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### **Increasing restrictions on reporting people accused of sexual offences- Developments in Northern Ireland and the Isle of Man.**

This media law and ethics guide first published and released 22<sup>nd</sup> April 2024.

**New legislation in Northern Ireland passed which makes it a criminal offence to report anything leading to the identification of persons suspected of sexual offences prior to charge. This legislation came into force 28th September 2023**

[The Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) has provisions across Sections 12 to 18 which criminalise any publication leading to the identification of people accused of sexual offences unless they are charged by investigating police. This mirrors the UK legislation anonymising teachers prior to charge.

However, it is unique in extending the anonymity for people accused of sexual offences for 25 years after their deaths. The legislation is also different from the rest of the UK in extending anonymity for 25 years after the deaths of sexual offence complainants.

Anyone wishing to discharge these restrictions has to make an application to a Magistrates Court and this includes living sexual offence complainants and anyone accused of such crimes who has not been charged.

The legislation was given Royal Assent 27th April 2022 and Sections 1 to 11, 12 to 18, and 19 have been commenced and became applicable law 28th September 2023.

See: Sexual offences: changes in privacy and anonymity protections for victims and suspects at: <https://www.justice-ni.gov.uk/news/sexual-offences-changes-privacy-and-anonymity-protections-victims-and-suspects>



## Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

2022 CHAPTER 19

An Act to make provision about and in connection with sexual offences; regulate particular matters relating to cases of trafficking or exploitation; and amend certain rules of law and procedure for the purpose of protecting people from harm. [27th April 2022]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

These unusual statutory provisions are the result of the Northern Ireland Assembly taking into account the recommendations of [Sir John Gillen's report in 2019](#) who investigated the law and serious sexual offences in Northern Ireland.

[The report itself is 714 pages](#) and takes many original and internationally law comparative approaches to the issues investigated. At this stage it is useful to mark the following proposed changes that are particularly relevant to journalists and publishers:

[Section 8.](#) Sexual offence complainants in Northern Ireland will have additional anonymity beyond their lifetime- 'during the period of 25 years beginning with the date of the complainant's death...'

[Section 9.](#) During the 25 years following the sexual complainant's death, interested parties may apply to a magistrates court to disapply or vary the anonymity. These would include 'persons interested in publishing matters', the late complainant's representative, or a family member. The court would have the power to revoke and vary the anonymity:

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

[Section 10.](#) Penalties for breaching the anonymity are a maximum of 6 months imprisonment and/or a Level 5 fine which used to be £5,000 but after legislative change in 2015 became unlimited.

[Section 12.](#) Statutory anonymity for anyone suspected of having committed a sexual offence in Northern Ireland unless charged by the police. 'No matter relating to the suspect is to be included in any publication if it is likely to lead members of the public to identify the suspect as a person who is alleged to have, or is suspected of having, committed the offence.'

The legislation when commenced will be retrospective. The anonymity will last '25 years beginning with the date of the suspect's death. Information protected includes:

- a)the suspect's name;
- (b)the suspect's address;
- (c)the identity of any school or other educational establishment attended by the suspect;
- (d)the identity of any place of work;
- (e)any still or moving picture of the suspect.

[Section 13.](#) This section sets out the sexual offences that apply and includes abuse of position of trust, possession of extreme pornographic images, and possession of a paedophile manual.

[Section 14.](#) This section sets out how the restriction can be disapplied during the suspects' lifetimes and 25 years after their deaths.

This legislation indicates that journalists and publishers cannot rely on the written consent of the suspect. Both suspect or the Chief Constable of Police Service Northern Ireland have the only *locus standi* to make the application while the suspect is alive. Following the suspect's death 'a person interested in publishing matters', representative of the suspect or a member of the suspect's family are able to apply to the Magistrates Court to disapply or vary the duration of the anonymity within the 25 year period.

#### [Anonymity of suspects- Sections 11 to 18 inclusive](#)

[Section 19.](#) This provides the courts in Northern Ireland trying sexual offences and any appeal arising to exclude the public from the proceedings. An exception to the exclusion includes 'bona fide representatives of news gathering or reporting organisations.'

