. The offence carries a maximum sentence of imprisonment for life, an unlimited fine, or both. The offence consists of intentional penetration of the vagina, anus or mouth by the penis (without consent).

Article 6 creates an offence of sexual penetration without consent, similar to rape but not involving the penis. The offence carries a maximum sentence of imprisonment for life, an unlimited fine, or both. The offence consists of intentional penetration of the vagina or anus (not the mouth) by anything other than the penis, including another body or something that is not a body part, but the penetration must be sexual (and again without consent).

Article 7 creates an offence of sexual touching without consent (but the customary law offence of indecent assault is also preserved by *Article 44(3)(a)* - see notes below). The offence carries a maximum sentence of imprisonment for 10 years, an unlimited fine, or both. (See notes on *Article 1* above for interpretation of "touch" and "sexual").

Article 8 creates an offence of causing a sexual act without consent. The offence carries a maximum sentence of imprisonment for 10 years, an unlimited fine, or both. However, the maximum imprisonment is increased to life if the offence involved certain acts of penetration.

Part 3 provides for sexual offences by adults against young children (aged 12 or younger). The child's consent is irrelevant to guilt, as would be any belief by the adult that the child was older.

Article 9 creates offences of penile penetration, other sexual penetration and sexual touching of a young child. Penetration of the vagina, anus or mouth by the penis carries a maximum sentence of imprisonment for life, an unlimited fine, or both. Sexual penetration of the vagina or anus by something other than the penis also carries a maximum sentence of imprisonment for life, an unlimited fine, or both. Other sexual touching carries a maximum sentence of imprisonment for 14 years, an unlimited fine, or both.

Article 10 creates an offence of causing or inciting a sexual act with a young child. The offence carries a maximum sentence of imprisonment for 14 years, an unlimited fine, or both. However, the maximum imprisonment is increased to life if the offence involved certain acts of penetration.

Part 4 provides for sexual offences by adults against older children (aged 13, 14 or 15). The child's consent is again irrelevant to guilt, but there is a defence of reasonable belief that the child was aged 16 or older.

Article 11 creates offences of unlawful sexual intercourse with, sexual penetration of or sexual touching of an older child. These offences involve the same acts as those against young children in *Article 9*, but each carry a maximum sentence of imprisonment for 10 years, an unlimited fine, or both.

Article 12 creates an offence of causing or inciting sexual activity with an older child. This offence involves the same acts as those against young children in *Article 10*, but carries a maximum sentence of imprisonment for 10 years, an unlimited fine, or both.

Part 5 provides for other sexual offences against children aged 15 or younger. Some, but not all, can be committed by children, some only by adults, and some by either.

Article 13 creates an offence of an unlawful sexual act between children. A child (aged 17 or younger) commits the offence if the child intentionally engages in, causes or incites any act (including but not limited to touching), if the act is sexual and the other person is aged 15 or younger. Both children involved can be guilty of this offence (including as accessories, because *Article 4(6)* does not apply as neither party can be an adult - see notes above). There is a defence, if the other child was aged 13 or older, that the accused reasonably believed he or she was aged 16 or older. The offence carries a maximum sentence of imprisonment for 5 years, an unlimited fine, or both.

Article 14 creates an offence of an adult causing a child aged 15 or younger to watch a sexual act, or be present during a sexual act. The adult must have acted for the purpose of obtaining sexual gratification, or of causing humiliation, distress or alarm. If the child was in fact aged 13, 14 or 15, the adult is not guilty if he or she reasonably believes that the child was aged 16 or older. The offence carries a maximum sentence of imprisonment for 10 years, an unlimited fine, or both.

Article 15 creates an offence of arranging or facilitating the commission of a sexual offence against a child aged 15 or younger in any part of the world. It can be committed by an adult or a child. There is an exception for those acting to protect the child, equivalent to that in *Article 4(7)* for accessories (see notes above). The offence carries a maximum sentence of imprisonment for 14 years, an unlimited fine, or both.

Article 16 creates offences of an adult sexually grooming a child aged 15 or younger. The offence in paragraph (1) replicates that in Article 2 of the Sexual Offences (Jersey) Law 2007, which it replaces, except that the adult only need have met or communicated with the child on one earlier occasion (instead of at least 2 occasions). The adult must meet the child or travel intending to meet the child. The States are given the power to specify by Regulations which offences the adult must be intending to commit. It is irrelevant where in the world the offence would be committed or the earlier meeting or communication took place (see also notes on *Article 41* below, in relation to overseas offences). The offence is not committed if the adult reasonably believes that the child was aged 16 or older. The offence carries a maximum sentence of imprisonment for 10 years, an unlimited fine, or both. The offence in paragraph (4) is a lesser offence (not taken from the Sexual Offences (Jersey) Law 2007), that does not require any travel or meeting, and carries a lower maximum sentence of imprisonment for 2 years (or an unlimited fine, or both). It is committed if an adult communicates, for sexual gratification, with a child aged 15 or younger (anywhere in the world, and without reasonable belief that the child is aged 16 or older), and either the communication itself is sexual or it is intended to encourage the child to make a sexual communication.

Article 17 creates an offence of a person (of any age) paying for the performance of a sexual service by a child. The offence is also committed if the person merely promises to pay, or knows or believes that another person has paid, or intends that another person will pay (payment is broadly defined – see notes on *Article 22(3)* below). It is irrelevant to guilt for this offence how many times the sexual services is performed, or whether the payment was to the child or to someone else. It is also irrelevant whether the child was compelled to perform the act, but that might then mean the incident also amounts to rape or another non-consensual offence, if the defendant does not reasonably believe there was consent (and it may amount also to a child sex offence under Part 3 or 4, if the child was aged 15 or younger). The offence applies where the child is aged 16 or 17, as well as where the child is younger, unlike most other child sex offences. If the child was in fact aged 15, 16 or 17, the adult is not guilty if he or she reasonably believed that the child was aged 18 or older. The offence carries a maximum sentence of imprisonment for 14 years, an unlimited fine, or both.

Article 18 creates an offence of a person (of any age) causing, inciting, controlling, arranging or facilitating prostitution or pornography involving a child anywhere in the world. Like the *Article 17* offence, this offence applies where the child is aged 16 or 17, as well as where the child is younger. Similarly, if the child was in fact aged 15, 16 or 17, the adult is not guilty if he or she reasonably believed that the child was aged 18 or older. The same factors are irrelevant to this offence as to the *Article 17* offence. This offence also carries a maximum sentence of imprisonment for 14 years, an unlimited fine, or both.

Part 6 provides for or sexual offences against children aged 16 or 17, where the defendant is abusing a position of trust. It is adapted from the statutory offences already present in Articles 2 to 6 of the Sexual Offences (Jersey) Law 2007 (which is repealed by *Article 43(d)* - see notes below), along with the relevant interpretative provisions and defences in that Law. Unlike the offences in that Law, these offences do not apply where the child is aged 15 or younger. That is because the relevant acts will be child sex offences in their own right at that age, and the breach of trust will then be an aggravating factor that the court can take into account on sentencing.

Article 19 provides for the offence of abuse of a position of trust by an adult in relation to a child aged 16 or 17 (not reasonably believed to be an adult). It applies when the adult engages in a sexual act with (or directed towards) the child, or causes or incites the child to engage in a sexual act (see notes above on *Article 1* for the breadth of the

definitions of “sexual” and “act”). The offence is adapted from Articles 3 to 6 of the Sexual Offences (Jersey) Law 2007, but simplified and integrated into the scheme of the other offences in this Law. There are three defences, adapted from Articles 9 and 10 of the Sexual Offences (Jersey) Law 2007. One is if the accused did not know or suspect, and could not reasonably be expected to, that there was a position of trust. Another is that the adult and child were spouses or civil partners. The third is that a lawful sexual relationship (not involving any other offence under this Law or otherwise) already existed immediately before the position of trust came into being.

Article 20 sets out what constitutes a “position of trust”. It is adapted from the Sexual Offences (Jersey) Law 2007, with some simplification and clarification, and the following substantive changes. Paragraph (2) extends the provision as to those who work at children’s homes, schools, nursing homes, hospitals and detention institutions, so that it does not matter whether the adult and the child are at the same institution as long as they are both at institutions in Jersey. Paragraph (3)(b) also adds provision for a person who looks after a child on an individual basis, and is engaged, on a professional or voluntary basis and not as a family member, in coaching, motivating, guiding or training the child for a sport, hobby, career, or competitive event. The various other statutory relationships (mostly under the Children (Jersey) Law 2002, or in relation to education or under a court order) are reproduced from the Sexual Offences (Jersey) Law 2007. But they are separated as to whether they only apply if the adult looks after the child on an individual basis, or regularly has unsupervised contact with the child, or merely by virtue of the relationship itself (such as a *tuteur*).

Article 21 defines terms used in *Article 20*, particularly looking after children generally and looking after a child on an individual basis. Express reference to teaching is added, to ensure it is clear that teachers are covered. It also allows the States, by Regulations, to add, remove or amend conditions under which there is a position of trust. Article 7(1)(b) of the Sexual Offences (Jersey) Law 2007, gave the Minister power, by Order, to specify additional conditions, but did not allow for removing or amending existing conditions.

Part 7 provides for offences related to prostitution, replacing some old legislation and adding new provisions. Prostitution itself is not made criminal, but particular aspects of it are.

Article 22 defines the terms “prostitution service”, “payment” and “gain”. A prostitution service is defined as a sexual act that is performed by one person for another in return for a payment. It does not matter whether the payment is made or merely promised, whether it is by the other person or on their behalf, or whether it is to the person performing the act or to someone else. Nor does it matter on how many occasions the act is performed or whether it is performed under compulsion (the incident may then also amount to rape or another non-consensual offence, and it may also amount to a child sex offence under Part 3 or 4, depending on the ages of those concerned). Payment is defined broadly to mean giving a financial advantage, including discharging an obligation to pay, or gratuitously (or at a discount) providing goods or services (which can include sexual services). Gain is defined as obtaining a payment (as broadly defined), but also as obtaining another person’s goodwill, if that is or appears likely (whether immediately or in time) to lead to a payment.

