



**Adults with Learning Disabilities:
Personal and Sexual Relationships
Operational Protocol.**

April 2023

Glossary of Terms

AIDS	Acquired Immune Deficiency Syndrome
BASHH	British Association of Sexual Health & HIV
BHIVA	British HIV Association
BIS	British Infection Society
DBS	Disclosure & Barring Service
DHSSPS	Department of Health, Social Services & Public Safety
FPA	Family Planning Association
GUM	Genito-Urinary Medicine
HIV	Human Immuno-deficiency Virus
HSC	Health & Social Care
HSCB	Health & Social Care Board
MedFASH	Medical Foundation for AIDS & Sexual Health
RSE	Relationship and Sexuality Education
STI	Sexually Transmitted Infection
HPV	Human Papillomavirus Vaccination
EHSSB	Eastern Health and Social Service Board
DOH	Department of Health
PHA	Public Health Agency
RQIA	Regulation and Quality Improvement Authority

LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, and others
NI	Northern Ireland
LARC	Long Acting Reversible Contraception
EHC	Emergency Hormonal Contraception
PEPSE	Post Exposure Prophylaxis for Sexual Exposure

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Part One

1.0 Summary of Protocol

The Health & Social Care (HSC) Trusts in NI affirm the right of people with learning disabilities to practise and enjoy personal and sexual relationships, if that is their choice. The HSC Trusts in NI developed this protocol with kind permission received from Westminster City, NHS Westminster & FPA to use their policy framework as a starting point and to guide the work. This protocol and its guidelines have been produced to ensure that this right is upheld, and to support those who work with service users in upholding it.

This is a complex area, however, with no absolute right or wrong answers in balancing rights, responsibilities and protection issues. The protocol and its guidelines cannot predict all future issues and specific matters, however we believe that it provides a framework within which staff can operate and a context for decision making that places human rights uppermost.

HSC Trusts will ensure that the protocol and its guidelines are fully implemented within services for people with a learning disability, supporting them to have meaningful relationships, which may include marriage and individual, unique, sexual expression within the law, balancing their rights with responsibilities.

This protocol aims to:

- Ensure the rights of service users are upheld so they can engage in personal and sexual relationships, if they so wish.
- Provide information about personal and sexual relationships for staff working with service users.
- Offer practical guidelines to staff.
- Promote best practice in services provided for service users.
- Support service providers in the provision of appropriate contexts in which discussion of sexual matters can take place.
- Ensure relationships between service users can develop.

- Ensure that service users' privacy is respected.
- Provide information and support for programmes of relationships and sexuality education for service users.
- To promote a consistent and considered approach.
- To safeguard adults at risk of harm/ exploitation.

The rationale for this protocol has included the following policies and legislation:

- Equal Lives Review of Policy and Services for people with a Learning Disability in NI 2005: highlights the importance of meaningful relationships, sexual expression and the developing sexuality of people with a learning disability as a right and recommends that personal relationships education should be available in all services for people with a learning disability with training offered to staff and support to those in a caring role.
- Human Rights Act 1998: includes the right to respect for privacy and family life, freedom of expression, the right to marry and to found a family and the right not to be discriminated against in respect of these rights and freedoms. Section 6 of the Human Rights Act places duties on public authorities, or those carrying out a function of a public authority, to act compatibly with the Convention of Rights as outlined within the European Convention of Human Rights. This requires Boards and Trusts to have a positive obligation to ensure that respect for human rights is at the heart of their daily activity. (EHSSB, 2005)
- Disability Discrimination Act 1995: this was further amended in 2005: this Act works alongside the Human Rights Act with the purpose of ensuring that disabled people are valued and treated as equal citizens. The amendment of the Act in 2005 among other things, places a duty on public authorities to promote disability equality.
- Learning Disability Service Framework 2012: The Bamford Review promotes the importance of people with a learning disability benefiting from meaningful relationships and the need to offer support, guidance, training and related services to ensure that this happens. It acknowledges the need for safeguards where necessary and appropriate, but within a framework that ensures the objective is to support people who are having positive relationships whenever possible (Standard 15).
- Section 75 of the Northern Ireland Act 1998: places a duty of public bodies to promote equality of opportunity amongst nine equality categories which includes disability. These duties are of particular importance to people with a learning disability as they

belong to an equality category but it is important to recognise an individual's potential membership of any of the other categories.

- UN Convention on the Rights of Persons with Disabilities: Discrimination relating to marriage, family and personal relations shall be eliminated. Persons with disabilities shall have the equal opportunity to experience parenthood, to marry and to found a family, to decide on the number and spacing of children, to have access to reproductive and family planning education and means, and to enjoy equal rights and responsibilities regarding guardianship, wardship, trusteeship and adoption of children (Article 23).
- Promoting Quality Care (2010): describes the principles of best practice to assist individual mental health and learning disability care professionals, multidisciplinary teams to make decisions about managing the potential risk that service users may cause to themselves or others.
- Seeking Consent: Working with people with learning disabilities (DHSSPS, 2003): The Department of Health, Social Services and Public Safety guidance, Reference Guide to Consent for Examination, Treatment or Care, sets out in detail the current law in Northern Ireland on consent and gives references to legal cases and good practice guidance from regulatory bodies for those who want to know more. This booklet focuses on the particular issues which may arise when seeking consent from adults with learning disabilities.
- We Matter 'Learning Disability Service Model for Northern Ireland (2021 – 2026) outlines a road map for transforming learning disability services in NI over the next 3-5 years).
- The Abortion (Northern Ireland) (No. 2) Regulations 2020. In October 2019 abortion was decriminalised and became lawful in Northern Ireland. The legal framework, came into effect on 31 March 2020. The legislation was introduced to implement in full the recommendations of the UN Committee on the Elimination of Discrimination against Women inquiry (CEDAW) into abortion care in NI.

Safeguards need to be put in place, where necessary and appropriate, but within a framework that ensures the objective is to support people who are having positive relationships whenever possible.

People with a learning disability have a right to learn about sexuality and the responsibilities that go along with exploring and experiencing one's own sexuality. They have to know how to protect themselves from unplanned pregnancy, HIV, other sexually transmitted infections and sexual and gender-based violence. Education programmes for people with a learning disability should begin during childhood as part of their general education.

1.1 Statement of core values

Individuals with learning disabilities should lead their lives like other people, with the same opportunities and responsibilities, and be treated with the same dignity and respect. This means inclusion particularly of those most often excluded, empowering those who receive services to make decisions and shape their own lives (DOH 2012). The service should adhere to the core values outlined by Equal Lives 2005: A Review of Policy and Services for people with learning disability in Northern Ireland.

Citizenship

The right to personal relationships is enshrined in Human Rights legislation. Meaningful relationships are a fundamental component of health and social wellbeing.

Social Inclusion

People will be supported to access social and leisure opportunities where friendships may be developed.

Empowerment

People will be supported to appreciate the rights, risks and responsibilities involved in personal relationships.

Working Together

Staff and carers will contribute to the development of policies and best practice guidelines in this area.

1.2 Who does the Protocol and Guidelines apply to?

The protocol and its guidelines are to be used to inform and support HSC Trust staff when working with people with a learning disability. It is expected that all staff working in the HSC Trusts will uphold this protocol and its guidelines. We all hold different values and beliefs about sex and sexuality; and implementing the protocol and its guidelines does not mean that we agree personally with every aspect of it. We do have to agree, however, that this protocol and its guidelines will be put into practice for users of the service. Staff whose personal views conflict with the protocol and its guidelines should discuss it with their manager and an alternative solution should be sought including staff development and training in these areas of their work.

In upholding and implementing this protocol and its guidelines, or in developing guidelines and programmes of work, Trusts, services, managers and workers should always give due consideration to relevant legislation and Trust policies (Appendix 1 and 3).

There are three main parts to this document:

Part One: The basic principles of the protocol and its guidelines

Part Two: The protocol and its guidelines for implementation

Part Three: Appendices

Each section of Part Two is organised with a summary of the protocol statement appearing first, followed by guidelines for implementation.

1.3 How HSC Trusts will support this protocol and its guidelines

Many people receiving services for learning disabilities from HSC Trusts wish and are able to have adult sexual relationships. We aim to support them in engaging in relationships when they are entered into with full and informed consent.

- Each Trust will ensure that this protocol and its guidelines reach all areas of the service, at all levels.
- They will provide opportunities for staff training about Relationship and Sexuality Education (RSE).
- They will monitor the effectiveness of the protocol and its guidelines at regular intervals.
- The protocol and its guidelines will be reviewed regularly to ensure that it keeps up to date with both legal requirements and best practice.
- A review of the protocol is scheduled to take place every 3 years once ratified.

A training package will be developed to support staff implementing this protocol. It is planned upon commencement of training and further embedding of the protocol to carry out a review to ensure we evaluate how the training has met the needs of staff in relation to the implementation of the protocol and the needs of service users and carers. This will help establish the needs of staff training in terms of regularity of updates and the necessary content of those.

2.0 Part Two - Principles

At the core of this protocol and its guidelines is the principle of Person Centred Planning. At all times the aim will be to put the service user at the centre of their individual plans, and in control of what happens.

2.1 The Rights of people with learning disabilities

People with a learning disability should be supported to have meaningful relationships which may include marriage and individual, unique, sexual expression within the law, balancing their rights with responsibilities (Learning Disability Service Framework, Standard 15, 2012).

These rights include support for:

- Information in accessible formats.
- Privacy.
- Intimacy.
- Specialised contraceptive service (UN Declaration, 1971).
- Parenthood.
- Marriage and civil partnerships.
- Sexual orientation.

We realise that ensuring these rights can sometimes be complicated. For example:

- A service user may require assistance to access a particular right.
- The rights of a service user may conflict with the wishes of a carer.
- The rights of an individual service user may conflict with the wishes of the wider group.
- The rights of a service user may conflict with the wishes of member/s of staff.

In such circumstances, it may be necessary to take the following steps:

- To consult fully with the service user, all those involved, including a line manager.
The importance of reflection in supervision re: these complex issues and value

challenges. Staff to be encouraged to avail of support/training to develop reflective practice and consider whether there are any legal implications.

- To make the decision with sensitivity, focusing on the aim of the protocol and its guidelines.

2.2 The Law and Learning Disability

In common with others, people with a learning disability have rights and obligations under the law. The particular vulnerability of people with a learning disability, however, is recognised in legislation which has sought to provide specific statutory protection against sexual abuse and exploitation. This very protection, however, may infringe on their civil liberties and human rights, thus creating dilemmas for staff, who must respect and act within the law. It is important that staff are conversant with the legislation which applies in Northern Ireland (Adult Protection Policy, July 2015). It is equally important that staff should obtain legal advice where there is doubt surrounding the legality of a relationship involving a person with a learning disability. People with a learning disability should be aware of the constraints within the law also (see Appendix 1).

The Human Rights Act (1998) legislated for the articles of the European Convention of Human Rights to be incorporated into local domestic law. Several of the articles are relevant to this protocol and its guidelines, especially Article 8 which protects the right to family and private life; Article 12 the right to marry and found a family; and Article 10 freedom of expression. Section 6 of the Human Rights Act places duties on public authorities, or those carrying out a function of a public authority, to act compatibly with the European Convention of Human Rights. This requires the Trust to have a positive obligation to ensure that respect for human rights is at the heart of their daily activity (see Appendix 1).

Staff within the HSC Trusts are correct in being concerned about the legal implications of informing and supporting people with a learning disability in matters of personal and sexual relationships. There are a number of legislative provisions which seek to

protect those with a learning disability and also provide for the punishment of those who carry out criminal offences. The number of such provisions is substantial and comprises a wide range of Acts, Orders and case law (see Appendix 1). This list is wide ranging but not exhaustive.