Northern Ireland's Department of Justice provided the following '**Media guidance for editors: Legislative changes for information**' on 28th September 2023.

(i) **Extended Anonymity of Victim and Complainants** - [Sections 8 to 11 of the Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) (external link opens in a new window / tab) ('the SOTV Act'). Currently, under the Sexual Offences (Amendment) Act 1992 publication of anything that would help identify the victim or complainant of a sexual offence is prohibited during their lifetime. The SOTV Act amends the 1992 Act to extend these reporting restrictions for 25 years after their death. From commencement on 28 September 2023, anonymity for 25 years after their death will apply to all living victims or complainants of sexual offences regardless of when the sexual offence took place. Where a victim or complainant has died 25 years or less before the commencement date, the extended anonymity will apply. The penalty for breach of anonymity has been increased to up to 6 months' imprisonment and applies to both lifelong and extended anonymity after the death of the victim. Applications can be made to the magistrates' court to dis-apply or modify the reporting restrictions after death.

(ii) **Anonymity of the Suspect** [Sections 12 to 18](#) (external link opens in a new window / tab) of, and [Schedule 3](#) (external link opens in a new window / tab). These provisions allow for the anonymity of the suspect in a sexual offence case up to the point of their charge. Where a suspect is not subsequently charged, his or her anonymity will be protected during their lifetime and for 25 years after their death. Under the new law, it will be an offence to publish anything that would lead to the identification of the suspect, punishable with up to six months' imprisonment. A suspect is defined as a person against whom an allegation of having committed a sexual offence has been made to the police or whom the police are investigating in connection with a sexual offence but where no allegation has been made. Once a suspect has been charged with a sexual offence the protection of anonymity ends. On commencement on 28 September 2023, the anonymity provisions will apply retrospectively. Applications to dis-apply or modify the reporting restrictions can be made to the magistrates' court.

(iii) **Exclusion of the public from Crown Court** - [Section 19 Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) (external link opens in a new window / tab) Where a sexual offence case is tried on indictment in the Crown Court, only certain persons are allowed to remain in the court. Before the trial, the court must make an exclusion direction which will specify those who are allowed to remain in the court. Under an exclusion direction, all persons are excluded from the court with the exception of those as prescribed in the SOTV Act:

- Members and officers of the court;
- Persons directly involved in the proceedings. This includes: the complainant, the accused, legal representatives acting in the proceedings, any witness while giving evidence in the proceedings, any person acting in the capacity of an interpreter or other person appointed to assist a witness or an accused and members of the jury;
- A relative or friend of the complainant nominated by the complainant and specified in the direction. Only one person may be nominated. A relative or friend of the accused nominated by the accused and specified in the direction. Only one person may be nominated;
- Bona fide representatives of news gathering or reporting organisations;
- Any other person specified in the direction as a person excepted from the exclusion.

Where the complainant in the sexual offence case has died before the start of the trial an exclusion direction does not apply. An exclusion direction has effect from the beginning of the trial until the proceedings, in respect of each serious sexual offence to which the trial relates, have been determined (by acquittal, conviction or otherwise) or abandoned. If the trial continues in respect of other non-sexual offences, the exclusion direction no longer applies. The exclusion direction does not apply during any time when a verdict is being delivered in relation to the accused. The public are allowed to be in the court when a verdict is being delivered.

(iv) **Exclusion of the public from appeal hearings – [\(external link opens in a new window / tab\)](#)Section 19 Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022**[\(external link opens in a new window / tab\)](#). The provisions also place a duty on the Court of Appeal to make an exclusion direction before the start of an appeal hearing or a hearing on an application for leave to appeal against a conviction or sentence (or both) for a serious sexual offence. The exclusion provisions do not apply to proceedings on applications for leave to appeal which are considered by a single judge mechanism on papers submitted. With the exception of the following, the guidance above on exclusion of the public from the Crown Court also applies to the exclusion of the public from appeal hearings:

- Where the complainant has died before the start of the hearing, an exclusion direction does not apply. Where the complainant has died after the hearing has commenced, the exclusion direction continues to apply;
- The exclusion direction does not apply when the following decisions of the court are being pronounced: A decision to grant or refuse leave to appeal; a decision on an appeal; a decision to grant or refuse leave for the Director of Public Prosecutions (DPP) to make a reference on the grounds of undue leniency; a decision on a reference on the grounds of undue leniency by the DPP.'