Article 23 provides an offence of paying for a prostitution service performed by another person. There is a defence if the payer reasonably believes that there is no third person who has, for gain (for anyone other than the performer of the service and the payee), engaged in any exploitative conduct likely to induce or encourage the person to perform (or offer) the service. Exploitative conduct is defined as deception or coercion (which

may include violence or threats). This offence carries a maximum sentence of a fine of level 3 on the standard scale, which is currently £10,000 (but no imprisonment).

Article 24 provides an offence of offering or seeking prostitution service in road or public place. It consists of contacting another person (or loitering with a view to contacting them), to offer or seek a prostitution service. It only applies if the contact or loitering is in a road or public place (which includes being in a vehicle), and it does not apply if the contact, and the offering or seeking, are solely by electronic communication without relying on being in the same road or place. This offence carries a maximum sentence of a fine of level 3 on the standard scale, which is currently £10,000 (but no imprisonment).

Article 25 provides an offence of advertising prostitution services on (or in the immediate vicinity of) a public structure. A structure is public if it is provided as an amenity for the use of the public (or a section of the public), such as a telephone kiosk, and is in a place to which the public have access (other than residential premises or premises not accessible to children aged 15 or younger). This offence carries a maximum sentence of a fine of level 3 on the standard scale, which is currently £10,000 (but no imprisonment).

Article 26 provides an offence of causing, inciting or controlling prostitution services, in the expectation of gain for anyone (other than the person performing the service). It is irrelevant where in the world the prostitution service is to be offered or provided. This offence carries a maximum sentence of imprisonment for 7 years, an unlimited fine, or both.

Article 27 provides an offence of controlling or facilitating entry to premises, knowing (or intending) that the person is entering to receive or perform a prostitution service. But it does not apply if the person controlling entry is the only person who performs the prostitution service there (irrespective of whether anyone else there does something else that does not amount to controlling entry or performing a prostitution service). Nor does it apply if the person is one of only 2 who control entry, nobody else performs the prostitution services there (again irrespective of other activities), and the other person is neither a child nor exploited (see notes on *Article 23* above). Equally the offence does not apply to preventing entry to the premises to end their use for prostitution (as opposed to turning away only undesirable customers). This offence carries a maximum sentence of imprisonment for 7 years, an unlimited fine, or both.

Article 28 provides an offence of letting premises for use for prostitution services, or failing to prevent that use. The offence applies to any person entitled to let the premises (as owner, agent or otherwise), who agrees to let them despite knowing (or having reasonable grounds to suspect) that there is an intention to use them to commit a prostitution offence (under *Articles 17, 23, 26* or *27*). It is also an offence for anyone with control of premises (including a lessee or occupier, as well as the owner) to fail, without reasonable excuse, to take reasonable steps to prevent use of the premises to commit prostitution offences, once aware of that use. These offences carry a maximum sentence of imprisonment for 6 months, a fine of level 3 on the standard scale (currently £10,000), or both.

Part 8 prohibits female genital mutilation (“FGM”). It creates offences, requires some professionals to report apparent FGM, and allows orders to be made by a court to protect persons from FGM.

Article 29 provides an offence of carrying out female genital mutilation on another person. FGM is defined as the excision, infibulation or other mutilation of the whole or any part of the labia majora, labia minora or clitoris. The offence is not committed by a doctor or midwife (or trainee) performing a surgical operation in connection with

childbirth, or as necessary for physical or mental health (leaving aside matters of custom or ritual), or as part of transgender surgery. This offence carries a maximum sentence of imprisonment for 14 years, an unlimited fine, or both.

Article 30 provides offences of aiding, abetting, counselling or procuring another person to carry out FGM. Under paragraph (1) the offence is of assisting the other person to perform FGM on her own body. Under paragraph (2) there is a separate offence of assisting the performance of FGM overseas (and see notes on *Article 41* for offences overseas). The offence is only committed if the person performing the FGM is not habitually resident in Jersey, but the person on whom it is performed is habitually resident in Jersey. Under *Article 41* (see notes below), if the person performing the FGM is habitually resident in Jersey, then there may be an offence under that Article read with *Article 29*, even though the FGM is performed outside Jersey. But if the person performing FGM overseas is not habitually resident in Jersey then there is no Jersey offence under *Article 29* or *41*, so a person assisting it from Jersey could not be an accessory. So this offence covers the opposite scenario for FGM performed overseas, where the victim (rather than the defendant) is habitually resident in Jersey, and the person assisting does so from Jersey. The offence is not committed by the overseas equivalents of doctors and midwives performing surgical operations equivalent to those that are not offences under *Article 29(3)* to *(5)*. These offences both carry a maximum sentence of imprisonment for 14 years, an unlimited fine, or both.

Article 31 provides an offence of failing to protect a child aged 15 or younger from FGM. It applies to everyone who has formal parental responsibility (or has assumed similar responsibility) for a child on whom FGM is carried out. There is a defence that the person either could not reasonably have been expected to be aware that there was a significant risk of FGM (and did not think there was one), or took the steps that could reasonably be expected of him or her to protect the child from FGM. This offence carries a maximum sentence of imprisonment for 7 years, an unlimited fine, or both.

Article 32 imposes a duty on certain professionals to notify police of apparent FGM of a child (aged 17 or younger), after being informed by the child or observing physical signs. The professionals covered are teachers, social workers, doctors, midwives, nurses (of certain types), trainees for those professions, and registered body piercers and tattooists. The Minister is given power, by Order and after consulting any appropriate professional body, to alter this list. The professional does not have to repeat the notification for subsequent observations or disclosures, or when he or she reasonably believes another professional has given notification (or that the FGM was a surgical offence that was not an offence under *Article 29*). The notification must identify the child, explain why it is made, and be given (orally or in writing) within a month to the Chief Officer of the States Police Force (or to a person nominated by him or her). It is an offence, carrying a maximum penalty of a fine of level 3 on the standard scale, which is currently £10,000 (but no imprisonment), to fail to make the notification. The notification will not be treated as a breach of any obligation of confidentiality, or of any other restriction on disclosing information.

Article 33 provides for the Royal Court to make an FGM protection order. The order is made, on the application of the Attorney General (in proceedings for that purpose, or in any other proceedings), to protect a person against an FGM offence, or to protect a person against whom such an offence has already been committed. The Royal Court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the person to be protected. The order can contain any terms the court considers appropriate, and may apply to conduct outside Jersey and respondents who are not directly involved in the potential or actual offence. Provision is made for orders to be made in appropriate cases without notice to the respondent in the first instance.

Orders can be for specified or unspecified periods, and can be varied or discharged by the court.

Article 34 creates an offence of breaching a FGM protection order without reasonable excuse (and once aware of the order). It carries a maximum sentence of imprisonment for 12 months, an unlimited fine, or both.

Part 9 provides for miscellaneous sexual offences.

Article 35 provides an offence of penetrative sex between relatives aged 16 or older. The relatives concerned are a grandparent, aunt, uncle, parent, sister, brother, half-sister, half-brother, child, niece, nephew or grandchild, but not including those relationships by reliance on marriage, civil partnership, or adoption. It applies to a person who knows, or could reasonably be expected to know, of the relationship, but a person claiming to be unaware must adduce sufficient evidence to raise the issue. It carries a maximum sentence of imprisonment for 2 years, an unlimited fine, or both.

Article 36 provides an offence of exposure. It applies if the person exposes his or her penis, scrotum or vagina, intending someone will see it, and intending to obtain sexual gratification (without reasonable belief in consent) or to cause humiliation, alarm or distress. It carries a maximum sentence of imprisonment for 2 years, an unlimited fine, or both.

Article 37 provides offences of voyeurism. They cover observing (directly or using equipment or by making a recording) another person, without reasonable belief in their consent, in a place that would reasonably be expected to provide privacy, while the other person is using a lavatory, is doing a private sexual act, or has their penis, scrotum, vagina, buttocks or breasts exposed or covered only with underwear. They also cover operating equipment, or making a recording, for a similar purpose, but under the person's clothes (even though that person is not in a private place), and installing equipment or adapting a structure with the intention of enabling one of the other offences to be committed. They carry a maximum sentence of imprisonment for 2 years, an unlimited fine, or both.

Article 38 provides an offence of intentional penile penetration of or by a living animal. It carries a maximum sentence of imprisonment for 5 years, an unlimited fine, or both.

Article 39 provides an offence of administering a substance to another person (or causing them to take it), without reasonable belief in consent, with intent to stupefy or overpower the other person so as to engage in a sexual act involving that person (or cause them to engage in a sexual act). It carries a maximum sentence of imprisonment for 10 years, an unlimited fine, or both.

Article 40 provides an offence of committing any other offence with intent to commit a sexual offence under any of *Parts 2, 3 or 4*. It carries a maximum sentence of imprisonment for 10 years, an unlimited fine, or both.

Article 41 makes it an offence to do an act outside Jersey that would be a sexual offence if done in Jersey. It replaces, and expands on, Article 17 of the Sex Offenders (Jersey) Law 2010. It applies to sexual offences under this Law and to other sexual offences to which the Sex Offenders (Jersey) Law 2010 applies (that Law will be consequentially amended to cater for the changes produced by this Law), and the Minister is given the power, by Order, to amend the list of sexual offences. The provision also applies to offences of being an accessory to, or attempting, a sexual offence. The provision applies to people who are habitually resident in Jersey, but do acts outside Jersey (which would otherwise mean those acts were not offences under this Law), and means they can effectively be tried in Jersey for the equivalent Jersey offence. If the person is a British national, the act done overseas must something that would be a sexual offence in Jersey

law if done here. If the person is not a British national, then the act done overseas must also be an offence under the law of the overseas jurisdiction. For the offence of carrying out FGM, an overseas equivalent of a doctor or midwife will benefit from the same protection as a Jersey doctor or midwife.