Section 75 of the Northern Ireland Act 1998 placed duties on public bodies to promote equality of opportunity amongst nine equality categories. These categories include disability in addition to age, gender, race, marital status, sexual orientation, religion, political opinion and dependents. While these duties are of particular relevance to people with a learning disability because they belong to a named equality category it is important to recognise an individual's potential membership of any of the other categories.

It is important that staff are aware of the relevant legislation which applies in Northern Ireland as it cannot safely be assumed that what is lawful or unlawful in England and Wales is necessarily so in Northern Ireland.

Some basic points of law which apply in Northern Ireland are:

- Staff should be aware of the sexual offences against a person with a Mental Disorder (Sexual Offences (Northern Ireland) Order 2008 Part 4), (see Appendix 1).
- Consent to a sexual relationship is from the age of 16 years of age in line with the rest of the UK.
- It is an offence to have a sexual relationship under the age of 13 years of age.
- Marriage cannot take place without parental consent until both parties are 18 years of age. It is possible to marry at 16 years of age with parental consent or by direction of the court.
- In October 2019 abortion was decriminalised and became lawful in Northern Ireland. The Abortion (Northern Ireland) Regulations 2020 commenced on 31 March 2020, authorising abortions to be carried out by a registered medical professional.
- The Mental Capacity Act 2005 does not apply to NI.

2.3 The Right to Decide

At present, when considering cases where an individual's capacity to consent is in question, best practice is to refer to guidelines in the Mental Capacity Act (2005 – England and Wales) Code of Practice. Until the new Mental Health and Learning Disability legislation comes into effect, relevant legislation remains the Mental Health (Northern Ireland) Order 1986 and the Sexual Offences (Northern Ireland) Order 2008 which must be followed to inform decision making in cases where a person's ability to consent is in question.

In seeking to determine whether or not a person has sufficient mental capacity to make a particular decision the following principles apply:

1. Every adult must be presumed to have capacity unless they fail the capacity assessment.
2. All practicable steps must be taken to help a person with the test of capacity.
3. Any unwise decision does not mean a person lacks capacity.
4. Any decision or action taken on behalf of a person lacking capacity must be in their best interests.
5. Any decision or action taken on behalf of a person lacking capacity should aim to be the least restrictive option available.

When completing a Capacity Assessment the key principles to consider are:

- Does the person comprehend the information relevant to the decision?
- Can the person retain the information relevant to the decision?
- Can the person use and weigh this information in the decision making process?
- Does the person have the ability to communicate the decision (by any means)?

These principles are decision and time-specific, and apply equally to each decision that a person makes with regard to their sexuality, as with other decisions about their life. Practitioners must be able to evidence their compliance with these principles when applying this guidance to their practice.

2.4 Respecting cultural and religious backgrounds

The cultural and religious beliefs and ethnic diversity of people with a learning disability should be reflected in service delivery.

Individual views and beliefs about sexual relationships are based on culture, religion and upbringing; and we must take care to recognise that the backgrounds of those we work with may be different, and not impose our values on them.

Good practice includes:

- Establishing the person's cultural and religious background.
- Understanding that culture is not static; do not make assumptions.
- Incorporating a person's cultural, religious and ethnic background when assessing a situation or providing a service.
- Working sensitively in developing care plans and programmes for Relationships and Sexuality Education (RSE).
- Challenging stereotypes and being prepared to provide flexible service responses.
- Endeavouring to make it possible for service users to discuss personal and sexual relationships and sexuality.

2.5 Ensuring best practice

To ensure best practice in this area:

- Service providers will discuss the protocol and use relationship champions within their own setting to ensure protocol and guidelines are put into practice. (Relationship champions will be throughout Learning Disability services and will have further training to enable them to give added support to staff in their work area around this theme).

- Ensure service users have been and remain involved at every stage of the process.
- The HSC Trusts will review this protocol every 3 years to ensure that it is kept updated in terms of legal and organisational changes.
- The HSC Trusts will ensure the development and implementation of RSE programmes as referenced throughout this protocol. Staff and service users will be fully engaged in this process.

2.6 Working in partnership

Sometimes people with a learning disability take more time to learn and to develop skills. It is essential that a consistent approach is used by all who come into contact with service users. This means that professionals, carers, and people with learning disabilities themselves, need to work together to ensure that adults with learning disabilities:

- Are helped to live full lives.
- Are helped to develop full and positive personal and sexual relationships.
- Are protected from abuse and exploitation.

Effective relationship and sexuality education requires that all agencies work together to support service users. Some obvious agencies are the Public Health Agency (PHA), the Regulation and Quality Improvement Authority (RQIA), the Department of Health, Social Services and Public Safety Northern Ireland (DHSSPSNI), the Strategic Planning and Performance Group (SPPG), formally known as Health and Social Care Board (HSCB), and the community and voluntary sector organisations who have a specialism in working with adults with a learning disability.

Equally, there will be a need for collaborative working between agencies to develop interrelated standards and policies in each organisation for Personal and Sexual Relationships e.g. supported living guidance provided by RQIA, Health and Social Care Trusts and the Northern Ireland Housing Executive.

3.0 Sexuality and adults with learning disabilities

3.1 Personal, social and emotional development

PROTOCOL

Services should understand and respect the wide variation in personal and sexual development exhibited by people with a learning disability.

Support for this development should be provided.

Guidelines

Everyone, including those with a learning disability, have different ways of expressing their sexuality and this is part of their personality.

Most people with learning disabilities develop physically within the parameters generally exhibited in the population at large, but in some cases their emotional and social development may be slower. It is not uncommon for sexual feelings to become stronger and sexual behaviour to be exhibited at a later age than for other people. This means that it is important that there are opportunities for RSE and support in adult services.

Support to meet the needs of service users includes: information, access to counselling, respect for intimacy, privacy and sensitivity for a developing relationship, help in developing the personal and social skills that encourage a relationship to progress and possibly some help in modifying behaviour.

An RSE programme can support service users' growing awareness of their sexuality.

3.2 Relationships and friendships

PROTOCOL

Relationships of all sorts are important to our personal development. Service users should be encouraged to engage in as wide a variety of relationships as they wish, as long as they are within the law (i.e. no underage sexual relationships), mutual and consenting.

It is important for people with learning disabilities to have the opportunity to develop a range of relationships, not only with others with a disability. Many service users, however, have a lifetime of broken relationships, with other service users and with staff changes. Often therefore, they have not developed the ability to make long-term relationships. To remedy this requires skilled help.

People with learning disabilities who do not use speech to communicate should not have their relationships underestimated or overlooked. Living with people for long periods of time is likely to create familiarity and security between some individuals which could be very important to their lives. People vary in their attitudes and expectations of relationships and staff will be expected to deal with service users and situations with sensitivity.

Guidelines

Staff should take positive steps to enable people to maintain their network of friendships, including supporting them to:

- Maintain and extend their network of friendships,
- Find new relationships and renew old ones,
- Use methods like “life story” books to acknowledge old friendships, and
- Develop links within the local community, for example through clubs, sporting activities and adult education classes.

Staff should also ensure that:

- Individual friendships are supported where there is no exploitative behaviour.
- The relationships formed by service users who do not use speech to communicate are not underestimated.
- There is no pressure exerted on those who do not wish to have links or sexual relationships with others; service users are free, if they so wish, not to engage in sexual relationships.

3.3 Sexual orientation and sexual behaviour

PROTOCOL

In society today there is a diversity of sexual needs and expression. This is no different for people with learning disabilities. Service users may form sexual relationships with either sex, as other people do. Within the limits of the law, sexual orientation and behaviour will be respected and supported.

Guidelines

A sexual relationship can offer mutual support and pleasure to the partners involved.

In practice, staff should respect any mutual relationships that are formed and should not discourage consensual sexual activity. Informed consent should be present in any sexual relationship. If a service user tells a member of staff about any sexual relationship, or their desire for such a relationship, this should be treated positively and with sensitivity by:

- keeping information confidential unless otherwise indicated (e.g. issues of vulnerability).
- offering support if needed, in the form of information and relevant resources.

- contacting outside agencies for further support and advice if required with the individual's consent.
- advising on safer sex practices.
- giving support if the individual wishes to tell others, e.g. carers.

A wide variety of sexual expression is to be found in the population at large. This is no different for service users. Any behaviour that seems to be giving rise to concern should be discussed with a line manager, named worker or designated officer for vulnerable adults. Clarity on whether this issue is of a value-base or a legal issue will need to be established. For example, even though you have your own value base and a service user you are working with has a sexual orientation outside of that you cannot discriminate.

All the above applies equally to all sexual orientations heterosexual, Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and other (LGBTQ+) relationships. If there are issues of vulnerability, procedures in the Safeguarding Vulnerable Adults Regional Adult Protection Policy and Procedural Guidance 2015 should be followed (see Section 3.4.1 Confidentiality and 3.4.5 Safeguarding).

A summary of the law

It is important that staff are aware of relevant legislation which applies to Northern Ireland (NI) as it cannot be safely assumed that what is lawful or unlawful in England and Wales is necessarily so in NI.

Some basic points of law which apply in NI are:

- The age of consent for both heterosexual and homosexual intercourse is 16 (The Sexual Offences (Northern Ireland) Order 2008).
- Anal sex between heterosexual couples was made legal in the Criminal Justice and Public Order 1994.
- It is an offence of strict liability for a man to have a sexual relationship with a child who is under 13 years of age. (An offence of strict liability is one where the perpetrator does not require to have a guilty mind).
- Marriage cannot take place without parental consent until both parties are 18 years of age. It is possible to marry at 16 years of age with parental consent or by special direction of the court.

- Same sex marriage is now legally recognised in NI from January 2020
- In October 2019 abortion was decriminalised and became lawful in Northern Ireland. The Abortion (Northern Ireland) Regulations 2020 commenced on 31 March 2020, authorising abortions to be carried out by a registered medical professional.

Following the change in the law, Early Medical Abortion (EMA) services (up to 9 weeks and 6 days of pregnancy dated from the first day of your last period) were established. EMA services are available in the Belfast, Northern, South Eastern and Southern HSC Trusts*. EMA services are not currently available within the Western HSC Trust. If you live in this area and wish further information on the options available to you, please visit www.informingchoicesni.org/central-access-point.

* Services available at the time of publication

If the gestation of your pregnancy is beyond 10 weeks, or you cannot be treated locally, abortion services can still be accessed in England. The UK Government will cover the cost of abortion care for women from Northern Ireland who are treated in England. As part of your treatment, the following expenses will be met:

- travel arrangements;
- overnight accommodation;
- transportation (e.g., taxi).

The Sexual Offences (Northern Ireland) Order 2008 lists sexual offences against a person with a mental disorder. These include:

- Sexual activity with a person with a mental disorder impeding choice.
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity.
- Engaging in sexual activity in the presence of a person with a mental disorder impeding choice.
- Causing a person with a mental disorder impeding choice, to watch a sexual act.
- Inducement, threat or deception to procure sexual activity with a person with a mental disorder.
- Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception.
- Engaging in sexual activity in the presence, procured by inducement, threat or deception of a person with a mental disorder.

- Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception.

A person guilty of an offence could be liable to a term of life imprisonment.

3.4 Specific issues

3.4.1 Confidentiality

PROTOCOL

Unless otherwise agreed by the service user, confidentiality about sexual matters should be maintained. If there are other factors which mean that confidentiality will need to be breached (e.g. for legal, health reasons or disclosure of abuse) the service user's consent should be gained whenever possible.

Guidelines

The Trusts use protocol and legislation to protect the rights of the person with a learning disability to privacy and respect for the processing of their personal data.

