

These notes refer to the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c.19) which received Royal Assent on 27 April 2022

Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual offences

Chapter 2: Anonymity and privacy

Anonymity of victims

Section 8: Extended anonymity of victims

This section amends section 1 of the Sexual Offences (Amendment) Act 1992 (the 1992 Act) to extend the existing lifelong anonymity of the alleged victim of a sexual offence, or the complainant in a sexual offence case, for a period of 25 years after the death of the alleged victim or complainant.

Lifelong anonymity is provided under the 1992 Act by prohibiting the publication, during the victim's or complainant's lifetime, of anything that would help to identify them. This section extends the reporting restrictions for a period of 25 years after their death. The sexual offences to which the provisions apply are those listed in section 2 of the 1992 Act.

Section 9: Disapplication of anonymity of victim after death

This section amends the 1992 Act by inserting new sections 3A (Disapplication of section 1 after victim's death) and 3B (Rules of Court). Section 3A(2) provides for interested parties to make application to the court for an order disapplying or modifying the reporting restrictions under amended section 1 of the 1992 Act as they apply to the prohibition of reporting anything that would lead to the identification of a victim for 25 years after their death.

Section 3A(4) clarifies that any order of the court to modify the reporting restrictions can reduce or increase the 25 year period.

Under section 3A(4) an 'interested party' means a family member or a personal representative of the deceased victim, or a person interested in publishing matters relating to the deceased victim. Sections 3A(8) and 3A(9) further define 'family member'.

Section 3A(5) places a duty on the court to make an order where an application has been made and where it is in the interests of justice or the public interest to do so. Under section 3A(6), any order made can be subsequently varied or revoked by the court on an application by an interested party, where the court is satisfied that the same tests are met.

New section 3B makes express provision for the making of Court Rules relating to the process of making applications to the court to dis-apply or modify reporting restrictions and the consideration of these applications by the court.

Section 10: Increase in penalty for breach of anonymity

This section amends section 5 of the 1992 Act to provide that a person guilty of breach of anonymity will be liable, on summary conviction, to a term of imprisonment of up to six months, or a fine not exceeding level 5 on the standard scale, or both.

Section 11: Special rules for providers of information society services

This section inserts a Schedule into the 1992 Act which sets out protections for certain online service providers from legal responsibility for illegal publication where the online service providers are a mere conduit for the relevant information, caching the information or hosting the information.

Anonymity of suspects

Section 12: Restriction on reports as to suspects of sexual offences

Subsections (1) and (2) of this section provide anonymity to a person against whom an allegation of having committed a sexual offence has been made to the police or a person who is being investigated by the police in connection with a sexual offence – ‘the suspect’. Nothing can be published that would lead to the identification of the suspect.

Subsection (5) details a list of non-exhaustive matters to which the reporting restrictions particularly apply. Subsection (3) provides that the reporting restrictions apply only up to the point of charge and sets out what constitutes a charge. Subsection (4) provides that where no charge is made, the reporting restrictions apply for the life of the suspect and for 25 years after the suspect’s death. Subsection (6) provides that the reporting restrictions will apply to a suspect regardless of whether the allegation is made, or there is a police investigation, before or after this section comes into operation.

Section 13: Meaning of sexual offence in section 12

Subsection (1) lists the offences which fall within the meaning of ‘sexual offence’ for the purposes of section 12. Subsections (2) and (3) provide that the Department can amend the meaning of ‘sexual offence’ by regulations which must be laid in draft before, and approved by a resolution of, the Assembly.

Section 14: Power to dis-apply reporting restriction

This section provides that a ‘relevant person’ can apply to a magistrates’ court to dis-apply or modify the reporting restrictions provided by section 12. During the suspect’s lifetime, ‘relevant person’ means the suspect or the Chief Constable.

After the suspect’s death, ‘relevant person’ means a family member or a personal representative of the suspect, or a person interested in publishing matters relating to the suspect.