Part 10 makes repeals and amendments and contains miscellaneous final provisions.

Article 42 amends the Protection of Children (Jersey) Law 1994, which deals with child pornography. The protection of that Law is extended to children aged 16 or 17 (but with a defence where the persons were spouses or civil partners at the time and subsequently, the child consents, nobody else appears in the image and it is not distributed or shown to anyone else). The definitions of image and film are extended to expressly include video-streaming. A defence is added for police officers, and others with similar functions, who have to copy (or possess, distribute or show) indecent images to carry out their functions.

The amendments also add a new offence in relation to images (such as cartoons) that are not photographs and do not appear to be photographs, but involve children and are pornographic and obscene. The same acts (making, possessing, distributing, showing, advertising) are an offence in relation to such an image as to an indecent photograph or pseudo-photograph. The offence carries a maximum sentence of imprisonment for 3 years (5 years for distribution, showing or advertising), an unlimited fine, or both. For the possession offence, there is a defence of having a legitimate reason for possession, not having seen the image and not knowing what it was, or having received it unrequested and then not kept it for an unreasonable time. There is an exception for an image in a work classified under the Video Recordings (Jersey) Law 1990.

Article 43 repeals 4 Laws, and provisions of one other. The Laws repealed in full are the Loi (1895) modifiant le droit criminel and the Loi (1915) modifiant le droit criminel, which are replaced by the prostitution offences in *Part 7*, the Loi (1938) modifiant le droit criminel (sodomie et bestialité), which is replaced by *Articles 5* and *38*, and the Sexual Offences (Jersey) Law 2007, which is replaced by the grooming offence in *Article 16* and the position of trust offences in *Part 6*. *Articles 1(3)* and *(4)* and *17* of the Sex Offenders (Jersey) Law 2010 are also repealed, replaced by *Article 41* in relation to acts overseas.

Article 44 abolishes the customary law sexual offences of rape, *sodomie*, gross indecency and incest, as replaced by the appropriate offences in this Law. Other customary law offences are unaffected. In particular the customary law offences of indecent assault, outraging public decency and conduct likely to result in a breach of the peace are preserved.

Article 45 allows the States, by Regulations, to make consequential amendments to other enactments in relation to sexual offences.

Article 46 allows Regulations and Orders under other Articles to include transitional, consequential, incidental, supplementary or savings provisions. It also allows those Regulations and Orders, when amending a provision of this Law, to include transitional, consequential, incidental or supplementary amendments of this Law as well.

Article 47 provides for the short title of this Law, and allows it to be brought into force by the States by one or more Appointed Day Acts.

CONSULTATION DRAFT

SEXUAL OFFENCES (JERSEY) LAW 201-

Arrangement

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CONSULTATION DRAFT

SEXUAL OFFENCES (JERSEY) LAW 201-

A LAW to make new provision about sexual offences, to amend the law relating to certain sexual acts, to amend the Sex Offenders (Jersey) Law 2010, and for connected purposes

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION AND GENERAL

1 Interpretation

(1) In this Law –

“adult” means a person aged 18 or older;

“child” means a person aged 17 or younger;

“consent” has the meaning given by Article 2;

“female genital mutilation” has the meaning given by Article 29(2);

“female genital mutilation offence” has the meaning given by Article 31(1);

“gain” has the meaning given by Article 22;

“incite” is to be construed in accordance with paragraph (7);

“Minister” means the Minister for Home Affairs;

“payment” has the meaning given by Article 22;

“penetration” is to be construed in accordance with paragraph (3);

“reasonable belief” is to be construed in accordance with Article 3;

“sexual” is to be construed in accordance with paragraph (2);

“touch” is to be construed in accordance with paragraph (4);

“vagina” includes the vulva.

- (2) For the purpose of this Law an act (including penetration, touching or communication) is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual.
- (3) A reference in this Law to “penetration” is to a continuing act from entry to withdrawal.
- (4) For the purpose of this Law, touching another person includes –
 - (a) ejaculating semen onto the other person; and
 - (b) emitting urine or saliva onto the other person.
- (5) A reference in this Law to a part of the body includes reference to such a part surgically constructed, whether through gender reassignment surgery or otherwise.
- (6) In this Law –
 - (a) a reference to a person “aged 16 or younger” is to a person who has not attained his or her 17th birthday;
 - (b) a reference to a person “aged 16” is to a person who has attained his or her 16th birthday but has not attained his or her 17th birthday;
 - (c) a reference to a person “aged 13, 14 or 15” is to a person who has attained his or her 13th birthday but has not attained his or her 16th birthday; and
 - (d) a reference to a person “aged 16 or older” is to a person who has attained his or her 16th birthday,and references to persons of other ages are to be construed accordingly.

2 Interpretation: consent

- (1) This Article applies for the purpose of construing references to consent in Part 2.
- (2) Consent means free agreement.
- (3) Agreement to an act is not free agreement if the complainant agrees because –
 - (a) violence is used or threatened by any person against the complainant or any other person;
 - (b) the complainant is unlawfully detained by the defendant;
 - (c) the complainant is mistaken, as a result of deception by the defendant, as to the nature or purpose of the act; or
 - (d) the defendant induces the complainant to agree to the act by impersonating another person.
- (4) For the purpose of paragraph (3), “complainant” means the person whose consent to an act is required, and “defendant” means the person who is required to believe that the complainant consents to the act.
- (5) Paragraph (3) does not limit other reasons for which agreement might not be free.
- (6) A person does not consent to an act if, at the time of the act or of the alleged consent, the person –

- (a) is asleep or unconscious;
 - (b) is incapable because of the effect of alcohol or any other substance (whether voluntarily consumed or otherwise) of consenting to the act; or
 - (c) otherwise lacks capacity, within the meaning of the Capacity and Self-Determination (Jersey) Law 2016, to consent to the act.
- (7) A person's consent to an act is not to be taken as implied merely by –
- (a) that person's consent to another act;
 - (b) a purported expression or indication of that person's consent to the act, if the expression or indication is given by another person; or
 - (c) another person's consent to that act, given by that other person on his or her own behalf.
- (8) Consent to an act –
- (a) may be taken back at any time before the act; and
 - (b) in the case of a continuing act, may be taken back at any time during the act,
- and accordingly, if the act takes place or continues after the consent has been taken back, it does so without consent.

3 Interpretation: reasonable belief in consent, age or absence of exploitation

- (1) Paragraph (2) applies if, in proceedings under this Law, a question arises as to whether the accused reasonably believed that another person consented to an act.
- (2) The question is to be determined having regard to all the circumstances, including in particular –
 - (a) whether the accused had taken any steps to ascertain whether the other person consented to the act; and
 - (b) if so, what those steps were.
- (3) Paragraphs (4) and (5) apply if in proceedings under this Law a question arises, other than in a defence under Article 11(4), 12(3) or 13(3), as to whether the accused reasonably believed that another person was of or older than a particular age.
- (4) If it is proved that the other person was younger than the particular age, the accused is to be taken not to have reasonably believed that the other person was of or older than that age unless sufficient evidence is adduced to raise an issue as to whether the accused reasonably believed it.
- (5) If, after applying paragraph (4), the question remains for determination, it is to be determined having regard to all the circumstances, including in particular –
 - (a) whether the accused had taken any steps to ascertain the age of the other person; and
 - (b) if so, what those steps were.

- (6) Paragraph (7) applies if, in proceedings under Article 23, a question arises as to whether the accused reasonably believed that no person had engaged in any exploitative conduct in relation to the prostitution service.
- (7) The question is to be determined having regard to all the circumstances, including in particular –
 - (a) whether the accused had taken any steps to ascertain whether any person had engaged in any exploitative conduct; and
 - (b) if so, what those steps were.

4 Jury trials, mixed indictments, alternative charges and accessories

- (1) For the purpose of the Loi (1864) réglant la Procédure Criminelle –
 - (a) an offence under Part 2, 3 or 4 is to be treated as if that offence were a *crime* rather than a *contravention*; and
 - (b) on an indictment falling within paragraph (2), the Royal Court is to decide, having regard to the nature and gravity of the offences and after hearing any submissions from the defence and the prosecution, the method by which the defendant is to be tried.
- (2) An indictment falls within this paragraph if it charges 2 or more offences, of which –
 - (a) at least one is –
 - (i) a *crime* or *délit*, or
 - (ii) a *contravention* that is to be treated as a *crime* under paragraph (1)(a);
 - (b) at least one other is a *contravention* (whether under this Law or any other enactment) that is not to be treated as a *crime* under paragraph (1)(a); and
 - (c) at least one, whether falling within sub-paragraph (a)(ii) or (b), is an offence under any Part of this Law.
- (3) If an act constitutes an offence under more than one Article of this Law, nothing in this Law is to be read, unless express provision is made otherwise, as preventing the charging of, or a prosecution or conviction for, either of the offences merely by virtue of the fact that the act also constituted the other offence.
- (4) In particular, and without prejudice to the generality of paragraph (3), nothing in Part 2, Part 3, Part 4 or Article 13 is to be read, in relation to an act to which a child does not consent –
 - (a) as preventing the charging of, or a prosecution or conviction for, an offence under Part 2 in relation to that act merely by virtue of the fact that the act also constituted an offence under Part 3, Part 4 or Article 13; or
 - (a) as preventing the charging of, or a prosecution or conviction for, the offence under Part 3, Part 4 or Article 13 in relation to the act merely by virtue of the fact that the act also constituted an offence under Part 2.