This includes:

- Code of Practice in protecting the confidentiality of Service User Information
- Data Protection Policy Statement
- Freedom of Information Act 2000
- UK General Data Protection Regulation (GDPR)

Also it is important for everyone to be clear about:

- Which matters are deemed to be confidential
- Lines of referral
- In which circumstances a referral should be made

There are situations when keeping confidentiality may not be possible, for instance on safety grounds. Staff should follow agreed Health and Safety or Safeguarding

procedures in these situations and always try to get the agreement of the service user if it is necessary to inform other parties. If confidentiality is to be breached, the service user should be informed.

Confidentiality will need to be breached when a disclosure of abuse, sexual or otherwise, has been made. Staff members have the responsibility under their duty of care to protect the service user from further abuse and to report it by following Safeguarding Vulnerable Adults: Regional adult protection policy and guidelines (2015). The service user must be informed of these responsibilities and the consequences regarding breaching of confidentiality.

Staff should seek support via supervision or from their manager in situations that are not clear.

3.4.2 Privacy

PROTOCOL

Service users have a right to privacy.

This privacy will be accepted and respected by members of staff and all other service users.

Guidelines

Relationships, with or without a sexual element, need privacy in places where the service user can relax and entertain. It should be remembered that day centres, adult education and community centres are public buildings and are therefore not appropriate places for sexual activity.

Certain behaviours like masturbation, nudity and sexually intimate contact should be seen as acceptable only in private.

As part of the individual care planning process staff may need to work with some service users to think about how they can have privacy to relax and entertain. It is possible that some service users might need help to achieve this.

To offer dignity and increase the safety for adults with learning disabilities known to be sexually active, staff should ensure that private space is available for service users to engage in sexual relationships, ideally in their bedrooms where appropriate.

A programme of relationships and sexuality education (RSE) can help people with learning disabilities to understand the concept of privacy, and how to identify matters and places that should be kept private.

3.4.3 Masturbation

PROTOCOL

It is normal behaviour to masturbate for both men and women: it is a safe way to explore one's own sexuality.

Reprimanding the service user is not appropriate.

People with learning disabilities should be helped to understand that masturbation should take place in private.

Guidelines

Residential providers should ensure that they identify appropriate "time and space" so that everyone has some acceptable opportunity to masturbate, if they so wish. Staff may need to teach a person that there are places where it would be inappropriate to masturbate.

For some people, masturbation can give physical pleasure, release tension and relieve boredom. Others may become very frustrated by being unable to masturbate. It is rare, but constant masturbation may bring about minor physical harm.

If there is a concern about masturbation this should be discussed with the Line Manager. If it is felt necessary, the Line Manager should set up a meeting of relevant professionals, (and the service user and carer if appropriate) to discuss the issues and develop an appropriate plan. The meeting should consider the needs of the individual and how these may be best addressed. Specialist advice may be necessary.

If an individual service user needs support in masturbating effectively, action may only be taken after a meeting of relevant professionals, including all relevant others. The service user should be at the centre of all decisions.

It may be decided to provide education to teach a service user how to masturbate. Such education should only be provided by people specifically trained.

A programme of RSE can help service users to understand the concept of privacy, and how to identify places that should be kept private. The programme should include education about masturbation.

A summary of the law

It is not illegal to teach someone about masturbation, but it is good practice to make sure this is an agreed part of the HSC Trusts RSE protocol; and to maintain notes with clear details about the programme. Staff should bear in mind their duties and responsibilities and know the offences set out in the Sexual Offences (Northern Ireland) Order 2008.

3.4.4 Pornography

PROTOCOL

People with learning disabilities have the same right as others to obtain and enjoy publicly available pornography (e.g. “top shelf” magazines). However there is a need to draw a distinction between pornography and extreme pornography so it is clear what the parameters are in terms of the “type’ of pornography. Section 63 of The Criminal Justice and Immigration Act 2008 States: (See Appendix 10)

No pornographic material should be brought into any public parts of the building.

Each Trust will set out clear guidelines to avoid service users accessing illegal pornography via the internet.

Guidelines

Pornography is a controversial subject. Pornography can be regarded as offensive and degrading. Some pornographic material is publicly available however and service users cannot readily be denied something that is available to others; it is their choice if they wish to use it.

Pornography can sometimes help people with learning disabilities to achieve some sexual satisfaction which they might otherwise be unable to attain. Its use by people with learning disabilities should be kept under review.

Those people with learning disabilities who use pornographic materials must be helped to understand that:

- Certain pornography which represents bestiality, child abuse is illegal.
- Most people do not behave as the people in the magazines/videos do.
- People can be offended by pornography.
- It must be kept and used in private and not brought into any public part of the establishment. A bedroom is usually considered the most appropriate place for such material.

Staff should not bring pornographic material into their work settings, nor will they buy pornographic material on behalf of a service user. The one exception to this where a person is unable to purchase pornography. For example, a wheelchair user who cannot reach the material on a “top shelf”. Any member of staff in this situation should consult with a manager. Staff should aim to support, empower and enable service user to access material where possible for themselves. Assurance will be needed that the service user is making a clear choice (it is always necessary to refer to the Mental Capacity Act 2005 Code of Practice to guide decision-making in cases where a person’s ability to consent is in question).

Service users may be able to access pornography online via the internet or Smart phones. This can be a growing problem for some services. In law, any online extreme pornography is considered illegal. It is possible to restrict access to the internet so that illegal pornographic sites cannot be visited.

Dealing with this requires the Trust to agree clear guidelines about what is acceptable and what is not; a clear protocol on what must be reported to police; and who is responsible for this. It is possible to restrict access to the internet so that illegal pornographic sites cannot be visited.

The guidelines will need to balance the rights of the individual, the requirements of the law, and any potential damage to the service user or others. When these issues arise, staff must inform their line manager.

A summary of the law

It is legal to purchase or own pornography showing people over 18 and if the purchaser is over 18 (The Sexual Offences (Northern Ireland) Order 2008).

Indecent images showing children 17 and under are always illegal. This includes images downloaded from the internet. Any material containing indecent images of children must be reported to the police.

Regarding the duty to report to police, in Northern Ireland the Criminal Law Act (1967) makes it an offence to fail to disclose a relevant offence to the police (see Appendix 8).

The guidelines will need to balance the rights of the individual, the requirements of the law, and any potential damage to the service user or others. When these issues arise, staff must inform their Line Manager.

It is good practice to refer to the Mental Capacity Act 2005 Code of Practice to guide decision making in cases where a person's ability to consent is in question.

3.4.5 Safeguarding

PROTOCOL

All service users have a right to be protected from grooming, exploitation and abuse. All members of staff have a duty to protect service users. Grooming, exploitation and abuse can never be condoned, whoever the perpetrator. Members of staff must have no sexual contact or relationship with service users.

Guidelines

All Trusts, provider organisations and their staff have a duty to protect service users who are vulnerable to grooming, exploitation and abuse.

What is Adult Safeguarding?

Most adults in Northern Ireland live independent, comfortable and secure lives, free from exploitation or neglect. However, there are some adults who, because of their situation or circumstances, may have been harmed or may be at risk of harm.

Adult Safeguarding is the term used for activities which **prevent** harm from taking place and which **protect** adults at risk (where harm has occurred or is likely to occur without intervention). Health and Social Care (HSC) agencies along with police, play a lead role in preventing, detecting and providing protection to adults at risk of harm.

<https://hscboard.hscni.net/niasp/>

In cases where staff are concerned that an individual is being or is suspected of being exploited or sexually abused, see <https://hscboard.hscni.net/niasp/niasp-publications/>

- Links to adult safeguarding publications from government/statutory bodies:
- Department of Health Adult Safeguarding Policy
- Department of Health Adult Safeguarding Policy (Easy Read)
- Department of Health – Stopping Domestic and Sexual Violence and Abuse Northern Ireland Strategy
- Department of Justice and the Department of Health – Guidance on the Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking
- Department of Health and the Department of Justice – Adult Safeguarding Prevention and Protection in Partnership Policy documentation
- Northern Ireland Practice and Education Council for Nursing and Midwifery (NIPEC) – Safeguarding Adults: Core Competency Framework for Nurses and Midwives

The Sexual Offences (Northern Ireland) Order 2008 part 4 sets out sexual acts which are offences including:

Offences with a Mental Disorder impeding choice:

- Sexual activity with a person with a mental disorder impeding choice
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity
- Engaging in sexual activity in the presence of a person with a mental disorder impeding choice
- Causing a person with a mental disorder impeding choice, to watch a sexual act

Inducements to persons with a mental disorder:

- Inducement, a threat or deception to procure sexual activity with a person with a mental disorder
- Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
- Engaging in a sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
- Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

Care workers for persons with a mental disorder:

- Care workers: sexual activity with a person with a mental disorder
- Care worker: causing or inciting sexual activity
- Care workers: sexual activity in the presence of a person with a mental disorder
- Care worker: causing a person with a mental disorder to watch a sexual act
- Care workers: interpretation of sexual activity

Some Sexual offence activity can be defined as follows:

- Touch – for example of breasts, genitals, anus, mouth
- Masturbation of either or both persons
- Penetration or attempted penetration of anus, mouth, vagina with or by penis, fingers or other objects.
- Involvement in pornography
- Indecent exposure
- Sexual harassment

In April 2018 the Director of Public Prosecutions Stephen Herron, together with other members of the Criminal Justice Board commissioned an independent review of arrangements around the delivery of justice in serious sexual offences. The review was led by The Right Honourable Sir John Gillen, a former Lord Justice of Appeal supported by an independent advisory panel. The PPS actively engaged with the review which is now complete and makes 253 recommendations to improve criminal justice outcomes and the experience of victims who engage with the service. Agreed responses to these recommendations are currently in development.

The Report into the law and procedures in serious sexual offences in Northern Ireland can be read at the link below.

[Gillen Review Report into the law and procedures in serious sexual offences in NI | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/gillen-review-report-into-the-law-and-procedures-in-serious-sexual-offences-in-ni)

Sexual harassment

Sexual harassment is unwanted and uninvited sexual attention, which may involve verbal and non-verbal action i.e. via social media. This may involve “jokes”, sexual comments about a person’s body, intrusive personal questions. This is considered a serious matter.

Service users may be abusing each other, staff may abuse service users or, in some circumstances, service users may abuse staff. Provider organisations need to ensure that their procedures cover all these scenarios. Most abuse is perpetrated by someone known to the service user.

The NI Executive has made arrangements for individuals who are unsuitable from working (in a paid or volunteer capacity) with vulnerable groups, to be barred from such work. The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, as amended by the Protection of Freedoms Act 2012, provides the legislative framework for these arrangements, known as 'Disclosure and Barring Arrangements.

Since December 2012 the Disclosure and Barring Service (DBS) has been responsible for maintaining the list of individuals barred from engaging in regulated activity with children and adults across England, Wales and Northern Ireland. This role was formerly carried out by the Independent Safeguarding Authority. Employers, Trusts, professional regulators and other bodies must refer to the DBS anyone who has harmed or poses a risk of harm to a child or vulnerable adult and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left. The DBS will consider whether the person is unsuitable from working with vulnerable groups and make a decision as to whether the person should be barred from working in regulated activity with children, or adults, or both. Access NI provides a criminal record disclosure service in Northern Ireland. Organisations seeking to engage an individual to work in regulated activity must obtain an enhanced disclosure with a barred list check.

<https://www.health-ni.gov.uk/consultations/legislative-options-inform-development-adult-protection-bill-northern-ireland>

The Digital World

The internet can be a very positive, enjoyable way to learn, talk to friends and play games; however at times it can be abused and can make its users vulnerable. It is important that we support service users to stay safe online and communicate key messages about keeping safe online e.g. everything you do on the internet can be seen by other people

so be careful what you say and think before you type; keep your passwords private; and never share your personal information.

