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Sexual Offences (Amendment) Act 1976

CHAPTER 82

ARRANGEMENT OF SECTIONS

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ELIZABETH II



Sexual Offences (Amendment) Act 1976

1976 CHAPTER 82

An Act to amend the law relating to rape.
[22nd November, 1976]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 1.—(1) For the purposes of section 1 of the Sexual Offences Act 1956 (which relates to rape) a man commits rape if— Meaning of “rape” etc. 1956 c. 69.
- (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and
 - (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it;

and references to rape in other enactments (including the following provisions of this Act) shall be construed accordingly.

(2) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.

2.—(1) If at a trial any person is for the time being charged with a rape offence to which he pleads not guilty, then, except with the leave of the judge, no evidence and no question in Restrictions on evidence at trials for rape etc.

cross-examination shall be adduced or asked at the trial, by or on behalf of any defendant at the trial, about any sexual experience of a complainant with a person other than that defendant.

(2) The judge shall not give leave in pursuance of the preceding subsection for any evidence or question except on an application made to him in the absence of the jury by or on behalf of a defendant; and on such an application the judge shall give leave if and only if he is satisfied that it would be unfair to that defendant to refuse to allow the evidence to be adduced or the question to be asked.

(3) In subsection (1) of this section "complainant" means a woman upon whom, in a charge for a rape offence to which the trial in question relates, it is alleged that rape was committed, attempted or proposed.

(4) Nothing in this section authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.

Application of s. 2 to committal proceedings, courts-martial and summary trials.

3.—(1) Where a magistrates' court inquires into a rape offence as examining justices, then, except with the consent of the court, evidence shall not be adduced and a question shall not be asked at the inquiry which, if the inquiry were a trial at which a person is charged as mentioned in subsection (1) of the preceding section and each of the accused at the inquiry were charged at the trial with the offences of which he is accused at the inquiry, could not be adduced or asked without leave in pursuance of that section.

(2) On an application for consent in pursuance of the preceding subsection for any evidence or question the court shall—

- (a) refuse the consent unless the court is satisfied that leave in respect of the evidence or question would be likely to be given at a relevant trial; and
- (b) give the consent if the court is so satisfied.

(3) Where a person charged with a rape offence is tried for that offence either by court-martial or summarily before a magistrates' court in pursuance of section 6(1) of the Children and Young Persons Act 1969 (which provides for the summary trial in certain cases of persons under the age of 17 who are charged with indictable offences) the preceding section shall have effect in relation to the trial as if—

- (a) the words "in the absence of the jury" in subsection (2) were omitted; and
- (b) for any reference to the judge there were substituted—
 - (i) in the case of a trial by court-martial for which a judge advocate is appointed, a reference to the judge advocate, and
 - (ii) in any other case, a reference to the court.

4.—(1) Subject to subsection (7)(a) of this section, after a person is accused of a rape offence no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall either be published in England and Wales in a written publication available to the public or be broadcast in England and Wales except as authorised by a direction given in pursuance of this section.

Anonymity of complainants in rape etc cases.

(2) If, before the commencement of a trial at which a person is charged with a rape offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge of the Crown Court for a direction in pursuance of this subsection and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that the preceding subsection shall not, by virtue of the accusation alleging the offence aforesaid, apply in relation to the complainant.

(3) If at a trial before the Crown Court at which a person is charged with a rape offence the judge is satisfied that the effect of subsection (1) of this section is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, he shall direct that that subsection shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given in pursuance of this subsection by reason only of an acquittal of a defendant at the trial.

(4) If a person who has been convicted of an offence and given notice of appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal, applies to the Court of Appeal for a direction in pursuance of this subsection and satisfies the Court—

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the Court shall direct that subsection (1) of this section shall not, by virtue of an accusation which alleges a rape offence and is specified in the direction, apply in relation to a complainant so specified.

