
STATUTORY INSTRUMENTS

1982 No. 1536 (N.I. 19)

NORTHERN IRELAND

The Homosexual Offences (Northern Ireland) Order 1982

Laid before Parliament in draft

Made 27th October 1982

Coming into Operation 9th December 1982

ARRANGEMENT OF ORDER

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At the Court of Saint James, the 27th day of October 1982

Present,

The Counsellors of State in Council

Whereas Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 30th day of September 1982, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and Her Royal Highness The Princess Margaret, Countess of Snowdon, being authorised thereto by the said Letters Patent, and in pursuance of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other

powers enabling Her Majesty in that behalf, and by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Homosexual Offences (Northern Ireland) Order 1982.

(2) This Order shall come into operation on the expiration of 6 weeks from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (a) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Act of 1861” means the Offences against the Person Act 1861 (b);

“the Act of 1885” means the Criminal Law Amendment Act 1885 (c);

“the Order of 1981” means the Magistrates' Courts (Northern Ireland) Order 1981 (d);

“homosexual act”, in relation to a man, means buggery with another man, an act of gross indecency with another man or the act of being a party to the commission by a man of such an act;

“man” includes boy;

“statutory provision” has the meaning given by section 1 (f) of the Interpretation Act (Northern Ireland) 1954.

Homosexual acts in private

3.—(1) Subject to Article 4 (mental patients) and Article 5 (merchant seamen), and notwithstanding any other statutory provision or any rule of law, a homosexual act in private shall not be an offence if the parties consent thereto and have attained the age of 21 years.

(2) An act which would otherwise be treated for the purposes of this Order as being done in private shall not be so treated if done—

(a) when more than 2 persons take part or are present; or

(b) in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise.

(3) A man who is a person requiring special care within the meaning of the Mental Health Act (Northern Ireland) 1961 (e), cannot in law give any consent which, by virtue of paragraph (1), would prevent a homosexual act from being an offence; but a person shall not be convicted, on account of the incapacity of such a man to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that man to be a person requiring special care.

(4) Paragraph (1) shall not prevent an act from being an offence under any provision of the Army Act 1955 (f), the Air Force Act 1955 (g) or the Naval Discipline Act 1957 (h).

(5) It is hereby declared that where in any proceedings it is charged that a homosexual act is an offence the prosecutor shall have the burden of proving that the act was done otherwise than in private or otherwise than with the consent of the parties or that any of the parties had not attained the age of 21 years.

(a) 1954 c. 33 (N.I.). (b) 1861 c. 100. (c) 1885 c. 69. (d) S.I. 1981/1675 (N.I. 26).
(e) 1961 c. 15 (N.I.). (f) 1955 c. 18. (g) 1955 c. 19. (h) 1957 c. 53.

Mental patients

4. In the Mental Health Act (Northern Ireland) 1961 the following section shall be inserted after section 100—

“Homosexual
acts with
patients.

100A.—(1) If—

(a) a man who is—

- (i) an officer on the staff of, or otherwise employed in, a hospital or private hospital, or
- (ii) a member of the Health and Social Services Board administering a hospital, or
- (iii) a person carrying on a private hospital,

commits a homosexual act with or in relation to a man who is for the time being receiving treatment for mental disorder in that hospital, or commits a homosexual act on the premises of which the hospital forms part with or in relation to a man who is for the time being receiving such treatment there as an out-patient; or

(b) a man who—

- (i) is the guardian of another man for the purposes of this Act or otherwise has another man who is suffering from mental disorder in his custody or care under this Act or the Health and Personal Social Services (Northern Ireland) Order 1972 (a), or
- (ii) is a member of a Health and Social Services Board which is the guardian of a man for the purposes of this Act or otherwise has a man who is suffering from mental disorder in its custody or care under this Act or that Order,

commits a homosexual act with or in relation to that man; he shall, subject to the exception mentioned in subsection (2), be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 2 years.

(2) A person shall not be guilty of an offence under this section if he proves that he did not know and had not any reason to suspect that the man in respect of whom he is charged was suffering from mental disorder.