Dating Applications (Apps) also pose an opportunity for grooming, exploitation and abuse. Service users may believe that they are forming a meaningful relationship with a person online but be unaware of the impact upon them emotionally and/or financially <https://www.mencap.org.uk/advice-and-support/bullying-and-discrimination/stay-safe>

It is important that these issues are referred to within Relationship and Sexuality Education.

3.4.6 Personal care

PROTOCOL

Wherever possible, intimate personal care should be carried out by member of staff whose gender was chosen by the person with a learning disability.

Guidelines

People with learning disabilities' should always be encouraged and given opportunity to carry out those aspects of personal care that they can do for themselves (Principle of least intervention).

The wishes of people with learning disabilities should be taken into account when deciding who is to administer intimate personal care as far as resources allow. The care plan should state how this is to be done. The service user's sexual orientation should also be respected, although their wishes may not necessarily be for a carer of the same or the opposite gender. There may be reasons why a service user would prefer one person rather than another that has nothing to do with their sexual orientation.

Situations of intimate personal care may take on an erotic nature for either person: Staff should be aware of this possibility, and seek support from management if it occurs.

A summary of the law

Any sexual touching in the context of personal care is illegal. But touching of sexual body parts as part of personal care and hygiene would be considered acceptable.

All staff have a duty of care to protect a client from harm. In the case of harm, a member of staff could be found negligent if it were assessed that harm could reasonably have been foreseen.

3.4.7 Carers Involvement

PROTOCOL

Working in partnership with carers, and supporting them, will be provided in the context of the rights & wishes of the person with learning disability taking into account the consent and best interest principles.

Guidelines

With the consent of the service user it is often good practice to keep carers informed about the personal and sexual development of the person they are caring for, during discussions about care plans for example. Some service users would prefer that their carer would not be involved in discussions and may prefer a named worker, social worker or an outside agency to be involved for support.

Carers can be involved wherever possible in discussions about RSE. The involvement and support of carers often enhances services users' learning, understanding and skills in the area of personal and sexual relationships. A common language can be agreed, and learning which takes place in the RSE programme can be reinforced by carers at home.

If there is disagreement with carers about any aspect of sexuality, the matter should be discussed with a line manager. Carers are usually supportive of programmes designed to help the people they care for gain the skills and understanding needed to enable them to form more satisfying personal relationships, and to protect themselves from potential harm. But sometimes the wishes of the carer regarding sexual behaviour and the content of RSE programmes may conflict with the wishes of the service user. Such situations are usually resolved after discussion but if no agreement can be reached, the wishes of the service user (who is over the age of consent) should be supported. It is important that the principles of person centred planning are upheld, consulting the service users, and giving control over what happens where possible.

A summary of the law

Whilst there is no legal requirement to inform parents about the RSE programme best practice principles as outlined above should apply.

3.5 Partnership and parenthood

3.5.1 Partnership, marriage and divorce

PROTOCOL

People with learning disabilities have the same right as others to form relationships and partnerships. A wish to live together or to marry should be respected and supported.

Guidelines

People with learning disabilities form a variety of relationships. We must not assume that these will always be with other people with a disability. The legal, emotional and psychological aspects of living together should be discussed with both partners. No greater expectations should be held about the viability of the partnership than would be held about any other partnerships in the community. An experienced counsellor may help to ensure that the couple are aware of the commitment they are entering into.

Same sex couples who wish to cohabit will be offered the same support as heterosexual couples.

A summary of the law

There is no restriction in law on the right of people with learning disabilities to marry. If they are over 18 they may marry as long as the Registrar of Marriages is satisfied that they both understand the commitment they are making

If they are between 16 and 18 they would need the consent of their parent or guardian, in the same way as other people.

Like marriage, there is no difference in law between people with learning disabilities and others who wish to divorce. The Matrimonial Causes Act 1973 states that marriage can be made void if either party was suffering from a mental disorder (this definition would include people with a learning disability). In practice, it is unlikely that this would be used as grounds for annulment.

Partners of the same sex can now enter into civil unions (Civil Partnerships Act 2004 Part 4). Same sex marriage is now legally recognised in NI from January 2020

Forced marriage is regarded as an abuse of human rights and a form of domestic abuse. It can happen to both men and women. Article 12 of European Convention on Human Rights upholds the right to marry and to found a family. The Courts now have the powers to prevent forced marriage from occurring or offer protection to those who have been forced to take part in a marriage (see The Right to Choose: Statutory Guidance for dealing with forced marriage www.nidirect.gov.uk).

With regard to any of the issues above, the client's capacity to consent should be fully considered.

3.5.2 Parenthood

PROTOCOL

People with a learning disability have the same rights as others to be a parent.

It should not be assumed that people with a learning disability are excluded from parenthood.

The welfare of any child born to service users will be paramount and will prevail over the interests of the parents. (Children (Northern Ireland) Order 1995)

Guidelines

This is a situation where rights and responsibilities need to be balanced.

Staff should provide support, information and resources to service users who wish to be parents. These could be by using internal or external agencies offering training and education to help them decide if they want to be parents, support them through the pregnancy, and to help prepare them care for a child.

Assessment of independent functioning should be undertaken when required, and maximum support should be sought from relevant services e.g. statutory services (health, social services, and housing departments), community/voluntary sector services, and carers.

Some of the areas that should be explored with prospective parents are:

- What are their expectations about becoming parents?
- What is the level of independent social functioning? The combined social functioning of a couple may be sufficient for independent living, even though the individual alone would not be able to manage.
- How stable is the relationship?
- Are there any possible risks to the baby?

Local services have a duty to provide a range and level of services appropriate to the needs of children in its area who are in need, and to promote their upbringing by their family.

A person who is single similarly has the right to choose whether or not to have children. Again, advice and support may be needed.

When staff assess that there may be safety, protection or support needs required by either the parent, mother or unborn child, a UNOCINI referral is to be forwarded to the Trust Gateway Team.

A summary of the law

Legally there is nothing to stop a woman with learning disabilities from having a child, if she is considered able to consent.

If she is considered to be unable to give consent, the decision may be made that she should have a termination to preserve her life or protect her health.

Where the woman lacks capacity to consent, it may be necessary to seek an order from the high court i.e. Declaratory Order.

If the woman is considered able to consent and bears a child, the decision may still be made that the child should be taken into care, since the wellbeing of the child is paramount. The welfare of any child born to service users will be paramount and will prevail over the interests of the parents.

3.5.3 Preventing unintended pregnancy: contraception & sterilisation

PROTOCOL

Information and education about contraception should be available to all service users for whom it is appropriate, whether engaging in sexual activity or not.

Advice and counselling on contraception should be available to service users who need it.

The wishes of the service user should take priority over those of carers.

If a service user becomes pregnant, the provider organisation must inform the key worker of the HSC Trust.

Guidelines

These matters can give rise to some difficult decisions. People involved in the situation may have conflicting views about what should happen.

The principle of putting the service user at the centre of decision making should always be respected. The use of contraceptives should be viewed in terms of the needs and wishes of the service user, not as a way of avoiding a difficult issue.

Several contraceptive methods are suitable for people with learning disabilities. If service users are sexually active, they will need advice in a format that is accessible to them about avoiding any unwanted pregnancy and sexually transmitted infections (STIs), but information about contraception should be made available to any service users whether or not they are in a sexual relationship. Contraception should form part of a programme of relationships and sexuality education (RSE) for service users.

The service user's cultural and religious views should be taken into account.

Some service users will be able to access contraception without support. For others, there may be need for discussion with management or a wider network e.g. medical practitioner re: contraindications of medicines if contraception is requested or thought to be inadvisable.

There should be regular reviews of service users who are using contraceptives, paying attention to possible side effects.

Local resources (e.g. clinics) should be identified and used. A visit to a Contraceptive and Sexual Health service could be helpful, with support from staff if necessary to reduce sexually transmitted infections and promote safer sex. The use of condoms should be explained and reinforced for any service user who is sexually active or wants to begin a sexual relationship regardless of whatever other method of contraception may be used.

Support should be available for any service user who is in a sexual relationship, or about to begin one. Advice on access to contraception may be provided by a member of staff, or a relevant outside organisation. Staff should acquaint themselves with all the resources available in the locality, for example relevant contraceptives. In all cases, staff should ensure that each service user receives appropriate medical advice and on-going medical supervision.

Community contraception or family planning services will advise and offer a full range of contraceptive options for women, including Long Acting Reversible Contraception (LARC).

Long Acting Reversible Contraception e.g. the Mirena coil can be quite an effective and less invasive means of contraception for people including people with a learning disability. These should be considered before sterilisation.

A Free Emergency Hormonal Contraception (EHC) and bridging contraception scheme is now available at Community Pharmacies across NI (a list of participating Community Pharmacies is available here Pharmacy First: [Pharmacy First: Emergency Hormonal Contraception \(hscni.net\)](https://www.hscni.net/pharmacy-first-emergency-hormonal-contraception)). This service ensures women and young people aged 13 years and over have timely access to sexual health advice and free EHC (including the provision of bridging contraception) locally. EHC is available from Community contraception services and general practitioners.

Sterilisation should only take place where every effort has been made to ensure that what is being done is understood and accepted by the service user. In all cases, legal advice

must be sought. All recommendations for sterilisation must be made at a multi-disciplinary case conference. It is necessary however to apply for a declaration from the High Court to permit sterilisation where the service user lacks capacity.

There will still be a need for education and advice about safer sex; and it should be remembered that sterilisation does not protect a service user from abuse or from sexually transmitted infections.

A summary of the law

Contraception: If the client cannot understand, a doctor can decide whether it is in the service user's best interests.

Sterilisation: In all cases, legal advice must be sought. All recommendations for sterilisation must be made at a multi-disciplinary case conference. It is necessary however to apply for a declaration from the High Court to permit sterilisation where the service user lacks capacity.

3.5.4 Options for unwanted pregnancy: termination and adoption

PROTOCOL

In October 2019 abortion was decriminalised and became lawful in Northern Ireland. The legal framework, The Abortion (Northern Ireland) (No. 2) Regulations 2020, came into effect on 31 March 2020 allowing for abortion with no conditions attached up to 12 weeks; up to 24 weeks if continuing the pregnancy would risk mental or physical injury to the woman or girl that is greater than the risk of terminating the pregnancy. Terminations with no gestational limit are also now legal in NI where there is an immediate necessity to save a life or to prevent a grave permanent injury to the physical or mental health of a pregnant woman, or in cases of severe fetal impairment or fatal fetal abnormality.

Guidelines

All women should be supported to exercise their reproductive choices. As with all other medical procedures, a woman seeking abortion should be provided with sufficient, accurate information to help her make a decision. Her consent must be freely and voluntarily given. However if the woman is considered to be unable to give consent, the decision may be made that she should have a termination to preserve her life or protect her health.

If an unwanted pregnancy does occur, options may include termination or to continue with the pregnancy and adoption. These are sensitive issues that need careful handling. They raise complex issues, and require legal advice.

Should an unwanted pregnancy occur, service users should receive counselling in respect of the following three options:

- continuation of the pregnancy
- adoption
- termination of pregnancy

Staff should be aware of and be able to facilitate access to services relating to abortion healthcare.

Pregnancy counselling support

Sometimes when faced with an unplanned or crisis pregnancy it can be difficult to discuss it with family and friends. Counselling offers a safe place to talk about anything that may be confusing, painful or uncomfortable. Informing Choices NI (ICNI) provides non-directive pregnancy choices counselling to all age groups. This means the counsellor has no opinion about what is best and is there to provide a confidential and non-judgmental space to explore feelings around the pregnancy, and the options that are available i.e., continuing with the pregnancy, abortion and adoption. Counselling is available as a one-off appointment or as regular sessions (currently provided via the telephone).

