



SEXUAL OFFENCES AND OBSCENE PUBLICATIONS ACT 2021 (APPOINTED DAY) (NO. 2) ORDER 2024

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Statutory Document No. 2024/0108



Sexual Offences and Obscene Publications Act 2021

SEXUAL OFFENCES AND OBSCENE PUBLICATIONS ACT 2021 (APPOINTED DAY) (NO. 2) ORDER 2024

Laid before Tynwald:

The Department of Home Affairs makes the following Order under section 2 of the Sexual Offences and Obscene Publications Act 2021.

1 Title

This Order is the Sexual Offences and Obscene Publications Act 2021 (Appointed Day) (No. 2) Order 2024.

2 Interpretation

In this Order “the 2021 Act” means the Sexual Offences and Obscene Publications Act 2021.

3 Commencement of the Sexual Offences and Obscene Publications Act 2021

- (1) Section 87 (duty to notify police of possible victims of child sexual abuse) of the 2021 Act comes into operation immediately upon the coming into operation of the first regulations that prescribe a safeguarding policy under section 87(5) for the purposes of that section.
- (2) The remainder of the 2021 Act, except paragraph 13 of Schedule 5 comes into operation on 25 March 2024.

4 Supplementary provision - continuity of sexual offences law

- (1) This article applies where, in any proceedings—
 - (a) a person (“the defendant”) is charged in respect of the same conduct both with an offence under the 2021 Act (“the 2021 Act offence”) and with an offence specified in paragraph (2) (“the pre-commencement offence”);
 - (b) the only thing preventing the defendant from being found guilty of the 2021 Act offence is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was

- after the coming into operation of the provision of the 2021 Act providing for the offence; and
- (c) the only thing preventing the defendant from being found guilty of the pre-commencement offence is the fact that it has not been proved beyond a reasonable doubt that that time was before the coming into operation of the repeal by the 2021 Act of the enactment providing for the offence.
- (2) The offences referred to in paragraph (1)(a) are —
- (a) an offence under section 2(2) or (4) (acts of vagrancy – prostitution and riotous and indecent behaviour and indecent exhibitions) of the Vagrancy Act 1896;
 - (b) an offence under the Obscene Publications and Indecent Advertisements Act 1907;
 - (c) an offence under Section 298(5) (penalties for certain offences – soliciting) of the Local Government Consolidation Act 1916;
 - (d) an offence under section 9(2) (burglary) of the Theft Act 1981 in a case where the person entered a building or part of a building with intent to rape any woman in the building or the part of the building;
 - (e) an offence under the Sexual Offences Act 1992;
 - (f) an offence under Section 3 (allowing persons under 16 to be in brothels) of the Children and Young Persons Act 1966;
 - (g) an offence under paragraph 4 of Schedule 1 to the Criminal Justice Act 2001.
- (3) For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was—
- (a) if the maximum penalty for the pre-commencement offence is less than the maximum penalty for the 2021 Act offence, a time before the coming into operation of the repeal by the 2021 Act of the enactment providing for the pre-commencement offence; and
 - (b) in any other case, a time after the coming into operation of the provision in the 2021 Act providing for the 2021 Act offence.
- (4) In paragraph (3) the reference, in relation an offence, to the maximum penalty is a reference to the maximum penalty by way imprisonment or other detention that could be imposed on the defendant on conviction of the offence in the proceedings in question.
- (5) A reference in this article to an offence under the 2021 Act or to an offence specified in paragraph (2) includes a reference to—
- (a) inciting the commission of that offence;
 - (b) conspiracy to commit that offence; and
 - (c) attempting to commit that offence,

and in relation to an offence falling within subparagraph (a), (b) or (c), a reference in this paragraph to the enactment providing for the offence so falling has effect as a reference to the enactment providing for the offence under that Act or, as the case may be, for the offence so specified.

- (6) Paragraphs (1) to (5) apply to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of the pre-commencement offence or the 2021 Act offence.
- (7) In paragraph 1 of Schedule 1A to the Police Powers and Procedures Act 1998, as substituted by paragraph 14(3)(a) of Schedule 5 to the 2021 Act, for the words “section 110” to the end, substitute **“sections 78 to 80 and 110 of, and Schedule 2 to, the *Sexual Offences and Obscene Publications Act 2021.*”**

5 Transitional provision: rights of landlords

Where a person (“tenant”) has been convicted of an offence under section 30 (occupier or tenant permitting premises to be used as brothel) of the Sexual Offences Act 1992 after the coming into operation of section 64 of the 2021 Act, section 64 of the 2021 Act shall apply in relation to the landlord’s rights in relation to the tenant upon the conviction of the tenant.

