



2022 CHAPTER 19

PART 1

Sexual offences

CHAPTER 2

Anonymity and privacy

Anonymity of victims

Extended anonymity of victims

8.—(1) Section 1 of the Sexual Offences (Amendment) Act 1992 (anonymity of victims of certain offences) is amended as follows.

(2) In subsection (1), for “shall during that person’s lifetime be included” substitute “shall—

- “(a) during that person’s lifetime, or
- (b) during the period of 25 years beginning with the date of that person’s death,

be included”.

(3) In subsection (2), for “shall during the complainant’s lifetime be included” substitute “shall—

- “(a) during the complainant’s lifetime, or
- (b) during the period of 25 years beginning with the date of the complainant’s death,

be included”.

Disapplication of anonymity of victim after death

9.—(1) The Sexual Offences (Amendment) Act 1992 is amended as follows.

(2) In section 1(3)(b) (anonymity of victims of certain offences), at the end insert “and

“(c) has effect subject to any order made under section 3A.”.

(3) After section 3 insert—

“3A Disapplication of section 1 after victim’s death

(1) Subsection (2) applies where matters relating to a person (“A”) are prohibited from publication by virtue of section 1(1) or (2).

(2) An interested party may after A’s death apply to a magistrates’ court for an order—

- (a) disapplying, or
- (b) modifying the application of,

section 1(1) or (2) in relation to A.

(3) For the avoidance of doubt, the modifications that may be made under subsection (2)(b) include increasing or decreasing the period mentioned in section 1(1)(b) or (2)(b) (the period during which publication is prohibited).

(4) In this section, “interested party” means—

- (a) a person who was a family member of A at the time of A’s death;
- (b) a personal representative of A;
- (c) a person interested in publishing matters relating to A which are prohibited from publication by virtue of section 1(1) or (2).

(5) On an application under subsection (2), the court must make an order under that subsection if the court is satisfied that it would be—

- (a) in the interests of justice, or
- (b) otherwise in the public interest,

to make such an order.

(6) An order made under subsection (2) may be varied or revoked by order of a magistrates’ court on the application of an interested party where the court is satisfied that it would be—

- (a) in the interests of justice, or
- (b) otherwise in the public interest,

to make such a variation or revocation.

(7) An order made under this section does not affect the operation of section 1 at any time before the order was made.

(8) In this section, “a family member of A” means—

Status: This is the original version (as it was originally enacted).

- (a) a person who at the time of A's death was—
 - (i) married to A;
 - (ii) in a civil partnership with A;
 - (iii) living with A as if a spouse;
 - (b) a relative of A.
- (9) For the purposes of this section—
- (a) “relative” means parent, child, grandparent, great-grandparent, grandchild, great-grandchild, brother, sister, uncle, great-uncle, aunt, great-aunt, nephew, great-nephew, niece or great-niece;
 - (b) a relationship of the half-blood or by affinity is to be treated as a relationship of the whole blood;
 - (c) the stepchild of a person is to be treated as that person's child.
- (10) In this section, “a person interested in publishing matters” means a person who—
- (a) wishes the matters to be included in a publication, and
 - (b) in relation to the publication, is a person mentioned in section 5(1) (persons by whom an offence relating to publishing may be committed).
- (11) In subsections (1) and (4)(c), a reference to matters being prohibited from publication includes matters being partially prohibited from publication following the making of an order under this section modifying the application of section 1(1) or (2) in relation to A.

3B Rules of Court

- (1) Rules of Court may make such provision relating to orders under section 3A as appears to the authority making them to be necessary or expedient for the purposes of that section.
- (2) Rules of Court may, in particular, make provision—
- (a) for notice of applications to be given to such persons as may be prescribed by the rules;
 - (b) for applications to be heard in private;
 - (c) as to the matters to be taken into consideration by a court in determining whether it is in the interests of justice, or the public interest, to make, vary or revoke an order under section 3A.
- (3) Nothing in subsections (1) and (2) is to be taken to affect the generality of any enactment conferring power to make Rules of Court; and no particular provision of those subsections prejudices any general provision of them.”

Increase in penalty for breach of anonymity

10.—(1) Section 5 of the Sexual Offences (Amendment) Act 1992 (offences) is amended as follows.

(2) In subsection (1) omit the words from “and liable” to “standard scale”.

(3) After subsection (1) insert—

“(1A) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.”.

Special rules for providers of information society services

11.—(1) In section 5 of the Sexual Offences (Amendment) Act 1992 (offences), at the end insert—

“(9) The Schedule contains special rules relating to providers of information society services.”.

(2) After section 8 of the Sexual Offences (Amendment) Act 1992 insert—

“SCHEDULE

Section 5(9).

OFFENCE OF BREACH OF ANONYMITY:
PROVIDERS OF INFORMATION SOCIETY SERVICES

Exceptions for mere conduits

(1) A service provider does not commit an offence under section 5 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—

- (a) initiate the transmission,
- (b) select the recipient of the transmission, or
- (c) select or modify the information contained in the transmission.

(2) For the purposes of sub-paragraph (1)—

- (a) providing access to a communication network, and
- (b) transmitting information in a communication network,

include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Status: This is the original version (as it was originally enacted).

Exception for caching

- (1) A service provider does not commit an offence under section 5 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
 - (a) is automatic, intermediate and temporary, and
 - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
 - (a) does not modify the information,
 - (b) complies with any conditions attached to having access to the information, and
 - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
 - (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

Exception for hosting

- (1) A service provider does not commit an offence under section 5 by storing information provided by a recipient of the service if—
 - (a) the service provider had no actual knowledge when the information was provided that its provision constituted an offence under section 5, or
 - (b) on obtaining actual knowledge that the information constituted such an offence, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

4. In this Schedule—

“information society service” means any service normally provided—

 - (a) for remuneration,

- (b) at a distance (namely, the service is provided without the parties being simultaneously present),
- (c) by electronic means (namely, the service is—
 - (i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and
 - (ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and
- (d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request);

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“service provider” means a person providing an information society service.”.