Pregnancy counselling support is available regionally and clients can self-refer into this service by calling **028 9031 6100**. ICNI also offer post pregnancy counselling. This support is provided free of charge.

Early Medical Abortion (EMA) Services

On 22 October 2019 abortion was decriminalised in Northern Ireland. Following the change in the law, Early Medical Abortion (EMA) services (up to 9 weeks and 6 days of pregnancy dated from the first day of last period) were established. EMA services are available in the Belfast, Northern, South Eastern and Southern HSC Trusts.* EMA services are not currently available within the Western HSC Trust. If you live in this area and wish further information on the options available to you, please visit

www.informingchoicesni.org/central-access-point.

*Services available at the time of publication

Accessing the service involves a telephone consultation with a healthcare professional who will ask some questions about the pregnancy and arrange for you to attend the clinic. You can self-refer into a local EMA service by calling the British Pregnancy Advisory Service on **03457 30 40 30** or request a consultation at www.bpas.org/request-a-consultation/.

Funded travel and treatment in England

If the gestation of the pregnancy is beyond 10 weeks, or treatment is not available locally, abortion services can still be accessed in England. A central booking system is provided by MSI Reproductive Choices. You can access this service by calling **0333 234 2184**.

The UK Government will cover the cost of abortion care for women from Northern Ireland who are treated in England. As part of the treatment, the following expenses will be met:

- travel arrangements;
- overnight accommodation;
- transportation (e.g., taxi).

There will still be a need for education and advice about contraception and safer sex for future protection from unwanted pregnancy and infection.

A summary of the law

The Abortion (Northern Ireland) (No. 2) Regulations 2020 allow for abortion with no conditions attached up to 12 weeks; up to 24 weeks if continuing the pregnancy would risk mental or physical injury to the woman or girl that is greater than the risk of terminating the pregnancy. Terminations with no gestational limit are also now legal in NI where there is an immediate necessity to save a life or to prevent a grave permanent

injury to the physical or mental health of a pregnant woman, or in cases of severe fetal impairment or fatal fetal abnormality.

Only medical professionals i.e. registered doctors, nurses and midwives can perform a termination.

Professionals may conscientiously object to performing a termination, unless it's necessary to save the pregnant woman or girl's life or prevent serious permanent physical or mental injury. The right to contentious objection is not absolute; and it is limited to participation in the act of abortion and does not apply to care before or after treatment.

Adoption

The welfare of any child born to service users will be paramount and will prevail over the interests of the parents (Children's (NI) Order 1995).

It must be recognised that recent case law indicates this is an extremely complex matter. If adoption is a consideration then specialists within Social Services Family Intervention Team should be involved. When this is the case, the named worker should ensure that a referral is made to the relevant Team.

If adoption is agreed to be the best course, normal adoption procedures should be followed.

3.6 Sexual Health

3.6.1 Sexual Health Screening and Testing

PROTOCOL

Sexual health issues are just as important for people with learning disabilities as for anyone else. All staff have a responsibility for the health and well-being of people with learning disabilities with whom they work and they have a responsibility to promote good sexual health. People should be given support to protect their own and any partner's sexual health. Sexually Transmitted Infection (STI) and HIV screening and testing should be encouraged for both men and women. Information should be provided on STI and this should include HIV and, where appropriate, vaccination for Hepatitis A/B or B depending on need.

Education should be provided to help people understand and practise safer sex. The use of condoms as a barrier to the transmission of STIs and HIV is to be encouraged. Contraception, including but not limited to condoms, should be available to both men and women. Women in particular should understand the use of contraception methods other than condoms to prevent unintended pregnancy. People who understand the risk and significance of acquiring STIs, including HIV, have the same rights as any person to engage in high risk activity. People who are unable to understand the risk and significance of acquiring STIs, including HIV, have the right under "Duty of Care" obligation to be protected from contracting STIs and HIV.

Guidelines

All people have the right to access timely and appropriate sexual health screening and testing services.

Sexually active individuals are encouraged to have regular full sexual health tests at least every 12 months if having unprotected intercourse. For individuals that may have engaged in higher risk behaviours (e.g. unprotected anal intercourse), or who have more than one sexual partner, it is considered good personal practice to have a sexual health check after any unprotected sex.

Staff should be aware of and be able to facilitate access to services relating to sexual and reproductive health as detailed in the following paragraphs.

A full sexual health test is one which will test for all the most common STIs, including HIV. These are available from Genito-Urinary Medicine (GUM)/Sexual Health Clinics. A map

of all GUM/Sexual Health Services is available in Appendix 2. Current standards ensure that a patient should be offered an appointment at GUM within 48 hours. Telephone GUM/Sexual Health Clinic for an appointment as the service can fast-track cases if required.

Best practice would advocate that anyone with a learning disability and who is sexually active should attend a specialist GUM service for assessment and testing.

Health and Social Care Trusts in Northern Ireland have been participating in a regional pilot project with SH:24 to provide home testing kits to test for four common STIs: chlamydia, gonorrhoea, HIV, syphilis. SH:24 home testing kits allow people to self-test for chlamydia and gonorrhoea with a self-testing swab for females or a urine sample for men and/or a finger prick blood sample to test for Syphilis and HIV.

The instructions on how to test are explicit and results are usually back in 48-72hrs. If there is a positive in relation to Gonorrhoea, Syphilis or HIV, the local GUM service will treat and manage it, including partner notification. If there is a positive chlamydia, then SH:24 will provide the treatment and partner notification. This discreet service is open to everyone across Northern Ireland. In addition to testing, SH:24 provides access to a comprehensive range of sexual health information

[SH:24 Free Home STI STD Test | Sexual & Reproductive Health \(sh24.org.uk\)](https://sh24.org.uk)

Some general practitioners will provide sexual health screening or testing and contraception services.

Not all services will have wide experience of working with people with learning disabilities and therefore workers should ensure that appropriate support is given to individuals wishing to access these services. Most services will have a chaperone protocol or procedure. Where patients are able to understand the service they will receive and make decisions about these services, their consent would normally be required for a third party to act as a chaperone in consultations.

British Association of Sexual Health and HIV (BASHH, 2019) has produced standards for the provision of sexual health services which include promoting good sexual health;

empowering and involving service users; identifying sexual health needs; access to services and protection and use of sexual health information. The document 'Standards for the Management of STIs' can be found on the BASHH website – www.bashh.org

BASHH, British HIV Association (BHIVA) and British Infection Society (BIS) have jointly produced the "UK National Guidelines for HIV Testing" (BASHH, BHIVA and BIS, 2008). These Guidelines set standards for HIV testing and address issues of confidentiality. The guidelines are available to download from the BASHH website – www.bashh.org

Standards for the contraceptive elements of sexual health services have been produced by the Faculty of Family Planning and Reproductive Health Care of the Royal College of Obstetricians and Gynaecologists. These standards cover contraception, pregnancy and termination, and screening amongst other key delivery subjects. The "Service Standards for Sexual Health Services" are available to download from the Faculty of Family Planning and Reproductive Health Care website – www.ffprhc.org.uk
[FSRH Service Standards for Sexual and Reproductive Healthcare - September 2016 - Faculty of Sexual and Reproductive Healthcare](#)

Service users should have access to a range of information about local sexual health screening and testing services, STIs, HIV and contraception. Staff should ensure that they are aware of these key sexual health issues and able to provide support to service users who require assistance in understanding information and services.

Staff should be familiar with:

- PrEP: a drug taken by HIV negative people that reduces their risk of acquiring HIV. Its effectiveness and efficacy depend on adherence. PrEP can be taken by anyone who is HIV negative but is at risk as they engage in activities where HIV transmission is increased. It can be accessed through the local GUM service.
- Post Exposure Prophylaxis for Sexual Exposure (PEPSE) of HIV is a course of treatment taken after unprotected sex. PEPSE must be started within 72 hours of the unprotected sex or condom accident. It is best to start PEPSE as soon as possible. PEPSE can be accessed through local GUM services and Emergency Departments.

In addition to sexual health screening and testing, staff should be aware of and facilitate access for service users to allied screening programmes such as those for Cervical and Breast cancer for women and testicular cancer for men.

Staff should be aware of best practice in relation to methods of testicular self-examination for men, and be ready to provide support to service users in raising awareness of examination and encouraging men to practice this.

Staff should also be aware of and facilitate access to the National Human Papillomavirus (HPV) vaccination programme for young women in the correct age category.

3.6.2 Safer sex and condom use

Guidelines

Condoms and femidoms should be made available in residential and supported living establishments. Where this is not possible, staff should facilitate service users access to condoms based on assessed need.

A programme of relationships and sexuality education (RSE) should be made available to all service users. This should include elements of both looking at and understanding different types of relationships – not just sexual relationships, and understanding safer sex practices. The programme should make it clear that the use of condoms in any form of penetrative sexual activity protects against STIs including HIV. Further, the programme should make clear that additional contraceptive methods should be used to prevent unintended pregnancy. The programme should be delivered in a way that will encourage the establishment of good interpersonal and sexual relationships, and encourage positive self-image and good self-esteem.

3.6.3 Sexually Transmitted Infections (STIs) and Human Immunodeficiency Virus (HIV)

Guidelines

Several STIs are increasing in prevalence in the general population, but may be particularly noticeable in specific sub-populations such as under 25s. Examples of STIs which have increased in prevalence are Chlamydia, Genital warts, Syphilis and HIV. Some difficulties have been experienced with STIs such as gonorrhoea displaying resistance to common treatments.

There are many symptoms that could indicate the presence of an STI. These may include rashes or blisters, pungent genital discharge, pain when passing urine, bloody urine or stools, or flu like symptoms. However, often there may be no symptoms displayed when an STI is present. STI's can be present in the throat vagina, rectum and blood so even if no vaginal /rectal penetration occurs, or if unprotected oral sex occurs clients will still require a STI screening.

Most STIs are easily treated with a simple administration or course of antibiotics. Left untreated, an STI can have serious health consequences such as causing infertility. STIs such as syphilis and hepatitis if left untreated over a long period will have more serious negative health outcomes which can include mortality.

There is no vaccination against the transmission of, and no cure for the HIV virus. HIV treatments have advanced very dramatically in the past twelve years and in many cases, HIV can be successfully managed as a long term health condition. However, the treatments can cause very unpleasant side effects, and will be required to be taken daily medication for life. A strong HIV prevention message should be retained in any sexual health awareness work.

It is not possible to protect people with learning disabilities from all of life's dangers – assessment of risk and risk taking has long been a feature of services for people with learning disabilities. However, service users should be informed about the risks of contracting an STI and how to avoid this.

All staff have a responsibility to maintain confidentiality relating to a service user's sexual health whilst upholding any protocol implemented in the place of work as well as safeguarding standards.

Training in Sexual Health and HIV Awareness, including infection control, is necessary for all staff and is to be encouraged for carers.

The use of both generic and specialist services as outlined in relation to sexual health is to be encouraged. These services can provide help and support. Staff should know how to access their local services and facilitate access for service users (see Appendix 2).

3.7 Relationships and Sexuality Education (RSE)

3.7.1 Developing a programme

PROTOCOL

A programme of RSE should be developed and offered to all service users, to enhance their understanding and skills in personal relationships and sexual relationships; and to encourage safer sex practices.

All staff working with service users should be involved in consultations about the RSE programme and be aware of its contents.

Support and advice for service users on personal & sexual relationships should be available if needed.

Guidelines

Service users can acquire information, misinformation and attitudes to sex from different sources in their everyday lives e.g. from other service users, staff, television or the internet. A formal RSE programme can supplement, enhance or correct this information.

As far as possible, all service users should be encouraged to take part in a programme of RSE and, in doing so, will be less vulnerable to abuse by other people, less likely to abuse others, become pregnant or acquire sexually transmitted infections (STIs) from

unsafe sex. In addition, they will feel empowered to make decisions and give consent to sexual relationships as they have a better understanding of the issues involved.

