

1978 No. 460 (N.I. 5)

NORTHERN IRELAND

The Sexual Offences (Northern Ireland) Order 1978

Laid before Parliament in draft

Made 21st March 1978

Coming into Operation 22nd April 1978

ARRANGEMENT OF ORDER

Article

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At the Court at Buckingham Palace, the 21st day of March 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Sexual Offences (Northern Ireland) Order 1978 and shall come into operation on the expiration of one month from the day on which it is made.

(2) Articles 4 and 5 shall not have effect in relation to a trial or investigation which begins before this Order comes into operation and Articles 6 and 8 shall not have effect in relation to an accusation alleging a rape offence which is made before this Order comes into operation.

(a) 1974 c. 28.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (a) 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—

“a rape offence” means any of the following, namely rape, attempted rape, aiding, abetting, counselling and procuring rape or attempted rape and incitement to rape;

“statutory provision” has the meaning assigned to it by section 1 (f) of the Interpretation Act (Northern Ireland) 1954.

(3) In this Order references to sexual intercourse shall be construed as references to carnal knowledge in accordance with section 63 of the Offences Against the Person Act 1861 (b) so far as it relates to natural intercourse (under which such intercourse is deemed complete on proof of penetration only).

(4) In this Order “man” and “woman” include respectively a male and a female person of any age; but this paragraph does not prejudice any rule of law by virtue of which a male person is treated by reason of his age as being incapable of committing an offence of any particular kind.

Meaning of “rape” etc.

3.—(1) A man commits rape if—

(a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and

(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it;

and any reference to rape in a statutory provision shall be construed accordingly.

(2) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.

Restrictions on evidence at trials for rape offences

4.—(1) If at a trial any person is for the time being charged with a rape offence to which he pleads not guilty, then, except with the leave of the judge, no evidence and no question in cross-examination shall be adduced or asked at the trial, by or on behalf of any defendant at the trial, about any sexual experience of a complainant with a person other than that defendant.

(2) The judge shall not give leave under paragraph (1) for any evidence or question except on an application made to him in the absence of the jury by or on behalf of a defendant; and on such an application the judge shall give leave if and only if he is satisfied that it would be unfair to that defendant to refuse to allow the evidence to be adduced or the question to be asked.

(3) In paragraph (1) “complainant” means a woman upon whom, in a charge for a rape offence to which the trial in question relates, it is alleged that rape was committed, attempted or proposed.

(4) Nothing in this Article authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this Article.

(a) 1954 c. 33 (N.I.).

(b) 1861 c. 100.

Application of Article 4 to committal proceedings

5.—(1) Where a magistrates' court conducts a preliminary investigation into a rape offence, then, except with the consent of the court, evidence shall not be adduced and a question shall not be asked at the investigation which, if the investigation were a trial at which a person is charged as mentioned in Article 4 (1) and each of the accused at the investigation were charged at the trial with the offences of which he is accused at the investigation, could not be adduced or asked without leave under that Article.

(2) On an application for consent under paragraph (1) for any evidence or question the court shall—

- (a) refuse the consent unless the court is satisfied that leave in respect of the evidence or question would be likely to be given at a relevant trial; and
- (b) give the consent if the court is so satisfied.

(3) Where a person charged with a rape offence is tried for that offence summarily under section 79 (1) of the Children and Young Persons Act (Northern Ireland) 1968 (a) (which provides for the summary trial in certain cases of a child or young person who is charged with indictable offences) Article 4 shall have effect as if—

- (a) the words "in the absence of the jury" in paragraph (2) were omitted; and
- (b) for any reference to the judge there were substituted a reference to the court.

Anonymity of complainants in rape offence cases

6.—(1) Subject to paragraph (7) (a), 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 either be published in Northern Ireland in a written publication available to the public or be broadcast in Northern Ireland except as authorised by a direction given under this Article.

(2) If, before the commencement of a trial at which a person is charged with a rape offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge of the county court or of the High Court for a direction under this paragraph and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; 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 judge shall direct that paragraph (1) shall not, by virtue of the accusation alleging that offence, apply in relation to the complainant.

(3) If at a trial at which a person is charged with a rape offence the judge is satisfied that the effect of paragraph (1) is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, he shall direct that that paragraph shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given under this paragraph by reason only of an acquittal of a defendant at the trial.