(3) If any person is charged with an offence under this section further proceedings on the charge shall not be taken against him except by or with the consent of the Director of Public Prosecutions.

(4) In this section—

“man” includes a boy;

“homosexual act”, in relation to a man, means buggery with another man, an act of gross indecency with another man or the act of being a party to the commission by a man of such an act.”

(a) S.I. 1972/1265 (N.I. 14).

Homosexual acts on merchant ships

5.—(1) It shall continue to be—

(a) an offence under section 61 of the Act of 1861 and at common law for a man to commit buggery with another man in circumstances in which by reason of the provisions of Article 3 it would not be an offence (apart from this Article); and

(b) an offence under section 11 of the Act of 1885 for a man to commit an act of gross indecency with another man, or to be party to the commission by a man of such an act, in such circumstances as aforesaid;

if the act charged is done on a United Kingdom merchant ship, wherever it may be, by a man who is a member of the crew of that ship with another man who is a member of the crew of that or any other United Kingdom merchant ship.

(2) Section 7 of the Criminal Justice Act (Northern Ireland) 1945 (a) (venue in indictable offences) shall apply to an act which is an offence by virtue of this Article as if it were an offence when done on land.

(3) In this Article—

“member of the crew” in relation to a ship, includes the master of the ship and any apprentice to the sea service serving in that ship;

“United Kingdom merchant ship” means a ship registered in the United Kingdom habitually used or used at the time of the act charged for the purposes of carrying passengers or goods for reward.

Revised punishment for homosexual acts

6.—(1) The maximum punishment which may be imposed on conviction on indictment of a man for buggery with another man of or over the age of 16 years shall, instead of being imprisonment for life as prescribed by section 61 of the Act of 1861, be—

(a) imprisonment for a term of 10 years except where the other man consented thereto; and

(b) in the said excepted case, imprisonment for a term of 5 years if the accused is of or over the age of 21 years and the other man is under that age, but otherwise 2 years.

(2) The maximum punishment which may be imposed on conviction on indictment of a man of attempting to commit buggery with another man of or over the age of 16 years shall, instead of the period of imprisonment mentioned in section 62 of the Act of 1861 (10 years), be the same as that fixed by paragraph (1) for the offence of buggery.

(3) The maximum punishment which may be imposed on conviction on indictment of a man of or over the age of 21 years of committing an act of gross indecency with another man under that age or of being a party to or procuring or attempting to procure the commission by a man under that age of such an act with another man shall, instead of being imprisonment for a term of 2 years as prescribed by section 11 of the Act of 1885, be imprisonment for a term of 5 years.

(4) References in this Article to a person's age, in relation to any offence, are references to his age at the time of the commission of the offence.

(a) 1945 c. 15 (N.I.).

Procuring others to commit homosexual acts

7.—(1) A man who procures another man to commit with a third man an act of buggery which by reason of Article 3 is not an offence shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years.

(2) It shall not be an offence under section 11 of the Act of 1885 for a man to procure the commission by another man of an act of gross indecency with the first-mentioned man which by reason of Article 3 is not an offence under the said section 11.

Living on earnings of male prostitution

8. A man who knowingly lives wholly or in part on the earnings of prostitution of another man, and a woman who knowingly lives wholly or in part on the earnings of prostitution of a man, shall be guilty of an offence and shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding 6 months; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 7 years.

Premises resorted to for homosexual practices

9. Premises shall be treated for purposes of section 13 of the Act of 1885 and section 5 of the Criminal Law Amendment Act 1912 (a) as a brothel if people resort to it for the purpose of lewd homosexual practices in circumstances in which resort thereto for lewd heterosexual practices would have led to its being treated as a brothel for the purposes of those sections.

Time limit on prosecutions

10.—(1) No proceedings for an offence to which this Article applies shall be commenced after the expiration of 12 months from the date on which that offence was committed.