Every attempt should be made to ensure consistent attendance, both of staff and of service users at identified training opportunities.

It is important that there is consistency of approach across the Trusts, which is why all staff need to be aware of what is being covered in the programme. Service users will benefit from consistency of messages received from everyone, and in the language used e.g. for body parts.

A programme of RSE can be developed for either a group or on an individual needs basis.

Senior Managers within the Trust will identify the appropriate levels of RSE training needs for staff within the Learning Disability Programme of Care. The training will be planned and co-ordinated by the Learning Disability Training Team in conjunction with Social Services Training, Health Improvement Service and outside specialist organisations.

3.7.2 Staff Support and Training

PROTOCOL

It is the responsibility of staff, at all levels, to make sure service users are allowed to express their sexuality, and to help them to understand about relationships and sexuality

Staff will be supported in any aspect of their work which concerns sexuality.

Training for members of staff is of key importance in carrying out the recommendations of this protocol.

Guidelines

All staff need to be aware of the personal and sexual relationship needs of people with learning disabilities so that they can work sensitively and appropriately with service users, and service users can feel comfortable with their own sexuality.

All staff should be given information about the relationships and sexuality education (RSE) programme.

Members of staff will need to facilitate access to RSE such as access to training, resources and advice.

All staff will be offered appropriate training opportunities on sexuality e.g.

- As an integral part of their induction to their area of work.
- To provide up to date information to existing staff.
- Training will be available at different levels which will include RSE programmes for differing roles, training for staff working directly with service users and more detailed training will be available for staff designated to deliver programmes of RSE.

Induction programmes should include sexual orientation training.

Staff who work with service users have a key role to play if service users are to benefit from a positive approach to sexuality and self-image. This means that particular attention should be paid to the responses that are made to service users, about sex and sexuality, by everyone who supports them.

This will allow for good practice ensuring that an opportunity is provided for all staff to discuss the messages they give to service users, both explicitly and implicitly; and that all staff work to dispel some of the attitudes commonly held regarding sexuality and people with learning disabilities.

Support, including supervision, should be available for staff taking part in these programmes. Staff teams should develop reflective practice sessions.

Staff have a right to expect from management:

- A consistent approach to sexuality from all levels of workers and management.
- Clarity about lines of responsibility and accountability.
- To be protected and supported.
- Access to relevant training.

4.0 Monitoring

This protocol will be monitored for its effectiveness by those involved in the protocol writing. This protocol will be reviewed every 3 years.

5.0 Evidence Base/References

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HMSO (1967) The Abortion Act. Cn87 (THIS ACT DOES NOT APPLY IN NI)
(www.legislation.gov.uk/ukpga/1967/87/pdfs/ukpga_19670087_en.pdf)

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6.0 Personal & Public Involvement (PPI)/Consultation Process

This protocol has had input from the beginning from Learning Disability Service users, from the voluntary and community sector in relation to services and education provided to service users. The consultation process has involved service users through the Trust's Forum for service users and the Compass Advocacy Network who also provided developed our Easy Read version alongside the protocol.

7.0 Equality, Human Rights & DDA

This protocol has been drawn up and reviewed in the light of Section 75 of the Northern Ireland Act (1998) which requires the Trust to have due regard to the need to promote equality of opportunity. It has been screened to identify any adverse impact on the 9 equality categories and no significant differential impacts were identified, therefore, an Equality Impact Assessment is not required.

Part THREE

Appendix 1

Legislation Underpinning Protocol Development

This summary gives an outline of the main legal parameters that affect the sexual behaviour of people with learning disabilities. This is a complex area and what appears here should not be taken as definitive or indeed correctly interpreted. Proper legal advice will always be needed in problematic situations.

A recent book has been used in preparing this summary: Learning disabilities, sex and the law, by Claire Fanstone and Sarah Andrews (FPA 2005). Services would find it useful to have this book for reference.

A summary of the law regarding people with learning disabilities and sexual behaviour. In general there is the same treatment in law for people with learning disabilities as for others; for instance regarding age of consent, age of marriage, divorce, sexual orientation or sexual intercourse. Differences relate to the ability to give consent. A key element of the law relating to people with learning disabilities is to find the balance between risk taking, protection and support. It is useful to note that some rights are upheld by law, but others have no real power, although good practice would uphold them.

Terminology

Recent legislation used the term 'mental disorder' to include people with learning disabilities.

Sexual behaviour and activity

The law makes no distinction between people with learning disabilities and others in terms of sexual behaviour. Differences occur when the issue of capacity to give consent arises.

- Rape and sexual assault: these are defined as occurring if happening to someone who does not give consent. Therefore sex with a person who cannot give consent (without capacity to consent) is rape.

- Other offences that apply include: inducement to take part in sexual activities; procurement of a person with a learning disability for sex; and protection from any sexual activity with a person who cares for them.

Consent

A person consents if s/he agrees by choice and has the freedom and capacity to make that choice. Consent is determined by common law and it is useful in NI context in the absence of our Mental Capacity Bill to consider the principles of The Mental Capacity Act (NI) 2016 when looking at this issue:

- Every adult is to be presumed to have capacity unless proven otherwise.
- People should be supported to make their own decisions.
- People have the right to make what might be seen as eccentric or unwise decisions.
- That intervention should be the least restrictive possible.

The DHSSPSNI Policy on Consent for Examination, Treatment or Care, 2003 provides guidance on consent for situations in which a member of Trust staff:

- Interacts with a patient/client and that interaction results in a decision about an examination, treatment or care;
- Undertakes an intervention with or to an individual or group of patients or clients.

The Mental Capacity Act (NI) 2016

It provides for a new Court of Protection as the final arbiter of decisions; and a Public Guardian who supervises court approved deputies.

It introduces a new criminal offence of ill treatment and neglect of a person who lacks capacity.

It assumes that everybody has the capacity to consent until proved otherwise.

The Code of Practice

a) Gives guidance on capacity

- 'The presumption of capacity – every adult has the right to make his/her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;

- The right for individuals to be supported to make their own decisions – people must be given all appropriate help before anyone concludes they cannot make their own decisions;
- Individuals must retain the right to make what might be seen as eccentric or unwise decisions;
- Best interests – anything done for or on behalf of people without capacity must be in their best interests; and
- Least restrictive alternative – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.'

b) Enabling people to make their own decisions

'There are many ways in which people can be given help and support to enable them to make their own decisions. The practicable steps to be taken might include using different forms of communication, providing information in an accessible form, treating an underlying medical condition to enable the person to regain capacity.'

c) Assessing inability to make decisions:

1. A person is unable to make a decision for him/herself if he/she is unable –
 - To understand the information relevant to the decision
 - To retain that information
 - To use or weigh that information as part of the process of making the decision, or
 - To communicate his decision (whether by talking, using sign language or any other means).
2. A person is not to be regarded as unable to understand the information relevant to a decision if he/she is able to understand an explanation of it given to him/her in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
3. The fact that a person is able to make the decision for a short period only does not prevent him/her from being regarded as able to make the decision.
4. The information relevant to a decision includes information about the reasonably foreseeable consequences of -
 - a) Deciding one way or another, or
 - b) Failing to make the decision.

The Abortion (Northern Ireland) Regulations 2020 [The Abortion \(Northern Ireland\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

PART 1: Introductory

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Abortion (Northern Ireland) Regulations 2020;
- (b) come into force on 31st March 2020;
- (c) extend to Northern Ireland only.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**1**) applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

“the Department” means the Department of Health in Northern Ireland;

“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983(**2**) who holds a licence to practise under that Act;

“registered”, in relation to a nurse or midwife, means registered in the register maintained under article 5 of the Nursing and Midwifery Order 2001(**3**) by virtue of qualifications in nursing or midwifery, as the case may be;

“registered medical professional” means—

- (a) a registered medical practitioner;
- (b) a registered midwife;
- (c) a registered nurse;

“termination” means a termination of pregnancy;

(3) References in these Regulations to a woman include a person of any age who is pregnant.

(4) References in these Regulations to the termination of pregnancy are references to its termination (whether by medical or surgical means) as regards any fetus in circumstances where it is intended that that fetus will not be delivered alive.

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(a) a registered medical practitioner;

(b) a registered midwife;

(c) a registered nurse;

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(3) References in these Regulations to a woman include a person of any age who is pregnant.

(4) References in these Regulations to the termination of pregnancy are references to its termination (whether by medical or surgical means) as regards any fetus in circumstances where it is intended that that fetus will not be delivered alive.

Part 2

Grounds for termination: cases with gestational limit

Pregnancy not exceeding 12 weeks

3. A registered medical professional may terminate a pregnancy where a registered medical professional is of the opinion, formed in good faith, that the pregnancy has not exceeded its 12th week.

Risk to physical or mental health where pregnancy not exceeding 24 weeks

4.—(1) A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that—

(a) the pregnancy has not exceeded its 24th week; and

(b) the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman which is greater than if the pregnancy were terminated.

(2) In forming an opinion as to the matter mentioned in paragraph (1)(b), account may be taken of the pregnant woman's actual or reasonably foreseeable circumstances.

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(b) the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman which is greater than if the pregnancy were terminated.

(2) In forming an opinion as to the matter mentioned in paragraph (1)(b), account may be taken of the pregnant woman's actual or reasonably foreseeable circumstances.

Immediate necessity

5. A registered medical professional may terminate a pregnancy where a registered medical professional is of the opinion, formed in good faith, that the termination is

immediately necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of the pregnant woman.

Risk to life or grave permanent injury to physical or mental health of pregnant woman

6. A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that—

(a) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(b) the continuance of the pregnancy would involve risk to the life of the pregnant woman which is greater than if the pregnancy were terminated.

Severe fetal impairment or fatal fetal abnormality

7.—(1) A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that there is a substantial risk that the condition of the fetus is such that—

(a) the death of the fetus is likely before, during or shortly after birth; or

(b) if the child were born, it would suffer from such physical or mental impairment as to be seriously disabled.

(2) In the case of a woman carrying more than one fetus, anything done to terminate the pregnancy as regards a particular fetus is authorised by paragraph (1) only if that paragraph applies in relation to that fetus.

Places where treatment for terminations may be carried out

8.—(1) Any treatment for the termination of pregnancy must be carried out—

(a) in an HSC hospital;

(b) at a clinic provided by an HSC trust for the purpose of carrying out terminations (whether or not the clinic also provides other services);

(c) at premises used to provide primary medical services in accordance with arrangements under the Health and Personal Social Services (Northern Ireland) Order 1972(1);

(d) in the case of the second stage of treatment for termination where the conditions mentioned in paragraph (2) are satisfied, in the home of the pregnant woman; or

(e) at a place approved under paragraph (3).

(2) The conditions mentioned in paragraph (1)(d) are that—

(a) the woman undergoing treatment for the termination of pregnancy has attended a place mentioned in sub-paragraph (a), (b) or (c) of paragraph (1) where she has been prescribed Mifepristone and Misoprostol to be taken for the purposes of terminating the pregnancy;

(b) the woman has taken Mifepristone at that place; and

(c) the pregnancy has not exceeded its 10th week.

(3) The Department may, for the purposes of these Regulations, approve a place for the carrying out of terminations.

(4) The power under paragraph (3) to approve a place includes power, in relation to a termination carried out by means consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places.

(5) An approval under this regulation—

(a) must be given in writing;

(b) must be published by the Department in such manner as it thinks appropriate.

(6) In this regulation—

“home”, in relation to a woman, means the place in Northern Ireland where the woman has her permanent address or usually resides;

“HSC hospital” means a hospital managed by an HSC trust;

“HSC trust” means a health and social care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(2);

“second stage of treatment” means the taking of the medicine Misoprostol.