6 Transitional provision: persons subject to notification requirements

- (1) Paragraph (2) applies to a person (“defendant”) whom, immediately before the coming into operation of Part 10 of the 2021 Act, was subject to a sexual offences prevention order under Part 1 of the Sex Offenders Act 2006 (“2006 Act”) where –
 - (a) a court dealt with the defendant in respect of a listed offence (within the meaning of section 4 of the 2006 Act); and
 - (b) that listed offence is not included in the list of offences contained in Schedule 3 to the 2021 Act on the coming into operation of that Schedule.
- (2) Where this paragraph applies, despite the repeal of section 4 of the 2006 Act and Schedule 1 to the Criminal Justice Act 2001, the 2006 Act continues to apply in respect of the order referred to in paragraph (1) except that a further order may not be made under section 7 of the 2006 Act in relation to the defendant.

7 Saving provision: anonymity in rape cases

- (1) Despite the repeal of section 34 (anonymity in rape cases) of, and Schedule 2 (anonymity in rape cases) to, the Sexual Offences Act 1992, those provisions shall continue to have effect in relation to an offence in respect of which, before the coming into operation of the 2021 Act, an allegation of rape has been made.

- (2) Despite the coming into operation of paragraph 9(2) of Schedule 5 (minor and consequential amendments) of the 2021 Act (which amends section 6(5) of the Summary Jurisdiction Act 1989) the requirement for the clerk of the court to display a notice shall continue to have effect subject to Schedule 2 (anonymity in rape cases) to the Sexual Offences Act 1992 in any case where the allegation of rape was made before the coming into operation of the 2021 Act.

8 Savings: Police Powers and Procedures Act 1998

- (1) Despite the coming into operation of paragraph 14(2) of Schedule 5 to the 2021 Act (which amends section 55 of the Police Powers and Procedures Act 1998) and paragraph (1)(b) of Schedule 6 (which repeals the Sexual Offences Act 1992) to the 2021 Act, section 55 of the Police Powers and Procedures Act 1998 (children: serious offences) shall continue to have effect in relation to an offence under the Sexual Offences Act 1992 (except sections 25 to 31) that is alleged to have been committed before the coming into operation of paragraph 14(2) of Schedule 5 to the 2021 Act.
- (2) Despite the coming into operation of paragraph 14(3)(a) and (c) of Schedule 5 to the 2021 Act (which amends Schedule 1A to the Police Powers and Procedures Act 1998) and paragraph (1)(a) of Schedule 6 to the 2021 Act (which repeals the Obscene Publications and Indecent Advertisements Act 1907), section 26A, 26C, 26E(5)(b), 26F, 26J(10)(b), 26K(5), 26K(6)(a) and 26M(1)(a) of the Police Powers and Procedures Act 1998 shall continue to have effect in respect of each of the powers of seizure conferred by section 3 of the Obscene Publications and Indecent Advertisements Act 1907 (power to search for and seize obscene materials and documents relating to a connected business) in relation to an offence under the Sexual Offences Act 1992 that is alleged to have been committed before the coming into operation of paragraphs 14(3)(a) and (c) of Schedule 5 to the 2021 Act.
- (3) Despite the coming into operation of paragraph 14(3)(b) and (d) of Schedule 5 to the 2021 Act (which amends Schedule 1A to the Police Powers and Procedures Act 1998), section 26A, 26C, 26E(5)(b), 26F, 26J(10)(b), 26K(5), 26K(6)(a) and 26M(1)(a) of the Police Powers and Procedures Act 1998 shall continue to have effect in respect of each of the powers of seizure conferred by paragraph 4(2) (entry, search and seizure) of Schedule 3 to the Criminal Justice Act 2001 in relation to an offence alleged to have been committed before the coming into operation of paragraph 14(3)(b) and (d) of Schedule 5 to the 2021 Act.
- (4) Despite the coming into operation of paragraph 14(4) of Schedule 5 to the 2021 Act (which amends paragraph (1) of Schedule 1B to the Police Powers and Procedures Act 1998) (“1998 Act”), section 3 of the Obscene Publications and Indecent Advertisements Act 1907 continues to apply in respect of an item seized under section 26A of the 1998 Act if the alleged

offence was committed before the coming into operation of paragraph 14(4) of Schedule 5 to the 2021 Act.

