



2022 CHAPTER 19

PART 3

Protection from harm

CHAPTER 2

Causing or risking serious harm

**Consent to harm for sexual gratification is no defence**

27.—(1) For the purpose of determining whether a person (A) who inflicts serious harm on another person (B) is guilty of a relevant offence, it is not a defence that B consented to the infliction of the serious harm for the purpose of obtaining sexual gratification.

(2) The reference in subsection (1) to obtaining sexual gratification is to obtaining it for any person (whether for A, B or some other person).

(3) In this section—

“the 1861 Act” is the Offences Against the Person Act 1861,

“relevant offence” means any of these—

- (a) an offence under section 18 of the 1861 Act,
- (b) an offence under section 20 of the 1861 Act,
- (c) an offence (but not common assault) under section 47 of the 1861 Act,

“serious harm” means any of these—

- (a) wounding within the meaning of section 18 of the 1861 Act,
- (b) grievous bodily harm within the meaning of section 18 of the 1861 Act,
- (c) actual bodily harm within the meaning of section 47 of the 1861 Act.

(4) However, this section does not apply in the case of an offence under section 20 or 47 of the 1861 Act where—

- (a) the serious harm consists of, or is a result of, the infection of B with a sexually transmitted infection in the course of sexual activity, and
- (b) B consented to the sexual activity in the knowledge or belief that A had the sexually transmitted infection.

(5) Nothing in this section affects the operation of any rule of law, or any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954), relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

### **Offence of non-fatal strangulation or asphyxiation**

**28.—**(1) A person (A) commits an offence if the first and the second conditions are met.

(2) The first condition is that A intentionally—

- (a) applies pressure on or to the throat or neck of another person (B), or
- (b) does something to B, of any other sort, amounting to battery of B.

(3) The second condition is that A—

- (a) intends A's act to affect B's ability to breathe or the flow of blood to B's brain, or
- (b) is reckless as to whether A's act would affect B's ability to breathe or the flow of blood to B's brain.

(4) An offence under this section is committed irrespective of whether in fact A's act affects B's ability to breathe or the flow of blood to B's brain.

(5) An offence under this section can be constituted by virtue of A's act irrespective of how A's act is done (for example, by use of a hand or another part of A's body or by A making use in any way of an object of any kind).

(6) It is a defence to an offence under this section for A to show that B consented to A's act, but the defence is not available if—

- (a) B suffers serious harm as a result of A's act, and
- (b) A—
  - (i) intended A's act to cause B to suffer serious harm, or
  - (ii) was reckless as to whether A's act would cause B to suffer serious harm.

(7) No question as to B's consent to A's act may be considered for the purpose of this section unless the question is relevant in relation to the defence in this section.

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

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(8) The matter of B's consent on which the defence in this section may be based is to be taken to be shown by A if—

- (a) evidence adduced is enough to raise an issue with respect to the matter, and
- (b) the contrary with respect to the matter is not proved beyond reasonable doubt.

(9) If—

- (a) an act is done in a country or territory outside the United Kingdom,
- (b) an offence under this section would be constituted by virtue of the act if done in Northern Ireland, and
- (c) the person who does the act is a United Kingdom national or is habitually resident in Northern Ireland,

the person commits an offence under this section as if the act is done in Northern Ireland.

(10) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

(11) In this section—

“the 1861 Act” is the Offences Against the Person Act 1861,

“serious harm” means any of these—

- (a) wounding within the meaning of section 18 of the 1861 Act,
- (b) grievous bodily harm within the meaning of section 18 of the 1861 Act,
- (c) actual bodily harm within the meaning of section 47 of the 1861 Act,

“United Kingdom national” means an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of the British Nationality Act 1981.

(12) Schedule 4 contains consequential amendments in connection with this section.