Certification of opinion by registered medical professional

9.—(1) An opinion given for the purposes of these Regulations must be certified—

(a) in a case falling within regulation 3 or 5, in a certificate signed and dated by the registered medical professional;

(b) in a case falling within regulation 4, 6 or 7, in a certificate signed and dated by both registered medical professionals.

(2) The certificate in a case falling within regulation 3 or 5 must state—

(a) the full name and address of the registered medical professional;

(b) the Health and Care number of the pregnant woman;

(c) whether or not the registered medical professional has seen, or seen and examined, the pregnant woman; and

(d) that the registered medical professional is of the opinion, formed in good faith, that the ground mentioned in the regulation in question is fulfilled.

(3) The certificate in a case falling within regulation 4, 6 or 7 must state—

(a) the full name and address of each of the registered medical professionals;

(b) the Health and Care number of the pregnant woman;

(c) whether or not each registered medical professional has seen, or seen and examined, the pregnant woman; and

(d) that each registered medical professional is of the opinion, formed in good faith, that one and the same ground mentioned in the regulation in question is fulfilled.

(4) A certificate must be given—

(a) before the commencement of the treatment for the termination of the pregnancy to which it relates; or

(b) in the case of a termination falling within regulation 5 where compliance with subparagraph (a) is not reasonably practicable, not later than 24 hours after the termination.

(5) A certificate—

(a) must be preserved by the registered medical professional who terminated the pregnancy to which it relates for a period of not less than 3 years beginning with the date of termination; and

(b) must, at the end of that period, be destroyed by the person in whose custody it then is.

(6) A person who intentionally contravenes any provision of this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) Proceedings in respect of an offence under paragraph (6) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

(8) The Department may provide forms for the purpose of certifying the opinions of registered medical professionals.

Notification of termination to Chief Medical Officer

10.—(1) A registered medical professional who terminates a pregnancy must give to the Chief Medical Officer of the Department—

(a) notice of the termination; and

(b) such other information relating to the termination as is specified in the Schedule to these Regulations.

(2) Notice and information under paragraph (1) must be given—

(a) within 14 days beginning with—

(i) in a case where the termination is by treatment with Mifepristone, the date of that treatment; or

(ii) in all other cases, the date on which the termination occurred; and

(b) in a sealed envelope or by e-mail.

(3) Any notice or information given to the Chief Medical Officer under this regulation must not be disclosed except—

(a) for the purpose of carrying out the functions of the Department, to an officer of the Department authorised by the Chief Medical Officer;

(b) for the purpose of carrying out the functions of the Registrar General for Northern Ireland, to the Registrar General or a member of the staff of the General Register Office;

(c) for the purpose of investigating whether an offence has been committed under these Regulations, to a police officer not below the rank of superintendent or a person authorised by that officer;

(d) for the purpose of carrying out functions in relation to offences under these Regulations, to the Director of Public Prosecutions for Northern Ireland or a member of the staff of the Public Prosecution Service authorised by the Director;

(e) pursuant to a court order, for the purposes of proceedings which have begun;

(f) for the purposes of bona fide scientific research;

(g) to the registered medical professional who terminated the pregnancy;

(h) to a registered medical professional, with the consent in writing of the woman whose pregnancy was terminated;

(i) to the General Medical Council or the Nursing and Midwifery Council when requested by that Council for the purpose of investigating whether the fitness to practise of a registered medical professional is impaired; or

(j) to the woman whose pregnancy was terminated, on her supplying to the Chief Medical Officer the date and place of the termination and written evidence of her identity.

(4) A person who intentionally contravenes any provision of this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Proceedings in respect of an offence under paragraph (4) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

(6) The Department may provide forms for the purpose of giving notice and information under paragraph (1).

Offence to terminate a pregnancy otherwise than in accordance with these Regulations

11.—(1) A person who, by any means, intentionally terminates or procures the termination of the pregnancy of a woman otherwise than in accordance with regulations 3 to 8 of these Regulations commits an offence.

(2) But paragraph (1) does not apply—

(a) to the woman herself; or

(b) where the act which caused the termination was done in good faith for the purpose only of saving the woman's life or preventing grave permanent injury to the woman's physical or mental health.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Proceedings in respect of an offence under paragraph (1) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

Conscientious objection to participation in treatment authorised by these Regulations

12.—(1) Except as provided by paragraph (3), a person is not under a duty to participate in any treatment authorised by these Regulations to which the person has a conscientious objection.

(2) Paragraph (1) applies whether the duty arises under contract or under any statutory or other legal requirement.

(3) Paragraph (1) does not affect any duty to participate in treatment which is necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of a pregnant woman.

(4) In any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

Amendments to offence of child destruction

13.—(1) Section 25 of the Criminal Justice Act (Northern Ireland) 1945(**1**) (offence of child destruction) is amended as follows.

(2) In subsection (1) for “sub-section” substitute “section”.

(3) After subsection (1) insert—

“(1A) Subsection (1) does not apply to—

(a) the pregnant woman herself; or

(b) a registered medical professional (within the meaning of the Abortion (Northern Ireland) Regulations 2020) who terminates a pregnancy in accordance with regulations 3 to 8 of those Regulations.”.

(4) At the end insert—

“(3) Proceedings in respect of an offence under subsection (1) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.”.

Amendments consequential on the repeal of sections 58 and 59 of the Offences against the Person Act 1861

14.—(1) In the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018(**1**) omit section 4 (Secretary of State’s guidance).

(2) In section 26 of the Criminal Justice Act (Northern Ireland) 1945 (prosecution of child destruction offence) omit—

(a) in subsection (1), the words from “or for an offence under section fifty-eight” to “procure abortion)” and the words “or of an offence under the said section fifty-eight”; and

(b) subsection (2).

Consent to treatment

15. Nothing in these Regulations affects any statutory provision or rule of law relating to consent to medical treatment.

Mental Health (NI) Order 1986

Under this Order people with a learning disability can be detained in hospital for assessment and treatment if they are suffering from a mental disorder, the nature and degree of which presents a substantial risk to themselves, and when failure to detain them creates a substantial likelihood of serious physical harm to themselves or others. The Order also allows for people to be received into guardianship to ensure that the person receives the care and protection he or she needs. The Order also allows steps to be taken to manage the property and affairs of people who cannot do so for themselves (Bamford Review).

Section 75 of Northern Ireland Act 1998

Section 75 states 'A public authority shall, in carrying out its functions to Northern Ireland, have due regard to the need to promote equality of opportunity – between persons of different religious belief, political opinion, religious group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and person without; and between persons with dependants and persons without. This Act also established the Equality Commission for NI.

Disability Discrimination Act 1995 also extended by Disability Discrimination (NI) Order 2006

This act provides laws which aim to end discrimination for people in terms of: Employment, Goods, Facilities & Services, Management, Buying or Renting a Property and Education. In NI in 2006 it was updated to extend protection from discrimination to people and situations that were not previously covered.

The Criminal Justice and Immigration Act 2008 (Section 63): this Act makes

“It is an offence for a person to be in possession of an extreme pornographic image.

'Sexual images of children 17 and under are always illegal including downloaded images', the relevant legislation is The Protection of Children (Northern Ireland) Order 1978 and The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

It is also an offence for a person to have any indecent photograph or pseudo-photograph of a child in his possession. The Protection of Children (Northern Ireland) Order 1978 makes it an offence to take and distribute any indecent photograph or pseudo-photograph of a child.

Human Rights Act 1998 – relevant parts of the Act documented to support protocol and guidance.

Article 8: Right to privacy

(1) Everyone has the right for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10: Freedom of Expression

(1) Everyone has the right of freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 12: Marriage and the family

Men and women of marriageable age shall have the right to marry and to found a family, according to national laws governing the exercise of this right.

Section 6 Human Rights Act - Acts of public authorities.

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if—
 - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
 - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- (3) In this section “public authority” includes—
 - (a) a court or tribunal, and
 - (b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
- (4) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.
- (5) “An act” includes a failure to act but does not include a failure to:
 - (a) introduce in, or lay before, Parliament a proposal for legislation; or
 - (b) make any primary legislation or remedial order.

Sexual Offences Order 2008 (in relation to protecting people with a mental disorder).

The Sexual Offences (Northern Ireland) Order 2008 was approved by Parliament in June 2008 and the new law came into force on 2 February 2009. The Order for the first time provides a specific set of offences to protect persons with a mental disorder.

Articles 43-57 deal with offences committed against persons with a mental disorder. These Articles apply in cases where the victim is unable to agree to the sexual activity

because of a mental disorder which impedes their choice (43-46) or it might appear that the victim had agreed to the sexual activity but because of a mental disorder which makes them vulnerable to inducements, threats or deceptions (47-50) or because they are in a relationship of care (51-54), their consent was not or could be deemed not to have been freely given (see Articles listed in Appendix 2).

However, it is important to appreciate that where a person with a mental disorder is able to consent freely to sexual activity, they have the same rights to engage in consensual sexual activity as anyone else.

It is also important to note that where a person with a mental disorder did not consent to the sexual activity, there are other offences such as rape, sexual assault etc., which also apply.

Sexual Offences (Northern Ireland) Order 2008 Articles 43-57

PART 4

SEXUAL OFFENCES AGAINST A PERSON WITH A MENTAL DISORDER

Offences against persons with a mental disorder impeding choice

Sexual activity with a person with a mental disorder impeding choice

43.—(1) A person (A) commits an offence if—

- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) B is unable to refuse because of or for a reason related to a mental disorder, and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

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

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

(3) A person guilty of an offence under this Article, if the touching involved—

- (a) penetration of B's anus or vagina with a part of A's body or anything else,
 - (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body, or
 - (d) penetration of A's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for life.

(4) Unless paragraph (3) applies, a person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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

44.—(1) A person (A) commits an offence if—

- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual,
- (c) B is unable to refuse because of or for a reason related to a mental disorder, and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

- (a) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or
- (b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this Article, if the activity caused or incited involved—

- (a) penetration of B's anus or vagina,
- (b) penetration of B's mouth with a person's penis,
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else,
or
- (d) penetration of a person's mouth with B's penis, is liable, on conviction on indictment, to imprisonment for life.

(4) Unless paragraph (3) applies, a person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

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

45.—(1) A person (A) commits an offence if—

- (a) he intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, he engages in it—
 - (i) when another person (B) is present or is in a place from which A can be observed, and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
- (d) B is unable to refuse because of or for a reason related to a mental disorder, and
- (e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

- (a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
- (b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

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

46.—(1) A person (A) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
- (b) the activity is sexual,
- (c) B is unable to refuse because of or for a reason related to a mental disorder, and
- (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

- (a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason), or
- (b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Inducements etc. to persons with a mental disorder

Inducement, threat or deception to procure sexual activity with a person with a mental disorder

47.—(1) A person (A) commits an offence if—

- (a) with the agreement of another person (B) he intentionally touches that person,
- (b) the touching is sexual,

- (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose,
- (d) B has a mental disorder, and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this Article, if the touching involved—

- (a) penetration of B's anus or vagina with a part of A's body or anything else,
 - (b) penetration of B's mouth with A's penis,
 - (c) penetration of A's anus or vagina with a part of B's body, or
 - (d) penetration of A's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for life.

(3) Unless paragraph (2) applies, a person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception

48.—(1) A person (A) commits an offence if—

- (a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity,
- (b) the activity is sexual,
- (c) B has a mental disorder, and
- (d) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this Article, if the activity caused or agreed to involved—

- (a) penetration of B's anus or vagina,

- (b) penetration of B's mouth with a person's penis,
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else,
or
- (d) penetration of a person's mouth with B's penis,
is liable, on conviction on indictment, to imprisonment for life.

