



# Sexual Offences (Amendment) Act 1992

## 1992 CHAPTER 34

### **1 Anonymity of victims of certain offences**

- (1) Where an allegation has been made that an offence to which this Act 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 England and Wales in a written publication available to the public; or
  - (b) be included in a relevant programme for reception in England and Wales, if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.
- (2) Where a person is accused of an offence to which this Act applies, no matter likely to lead members of the public to identify a person as the person against whom the offence is alleged to have been committed ("the complainant") shall during the complainant's lifetime—
  - (a) be published in England and Wales in a written publication available to the public; or
  - (b) be included in a relevant programme for reception in England and Wales.
- (3) Subsections (1) and (2) are subject to any direction given under section 3.
- (4) Nothing in this section 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.

### **2 Offences to which this Act applies**

- (1) This Act applies to the following offences—
  - (a) any offence under any of the provisions of the Sexual Offences Act 1956 mentioned in subsection (2);
  - (b) any offence under section 128 of the Mental Health Act 1959 (intercourse with mentally handicapped person by hospital staff etc.);

- (c) any offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child);
  - (d) any offence under section 54 of the Criminal Law Act 1977 (incitement by man of his grand-daughter, daughter or sister under the age of 16 to commit incest with him);
  - (e) any attempt to commit any of the offences mentioned in paragraphs (a) to (d).
- (2) The provisions of the Act of 1956 are—
- (a) section 2 (procurement of a woman by threats);
  - (b) section 3 (procurement of a woman by false pretences);
  - (c) section 4 (administering drugs to obtain intercourse with a woman);
  - (d) section 5 (intercourse with a girl under the age of 13);
  - (e) section 6 (intercourse with a girl between the ages of 13 and 16);
  - (f) section 7 (intercourse with a mentally handicapped person);
  - (g) section 9 (procurement of a mentally handicapped person);
  - (h) section 10 (incest by a man);
  - (i) section 11 (incest by a woman);
  - (j) section 12 (buggery);
  - (k) section 14 (indecent assault on a woman);
  - (l) section 15 (indecent assault on a man);
  - (m) section 16 (assault with intent to commit buggery).

### 3 Power to displace section 1

- (1) If, before the commencement of a trial at which a person is charged with an offence to which this Act applies, he or another person against whom the complainant may be expected to give evidence at the trial, applies to the judge for a direction under this subsection and satisfies the judge—
- (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 judge shall direct that section 1 shall not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.
- (2) If at a trial the judge is satisfied—
- (a) that the effect of section 1 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,
- he shall direct that that section shall not apply to such matter as is specified in the direction.
- (3) A direction shall not be given under subsection (2) by reason only of the outcome of the trial.
- (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 subsection 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 section 1 shall not, by virtue of an accusation which alleges an offence to which this Act applies and is specified in the direction, apply in relation to a complainant so specified.
- (5) A direction given under any provision of this section does not affect the operation of section 1 at any time before the direction is given.
- (6) In subsections (1) and (2), “judge” means—
- (a) in the case of an offence which is to be tried summarily or for which the mode of trial has not been determined, any justice of the peace acting for the petty sessions area concerned; and
  - (b) in any other case, any judge of the Crown Court.
- (7) If, after the commencement of a trial at which a person is charged with an offence to which this Act 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 subsection (1).

#### **4 Special rules for cases of incest or buggery**

- (1) In this section—
- “section 10 offence” means an offence under section 10 of the Sexual Offences Act 1956 (incest by a man) or an attempt to commit that offence;
  - “section 11 offence” means an offence under section 11 of that Act (incest by a woman) or an attempt to commit that offence;
  - “section 12 offence” means an offence under section 12 of that Act (buggery) or an attempt to commit that offence.
- (2) Section 1 does not apply to a woman against whom a section 10 offence is alleged to have been committed if she is accused of having committed a section 11 offence against the man who is alleged to have committed the section 10 offence against her.
- (3) Section 1 does not apply to a man against whom a section 11 offence is alleged to have been committed if he is accused of having committed a section 10 offence against the woman who is alleged to have committed the section 11 offence against him.
- (4) Section 1 does not apply to a person against whom a section 12 offence is alleged to have been committed if that person is accused of having committed a section 12 offence against the person who is alleged to have committed the section 12 offence against him.
- (5) Subsection (2) does not affect the operation of this Act in relation to anything done at any time before the woman is accused.
- (6) Subsection (3) does not affect the operation of this Act in relation to anything done at any time before the man is accused.
- (7) Subsection (4) does not affect the operation of this Act in relation to anything done at any time before the person mentioned first in that subsection is accused.

