
STATUTORY INSTRUMENTS

1999 No. 2789

The Criminal Evidence (Northern Ireland) Order 1999

PART IV

**PROTECTION OF COMPLAINANTS IN
PROCEEDINGS FOR SEXUAL OFFENCES**

Restriction on evidence or questions about complainant's sexual history

28.—(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

- (a) no evidence may be adduced, and
- (b) no question may be asked in cross-examination,

by or on behalf of any accused at the trial about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied—

- (a) that paragraph (3) or (5) applies, and
- (b) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

(3) This paragraph applies if the evidence or question relates to a relevant issue in the case and either—

- (a) that issue is not an issue of consent; or
- (b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or
- (c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar—

- (i) to any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused, or

- (ii) to any other sexual behaviour of the complaint which (according to such evidence) took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of paragraph (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This paragraph applies if the evidence or question—

Status: Point in time view as at 11/11/2013.

Changes to legislation: The Criminal Evidence (Northern Ireland) Order 1999, Section 28 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and
 - (b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.
- (6) For the purposes of paragraphs (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those paragraphs is capable of applying in relation to the evidence or question to the extent that it does not so relate).
- (7) Where this Article applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence—
- (a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
 - (b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.
- (8) Nothing in this Article authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this Article.

Status:

Point in time view as at 11/11/2013.

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