
STATUTORY INSTRUMENTS

1994 No. 2795

The Criminal Justice (Northern Ireland) Order 1994

PART III

SEXUAL OFFENCES

Anonymity in rape, etc., cases

18.—(1) The Sexual Offences (Northern Ireland) Order 1978⁽¹⁾ shall be amended as follows.

(2) In Article 2(2) (interpretation), in the definition of a “rape offence” for “and incitement to rape” there shall be substituted “, incitement to rape, conspiracy to rape, assault with intent to rape and burglary with intent to rape”.

(3) In Article 6 (anonymity of complainants in rape, etc., cases)—

(a) for paragraph (1) there shall be substituted—

“(1) Except as authorised by a direction given under this Article—

(a) after an allegation that a woman has been the victim of a rape offence has been made by the woman or by any other person, neither the woman’s name nor her address nor a still or moving picture of her shall during her lifetime—

(i) be published in Northern Ireland in a written publication available to the public; or

(ii) be included in a relevant programme for reception in Northern Ireland, if that is likely to lead members of the public to identify her as an alleged victim of such an offence; and

(b) after a person is accused of a rape offence, no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall during her lifetime—

(i) be published in Northern Ireland in a written publication available to the public; or

(ii) be included in a relevant programme for reception in Northern Ireland;

but nothing in this paragraph prohibits the publication or inclusion in a relevant programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(1A) In paragraph (1) “picture” includes a likeness however produced.”;

(b) in paragraph (3)—

(i) the words “at which a person is charged with a rape offence” and “relating to the complainant” shall cease to have effect;

- (ii) for “an acquittal of a defendant at” there shall be substituted “the outcome of”;
- (c) after paragraph (5) there shall be inserted—
 - “(5A) Where a person is charged with an offence under paragraph (5) in respect of the publication of any matter or the inclusion of any matter in a relevant programme, it shall be a defence, subject to paragraph (5B), to prove that the publication or programme in which the matter appeared was one in respect of which the woman had given written consent to the appearance of matter of that description.
 - (5B) Written consent is not a defence if it is proved that any person interfered unreasonably with the woman’s peace or comfort with intent to obtain the consent.”.
- (4) Article 8 (anonymity of defendants in rape, etc., cases) shall cease to have effect.

Anonymity of victims of certain other sexual offences

19.—(1) Where an allegation has been made that an offence to which this Article applies has been committed against a person, neither the name nor address, and no still or moving picture, of that person shall during that person’s lifetime—

- (a) be published in Northern Ireland in a written publication available to the public; or
- (b) be included in a relevant programme for reception in Northern Ireland,

if it is likely to lead members of the public to identify that person as the complainant.

(2) Where a person is accused of an offence to which this Article applies, no matter likely to lead members of the public to identify a person as the complainant shall during the complainant’s lifetime—

- (a) be published in Northern Ireland in a written publication available to the public; or
- (b) be included in a relevant programme for reception in Northern Ireland.

(3) Paragraphs (1) and (2) are subject to any direction given under Article 21.

(4) Nothing in this Article prohibits the publication or inclusion in a relevant programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

Offences to which Article 19 applies

20. Article 19 applies to the following offences—

- (a) any offence under any of the following provisions of the Offences against the Person Act 1861⁽²⁾—
 - (i) section 52 (indecent assault on a female);
 - (ii) section 61 (buggery);
 - (iii) section 62 (attempt to commit buggery, assault with intent to commit buggery or indecent assault on a male);
- (b) any offence under any of the following provisions of the Criminal Law (Amendment) Act 1885⁽³⁾—
 - (i) section 3 (procuring unlawful carnal knowledge of woman by threats or false pretences or representations or administering drugs);
 - (ii) section 4 (unlawful carnal knowledge or attempted unlawful carnal knowledge of a girl under 14 years of age);

⁽²⁾ 1861 c. 100

⁽³⁾ 1885 c. 69

- (iii) section 5 (unlawful carnal knowledge of a girl under 17 years of age);
- (c) any offence under any of the following provisions of the Punishment of Incest Act 1908⁽⁴⁾—
 - (i) section 1 (incest, attempted incest by males);
 - (ii) section 2 (incest by females of or over 16);
- (d) any offence under section 22 of the Children and Young Persons Act (Northern Ireland) 1968⁽⁵⁾ (indecent conduct toward a child);
- (e) any offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980⁽⁶⁾ (inciting girl under 16 to have incestuous sexual intercourse);
- (f) any offence under any of the following provisions of the Mental Health (Northern Ireland) Order 1986⁽⁷⁾—
 - (i) Article 122(1)(a) (unlawful sexual intercourse with a woman suffering from severe mental handicap);
 - (ii) Article 122(1)(b) (procuring a woman suffering from severe mental handicap to have unlawful sexual intercourse);
 - (iii) Article 123 (unlawful sexual intercourse by hospital, etc., staff with a person receiving treatment for mental disorder);
- (g) without prejudice to section 62 of the Offences against the Person Act 1861⁽⁸⁾, section 4 of the Criminal Law (Amendment) Act 1885⁽⁹⁾ or section 1 of the Punishment of Incest Act 1908⁽¹⁰⁾, any attempt to commit any of the offences mentioned in sub-paragraphs (a) to (f).