-
- (5) Paragraphs (3) and (4) do not limit the application to this Law of Article 12 of the Interpretation (Jersey) Law 1954.
 - (6) A child aged 15 or younger is not guilty, whether under customary law or Article 1 of the Criminal Offences (Jersey) Law 2009, of aiding, abetting, counselling, procuring or inciting the commission by an adult of an offence under this Law against that child.
 - (7) A person is not guilty, whether under customary law or Article 1(1)(a) of the Criminal Offences (Jersey) Law 2009, of aiding, abetting, counselling or procuring the commission against a child aged 15 or younger of an offence under Article 9 or 11, if the person –
 - (a) acts for the purpose of –
 - (i) protecting the child from sexually transmitted infection,
 - (ii) protecting the physical safety of the child,
 - (iii) preventing the child from becoming pregnant, or
 - (iv) promoting the child’s emotional well-being by the giving of advice; and
 - (b) does not act for the purpose of –
 - (i) obtaining sexual gratification,
 - (ii) causing humiliation, distress or alarm, or
 - (iii) causing or encouraging the act constituting the offence or the child’s participation in it.
 - (8) Paragraphs (6) and (7) do not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting, counselling, procuring or inciting the commission of an offence under this Law.

PART 2

NON-CONSENSUAL OFFENCES

5 Rape

- (1) A person (“D”), who intentionally penetrates the vagina, anus or mouth of another person (“C”) with D’s penis, commits an offence if –
 - (a) C does not consent to the penetration; and
 - (b) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for life and to a fine.

6 Sexual penetration without consent

- (1) A person (“D”), who intentionally penetrates the vagina or anus of another person (“C”) with a part of D’s body or with anything else, commits an offence if –
 - (a) the penetration is sexual;

- (b) C does not consent to the penetration; and
 - (c) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for life and to a fine.

7 Sexual touching without consent

- (1) A person (“D”), who intentionally touches another person (“C”), commits an offence if –
- (a) the touching is sexual;
 - (b) C does not consent to the touching; and
 - (c) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for 10 years and to a fine.

8 Causing sexual act without consent

- (1) A person (“D”), who intentionally causes another person (“C”) to engage in an act, commits an offence if –
- (a) the act is sexual;
 - (b) C does not consent to engaging in the act; and
 - (c) D does not reasonably believe that C consents.
- (2) A person guilty of an offence under paragraph (1) is liable –
- (a) to imprisonment for life and to a fine, if the act caused involved –
 - (i) penetration of C’s anus or vagina,
 - (ii) penetration of C’s mouth with a person’s penis,
 - (iii) penetration of a person’s anus or vagina with a part of C’s body or by C with anything else, or
 - (iv) penetration of a person’s mouth with C’s penis; or
 - (b) in any other case, to imprisonment for 10 years and to a fine.
- (3) For the purpose of paragraph (1), and without limiting that paragraph, it is irrelevant whether any other person or persons (whether or not including D) also engage in the act.

PART 3

OFFENCES BY ADULTS AGAINST CHILDREN AGED 12 OR YOUNGER

9 Penile penetration, sexual penetration or sexual touching of a young child

- (1) An adult commits an offence, and is liable to imprisonment for life and to a fine, if –
- (a) the adult intentionally penetrates the vagina, anus or mouth of another person with the adult’s penis; and

- (b) the other person is a child aged 12 or younger.
- (2) An adult commits an offence, and is liable to imprisonment for life and to a fine, if –
 - (a) the adult intentionally penetrates the vagina or anus of another person with a part of the adult’s body or with anything else;
 - (b) the penetration is sexual; and
 - (c) the other person is a child aged 12 or younger.
- (3) An adult commits an offence, and is liable to imprisonment for 14 years and to a fine, if –
 - (a) the adult intentionally touches another person;
 - (b) the touching is sexual; and
 - (c) the other person is a child aged 12 or younger.

10 Causing or inciting a sexual act with a young child

- (1) An adult commits an offence if –
 - (a) the adult intentionally causes or incites another person to engage in an act;
 - (b) the act is sexual; and
 - (c) the other person is a child aged 12 or younger.
- (2) An adult guilty of an offence under paragraph (1) is liable –
 - (a) to imprisonment for life and to a fine, if the offence was one of causing engagement in an act and the act involved –
 - (i) penetration of the child’s anus or vagina,
 - (ii) penetration of the child’s mouth with a person’s penis,
 - (iii) penetration of a person’s anus or vagina with a part of the child’s body or by the child with anything else, or
 - (iv) penetration of a person’s mouth with the child’s penis; or
 - (b) in any other case, to imprisonment for 14 years and to a fine.
- (3) For the purpose of paragraphs (1) and (2), and without limiting those paragraphs, it is irrelevant whether any other person or persons (whether or not including the adult) also engage in the act.

PART 4

OFFENCES BY ADULTS AGAINST CHILDREN AGED 13 TO 15

11 Unlawful sexual intercourse with, sexual penetration of or sexual touching of an older child

- (1) An adult commits an offence if –
 - (a) the adult intentionally penetrates the vagina, anus or mouth of another person with the adult’s penis; and

- (b) the other person is aged 13, 14 or 15.
- (2) An adult commits an offence if –
 - (a) the adult intentionally penetrates the vagina or anus of another person with a part of the adult’s body or with anything else;
 - (b) the penetration is sexual; and
 - (c) the other person is aged 13, 14 or 15.
- (3) An adult commits an offence if –
 - (a) the adult intentionally touches another person;
 - (b) the touching is sexual; and
 - (c) the other person is aged 13, 14 or 15.
- (4) It is a defence to a charge for an offence under this Article that the accused reasonably believed that the other person was aged 16 or older.
- (5) An adult guilty of an offence under this Article is liable to imprisonment for 10 years and to a fine.

12 Causing or inciting a sexual act with an older child

- (1) An adult commits an offence, and is liable to imprisonment for 10 years and to a fine, if –
 - (a) the adult intentionally causes or incites another person to engage in an act;
 - (b) the act is sexual; and
 - (c) the other person is aged 13, 14 or 15.
- (2) For the purpose of paragraph (1), and without limiting that paragraph, it is irrelevant whether any other person or persons (whether or not including the adult) also engage in the act.
- (3) It is a defence to a charge for an offence under paragraph (1) that the accused reasonably believed that the other person was aged 16 or older.

PART 5

OTHER OFFENCES AGAINST CHILDREN AGED 15 OR YOUNGER

13 Unlawful sexual act between children

- (1) A child commits an offence, and is liable to imprisonment for 5 years and to a fine, if –
 - (a) that child intentionally –
 - (i) touches another person,
 - (ii) engages in any other act with another person,
 - (iii) causes another person to engage in an act, or
 - (iv) incites another person to engage in an act;
 - (b) the touching or the act is sexual; and

- (c) the other person is aged 15 or younger.
- (2) For the purpose of paragraph (1)(a), it is irrelevant whether the touching or the act also forms part of an offence committed by the other person.
- (3) It is a defence to a charge for an offence under paragraph (1) that –
 - (a) the other person was aged 13 or older; and
 - (b) the accused reasonably believed that the other person was aged 16 or older.

14 Causing a child to watch or be present during a sexual act

- (1) An adult commits an offence if –
 - (a) the adult intentionally engages in an act;
 - (b) the act is sexual;
 - (c) for the purpose of obtaining sexual gratification or of causing humiliation, distress or alarm, the adult engages in the act when another person (“C”) is present or is in a place from which the adult can be observed; and
 - (d) either –
 - (i) C is aged 12 or younger, or
 - (ii) C is aged 15 or younger, and the adult does not reasonably believe that C is aged 16 or older.
- (2) An adult commits an offence if –
 - (a) for the purpose of obtaining sexual gratification or of causing humiliation, distress or alarm, the adult intentionally causes another person (“C”) –
 - (i) to watch a third person engaging in an act, or
 - (ii) to look at an image of any person engaging in an act;
 - (b) the act is sexual; and
 - (c) either –
 - (i) C is aged 12 or younger, or
 - (ii) C is aged 15 or younger, and the adult does not reasonably believe that C is aged 16 or older.
- (3) An adult guilty of an offence under paragraph (1) or (2) is liable to imprisonment for 10 years and to a fine.

15 Arranging or facilitating commission of a child sexual offence

- (1) A person commits an offence if –
 - (a) the person intentionally arranges or facilitates something that he or she 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, against a child aged 15 or younger, of –
 - (i) an offence under any of Parts 2, 3 or 4, or Article 14, or

- (ii) an offence of indecent assault under customary law.
- (2) A person does not commit an offence under paragraph (1) if –
 - (a) the person arranges or facilitates something that he or she believes another person will do, but that he or she does not intend to do or intend another person to do; and
 - (b) the offence that would fall within paragraph (1)(b) would be an offence against a child for whose protection the person acts.
- (3) For the purpose of paragraph (2), a person acts for the protection of a child if the person acts for a purpose falling within Article 4(7)(a) and does not act for a purpose falling within Article 4(7)(b).
- (4) A person guilty of an offence under paragraph (1) is liable to imprisonment for 14 years and to a fine.

16 Sexual grooming of a child

- (1) An adult commits an offence, and is liable to imprisonment for a term of 10 years and to a fine, if –
 - (a) having met or communicated with another person on at least one earlier occasion, the adult –
 - (i) intentionally meets the other person, or
 - (ii) travels with the intention of meeting the other person in any part of the world;
 - (b) at the time, the adult intends to do anything to or in respect of the other person, during or after the meeting and in any part of the world, which if done will involve the commission by the adult of a relevant offence;
 - (c) the other person is aged 15 or younger; and
 - (d) the adult does not reasonably believe that the other person is aged 16 or older.
- (2) In paragraph (1), the reference to the adult having met or communicated with the other person is a reference to the adult –
 - (a) having met the other person in any part of the world; or
 - (b) having communicated with the other person by any means from, to or in any part of the world.
- (3) The States may by Regulations specify relevant offences for the purposes of paragraph (1)(b).
- (4) An adult commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if -
 - (a) the adult intentionally communicates, by any means, with another person (irrespective of whether the other person is in Jersey or elsewhere);
 - (b) the adult does so for the purpose of obtaining sexual gratification;
 - (c) the communication -
 - (i) is sexual, or

- (ii) is intended to encourage the other person to make a communication (whether or not to the adult) that is sexual;
- (d) the other person is aged 15 or younger; and
- (e) the adult does not reasonably believe that the other person is aged 16 or older.