(3) Unless paragraph (2) applies, a person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

49.—(1) A person (A) commits an offence if—

- (a) he intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, he engages in it—
 - (i) when another person (B) is present or is in a place from which A can be observed, and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
- (d) B agrees to be present or in the place referred to in sub-paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
- (e) B has a mental disorder, and
- (f) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

50.—(1) A person (A) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
- (b) the activity is sexual,
- (c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
- (d) B has a mental disorder, and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Care workers for persons with a mental disorder

Care workers: sexual activity with a person with a mental disorder

51.—(1) A person (A) commits an offence if—

- (a) he intentionally touches another person (B),
- (b) the touching is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within Article 55.

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this Article, if the touching involved—

- (a) penetration of B's anus or vagina with a part of A's body or anything else,
- (b) penetration of B's mouth with A's penis,
- (c) penetration of A's anus or vagina with a part of B's body, or
- (d) penetration of A's mouth with B's penis, is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) Unless paragraph (3) applies, a person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Care workers: causing or inciting sexual activity

52.—(1) A person (A) commits an offence if—

- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within Article 55.

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this Article, if the activity caused or incited involved—

- (a) penetration of B's anus or vagina,
- (b) penetration of B's mouth with a person's penis,

- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else,
or
- (d) penetration of a person's mouth with B's penis,

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

(4) Unless paragraph (3) applies, a person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Care workers: sexual activity in the presence of a person with a mental disorder

53.—(1) A person (A) commits an offence if—

- (a) he intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, he engages in it—
 - (i) when another person (B) is present or is in a place from which A can be observed, and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
- (d) B has a mental disorder,
- (e) A knows or could reasonably be expected to know that B has a mental disorder, and
- (f) A is involved in B's care in a way that falls within Article 55.

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

Care workers: causing a person with a mental disorder to watch a sexual act

54.—(1) A person (A) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
- (b) the activity is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within Article 55.

(2) Where in proceedings for an offence under this Article it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this Article is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

Care workers: interpretation

55.—(1) For the purposes of Articles 51 to 54, a person (A) is involved in the care of another person (B) in a way that falls within this Article if any of paragraphs (2) to (4) applies.

(2) This paragraph applies if—

- (a) B is accommodated and cared for in a residential care home, residential family centre, voluntary home or children's home, and
- (b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(3) This paragraph applies if B is a patient for whom services are provided—

- (a) by a Health and Social Services Board established under Article 16(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14),
- (b) by a Health and Social Services trust established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991 (NI 1),
- (c) by an independent medical agency,
- (d) in an independent clinic or independent hospital, or
- (e) in a private hospital,

and A has functions to perform for the Board, Trust or agency, or in the clinic or hospital, in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(4) This paragraph applies if A—

- (a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder, and
- (b) as such, has had or is likely to have regular face to face contact with B.

(5) In this Article—

“children's home” has the meaning that would be given by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9) (“the 2003 Order”) if in paragraph (4) of that Article sub-paragraphs (d), (f) and (g) were omitted;

“employment” means any employment, whether paid or unpaid and whether under a contract for service or apprenticeship, under a contract for services, or otherwise than under a contract;

“independent clinic”, “independent hospital” and “independent medical agency” have the meanings given by Article 2(2) of the 2003 Order;

“private hospital” has the meaning given by Article 90(2) of the Mental Health (Northern Ireland) Order 1986 (NI 4);

“residential care home” means an establishment which is a residential care home for the purposes of the 2003 Order;

“residential family centre” has the meaning given by section 22 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3);

“voluntary home” has the meaning given by Article 74(1) of the 1995 Order.

Articles 51 to 54: exception for spouses and civil partners

56.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 51 to 54 against another person (B) is not an offence under that Article if at the time—

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

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

Articles 51 to 54: sexual relationships which pre-date care relationships

57.—(1) Conduct by a person (A) which would otherwise be an offence under any of Articles 51 to 54 against another person (B) is not an offence under that Article if, immediately before A became involved in B’s care in a way that falls within Article 55, a sexual relationship existed between A and B.

(2) Paragraph (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of Articles 51 to 54 it is for the defendant to prove that such a relationship existed at that time.

Legal guidance on Pornography

Section 63 of The Criminal Justice and Immigration Act 2008 states:

“It is an offence for a person to be in possession of an extreme pornographic image.

(2) An “extreme pornographic image” is an image which is both—

- (a) pornographic, and
 - (b) an extreme image.
- (3) An “extreme image” is an image which—
- (a) falls within subsection (7), and
 - (b) is grossly offensive, disgusting or otherwise of an obscene character.
- (4) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following—
- (a) an act which threatens a person's life,
 - (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,
 - (c) an act which involves sexual interference with a human corpse, or
 - (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive), and a reasonable person looking at the image would think that any such person or animal was real.
- (5) In this section “image” means—
- (a) a moving or still image (produced by any means); or
 - (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).
- (6) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).
- (7) Proceedings for an offence under this section may not be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

‘Sexual images of children 17 and under are always illegal including downloaded images’, the relevant legislation is The Protection of Children (Northern Ireland) Order 1978 and The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

Under Article 15 of The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 it is an offence for a person to have any indecent photograph or pseudo-photograph of a child in his possession. A child as defined in The Protection of Children (Northern Ireland) Order 1978 means a person under the age of eighteen. The age increased from 16 on 2 February 2009 pursuant to Article 42 of the Sexual Offences (Northern Ireland) Order 2008.

The Protection of Children (Northern Ireland) Order 1978 makes it an offence to take and distribute any indecent photograph or pseudo-photograph of a child.

The legislation is set out below.

The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988

15. - (1) Subject to Article 15A, it is an offence for a person to have any indecent photograph or pseudo-photograph of a child in his possession.

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

(a) that he had a legitimate reason for having the photograph or pseudo-photograph in his possession; or

(b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(2A) A person shall be liable on conviction on indictment of an offence under paragraph (1) to imprisonment for a term not exceeding five years or a fine, or both. [inserted from 11 Jan 2001]

(3) A person shall be liable on summary conviction of an offence under paragraph (1) to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both. [penalty increased from 3 Feb 1995]

(4) Proceedings for an offence under paragraph (1) shall not be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland

(5) Articles 2(2), (2A) and (3), 7(1) and 8 of the Protection of Children (Northern Ireland) Order 1978 shall have effect as if any reference in them to that Order included a reference to this Article.

The Protection of Children (Northern Ireland) Order 1978

2. - (1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order-

“child”, subject to paragraph (3)(c), means a person under the age of eighteen [increased from 16 on 2 Feb 2009] subject to paragraph (3)(c);

“film” includes any form of video-recording;

“indecent photograph” includes an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;

“indecent pseudo-photographs” includes-

(a) a copy of an indecent pseudo-photograph; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into an indecent pseudo-photograph;

“photograph” includes-

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;

“pseudo-photograph” means an image, whether made by computer graphics or otherwise howsoever, which appears to be a photograph.

(3) For the purposes of this Order-

(a) a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person; and

(b) photographs (including those comprised in a film) shall, if they show children and are indecent, be treated as indecent photographs of children, and so as respects a pseudo-photograph; and

(c) if the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

Indecent photographs of children

3. - (1) Subject to Articles 3A and 3B, any person who-

(a) takes, or permits to be taken or makes any indecent photograph or pseudo-photograph of a child; or

(b) distributes or shows such indecent photographs or pseudo-photographs; or

(c) has in his possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself or others; or

(d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs or intends to do so, shall be guilty of an offence.

Sexual Offences (Northern Ireland) Order 2008

42. (1) The Protection of Children (Northern Ireland) Order 1978 (NI 17) (which makes provision about indecent photographs of persons under 16) is amended as follows.

(2) In Article 2(2) (interpretation), in the definition of “child”, for “sixteen” substitute “eighteen”.

(3) In Article 7(1) (evidence of person being a child at a material time) for “sixteen” substitute “eighteen”.

(4) In Article 3(1) (offences relating to indecent photographs of children) at the beginning insert “Subject to Articles 3A and 3B”.

(5) After Article 3A insert—

Other legislation

The Coroners and Justice Act 2009 (Chapter 2 Article 62) states:

“(1) It is an offence for a person to be in possession of a prohibited image of a child.

(2) A prohibited image is an image which—

(a) is pornographic,

(b) falls within subsection (6), and

(c) is grossly offensive, disgusting or otherwise of an obscene character.

(3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Proceedings for an offence under subsection (1) may not be instituted—

(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

As regards the duty to report to police, in Northern Ireland the Criminal Law Act 1967 makes it an offence to fail to disclose a relevant offence to the police.

Criminal Law Act (Northern Ireland) 1967

Section 5 – Penalties for concealing offences etc.

“(1) Subject to the succeeding provisions of this section, where a person has committed a relevant offence it shall be the duty of every other person, who knows or believes—

(a) that the offence or some other relevant offence has been committed; and

(b) that he has information which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of any person for that offence;

to give that information, within a reasonable time, to a constable and if, without reasonable excuse, he fails to do so he shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment according to the gravity of the offence about which he does not give that information, as follows:—

- (i) if that offence is one for which the court is required by law to sentence an offender to death or to imprisonment for life or to detention during the pleasure of the Governor of Northern Ireland, he shall be liable to imprisonment for not more than ten years;
- (ii) if it is one for which a person (of full age and capacity and not previously convicted) may be sentenced to imprisonment for a term of fourteen years, he shall be liable to imprisonment for not more than seven years;
- (iii) if it is not one included above but is one for which a person (of full age and capacity and not previously convicted) may be sentenced to imprisonment for a term of ten years, he shall be liable to imprisonment for not more than five years;
- (iv) in any other case, he shall be liable to imprisonment for not more than three years.”

Other legislation that is applicable:

- The Marriage (NI) Act 1954
- The Marriage Act 1983
- Homosexual Offences (NI) Order 1982
- The Protection of Children (Northern Ireland) Order 1978
- The Coroners and Justice Act 2009 (Chapter 2 Article 62)
- Criminal Law Amendment Act (NI) 1923
- Criminal Justice Act (NI) 1945
- Criminal Law Act (Northern Ireland) 1967
- Criminal Law Amendment Act 1985
- Section 58 & 59, Offences Against the Person Act 1861
- Infant life (Preservation) Act 1929
- R V's Bourne 1939 (Case Law)
- The Children (NI) Order 1995

Appendix 2

Central booking details for sexual health services

	GUM	Contraceptive Service
Belfast Trust	028 9615 2111	028 9504 5500
Southern Trust	028 3756 2080	028 3756 2200 contraception@southerntrust.hscni.net
Northern Trust	028 7034 6028	028 2826 6163
South Eastern Trust	028 4483 8133	028 9041 3796
Western Trust	028 7161 1269	028 7132 1758

Appendix 3

Each Trust will need to populate this individually. This is a guide to some such policies that may apply.

iConnect Code	Policies & Procedures
	Code of Practice on Protecting the confidentiality of Service user Information
	Data Protection Policy Statement
	Transferring Personal Information Protocol & Procedures
	Use Of the Internet
	ICT Policy
	Records Management Policy Statement
	Improving the Detection and Diagnosis of Human Immunodeficiency Virus (HIV) Infection in all HealthCare Settings Including Primary Care
	Guideline statement on the Management of Healthcare Workers Infected with HIV, Hepatitis B and Hepatitis C
	Access to Interpreting Services for People from a Minority Ethnic Background
	Provision of Patient/Client Single Sex Accommodation
	HIV & Post Exposure Prophylaxis following Sexual exposure (PEPSE)
	Guardianship under the Mental Health (Northern Ireland) Order 1986: A Model for Operation.
	Deprivation of Liberty Safeguards & Human Right
	Forensic readiness policy