Power to displace Article 19

21.—(1) If, before the commencement of a trial at which a person is charged with an offence to which Article 19 applies, he or another person against whom the complainant may be expected to give evidence at the trial, applies to the court for a direction under this paragraph and satisfies the court—

- (a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the court shall direct that Article 19 shall not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.

(2) If at a trial the court is satisfied—

- (a) that the effect of Article 19 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial, and
- (b) that it is in the public interest to remove or relax the restriction,

the court shall direct that Article 19 shall not apply to such matter as is specified in the direction.

(3) A direction shall not be given under paragraph (2) by reason only of the outcome of the trial.

(4) 1908 c. 45
(5) 1968 c 34 (N.I.)
(6) 1980 NI 6
(7) 1986 NI 4
(8) 1861 c. 100
(9) 1885 c. 69
(10) 1908 c. 45

(4) If a person who has been convicted of an offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to the appellate court for a direction under this paragraph and satisfies the court—

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

(b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the court shall direct that Article 19 shall not, by virtue of an accusation which alleges an offence to which Article 19 applies and is specified in the direction, apply in relation to a complainant so specified.

(5) A direction given under any provisions of this Article does not affect the operation of Article 19 at any time before the direction is given.

(6) If, after the commencement of a trial at which a person is charged with an offence to which Article 19 applies, a new trial of the person for that offence is ordered, the commencement of any previous trial shall be disregarded for the purposes of paragraph (1).

Special rules for cases of incest or buggery

22.—(1) In this Article—

“section 1 offence” means an offence under section 1 of the Punishment of Incest Act 1908⁽¹¹⁾ (incest by males) or an attempt to commit that offence;

“section 2 offence” means an offence under section 2 of that Act (incest by females of or over 16) or an attempt to commit that offence;

“section 61 offence” means an offence under section 61 of the Offences against the Person Act 1861⁽¹²⁾ (buggery) or an attempt to commit that offence.

(2) Article 19 does not apply to a woman against whom a section 1 offence is alleged to have been committed if she is accused of having committed a section 2 offence against the man who is alleged to have committed the section 1 offence against her.

(3) Article 19 does not apply to a man against whom a section 2 offence is alleged to have been committed if he is accused of having committed a section 1 offence against the woman who is alleged to have committed the section 2 offence against him.

(4) Article 19 does not apply to a person against whom a section 61 offence is alleged to have been committed if that person is accused of having committed a section 61 offence against the person who is alleged to have committed the section 61 offence against him.

(5) Paragraph (2) does not affect the operation of Articles 19 to 23 in relation to anything done at any time before the woman is accused.

(6) Paragraph (3) does not affect the operation of Articles 19 to 23 in relation to anything done at any time before the man is accused.

(7) Paragraph (4) does not affect the operation of Articles 19 to 23 in relation to anything done at any time before the person mentioned first in that paragraph is accused.

Offences

23.—(1) If any matter is published or included in a relevant programme in contravention of Article 19, the following persons shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale—

(11) 1908 c. 45

(12) 1861 c. 100

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of publication in any other form, the person publishing the matter; and
- (c) in the case of matter included in a relevant programme—
 - (i) any body corporate engaged in providing the service in which the programme is included; and
 - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(2) Where a person is charged with an offence under this Article in respect of the publication of any matter or the inclusion of any matter in a relevant programme, it shall be a defence, subject to paragraph (3), to prove that the publication or programme in which the matter appeared was one in respect of which the person against whom the offence mentioned in Article 19 is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain it.

(4) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.

(5) Where a person is charged with an offence under this Article it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.

Provisions supplementary to Articles 19 to 23

24.—(1) For the purposes of Articles 19 to 23—

- (a) where it is alleged that an offence to which Article 19 applies has been committed, the fact that any person has consented to an act which, on any prosecution for that offence, would fall to be proved by the prosecution, does not prevent that person from being regarded as a person against whom the alleged offence was committed; and
- (b) where a person is accused of an offence of incest or buggery, the other party to the act in question shall be taken to be a person against whom the offence was committed even though he consented to that act.

(2) For the purposes of Articles 19 to 23, a person is accused of an offence if—

- (a) a complaint is made alleging that he has committed the offence,
- (b) he appears before a court charged with the offence,
- (c) a court before which he is appearing commits him for trial on a new charge alleging the offence, or
- (d) a bill of indictment charging him with the offence is preferred before a court in which he may lawfully be indicted for the offence,

and references in Article 21 to an accusation alleging an offence shall be construed accordingly.

(3) Nothing in Articles 19 to 23 affects any prohibition or restriction imposed by virtue of any other statutory provision upon a publication or upon matter included in a relevant programme.