(5) If any matter is published or broadcast in contravention of subsection (1) of this section, the following persons, namely—

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical ;
- (b) in the case of any other publication, the person who publishes it ; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(6) For the purposes of this section a person is accused of a rape offence if—

- (a) an information is laid alleging that he has committed a rape offence ; or
- (b) he appears before a court charged with a rape offence ;
or
- (c) a court before which he is appearing commits him for trial on a new charge alleging a rape offence ; or
- (d) a bill of indictment charging him with a rape offence is preferred before a court in which he may lawfully be indicted for the offence,

and references in this section and section 7(5) of this Act to an accusation alleging a rape offence shall be construed accordingly ; and in this section—

“ a broadcast ” means a broadcast by wireless telegraphy of sound or visual images intended for general reception, and cognate expressions shall be construed accordingly ;

“ complainant ”, in relation to a person accused of a rape offence or an accusation alleging a rape offence, means the woman against whom the offence is alleged to have been committed ; and

“ written publication ” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(7) Nothing in this section—

- (a) prohibits the publication or broadcasting, in consequence of an accusation alleging a rape offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal

arising out of, a trial at which the accused is charged with that offence; or

- (b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast;

and a direction in pursuance of this section does not affect the operation of subsection (1) of this section at any time before the direction is given.

5.—(1) In relation to a person charged with a rape offence in pursuance of any provision of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, the preceding section shall have effect with the following modifications, namely—

Provisions supplementary to s. 4.
1957 c. 53.
1955 c. 18.
1955 c. 19.

- (a) any reference to a trial or a trial before the Crown Court shall be construed as a reference to a trial by court-martial;
- (b) in subsection (1) after the word "Wales" in both places there shall be inserted the words "or Northern Ireland";
- (c) for any reference in subsection (2) to a judge of the Crown Court there shall be substituted a reference to the officer who is authorised to convene or has convened a court-martial for the trial of the offence (or, if after convening it he has ceased to hold the appointment by virtue of which he convened it, the officer holding that appointment) and for any reference in subsection (3) to such a judge there shall be substituted a reference to the court;
- (d) for any reference in subsection (4) to the Court of Appeal there shall be substituted a reference to the Courts-Martial Appeal Court; and
- (e) in subsection (6) for paragraphs (a) to (d) there shall be substituted the words "he is charged with a rape offence in pursuance of any provision of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955".

(2) If after the commencement of a trial at which a person is charged with a rape offence a new trial of the person for that offence is ordered, the commencement of any previous trial at which he was charged with that offence shall be disregarded for the purposes of subsection (2) of the preceding section.

(3) In relation to a conviction of an offence tried summarily as mentioned in section 3(3) of this Act, for references to the Court of Appeal in subsection (4) of the preceding section there shall be substituted references to the Crown Court and the reference to notice of an application for leave to appeal shall be omitted.

(4) When an offence under subsection (5) of the preceding section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

Where the affairs of a body corporate are managed by its members the preceding provisions of this subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) Proceedings for an offence under subsection (5) of the preceding section (including such an offence which is alleged to have been committed by virtue of the preceding subsection) shall not be instituted except by or with the consent of the Attorney General or, if the offence is alleged to have been committed in Northern Ireland, of the Attorney General for Northern Ireland; and where a person is charged with such an offence it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in subsection (1) of that section.

1968 c. 19.

(6) In section 31(1) of the Criminal Appeal Act 1968 (which provides that certain powers of the Court of Appeal may be exercised by a single judge) after the word "1973" there shall be inserted the words "and the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976"; and in section 36(1) of the Courts-Martial (Appeals) Act 1968 (which provides that certain powers of the Courts-Martial Appeal Court may be exercised by a single judge) after paragraph (g) there shall be inserted the words "and the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976 as adapted by section 5(1)(d) of that Act".

1968 c. 20.

Anonymity of
defendants in
rape etc cases.

6.—(1) After a person is accused of a rape offence no matter likely to lead members of the public to identify him as the person against whom the accusation is made shall either be published in England and Wales in a written publication available to the public or be broadcast in England and Wales except—

(a) as authorised by a direction given in pursuance of this section or by section 4(7)(a) of this Act as applied by subsection (6) of this section; or

(b) after he has been convicted of the offence at a trial before the Crown Court.

(2) If a person accused of a rape offence applies to a magistrates' court, before the commencement of his trial for that offence, for a direction in pursuance of this subsection, the court shall direct that the preceding subsection shall not apply to him in consequence of the accusation; and if at a trial before the Crown Court at which a person is charged with a rape offence in respect of which he has not obtained such a direction—

- (a) the judge is satisfied that the effect of the preceding subsection is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove the restriction in respect of that person; or
- (b) that person applies to the judge for a direction in pursuance of this subsection,

the judge shall direct that the preceding subsection shall not apply to that person in consequence of the accusation alleging that offence.