17 Paying for sexual service by a child

- (1) A person (“D”) commits an offence, and is liable to imprisonment for 14 years and to a fine, if –
 - (a) D intentionally obtains a service consisting of the performance of a sexual act by another person (“C”);
 - (b) D makes or promises payment for that service, knows or believes that another person has done so, or intends that another person will do so; and
 - (c) either –
 - (i) C is aged 14 or younger, or
 - (ii) C is a child, and D does not reasonably believe that C is an adult.
- (2) For the purpose of paragraph (1) it is irrelevant –
 - (a) whether C performs the act on one occasion or more;
 - (b) whether or not C is compelled to perform the act; and
 - (c) whether the payment is to C or to any other person.

18 Causing, inciting or controlling prostitution or pornography involving a child

- (1) A person (“D”) commits an offence if, in relation to another person (“C”) –
 - (a) whether or not for gain, D intentionally –
 - (i) causes or incites C’s sexual exploitation in any part of the world,
 - (ii) controls any of the activities of C relating to C’s sexual exploitation in any part of the world, or
 - (iii) arranges or facilitates C’s sexual exploitation in any part of the world; and
 - (b) either –
 - (i) C is aged 14 or younger, or
 - (ii) C is a child, and D does not reasonably believe that C is an adult.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for 14 years and to a fine.
- (3) For the purpose of paragraph (1), C is sexually exploited if either or both of paragraphs (4) and (5) applies
- (4) This paragraph applies if –

- (a) an indecent photograph of C is recorded; or
- (b) a photograph of C is recorded, when D knows or intends that it will be used to make an indecent pseudo-photograph or a prohibited image,

within the meaning given by the Protection of Children (Jersey) Law 1994 for each of those expressions.

- (5) This paragraph applies if –
 - (a) C performs, or offers to perform, a sexual act for another person (whether D or any other person);
 - (b) payment is made or promised, by any person, in return for the act.
- (6) Article 17(2) applies for the purpose of paragraph (5) as it applies for the purpose of that Article.

PART 6

ABUSE OF TRUST OFFENCES AGAINST PERSONS AGED 16 OR 17

19 Abuse of trust by a sexual act against a person aged 16 or 17

- (1) An adult commits an offence, and is liable to imprisonment for a term of 5 years and to a fine, if in relation to another person (“C”) –
 - (a) the adult intentionally –
 - (i) engages in an act with or directed towards C, or
 - (ii) causes or incites C to engage in an act;
 - (b) the act is sexual;
 - (c) C is a child aged 16 or 17;
 - (d) the adult does not reasonably believe that C is an adult; and
 - (e) the adult is in a position of trust in relation to C.
- (2) It is a defence to a charge for an offence under paragraph (1) –
 - (a) that the accused did not know or suspect, and could not reasonably be expected to know or suspect, that the accused was in a position of trust in relation to C;
 - (b) that the accused was C’s spouse or civil partner; or
 - (c) that, immediately before the position of trust came into being, a lawful sexual relationship existed between the accused and C.

20 Positions of trust

- (1) For the purposes of Article 19, an adult is in a position of trust in relation to a child if any one or more of the 5 conditions in the following paragraphs is fulfilled.
- (2) The first condition is that –
 - (a) the adult looks after any children (whether or not including the child in question) in premises; and

-
- (b) those premises are –
- (i) a children’s home, if the child is accommodated in that home or in any other children’s home in Jersey,
 - (ii) a school, if the child is receiving education at that school or at any other school in Jersey,
 - (iii) a nursing home or a hospital, if the child is accommodated in that nursing home or a hospital, or in any other nursing home or a hospital in Jersey, to receive services provided there, or
 - (iv) any other institution in which a child may be detained under a court order or an enactment, if the child is so detained in that institution or in any other such institution in Jersey.
- (3) The second condition is that the adult looks after the child on an individual basis, and does so –
- (a) as a person engaged in the provision of services provided by the Minister for Education to enable or assist participation by other persons in education or training;
 - (b) as a person engaged, on a professional or voluntary basis and not as a family member, in coaching, motivating, guiding or training the child for a sport, hobby, career, or competitive event;
 - (c) in pursuance of requirements to which the child is subject, being requirements that are imposed –
 - (i) by or under an enactment on the child’s release from detention for a criminal offence, or
 - (ii) by a court order made in criminal proceedings; or
 - (d) in the exercise of functions conferred –
 - (i) by or under an order to which the child is subject, being a care order, a supervision order or an education supervision order, and
 - (ii) on an authorized person or on the authority designated by that order.
- (4) The third condition is that the adult regularly has unsupervised contact with the child (whether face to face or by any other means), and does so –
- (a) in the exercise of functions of the Minister for Health and Social Services under Article 17 or 18 of the Children Law;
 - (b) in the exercise of functions for the provision of publicly provided accommodation for the purposes of Article 36 of the Police Procedures and Criminal Evidence (Jersey) Law 2003;
 - (c) as a person who is to report to the court under Article 9 of the Children Law on matters relating to the welfare of the child;
 - (d) as a person specified by a court under Article 75(1)(b) of the Children Law to assist and befriend the child; or
 - (e) as a guardian ad litem of the child, appointed under Article 75(2)(b) of the Children Law, Article 18(6) of the Adoption (Jersey) Law 1961, or rule 51 of the Matrimonial Causes Rules 2005.

- (5) The fourth condition is that the adult is an officer in an administration of the States for which the Minister for Health and Social Services is assigned responsibility, and that Minister delegates to the adult –
 - (a) that Minister’s functions under Article 21 of the Children Law, being functions in the discharge of which the adult advises and assists the child and looks after the child on an individual basis; or
 - (b) the functions imposed on that Minister in relation to the child by an order made under Article 12 of the Adoption (Jersey) Law 1961;
- (6) The fifth condition is that the adult is appointed as the guardian of the child, under Article 7 of the Children Law, or as the child’s *tuteur*.

21 Interpretation and amendment of Article 20

- (1) For the purpose of Article 20, an adult –
 - (a) looks after children if the adult is regularly involved in caring for, teaching, training, supervising or being in sole charge of children; and
 - (b) looks after a child on an individual basis if –
 - (i) the adult regularly looks after that child, and
 - (ii) in the course of doing so, the adult regularly has unsupervised contact with that child (whether face to face or by any other means).
- (3) In Article 20 –
 - “care order” has the meaning given by the Children Law
 - “Children Law” means the Children (Jersey) Law 2002;
 - “children’s home” means –
 - (a) a home or other place in which accommodation and maintenance are provided by the Minister for Health and Social Services under Article 20(1) of the Children Law; or
 - (b) a voluntary home, within the meaning of the Children Law;
 - “Education Law” means the Education (Jersey) Law 1999;
 - “education supervision order” has the meaning given by the Education Law;
 - “hospital” has the same meaning as in the Children Law;
 - “nursing home” has the same meaning as in the Nursing and Residential Homes (Jersey) Law 1994;
 - “school” has the meaning given by the Education Law;
 - “supervision order” has the meaning given by the Children Law.
- (4) The States may by Regulations amend Article 20, and paragraphs (1) to (3) of this Article, to add, remove or amend conditions under which an adult is in a position of trust in relation to a child.

PART 7**PROSTITUTION OFFENCES****22 Meaning of prostitution service, payment and gain in Part 7**

- (1) In this Part “prostitution service” means a sexual act that is performed by a person for another person in return for payment, or for a promise of payment, by or on behalf of that other person.
- (2) For the purpose of paragraph (1) it is irrelevant –
 - (a) whether the act is performed on one occasion or more;
 - (b) whether or not a person is compelled to perform the act; and
 - (c) whether the payment is to the person who performs the act or to any other person.
- (3) In this Law “payment” means the giving of a financial advantage, including the discharge of an obligation to pay or the provision of any goods or of a service (including a sexual service) gratuitously or at a discount.
- (4) In this Law “gain” means the obtaining of –
 - (a) a payment; or
 - (b) the goodwill of another person, if that goodwill is or appears likely (whether immediately or in time) to lead to a payment.

23 Paying for a prostitution service

- (1) A person (“A”) commits an offence, and is liable to a fine of level 3 on the standard scale, if the person makes or promises payment for the performance by another person (“B”) of a prostitution service.
- (2) For the purpose of paragraph (1) it is irrelevant –
 - (a) where in the world B is to perform the prostitution service; and
 - (b) whether B performs the prostitution service or not.
- (3) It is a defence to a charge for an offence under paragraph (1) that A reasonably believes that no third person (“C”) has engaged in any exploitative conduct that –
 - (i) is of a kind likely to induce or encourage B to perform, or offer to perform, the prostitution service; and
 - (ii) is engaged in by C for gain for, or in the expectation of gain for, C or another person (apart from A or B).
- (4) For the purpose of paragraph (3) exploitative conduct is –
 - (a) the use of force, threats (whether or not relating to violence) or any other form of coercion; or
 - (b) the practice of any form of deception.

24 Offering or seeking prostitution service in road or public place

- (1) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person, while on or in a road or other public place –
 - (a) contacts, or loiters with a view to so contacting, any other person; and
 - (b) does so for the purpose of offering a prostitution service to that other person or seeking a prostitution service from that other person.
- (2) For the purpose of paragraph (1) –
 - (a) “road or other public place” has the same meaning as in the Road Traffic (Jersey) Law 1956; and
 - (b) the reference to being on or in a road or public place includes being in a vehicle that is on or in a road or public place.
- (3) Paragraph (1) does not apply if the contacting of the other person, and the offering or seeking of the service, are conducted solely by means of electronic communication, within the meaning of the Electronic Communications (Jersey) Law 2000, in a manner that does not rely on the persons being on or in the same road or public place.