- (5) Despite the coming into operation of paragraph 14(5) of Schedule 5 to the 2021 Act (which amends Schedule 3 to the Police Powers and Procedures Act 1998), the following provisions shall continue to be treated as serious offences for the purposes of section 79(2) (meaning of “serious offence”) of the Police Powers and Procedures Act 1998 in so far the offences were alleged to have been committed before the coming into operation of paragraph 14(5) of Schedule 5 to the 2021 Act –
- (a) section 2 (penalty for printing, selling etc., indecent or obscene publications) of the Obscene Publications and Indecent Advertisements Act 1907, insofar as it relates to obscene matter or items;
 - (b) the following offences under the Sexual Offences Act 1992 –
 - (i) section 1 (rape);
 - (ii) section 4(1) (intercourse with a girl under the age of 13 years);
 - (iii) section 7(1)(a) (incest with a person under the age of 13 years);
 - (iv) section 9(1)(a) and (2)(a) (buggery with persons under the age of 21 years).

MADE 22 MARCH 2024

JANE POOLE-WILSON
Minister for Justice and Home Affairs

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order brings into operation the remainder of the Sexual Offences and Obscene Publications Act 2021 (“the 2021 Act”) on 25 March 2024, except –

- (a) section 87 (duty to notify police of possible victims of child sexual abuse), which will come into operation immediately upon the making of regulations under that section that prescribe a safeguarding policy for the purposes of that section; and
- (b) paragraph 13 of Schedule 5 (which amends section 36(3) of the Licensing Act 1995, which has been repealed since the passing of the 2021 Act).

Sections 1 and 2 of the 2021 Act came into operation on its announcement day. Part 11 (pardons and disregards) of the 2021 Act was brought into operation on 29 June 2022.

Article 4 of this Order makes a supplementary provision to the effect that where a person is charged in respect of conduct that is an offence under the 2021 Act and was an offence under one of the repealed offences listed in Article 4(2), and the only thing preventing the person being found guilty is that it cannot be proven beyond reasonable doubt whether the conduct took place before or after the commencement of the 2021 Act, then it is to be conclusively presumed for the purposes of determining the guilt of the defendant that the conduct took place at a time when the offence in respect of that conduct carried the lower penalty in terms of a custodial sentence which could be imposed on conviction of the defendant. If the penalties are the same, then it is to be conclusively presumed that the conduct took place after the commencement of the 2021 Act. This provision is extended to inciting, conspiring and attempting to commit the specified offences. Article 4(6) provides that Article 4 applies to any proceedings, whenever commenced, other than where, before the commencement of the 2021 Act, the defendant has been convicted or acquitted of an offence repealed by that Act.

Article 4(7) also makes a supplementary provision so that the powers that apply in relation to matters listed in Schedule 1A to the Police Powers and Procedures Act 1998 apply in relation to sections 78 to 80 of, and Schedule 2 to, the 2021 Act, as well as to section 110 of that Act.

Article 5 makes a transitional provision so that where an occupier or tenant has been convicted of an offence under section 30 of the Sexual Offences Act 1992 (of permitting premises to be used as brothel) after the coming into operation of the equivalent section of the 2021 Act, the landlord is able to exercise the rights in respect of the property under the 2021 Act.

Article 6 makes a transitional provision in relation to a defendant who is subject to a sexual offences prevention order under Part 1 (sexual offences prevention orders) of the Sex Offenders Act 2006 (“2006 Act”) which will no longer be an offence in respect of which a similar order may be made under the 2021 Act. In those circumstances the order

is to continue to have effect until the date it was due to end under the 2006 Act, and no further order may be made under the 2006 Act.

Article 7 makes a saving provision in relation to the anonymity provisions in rape cases under the Sexual Offences Act 1992 so that those provisions continue to have effect in relation to an offence in respect of which, before the coming into operation of the 2021 Act, an allegation of rape has been made. Article 7 also provides that the requirement for the clerk of the court to display a notice after committal proceedings is still subject to compliance with the requirements under the Sexual Offences Act 1992 to ensure anonymity of the complainant.

Article 8 makes savings provisions in respect of the enhanced powers under the Police Powers and Procedures Act 1998 that may be exercised for serious offences, so that those powers are retained for offences that were allegedly committed, before the coming into operation of the 2021 Act, under the Sexual Offences Act 1992, the Obscene Publications and Indecent Advertisements Act 1907 and the Criminal Justice Act 2001.