The media lawyer Sam Brookman analysed the commencement of the Northern Ireland legislation for the regular Jaffa Law Column at Hold The Front Page 3<sup>rd</sup> October 2023 'NI takes lead on anonymity for sexual offence suspects.'

See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-ni-takes-lead-on-anonymity-for-sexual-offence-suspects/>

She made the point that statutory anonymity for sexual offence suspects does not substantially change the law because since the sequence of privacy cases such as Richard v BBC, Sicri v Associated Newspapers and ZXC v Bloomberg, the UK Supreme Court consolidated the precedent of the reasonable expectation of privacy for all crime suspects.

However, she points out 'the main difference created by the statutory measures in Northern Ireland is that the potential penalty for publishers is far more severe – a criminal conviction and up to 6 months in prison' and 'The right to claim civil damages will not have been affected.' That is not the case in the Scottish jurisdiction though.

While recognising a laudable aim in ‘victims to have greater confidence in the criminal justice system’ Sam Brookman raises the issue ‘what price open justice? Some might be asking whether the NI Assembly [has] gone too far and forgotten the importance of open justice. And is this just a start, with this Act being a precedent which the other home countries will follow?’

The commencement of these new and unique laws applying in Northern Ireland has attracted some critical coverage in other journalistic publications.

Mail Online 29th September 2023 'New anonymity law for suspected sex offenders which would have made it illegal to call Jimmy Savile a paedophile comes into force in Northern Ireland.'

See: <https://www.dailymail.co.uk/news/article-12572853/New-anonymity-law-paedophiles-Northern-Ireland.html>

Belfast Telegraph 28th September 2023 'New laws granting anonymity to suspects in sexual offence cases come into force in NI.'

See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/new-laws-granting-anonymity-to-suspects-in-sexual-offence-cases-come-into-force-in-ni/a1224888762.html>

Belfast Telegraph 29th September 2023 "New NI anonymity laws ‘would have prevented reporting of Savile allegations”

See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/new-ni-anonymity-laws-would-have-prevented-reporting-of-savile-allegations/a146787537.html>

The application of this new law from the end of September 2023 has been manifesting problems and increasing anxieties for journalists in Northern Ireland and these may well have implications for journalists in the rest of the United Kingdom.

Media lawyer Tony Jaffa addressed some of these in his media law column for *Hold The Front Page* on 7<sup>th</sup> March 2024 titled: ‘Anonymity for sexual offence suspects in NI – and the ‘law’ of unintended consequences.’

See: <https://www.holdthefrontpage.co.uk/2024/news/law-column-anonymity-for-sexual-offence-suspects-in-ni-and-the-law-of-unintended-consequences/>

He outlined one of the ‘unintended consequences’:

‘Northern Ireland has seen quite a few historic child abuse cases, often perpetrated by former clergymen. In at least one instance, the perpetrator died decades ago; his victims have formed a support group which remains active to this day; the Church has acknowledged the man’s offending, for which it has apologised; and compensation has been paid to the victims.

And yet.... because the man died prematurely and so could not be prosecuted, he cannot now be identified, even though the victim's support group and the Church held a public service of reconciliation, and it is obviously in the public interest to identify him.

And to make matters worse, the man in question has been widely identified over the last two decades (before the 2022 Act came into force) because he was such a notorious and prolific offender.'

Experienced journalists and editors did warn the Northern Ireland legislators of the difficulties these new restrictions would bring.

While it is true that a publisher could apply to the Magistrates Court for the prohibition to be lifted, with the implosion of the local weekly and regional media industry it is not likely many publishers would have the professional time and financial sources to invest in making such applications which always carry the risk of incurring additional legal costs if opposed and unsuccessful.