25 Advertising services of prostitute on public structure

- (1) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person –
 - (a) places on, or in the immediate vicinity of, a public structure an advertisement relating to prostitution; and
 - (b) intends the advertisement to come to the attention of any other person.
- (2) In paragraph (1) “public structure” means any structure that –
 - (a) is provided as an amenity for the use of the public or a section of the public; and
 - (b) is located in a public place, being a place to which the public have or are permitted to have access (whether on payment or otherwise), other than –
 - (i) a place to which children aged 15 or younger are not permitted to have access (whether by law or otherwise), or
 - (ii) premises wholly or mainly used for residential purposes.
- (3) For the purpose of this Article, an advertisement relates to prostitution if it –
 - (a) is for a prostitution service; or
 - (b) indicates that premises are premises at which a prostitution service is offered or performed.
- (4) In proceedings for an offence under this Article, if a reasonable person would consider an advertisement to fall within paragraph (3), the advertisement is to be presumed to be an advertisement relating to prostitution unless it is shown not to be.

26 Causing, inciting or controlling prostitution for gain

- (1) A person commits an offence, and is liable to imprisonment for 7 years and to a fine, if the person –
 - (a) intentionally –
 - (i) causes or incites another person to perform, or offer to perform, a prostitution service, or
 - (ii) controls an act of another person, that relates to that other person performing, or offering to perform, a prostitution service; and
 - (b) does so for or in the expectation of gain for himself or herself or a third person.
- (2) It is irrelevant where in the world the prostitution service is to be offered or provided.

27 Controlling or facilitating entry to premises used for prostitution

- (1) A person commits an offence, and is liable to imprisonment for 7 years and to a fine, if the person –
 - (a) controls or facilitates entry to premises;
 - (b) knows or intends that a person entering, or attempting or requesting to enter, the premises does so in order –
 - (i) to perform a prostitution service on the premises, or
 - (ii) to have a prostitution service performed on the premises for his or her sexual gratification; and
 - (c) does not fall within one of paragraphs (2) and (3).
- (2) A person falls within this paragraph if –
 - (a) that person performs a prostitution service on the premises; and
 - (b) no other person performs a prostitution service on the premises.
- (3) A person falls within this paragraph if –
 - (a) that person is one of 2 persons who perform a prostitution service on the premises;
 - (b) no person, other than those 2 persons, performs a prostitution service on the premises; and –
 - (c) the other of those 2 persons –
 - (i) is not a child, and
 - (ii) is not induced or encouraged, by a person who engages in exploitative conduct within the meaning of Article 23, to perform a prostitution service.
- (4) For the purpose of paragraph (1)(a), controlling entry to premises does not include preventing entry to the premises with a view to preventing or ending all use of the premises for the performance of prostitution services.

28 Letting premises for use for prostitution or failing to prevent that use

- (1) A person commits an offence if the person –
 - (a) is the owner of premises, or the agent of the owner, or any other person entitled to let the premises; and
 - (b) enters into an agreement to let those premises, knowing or having reasonable grounds to suspect that the lessee, or another person with the permission or connivance of the lessee, intends to use the premises –
 - (i) to commit an offence under Article 17, 23, 26 or 27, or
 - (ii) to enable another person to commit such an offence.
- (2) A person commits an offence if the person –
 - (a) is the owner, lessee or occupier of premises, or otherwise controls the occupation or use of premises;
 - (b) knows that another person has used, is using or intends to use the premises –
 - (i) to commit an offence under Article 17, 23, 26 or 27, or
 - (ii) to enable another person to commit such an offence; and
 - (c) fails, without reasonable excuse, to take reasonable steps to prevent that use of the premises continuing or being repeated.
- (3) A person guilty of an offence under paragraph (1) or (2) is liable to imprisonment for 6 months and to a fine of level 3 on the standard scale.

PART 8**FEMALE GENITAL MUTILATION OFFENCES AND ORDERS****29 Carrying out female genital mutilation**

- (1) A person commits an offence, and is liable to imprisonment for 14 years and to a fine, if the person carries out female genital mutilation on another person.
- (2) In this Law, “female genital mutilation” means the excision, infibulation or other mutilation of the whole or any part of the labia majora, labia minora or clitoris.
- (3) No offence is committed under paragraph (1) by a relevant practitioner who performs a surgical operation on a person –
 - (a) if the person is in any stage of labour, or has just given birth, and the operation is for a purpose connected with the labour or birth;
 - (b) if the operation is necessary for the person’s physical or mental health; or
 - (c) if by virtue of the operation, or of a process of which the operation forms a part, the person is a transgender person for the purpose of paragraph 5 of Schedule 1 to the Discrimination (Jersey) Law 2013.
- (4) For the purpose of paragraph (3) a relevant practitioner is –

- (a) in relation to an operation meeting the condition in sub-paragraph (3)(a) –
 - (i) a doctor,
 - (ii) a person undergoing a course of training with a view to becoming a doctor,
 - (iii) a person registered under the Health Care (Registration) (Jersey) Law 1995 as a midwife or as a midwife prescribing practitioner, or
 - (iv) a person undergoing a course of training with a view to becoming so registered;
 - (b) in relation to an operation meeting the condition in sub-paragraph (3)(b) or (c), a doctor.
- (5) For the purpose of paragraph (3)(b), in determining whether an operation is necessary for a person’s mental health it is immaterial whether that person or any other person believes that the operation is required as a matter of custom or ritual.

30 Assisting female genital mutilation

- (1) A person commits an offence, and is liable to imprisonment for 14 years and to a fine, if the person aids, abets, counsels or procures another person to carry out female genital mutilation on that other person’s own body.
- (2) A person is guilty of an offence, and is liable to imprisonment for 14 years and to a fine, if the person aids, abets, counsels or procures a person who is not habitually resident in Jersey to do a relevant act of female genital mutilation outside Jersey.
- (3) For the purpose of paragraph (2) an act is a relevant act of female genital mutilation if –
 - (a) it is done in relation to a person who is habitually resident in Jersey; and
 - (b) it would, if done by such a person, constitute an offence under Article 29.
- (4) Paragraphs (3) to (5) of Article 29 apply for the purpose of the offence under paragraph (2) of this Article as they do to the offence under Article 29(1), but the reference to a relevant practitioner is to be read as including a reference to a person who exercises functions corresponding, in the jurisdiction in which the operation is performed, to those of a relevant practitioner.

31 Failing to protect a child aged 15 or younger from risk of genital mutilation

- (1) In this Article –
 - “female genital mutilation offence” means an offence under Article 29 or 30;
 - “person responsible”, in relation to a child, means a person who –

- (a) has parental responsibility, within the meaning of the Children (Jersey) Law 2002, for the child; or
 - (b) is an adult and has assumed (and not relinquished) responsibility for caring for the child in the manner of a parent;
- “relevant time” means the time at which female genital mutilation takes place.
- (2) If a female genital mutilation offence is committed against a child aged 15 or younger, each person responsible for the child at the relevant time commits an offence and is liable to imprisonment for 7 years and to a fine.
 - (3) It is a defence for the accused to show that –
 - (a) at the relevant time, the accused did not think that there was a significant risk of a female genital mutilation offence being committed against the child, and could not reasonably have been expected to be aware that there was any such risk; or
 - (b) the accused took such steps as he or she could reasonably have been expected to take to protect the child from being the victim of a female genital mutilation offence.
 - (4) A person is taken to have shown the fact mentioned in paragraph (3)(a) or (b) if –
 - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond reasonable doubt.
 - (5) Nothing in the definition “female genital mutilation offence” in paragraph (1) is to be construed, for purpose of the offence under paragraph (2), as requiring the prosecutor to prove which of Articles 29 and 30 the female genital mutilation offence falls under.

32 Duty to notify police of apparent female genital mutilation of child

- (1) A regulated professional must notify the police in accordance with paragraph (4) if, in the course of working as a regulated professional, he or she –
 - (a) is informed by a child that female genital mutilation (however described) has been carried out on the child; or
 - (b) observes physical signs on a child that appear to show that female genital mutilation has been carried out on the child.
- (2) A regulated professional is –
 - (a) a teacher, being a person employed to teach in –
 - (i) a provided school, within the meaning of the Education (Jersey) Law 1999, or
 - (ii) a non-provided school that is a primary or secondary school, within the meaning of those terms in that Law;
 - (b) a social worker, being a person registered to engage in the registrable occupation of social worker, within the meaning of the Health Care (Registration) (Jersey) Law 1995;

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- (c) a doctor;
 - (d) a midwife or nurse, being a person registered to engage in any of the following registrable occupations, within the meaning of the Health Care (Registration) (Jersey) Law 1995 –
 - (i) midwife,
 - (ii) midwife prescribing practitioner,
 - (iii) nurse,
 - (iv) nurse prescribing practitioner,
 - (v) registered nurse: first level,
 - (vi) registered nurse: second level,
 - (vii) specialist community public health nurse,
 - (viii) specialist community public health nurse prescribing practitioner;
 - (e) a person working lawfully as a trainee in any of those occupations; or
 - (f) a person who is registered under the Piercing and Tattooing (Jersey) Law 2002 to administer body piercing or tattooing.
- (3) Paragraph (1) does not apply –
- (a) if the regulated professional has already complied with that paragraph in respect of previous information, or a previous observation, relating to the same child and the same apparent occurrence of female genital mutilation; or
 - (b) if, and for so long as, the regulated professional reasonably believes –
 - (i) that another regulated professional has already notified the police under paragraph (1) in respect of the same child and the same apparent occurrence of female genital mutilation, or
 - (ii) that the apparent female genital mutilation occurred in a surgical operation that, by virtue of Article 29(3), would not constitute an offence under Article 29(1).
- (4) Notification under paragraph (1) –
- (a) must identify the child;
 - (b) must explain why the notification is made;
 - (c) must be given before the end of one month from the time when paragraph (1) first applied to the regulated professional in respect of the particular child's apparent female genital mutilation;
 - (d) must be given to the Chief Officer of the States Police Force, within the meaning of the States of Jersey Police Force Law 2012, or to a person nominated by that Chief Officer for this purpose (whether by reference to a particular person or to a description of persons); and
 - (e) may be given orally or in writing.
- (5) A regulated professional who contravenes paragraph (1) commits an offence and is liable to a fine of level 3 on the standard scale.
- (6) A disclosure made in a notification under paragraph (1) does not breach –

- (a) any obligation of confidence owed by the person making the disclosure; or
 - (b) any other restriction on the disclosure of information.
- (7) Nothing in this Article is to be construed as limiting any other power or duty of a regulated professional to disclose information about female genital mutilation.
- (8) The Minister may by Order amend this Article to add, remove or otherwise alter the descriptions of persons regarded as regulated professionals for the purpose of this Article.
- (9) The Minister must, before making an Order under paragraph (8), consult such representative body of professionals as appears appropriate to the Minister.

