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STATUTORY INSTRUMENTS

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**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—

- (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.

### **Interpretation and application of Article 28**

**29.**—(1) In Article 28—

- (a) “relevant issue in the case” means any issue falling to be proved by the prosecution or defence in the trial of the accused;
  - (b) “issue of consent” means any issue whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged (and accordingly does not include any issue as to the belief of the accused that the complainant so consented);
  - (c) “sexual behaviour” means any sexual behaviour or other sexual experience, whether or not involving any accused or other person, but excluding (except in Article 28(3)(c)(i) and (5)(a)) anything alleged to have taken place as part of the event which is the subject matter of the charge against the accused; and
  - (d) subject to any order made under paragraph (2), “sexual offence” shall be construed in accordance with Article 3.
- (2) The Secretary of State may by order make such provision as he considers appropriate for adding or removing, for the purposes of Article 28, any offence to or from the offences which are sexual offences for the purposes of this Order by virtue of Article 3.
- (3) Article 28 applies in relation to the following proceedings as it applies to a trial, namely—
- (a) proceedings before a magistrates' court conducting a preliminary investigation or preliminary inquiry into an offence,
  - (b) the hearing of an application under paragraph 4(1) of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application to dismiss charge following notice of transfer of case to Crown Court),
  - (c) any hearing held, between conviction and sentencing, for the purpose of determining matters relevant to the court's decision as to how the accused is to be dealt with, and
  - (d) the hearing of an appeal,
- and references (in Article 28 or this Article) to a person charged with an offence accordingly include a person convicted of an offence.

### **Procedure on applications under Article 28**

**30.**—(1) An application for leave shall be heard in private and in the absence of the complainant.

In this Article “leave” means leave under Article 28.

(2) Where such an application has been determined, the court must state in open court (but in the absence of the jury, if there is one)—

- (a) its reasons for giving or refusing leave, and
- (b) if it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave,

and, if it is a magistrates' court, must cause those matters to be entered in the Order Book.

(3) Rules of court may make provision—

- (a) requiring applications for leave to specify, in relation to each item of evidence or question to which they relate, particulars of the grounds on which it is asserted that leave should be given by virtue of paragraph (3) or (5) of Article 28;
- (b) enabling the court to request a party to the proceedings to provide the court with information which it considers would assist it in determining an application for leave;
- (c) for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.