## 5 Offences

- (1) If any matter is published or included in a relevant programme in contravention of section 1, the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—
- (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 section 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 subsection (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 section 1 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 section 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 section 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.
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity,
- he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) In relation to a body corporate whose affairs are managed by its members “director”, in subsection (6), means a member of the body corporate.

## 6 Interpretation etc

- (1) In this Act—
- “complainant” has the meaning given in section 1(2);
  - “picture” includes a likeness however produced;
  - “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990; 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.

- (2) For the purposes of this Act—
- (a) where it is alleged that an offence to which this Act 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.
- (3) For the purposes of this Act, a person is accused of an offence if—
- (a) an information is laid 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 section 3 to an accusation alleging an offence shall be construed accordingly.
- (4) Nothing in this Act affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or upon matter included in a relevant programme.

## **7 Courts-martial**

- (1) This Act shall have effect with the modifications set out in subsection (2) in any case where, in pursuance of any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, a person is charged with an offence to which this Act applies.
- (2) The modifications are—
- (a) any reference to a trial shall be read as a reference to a trial by court-martial;
  - (b) in section 1 after the word “Wales”, in each of the places where it occurs in subsections (1) and (2), there shall be inserted “or Northern Ireland”;
  - (c) subject to subsection (3), in section 3(1) any reference to a judge, in relation to the person charged with the offence, shall be read as a reference to the officer who is authorised to convene, or has convened, a court-martial for the trial of the offence;
  - (d) in section 3(2), any reference to a judge shall be read as a reference to the court;
  - (e) in section 5(4), the reference to the Attorney General shall be read, in the case of an offence under section 5 which is alleged to have been committed in Northern Ireland, as a reference to the Attorney General for Northern Ireland; and
  - (f) for section 6(3)(a) to (d) there shall be substituted “he is charged, in pursuance of any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, with an offence to which this Act applies”.

- (3) Where, after convening a court-martial, the officer concerned has ceased to hold the appointment by virtue of which he convened that court-martial, any reference to a judge in section 3(1) shall be read as a reference to the officer holding that appointment.
- (4) In section 36(1) of the Courts-Martial (Appeals) Act 1968 (which provides that certain powers of the Courts-Martial Appeal Court may be exercised by a single judge) after the words “section 5(1)(d) of that Act” there shall be inserted “or section 3(4) of the Sexual Offences (Amendment) Act 1992”.

## **8 Short title, commencement and extent, etc**

- (1) This Act may be cited as the Sexual Offences (Amendment) Act 1992.
- (2) This Act and the Sexual Offences Acts 1956 to 1976 may be cited together as the Sexual Offences Acts 1956 to 1992.
- (3) This section comes into force on the passing of this Act but otherwise this Act comes into force on such date as may be appointed by order made by the Secretary of State.
- (4) The power to make an order under subsection (3) shall be exercisable by statutory instrument.
- (5) Different dates may be appointed for different provisions of this Act and for different purposes.
- (6) This Act shall not extend to Scotland, except so far as it relates to courts-martial and the Courts-Martial Appeal Court.
- (7) This Act shall not extend to Northern Ireland, except so far as it relates to courts-martial and the Courts-Martial Appeal Court and to such a publication in, or such an inclusion of matter in a relevant programme for reception in, Northern Ireland as is mentioned in section 1(1) or (2) as adapted by section 7(2)(b).