33 Female genital mutilation protection orders

- (1) The Royal Court may, on the application of the Attorney General, make an order (an “FGM protection order”) for the purpose of –
 - (a) protecting a person against the commission of a female genital mutilation offence; or
 - (b) protecting a person against whom such an offence has been committed.
- (2) The Attorney General may make the application in proceedings brought for that purpose or in any other proceedings, including criminal proceedings, proceedings under the Children (Jersey) Law 2002 or proceedings between the parents of a child.
- (3) In deciding whether to exercise its powers under this Article and, if so, in what manner, the Royal Court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the person to be protected.
- (4) An FGM protection order may contain –
 - (a) such prohibitions, restrictions or requirements; and
 - (b) such other terms,as the Royal Court considers appropriate for the purposes of the order.
- (5) The terms of an FGM protection order may, in particular, relate to –
 - (a) conduct outside Jersey as well as (or instead of) conduct within Jersey;
 - (b) a respondent who is, or may become, involved in any other respect as well as (or instead of) a respondent who commits or attempts to commit, or may commit or attempt to commit, a genital mutilation offence against a person;
 - (c) any other person who is, or may become, involved in any other respect as well as a respondent of any kind, such as –
 - (i) a person aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a third person, or

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- (ii) a person conspiring to commit, or to attempt to commit, such an offence.
 - (6) The Royal Court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
 - (7) In deciding whether to exercise its powers under paragraph (6), the Royal Court must have regard to all the circumstances including –
 - (a) the risk to any person of becoming a victim of a female genital mutilation offence if the order is not made immediately;
 - (b) whether it is likely that an actual or potential victim of a female genital mutilation offence will be deterred or prevented from giving evidence in connection with the offence or the order if the order is not made immediately; and
 - (c) whether there is reason to believe that –
 - (i) the respondent is aware of the proceedings but is deliberately evading service, and
 - (ii) the delay involved in effecting service will cause serious prejudice to the girl to be protected or (if different) an applicant.
 - (8) The Royal Court must give the respondent an opportunity to make representations about an order made under paragraph (6) –
 - (a) as soon as just and convenient; and
 - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.
 - (9) An FGM protection order may be made for a specified period or until varied or discharged.
 - (10) The Royal Court may vary or discharge an FGM protection order of its own motion or on an application by –
 - (a) the Attorney General;
 - (b) the person being protected by the order;
 - (c) the respondent; or
 - (d) any other person affected by the order.
 - (11) Paragraphs (6) to (8) apply to a variation of an FGM protection order as they apply to the making of such an order (and references in those paragraphs to the making of an FGM protection order are to be read accordingly).
 - (12) The power to make rules of court under the Royal Court (Jersey) Law 1948 includes the power to make rules of court for the purposes of this Article.

34 Breaching FGM protection order

- (1) A person commits an offence, and is liable to imprisonment for 12 months and to a fine, if the person without reasonable excuse does anything that the person is prohibited from doing by an order made under Article 33.

- (2) If an order is made under Article 33(6), a person does not commit an offence under this Article by conduct engaged in at a time before the person is made aware of the existence of the order.

PART 9

MISCELLANEOUS SEXUAL OFFENCES

35 Penetrative sex with a blood relative by persons aged 16 or older

- (1) A person aged 16 or older (“A”) commits an offence, and is liable to imprisonment for 2 years and to a fine, if –
- (a) in relation to another person who is aged 16 or older (“B”) –
 - (i) A intentionally penetrates B’s vagina or anus with a part of A’s body, or
 - (ii) A intentionally causes or allows a part of B’s body to penetrate A’s vagina or anus;
 - (b) the penetration is sexual;
 - (c) A is a blood relative of B; and
 - (d) A knows or could reasonably be expected to know that A is a blood relative of B.
- (2) For the purpose of paragraph (1)(d) and (e), a blood relative is a person who –
- (a) is a grandparent, aunt, uncle, parent, sister, brother, half-sister, half-brother, child, niece, nephew or grandchild; and
 - (b) has that relationship without reliance on a marriage, civil partnership, or adoption.
- (3) If in proceedings for an offence under this Article it is proved that the accused was a blood relative of the other person, it is to be taken that the accused could reasonably have been expected to know of that relationship unless sufficient evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know of the relationship.

36 Exposure

A person commits an offence, and is liable to imprisonment for 2 years and to a fine, if he or she exposes his or her penis, scrotum or vagina –

- (a) intending that someone will see the penis, scrotum or vagina; and
- (b) intending –
 - (i) to obtain sexual gratification, without any reasonable belief that every person who may see the penis, scrotum or vagina has consented to seeing it, or
 - (ii) to cause humiliation, alarm or distress to any one or more of the persons who may see it.

37 Voyeurism

- (1) For the purposes of paragraphs (2) and (3) a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and –
 - (a) the person’s penis, scrotum, vagina, buttocks or breasts are exposed or covered only with underwear;
 - (b) the person is using a lavatory; or
 - (c) the person is doing a sexual act that is not of a kind ordinarily done in public.
- (2) A person commits an offence if the person –
 - (a) for the purpose of obtaining sexual gratification, observes another person doing a private act; and
 - (b) does not reasonably believe that the other person consents to being observed for that purpose.
- (3) A person (“A”) commits an offence if –
 - (a) A operates equipment or records an image;
 - (b) A intends by doing so to enable A, or any other person other than B, for the purpose of obtaining sexual gratification, to observe, or to look at an image of, another person (“B”) doing a private act; and
 - (c) A does not reasonably believe that B consents to the operation or recording with that intention.
- (4) A person (“A”) commits an offence if –
 - (a) A operates equipment, or records an image, under the clothing of another person (“B”);
 - (b) A intends by doing so to enable A, or any other person other than B, for the purpose of obtaining sexual gratification, to observe or to look at an image of –
 - (i) B’s penis, scrotum, vagina, buttocks or breasts (whether exposed or covered with underwear), or
 - (ii) the underwear covering any of those body parts;
 - (c) those body parts or the underwear would not otherwise be visible; and
 - (d) A does not reasonably believe that B consents to the operation or recording with that intention.
- (5) A person commits an offence if the person installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling that person or another person to commit an offence under any of paragraphs (2) to (4).
- (6) In paragraph (5) “structure” includes a tent, vehicle or vessel or other temporary or movable structure.
- (7) A person guilty of an offence under this Article is liable to imprisonment for 2 years and to a fine.

38 Penetration of or by an animal

- (1) A person commits an offence if –
 - (a) the person intentionally penetrates something with the person’s penis;
 - (b) what the person penetrates is the vagina or anus of a living animal, or a similar part of a living animal that lacks a vagina or anus; and
 - (c) the person knows that, or is reckless as to whether, that is what the person penetrates.
- (2) A person commits an offence if –
 - (a) the person intentionally causes or allows the person’s vagina or anus to be penetrated;
 - (b) what penetrates the person is the penis of a living animal; and
 - (c) the person knows that, or is reckless as to whether, that is what penetrates the person.
- (3) A person guilty of an offence under this Article is liable to imprisonment for 5 years and to a fine.

39 Administering a substance with intent to commit a sexual offence

A person commits an offence, and is liable to imprisonment for 10 years and to a fine, if the person –

- (a) intentionally administers a substance to, or causes a substance to be taken by, another person (“B”);
- (b) does not reasonably believe that B consents; and
- (c) intends to stupefy or overpower B, so as to –
 - (i) enable himself or herself, or any other person, to engage in a sexual act that involves B, or
 - (ii) cause B to engage in a sexual act.

40 Committing an offence with intent to commit a sexual offence

A person commits an offence, and is liable to imprisonment for 10 years and to a fine, if the person commits any offence with the intention of committing a further offence under any of Parts 2, 3 or 4.

41 Sexual offences outside Jersey

- (1) In this Article –

“British national” means an individual who is, within the meaning of the British Nationality Act 1981 of the United Kingdom, a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person;

“relevant offence” means –

 - (a) an offence under this Law; and

-
- (b) any other offence that is a sexual offence to which the Sex Offenders (Jersey) Law 2010 applies by virtue of Article 2 of that Law.
- (2) If –
- (a) a person is a British national and is habitually resident in Jersey;
- (b) the person does an act in a jurisdiction outside Jersey; and
- (c) the act, if done in Jersey, would constitute a relevant offence,
- the person is guilty in Jersey of that relevant offence, and accordingly the person may be proceeded against in Jersey in respect of the relevant offence.
- (3) If –
- (a) a person is not a British national but is habitually resident in Jersey;
- (b) the person does an act in a jurisdiction outside Jersey;
- (c) the act constitutes an offence under the law of that jurisdiction; and
- (d) the act, if done in Jersey, would constitute a relevant offence,
- the person is guilty in Jersey of that relevant offence, and accordingly the person may be proceeded against in Jersey in respect of the relevant offence.
- (4) The condition in paragraph (3)(c) is to be taken to be met unless, not later than rules of court may provide, the accused serves on the prosecutor a notice –
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the accused’s opinion met,
- (b) showing the grounds for that opinion, and
- (c) requiring the prosecutor to prove that the condition is met.
- (5) But the court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition in paragraph (3)(c) is met without service of a notice under paragraph (4).
- (6) On a trial before the Royal Court, the question whether the condition in paragraph (3)(c) is met is to be treated as a question of law.
- (7) If the relevant offence is the offence under Article 29(1), then the reference in Article 29(3) to a “relevant practitioner” is to be read as to a person who, under the law of the other jurisdiction, exercises functions corresponding to those of a relevant practitioner within the meaning of Article 29(4).
- (8) A reference in this Article to an offence includes a reference –
- (a) to an attempt, conspiracy or incitement to commit the offence; and
- (b) to aiding and abetting, counselling or procuring the commission of the offence,
- whether under customary law or under Article 1 of the Criminal Offences (Jersey) Law 2009.
- (9) An act punishable under the law of a jurisdiction outside Jersey constitutes an offence under that law for the purpose of this Article however it is described by the law of that jurisdiction.