In the case of the notorious priest, the Northern Irish publication was compelled to remain silent and not report a significant local event with strong public interest- the church service for his victims.

This would have led to the identification of the dead man. Mr Jaffa concluded his column with the wise words of the old homily: '...the road to Hell is paved with good intentions.'

The distinguished legal commentator Joshua Rozenberg investigated the new law in his Substack column on December 14<sup>th</sup> 2023 with the question: 'Jimmy Savile was a paedophile But does a new law allow me to say that?'

See: <https://rozenberg.substack.com/p/jimmy-savile-was-a-paedophile>

Somewhat worryingly, he concluded that it does not. While the law applies only to accusations of sexual offence crimes in Northern Ireland, at first, it might seem discussion about Jimmy Savile as a dead paedophile never brought to court is wholly permissible because all of his alleged crimes took place in the other UK legal jurisdictions.

But Mr Rozenberg revealed that a report from HM Inspectorate of Constabulary in 2013 states categorically that an allegation against Savile was made to the then Royal Ulster Constabulary during his lifetime, but the police did not follow it up.

As he died in 2011, the 25-year protection applies. Successful prosecutions of journalists could carry a maximum imprisonment of six months imprisonment. Rozenberg explained that the legal jeopardy here is dependent on the discretion of the Director of Public Prosecutions in Northern Ireland.

He further highlighted the problem that the act enables relatives of deceased persons accused of sexual offences but never charged to extend or reduce the 25-year anonymity protection. He also argued that Sir John Gillen's report never recommended extending anonymity for suspects. He had only made it in relation to complainants. Apparently

legislators were told that he had though nobody has been able to establish how this misunderstanding arose.

BBC Northern Ireland, Chris Buckler 14<sup>th</sup> December 2023: 'Jimmy Savile victim says new NI law could protect sex offenders

See: <https://www.bbc.co.uk/news/uk-northern-ireland-67710314>

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### **Isle of Man Sexual Offences legislation enshrines anonymity for defendants unless and until found guilty as well as complainants**

The Sexual Offences and Obscene Publication Act Isle of Man 2021 makes it a criminal offence to publish anything which could lead to the identification of a sexual offence defendant until convicted. (See:

[https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2021/2021-0010/SexualOffencesandObscenePublicationsAct2021\\_1.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2021/2021-0010/SexualOffencesandObscenePublicationsAct2021_1.pdf))

This makes the Isle of Man legal jurisdictional approach to sex offence defendants unique in the British Islands. The relevant part of the act is set out in Sections 139 to 146. The legislation includes a 'backstop' provision that allows a judge to lift the naming ban in the public interest if it is judged to be a 'substantial and unreasonable' restriction on the reporting of the court proceedings.

The anonymity clause only applies to the Manx media, and the same case could be covered without restriction in the UK press. However, the risk of 'jigsaw identification', where readers can piece together the information of a case from two different media sources, means Isle of Man media may decide to avoid covering a case because the missing details reported elsewhere makes them liable.

Section 140 of this act 'Anonymity of suspects and defendants alleged to have committed certain offences. Non-statutory guidance explaining the changes brought by Part 8 regarding Anonymity and the effect these changes have in connection with reporting of sexual offences proceedings' was implemented and came into force on March 25<sup>th</sup> 2024.

See BBC News 25<sup>th</sup> March 2024: 'Tougher sexual offences laws come into force' at <https://www.bbc.co.uk/news/articles/c9947e7ljr5o>

It should go without saying that this legislation also provides lifelong anonymity for anyone who complains of being the victim of a sexual offence from the time they make the accusation.

The legislation mirrors UK law at Section 139(1) when it states: 'no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead

members of the public to identify that person as the person against whom the offence is alleged to have been committed.'

Under 139(4) the matters 'include in particular — (a) the person's name; (b) the person's address; (c) the identity of any school or other educational establishment attended by the person; (d) the identity of any place of work; and (e) any still or moving picture of the person.'