(4) If a person who has been convicted of an offence and given notice of appeal to the Court of Criminal Appeal against the conviction, or notice of an

(a) 1968 c. 34 (N.I.).

application for leave so to appeal, applies to the Court of Criminal Appeal 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 paragraph (1) shall not, by virtue of an accusation which alleges a rape offence and is specified in the direction, apply in relation to a complainant so specified.

(5) If any matter is published or broadcast in contravention of paragraph (1), the following persons, namely—

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

- (6) For the purposes of this Article a person is accused of a rape offence if—
 - (a) a complaint is made alleging that he has committed a rape offence; or
 - (b) he appears before a court charged with a rape offence; or
 - (c) a court before which he is appearing commits him for trial on a new charge alleging a rape offence; or
 - (d) a bill of indictment charging him with a rape offence is preferred before a court in which he may lawfully be indicted for the offence,

and references in this Article and Article 1.(2) to an accusation alleging a rape offence shall be construed accordingly; and in this Article—

- “a broadcast” means a broadcast by wireless telegraphy of sound or visual images intended for general reception;
- “complainant”, in relation to a person accused of a rape offence or an accusation alleging a rape offence, means the woman against whom the offence is alleged to have been committed; and
- “written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(7) Nothing in this Article—

- (a) prohibits the publication or broadcasting, in consequence of an accusation alleging a rape offence, of matter consisting only of a report of legal 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 that offence; or
- (b) affects any prohibition or restriction imposed under any other statutory provision upon a publication or broadcast;

and a direction under this Article does not affect the operation of paragraph (1) at any time before the direction is given.

Provisions supplementary to Article 6

7.—(1) If after the commencement of a trial at which a person is charged with a rape offence a new trial of the person for that offence is ordered, the commencement of any previous trial at which he was charged with that offence shall be disregarded for the purposes of Article 6 (2).

(2) In relation to a conviction of an offence tried summarily as mentioned in Article 5 (3), for references to the Court of Criminal Appeal in Article 6 (4) there shall be substituted references to the county court and the reference to notice of an application for leave to appeal shall be omitted.

(3) Proceedings for an offence under Article 6 (5) shall not be instituted except by or with the consent of the Attorney General; and where a person is charged with such an offence 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 broadcast in question was of such matter as is mentioned in Article 6 (1).

Anonymity of defendants in rape offence cases

8.—(1) After a person is accused of a rape offence no matter likely to lead members of the public to identify him as the person against whom the accusation is made shall either be published in Northern Ireland in a written publication available to the public or be broadcast in Northern Ireland except—

- (a) as authorised by a direction given in pursuance of this Article or by Article 6 (7) (a) as applied by paragraph (5); or
- (b) after he has been convicted of the offence at a trial.

(2) If a person accused of a rape offence applies to a magistrates' court, before the commencement of his trial for that offence, for a direction under this paragraph, the court shall direct that paragraph (1) shall not apply to him in consequence of the accusation; and if at a trial at which a person is charged with a rape offence in respect of which he has not obtained such a direction—

- (a) the judge is satisfied that the effect of paragraph (1) is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove the restriction in respect of that person; or

(b) that person applies to the judge for a direction under this paragraph, the judge shall direct that paragraph (1) shall not apply to that person in consequence of the accusation alleging that offence.

(3) If, before the commencement of a trial at which a person is charged with a rape offence, another person who is to be charged with a rape offence at the trial applies to a judge of the county court or of the High Court for a direction under this paragraph and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; 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 judge shall direct that paragraph (1) shall not, by virtue of the accusation alleging the offence with which the first-mentioned person is charged, apply to him.

(4) A direction of a court under section 59 of the Children and Young Persons Act (Northern Ireland) 1968 (which imposes restrictions on reports of certain court proceedings concerning juveniles) may include a direction that

paragraph (1) shall not apply to a person in respect of whom the direction is given.

(5) Paragraphs (5) to (7) of Article 6 shall have effect for the purposes of this Article as if for references to that Article there were substituted references to this Article; and—

- (a) in Article 7 (1) the reference to the purposes of Article 6 (2) shall be construed as including a reference to the purposes of paragraphs (2) and (3) of this Article; and
- (b) in relation to a person charged under this paragraph with such an offence as is mentioned in paragraph (3) of Article 7, that paragraph shall have effect as if for the reference to Article 6 (1) there were substituted a reference to paragraph (1) of this Article.

N. E. Leigh,
Clerk of the Privy Council.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the law relating to rape by restricting the evidence which may be given at trials for rape offences and by providing for anonymity of complainants and defendants in rape offence cases.