(3) If, before the commencement of a trial at which a person is charged with a rape offence, another person who is to be charged with a rape offence at the trial applies to a judge of the Crown Court for a direction in pursuance of this subsection and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that subsection (1) of this section shall not, by virtue of the accusation alleging the offence with which the first-mentioned person is charged, apply to him.

(4) In relation to a person charged with a rape offence in pursuance of any provision of the Naval Discipline Act 1957, 1957 c. 53. the Army Act 1955 or the Air Force Act 1955, the preceding 1955 c. 18. provisions of this section shall have effect with the following 1955 c. 19. modifications, namely—

- (a) any reference to a trial or a trial before the Crown Court shall be construed as a reference to a trial by court-martial;
- (b) after the word "Wales" in both places there shall be inserted the words "or Northern Ireland";
- (c) in subsection (2) for any reference to a judge of the Crown Court there shall be substituted a reference to the court-martial; and

(d) in subsection (2) for any reference to a magistrates' court and in subsection (3) for any reference to a judge of the Crown Court there shall be substituted a reference to the officer who is authorised to convene or has convened a court-martial for the trial of the offence or, if after convening it he has ceased to hold the appointment by virtue of which he convened it, the officer holding that appointment.

1933 c. 12.

(5) An order in pursuance of section 49 of the Children and Young Persons Act 1933 (which among other things imposes restrictions on reports of certain court proceedings concerning juveniles but authorises the court and the Secretary of State to make orders lifting the restrictions for the purpose of avoiding injustice to a juvenile) may include a direction that subsection (1) of this section shall not apply to a person in respect of whom the order is made.

(6) Subsections (5) to (7) of section 4 of this Act shall have effect for the purposes of this section as if for references to that section there were substituted references to this section ; and—

(a) in relation to a person charged as mentioned in subsection (4) of this section, section 4(6) of this Act, as applied by this subsection, shall have effect as if for paragraphs (a) to (d) there were substituted the words “ he is charged with a rape offence in pursuance of any provision of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955 ” ;

(b) in section 5(2) of this Act the reference to the purposes of section 4(2) of this Act shall be construed as including a reference to the purposes of subsections (2) and (3) of this section ; and

(c) in relation to a person charged by virtue of this subsection with such an offence as is mentioned in subsection (5) of section 5 of this Act, that subsection shall have effect as if for the reference to section 4(1) of this Act there were substituted a reference to subsection (1) of this section.

Citation,
interpretation,
commence-
ment and
extent.

7.—(1) This Act may be cited as the Sexual Offences (Amendment) Act 1976, and this Act and the Sexual Offences Acts 1956 and 1967 may be cited together as the Sexual Offences Acts 1956 to 1976.

(2) In this Act—

“ a rape offence ” means any of the following, namely rape, attempted rape, aiding, abetting, counselling and procuring rape or attempted rape, and incitement to rape ; and

references to sexual intercourse shall be construed in accordance with section 44 of the Sexual Offences Act 1956 c. 69. 1956 so far as it relates to natural intercourse (under which such intercourse is deemed complete on proof of penetration only) ;

and section 46 of that Act (which relates to the meaning of "man" and "woman" in that Act) shall have effect as if the reference to that Act included a reference to this Act.

(3) In relation to such a trial as is mentioned in subsection (2) of section 1 of this Act which is a trial by court-martial or a summary trial by a magistrates' court, references to the jury in that subsection shall be construed as references to the court.

(4) This Act shall come into force on the expiration of the period of one month beginning with the date on which it is passed, except that sections 5(1)(b) and 6(4)(b) shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(5) Sections 2 and 3 of this Act shall not have effect in relation to a trial or inquiry which begins before the expiration of that period and sections 4 and 6 of this Act shall not have effect in relation to an accusation alleging a rape offence which is made before the expiration of that period.

(6) This Act, except so far as it relates to courts-martial and the Courts-Martial Appeal Court, shall not extend to Scotland and this Act, except so far as it relates to courts-martial and the Courts-Martial Appeal Court (including such a publication or broadcast in Northern Ireland as is mentioned in section 4(1) as adapted by section 5(1)(b) and section 6(1) as adapted by section 6(4)(b)), shall not extend to Northern Ireland.

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