- (10) The Minister may, by Order, amend the definition “relevant offence” in paragraph (1) to make different provision as to offences appearing to the Minister to be sexual.

PART 10

REPEALS, AMENDMENTS AND FINAL PROVISIONS

42 Protection of Children (Jersey) Law 1994 amended

In the Protection of Children (Jersey) Law 1994 –

- (a) for Article 1(1) there is substituted the following paragraph -

“(1) In this Law –

‘child’, subject to paragraph (5), means a person under the age of 18 years;

‘film’ includes any form of video-recording, video-streaming or other moving image of a real subject;

‘image’ includes –

(a) a moving or still image (including a still image captured by any means from a moving image), whether produced by a means of recording, by computer graphics or otherwise; and

(b) data (stored by any means) that is capable of conversion into such an image;

‘indecent image’ means an indecent photograph, indecent pseudo-photograph or prohibited image;

‘non-photographic image’ means an image that is not a photograph or pseudo-photograph;

‘prohibited image’ has the meaning given by Article 2B;

‘pseudo-photograph’ means an image that is not, but appears to be, a photograph.”;

- (b) for Article 1(6) there is substituted the following paragraph -

“(6) References to an indecent pseudo-photograph include a copy of an indecent pseudo-photograph, and references to a prohibited image include a copy of a prohibited image.”;

- (c) in Article 1(7) for the words “indecent photograph or pseudo-photograph” there are substituted the words “indecent image”;

- (d) in Article 2(4) for the word “Law” there is substituted the word “Article”;

- (e) after Article 2(4) there are inserted the following paragraphs –

“(4A) Where a person (“the accused”) is charged with an offence under paragraph (1)(a) or (b), it shall be a defence for the accused to prove that all of the conditions in paragraph (4B) are met.

(4B) The conditions are –

- (a) that the child was aged 16 or older at the time when the photograph or pseudo-photograph was taken or made;
 - (b) that the child was the spouse or civil partner of the accused at the time when the photograph or pseudo-photograph was taken or made, and at all times at which it was in the possession of the accused;
 - (c) that the photograph or pseudo-photograph did not show or appear to show any person who was neither the child nor the accused; and
 - (d) that the child consented to the taking or making of the photograph or pseudo-photograph, and to any possession of it by the accused, or the accused reasonably believed that the child so consented.”;
- (f) in Article 2(6), before sub-paragraph (a), there is inserted the following sub-paragraph –
- “(aa) that –
 - (i) all of the conditions in paragraph (4B) are met,
 - (ii) he or she intended the showing or distribution to be to the child and to no other person, and
 - (iii) no showing or distribution occurred to any person other than to the child;”;
- (g) after Article 2A there are inserted the following Articles –

“2B Prohibited image of a child: interpretation

- (1) This Article applies for the purposes of Articles 2C and 2D.
- (2) A prohibited image is an image that –
 - (a) is non-photographic;
 - (b) is pornographic;
 - (c) falls within paragraph (6); and
 - (d) is grossly offensive, disgusting or otherwise of an obscene character.
- (3) An image is ‘pornographic’ if it is of such a nature that a reasonable person would assume it to have been produced solely or principally for the purpose of sexual arousal.
- (4) If an image (as made, found in the person’s possession, distributed or shown) forms part of a series of images, the question whether the image is of such a nature as is mentioned in paragraph (3) 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.
- (5) So, for example, if –

- (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.

(6) An image falls within this paragraph if it –

- (a) is an image that focuses solely or principally on a child's penis or vagina, or on the region of a child's anus; or
- (b) portrays any of the acts mentioned in paragraph (7).

(7) Those acts are –

- (a) an act of masturbation by, of, involving or in the presence of a child;
- (b) an act of penetration by, of, involving or in the presence of a child, if the penetration is -
 - (i) of a person's vagina or anus by a part of another person's body or by anything else,
 - (ii) of a person's mouth by another person's penis,
 - (iii) of a person's vagina, anus or mouth by an animal's penis,
 - (iv) of an animal's vagina, anus or mouth by a person's penis.

(8) For the purpose of this Article –

- (a) the references to body parts, generally or in particular, of a person or animal, and to penetration, are to be construed in accordance with the Sexual Offences (Jersey) Law 201-; and
- (b) it is irrelevant whether a person or animal is dead, alive or imaginary.

2C Making, possessing, distributing or showing a prohibited image of a child

(1) A person commits an offence if the person –

- (a) makes a prohibited image of a child;
- (b) has such an image in his or her possession;
- (c) distributes or shows such an image;
- (d) has in his or her possession such an image, with a view to it being distributed or shown by himself, herself or others; or
- (e) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such images, or intends to do so.

- (2) This Article is subject to Article 2E.
- (3) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.
- (4) A person guilty of an offence under paragraph (1)(a) or (b) is liable to imprisonment for a term of 3 years and to a fine.
- (5) A person guilty of an offence under paragraph (1)(c), (d) or (e) is liable to imprisonment for a term of 5 years and to a fine.
- (6) Articles 4 and 5 apply in relation to a prohibited image, and to an offence under this Article or an exclusion or defence under Article 2D, as they apply in relation to an indecent photograph or pseudo-photograph of a child, and to an offence, exclusion or defence under Article 2.

2D Defence: possession of prohibited image of child

It is a defence to a charge of an offence under Article 2C(1)(b) for the defendant to prove any of the following –

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

2E Exclusion: prohibited image of child in classified work

- (1) Article 2C does not apply to an excluded image.
- (2) An ‘excluded image’ is an image that forms part of a series of images contained in a recording of the whole or part of a classified work.
- (3) But such an image 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.
- (4) If 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 paragraph (3)(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;

and Article 2B(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

- (5) In determining for the purposes of this Article 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.
- (6) Nothing in this Article is to be taken as affecting any duty of a designated authority to have regard to Article 2C (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.
- (7) In this Article –
- ‘classified work’ means (subject to paragraph (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this Article);
 - ‘classification certificate’, ‘designated authority’ and ‘video work’ have the same meaning as in the Video Recordings (Jersey) Law 1990;
 - ‘extract’ includes an extract consisting of a single image;
 - ‘pornographic’ has the same meaning as in Article 2C;
 - ‘recording’ means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).
- (8) Article 1(9) of the Video Recordings (Jersey) Law 1990 applies for the purpose of this Article in relation to alterations as it applies for the purpose of that Law.

2D Defence: indecent image necessary for function of prevention or prosecution of crime

- (1) For the purpose of paragraph (2) –
- (a) a relevant act is an act of copying, possessing, distributing or showing an indecent image;
 - (b) a relevant charge is charge by which the defendant is accused of an offence under this Law, by virtue of a relevant act;
 - (c) a relevant function is –
 - (i) a power or duty of a police officer, or
 - (ii) a power or duty of any other person, by virtue of that person’s office or employment, that relates to the

prevention, detection or investigation of crime, or the conduct of criminal proceedings, in any part of the world.

- (2) It is a defence to a relevant charge for the defendant to prove that, at the time of the relevant act it was necessary for the defendant to carry out that relevant act for the purpose of exercising a relevant function of the defendant.”

43 Repeal of enactments

The following enactments are repealed –

- (a) the Loi (1895) modifiant le droit criminel;
- (b) the Loi (1915) modifiant le droit criminel;
- (c) the Loi (1938) modifiant le droit criminel (sodomie et bestialité);
- (d) the Sexual Offences (Jersey) Law 2007;
- (e) Articles 1(3) and (4) and 17 of the Sex Offenders (Jersey) Law 2010.

44 Certain customary law sexual offences abolished and others saved

- (1) The following customary law offences are abolished –
 - (a) rape;
 - (b) *sodomie*;
 - (c) gross indecency;
 - (d) incest.
- (2) Article 17(2) of the Interpretation (Jersey) Law 1954 applies in relation to the abolition of a customary law offence by paragraph (1) as it applies in relation to the repeal or expiry of a provision of an enactment creating an offence.
- (3) Nothing in this Law is to be read as limiting any other customary law offence, including in particular the offences of –
 - (a) indecent assault;
 - (b) outraging public decency;
 - (c) conduct likely to result in a breach of the peace.

45 Consequential amendments

The States may by Regulations amend any enactment, other than this Law, to make such consequential provision as the States consider necessary or expedient, in relation to a reference (direct or indirect) in that other enactment to a sexual offence under any enactment or under customary law, being an offence that –

- (a) is an offence under a provision of an enactment or of customary law that is amended or repealed by this Law; or
- (b) is otherwise constituted in whole or in part by a sexual act.

46 Orders and Regulations

- (1) An Order or Regulations under this Law may contain such transitional, consequential, incidental, supplementary or savings provisions, other than an amendment of this Law, as appear to the Minister or the States to be necessary or expedient for the purposes of the Order or Regulations.
- (2) A power under this Law to amend, by Regulations or Order, any provision of this Law includes the power to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States or the Minister to be necessary or expedient.

47 Citation and commencement

This Law may be cited as the Sexual Offences (Jersey) Law 201- and comes into force on such day or days as the States may by Act appoint.