Subsection (3) clarifies that any order of the court to modify the reporting restrictions can reduce or increase the 25 year period of anonymity provided in section 12(4) but cannot override the loss of anonymity upon charge.

Subsections (8) and (9) define what is meant by ‘a family member’. Where an application has been made, subsection (5) places a duty on the court to make an order where it is in the interests of justice or the public interest to do so. An initial order can dis-apply or modify the reporting restrictions. A further order can vary or revoke the reporting restrictions.

Section 15: Magistrates’ courts rules

This section makes express provision for the making of magistrates’ courts rules relating to the making of applications to the Court to dis-apply or modify reporting restrictions and the consideration of these applications by the Court.

Section 16: Offence relating to reporting

Subsection (1) of this section details those who are held accountable where information identifying a suspect is included in a newspaper or periodical, in a relevant programme or in any other publication. Subsections (2), (3) and (4) relate to the defences available to a person charged with the offence.

Subsection (5) provides that a person guilty of an offence is liable on summary conviction to a maximum of six months imprisonment, or to a fine not exceeding a level 5 fine on the standard scale, or to both. Proceedings for an offence can only be brought with the consent of the Director of Public Prosecutions.

Section 17: Interpretation of sections 12 to 16

This section provides interpretation of the terms ‘picture’, ‘publication’, relevant programme, ‘statutory provision’ and ‘suspect’ for the purposes of sections 12 to 16

Section 18: Consequential amendment

This section makes a consequential amendment to section 44(4)(a) of the Youth Justice and Criminal Evidence Act 1999 (restrictions on reporting alleged offences involving persons under 18). Section 44(4)(a) prohibits the publication of matters that could identify a person as involved in an offence while that person is under the age of 18.

The amendment excludes from section 44(4)(a), a suspect to whom new section 12(2) applies to ensure that the two legislative regimes do not overlap.

Exclusion from proceedings

Section 19: Serious sexual offences: exclusion of public from court

This section amends the Criminal Evidence (Northern Ireland) Order 1999 by inserting new Articles 27A to 27D to provide for the exclusion of the public from hearings of serious sexual offences tried on indictment.

New **Article 27A** (Exclusion of public from trial) imposes a duty on the court to give an exclusion direction where a person is to be tried on indictment for a serious sexual offence. The duty to give an exclusion direction also applies where the trial includes offences additional to the serious sexual offence.

Article 27A does not apply where the complainant has died. Under an exclusion direction, all persons are excluded from the court with the exception of those listed in Article 27A(2).

These are: members and officers of the court; persons directly involved in the proceedings; a relative or friend of the complainant as nominated by the complainant; a relative or friend of the accused as nominated by the accused; bona fide representatives of news gathering or reporting organisations; and any other person excepted from the exclusion direction at the discretion of the court.

Under Article 27A(5) an exclusion direction has effect from the beginning of the trial until the proceedings have been determined or abandoned and does not apply during any time when a verdict is being delivered. Article 27A(7) provides definitions for terms used in Articles 27A to 27D. These include: ‘complainant’ which means any person who is the complainant in respect of a serious sexual offence to which the trial relates; and ‘serious sexual offence’ which is defined as any offence listed in section 2(3) of the Sexual Offences (Amendment) Act 1992.

New **Article 27B** (Nomination etc. of persons to be excepted from exclusion) supplements Article 27A(2)(c) and (d) which enable nominations to be made by the complainant and the accused for a relative or friend to remain in the court. The court can specify the nominated person as excepted from the exclusion direction and therefore allowed to remain in the court. Under Article 27B(3) the court also has the power to refuse to specify the nominated person as excepted from the exclusion direction.

The court can exercise this power either on application by a party to the proceedings or the complainant, or of its own motion, where it is in the interests of justice to do so. Article 27B(5) and (6) also supplement the power of the court under Article 27A(2)(f) to except other persons from the exclusion direction. This power can be exercised either on an application or of the court’s own motion, and only where excepting the person is in the interests of justice.