This provision could make it a potential offence to include a pixelated still or film purportedly concealing identity because there may be remaining features which are identifiable to somebody who may know the victim/complainant. Section 146 defines 'picture' as to include 'a likeness however produced.'

The Act also provides the power to additionally grant anonymity to witnesses in sexual offence trials. Section 142 sets out offences to which the anonymity restrictions can be applied and states the reasons and circumstances under Section 143 and 144 where they could be varied and lifted by order of the court. The list has been extended to include the criminal offences of revenge porn and upskirting.

The legislation was considered controversial and the debate generated is covered in the articles 'Anonymity law will lead to cases going unreported' 12th November 2020 at <https://www.iomtoday.co.im/news/courts/anonymity-law-will-lead-to-cases-going-unreported-238097> and 'Defendants accused of rape to have identity protected' 11th December 2019 at <https://www.iomtoday.co.im/news/politics/defendants-accused-of-rape-to-have-identity-protected-231894>

UK British media need to be conscious of the potential legal position of a news website which part covered Isle of Man news. When the legislation was scrutinised by the Tynwald a spokesman for the Department of Home Affairs said: 'If the website had an Isle of Man presence and an article naming a defendant on it was published, the bill talks about the editor having committed an offence, and the penalties are specified.'

See Isle of Man Government media release: 'New sexual offence laws come into effect today' at: <https://www.gov.im/news/2024/mar/25/new-sexual-offence-laws-come-into-effect-today/>

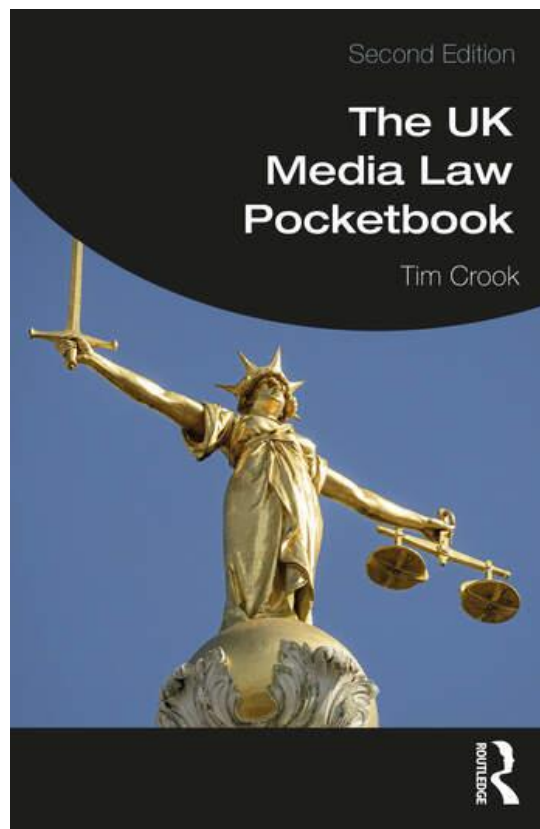
It could be argued that the Isle of Man is making the same mistake as England and Wales when anonymity for men accused of rape offences was extended to them at section 6 of the Sexual Offences Amendment Act of 1976.

See: <https://www.legislation.gov.uk/ukpga/1976/82/enacted>

This lasted until it was abolished by Section 158 of the Criminal Justice Act of 1988, largely because it was under intense criticism from rape victim groups and police forces.

See: <https://www.legislation.gov.uk/ukpga/1988/33/section/158>

The police felt unable to engage with media publicity when seeking fugitives from rape offences. The most notorious case history concerned Arthur Hutchinson who escaped from police custody at Selby police station 28<sup>th</sup> September 1983. Three and a half weeks later he broke into a house in Sheffield and murdered a married couple and their 28 year-old son, as well as raping the couple 18 year-old daughter. The family had hosted the wedding reception of their other daughter only hours earlier. Hutchinson remains in prison where he is serving a whole life tariff despite unsuccessful appeals to be released at the European Court of Human Rights.



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

*The UK Media Law Pocketbook* is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

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