New **Article 27C** (Variation of exclusion directions given under Article 27A) provides that the court may vary an exclusion direction either: by revoking the specification of a person nominated in accordance with Article 27B; by specifying a person not already specified in the exclusion direction as allowed to remain in the court; or by revoking a specification of any person previously specified by the court as being allowed to remain in the court.

Variations may be made by the court only where it is in the interests of justice to do so and either on application by a party to the proceedings or the complainant where there has been a material change of circumstances, or of its own motion.

New **Article 27D** (Exclusion directions under Article 27A: general)

Article 27D(1) requires the court to state in open court its reasons for specifying or refusing to specify persons to be excepted from an exclusion direction and varying or refusing to vary exclusion directions. The reference to ‘open court’ means the court from which the public are excluded under Article 27A.

Article 27D(4) details the provisions and the powers of the court which take precedence over an exclusion direction.

Article 27D(5) makes express provision for the making of Crown Court rules relating to the process of making applications to the court under Articles 27B and 27C.

New **Article 27E** (Exclusion of public from appeal hearing)

Article 27E imposes a duty on the court to give an exclusion direction where a hearing relating to a serious sexual offence is to be held by the Court of Appeal.

This duty applies to: an appeal or an application for leave to appeal against a conviction or sentence (or both) for a serious sexual offence; an application for leave to refer a sentence for a serious sexual offence to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (reviews of sentencing); a reference under section 36 and; an application for leave to appeal or an appeal under section 12 or 13A of the Criminal Appeal (Northern Ireland) Act 1980 (appeals against findings of not guilty on ground of insanity and unfitness to be tried).

The duty to give an exclusion direction also applies where the appeal or leave to appeal hearing includes offences additional to the serious sexual offence. Article 27E does not apply where the complainant has died.

Under an exclusion direction, all persons are excluded from the court with the exception of those listed in Article 27A(2).

Under Article 27E(5) an exclusion direction has effect from the beginning of the appeal hearing until the proceedings have been determined or abandoned and does not apply during any time when a decision is being pronounced by the court. Article 27A(7) provides definitions for ‘decisions’ of the court.

Article 27E(8) provides definitions for terms used in Articles 27E and 27F.

Article 27E(9) clarifies that a reference to an appeal in Article 27A does not include any proceedings on an application for leave to appeal, or on an application for leave to refer a sentence, that (ignoring Article 27E) are not held in open court.

New **Article 27F** (Exclusion from appeal hearings: further provision)

Article 27F(1) provides that an exclusion direction has the meaning given by Article 27A(2).

Article 27F(2) sets out the provisions in Articles 27B, 27C and 27D which apply to an exclusion direction in the Court of Appeal.

Article 27F(3) adds a further provision to the list of provisions and powers of the court detailed in Article 27D(4) which take precedence over an exclusion direction.

Article 27F(4) makes express provision for the making of Court of Appeal rules relating to the process of making applications to the court under Articles 27B and 27C.

Article 27F(5) sets out how the definitions of ‘complainant’ and ‘persons directly involved in the proceedings’, as referenced in Article 27A(7), are to be read in their application to Court of Appeal hearings.

Section 20: Guidance about Part 1

This section provides that the Department of Justice in Northern Ireland must issue guidance about the effect of Part 1 of the Act; and such other matters as the Department considers appropriate as to the criminal law or procedure relating to Part 1 in Northern Ireland.

The section specifies that the guidance must include information for the training of personnel in any public body that has functions within the Criminal Justice System in Northern Ireland that the Department considers appropriate on the effect of Part 1; and the sort of information to be obtained from them for the purpose of the assessment of the operation of the Act.

A person exercising public functions to whom the guidance relates must have regard to it in the exercise of those functions and the Department must keep any issued guidance about Part 1 under this section, under review and revise that guidance as necessary in light of review. Finally, the guidance (including any revised guidance) must be published.