(2) This Article applies to—

- (a) any offence under section 11 of the Act of 1885 (gross indecency between men);
- (b) any offence under section 1 (1)(b) of the Vagrancy Act 1898 (b) (soliciting and importuning by men for immoral purposes) where the immoral purpose is the commission of a homosexual act;
- (c) any offence of buggery by a man with another man not amounting to an assault on that other man and not being an offence by a man with a boy under the age of 16 years.

Restriction on prosecutions

11.—(1) Without prejudice to section 12 of the Criminal Jurisdiction Act 1975 (c) (arrest and remand of alleged offender), no proceedings shall be initiated or carried on except by or with the consent of the Director of Public Prosecutions against any man for the offence of buggery with, or gross indecency with, another man, for attempting to commit either offence, or for aiding, abetting, counselling, procuring or commanding its commission where either of those men was at the time of its commission under the age of 21 years.

(2) Paragraph (1) does not apply to proceedings under any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or to proceedings under section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (d) (indecent conduct towards child).

(a) 1912 c. 20.

(b) 1898 c. 39.

(c) 1975 c. 59.

(d) 1968 c. 34 (N.I.).

Choice of mode of trial for certain offences

12.—(1) A man charged before a court of summary jurisdiction with an offence under section 1 (1) (b) of the Vagrancy Act 1898 (soliciting or importuning by men for immoral purposes) where the immoral purpose is the commission of a homosexual act shall be entitled to claim under Article 29 of the Order of 1981 to be tried by jury.

(2) An offence under—

(a) section 11 of the Act of 1885 (gross indecency between men);

(b) Article 7 (1) (procuring another to commit buggery with a third man);

shall be included among the offences specified in Schedule 2 to the Order of 1981 (indictable offences which may be dealt with summarily upon consent of the accused).

Past offences

13.—(1) Except as provided by paragraphs (2) and (3), Articles 3, 6, and 7, Article 14 so far as it applies to paragraphs 1, 2 and 4 of the Schedule and those paragraphs shall have effect in relation to acts done before the commencement of this Order as they have effect in relation to acts done after its commencement.

(2) Except as provided by paragraph (3), this Order shall not have effect in relation to any act which is, or apart from this Order would be, an offence where the defendant to an indictment for that offence has been committed for trial before the commencement of this Order.

(3) Paragraphs (1) and (2) shall not operate to increase the punishment for any offence committed before the commencement of this Order.

Consequential amendments

14. The statutory provisions specified in the Schedule shall have effect subject to the respective amendments there specified.

N. E. Leigh,
Clerk of the Privy Council.

Article 14.

SCHEDULE

AMENDMENTS

Offences against the Person Act 1861 (c. 100)

1. In section 61 for the words from “shall be liable” onwards substitute—
“shall be liable—

(a) where the offence was committed with a boy who at the time of the commission of the offence was under the age of 16 years or with a woman or girl or an animal, to imprisonment for life;

(b) otherwise, to the relevant punishment prescribed by Article 6 (1) of the Homosexual Offences (Northern Ireland) Order 1982.”.

2. In section 62 after “crime” insert “with a boy who at the time of the commission of the offence was under the age of 16 years or with a woman or girl or an animal”, for “the same” substitute “that crime”, and at the end insert “; and a man who attempts to commit buggery with a boy who at the aforesaid time was of or over the age of 16 years or with another man shall be liable to the relevant punishment prescribed by Article 6 (1) and (2) of the Homosexual Offences (Northern Ireland) Order 1982”.

Criminal Law Amendment Act 1885 (c. 69)

3. In section 11 for the words from “shall be guilty” onwards substitute—
“shall be guilty of an offence and shall be liable on conviction—

- (a) where he was, at the time of the commission of the offence, of or over the age of 21 years and the male person with whom the act of gross indecency was committed, or was attempted to be procured, was under that age, to imprisonment for a term not exceeding five years;
- (b) otherwise, to imprisonment for a term not exceeding two years.”.

4. At the end of section 11 insert—

“(2) It is not an offence under this section for a man to procure or attempt to procure the commission by another man of an act of gross indecency with the first-mentioned man which by reason of Article 3 of the Homosexual Offences (Northern Ireland) Order 1982 is not an offence under this section.”.

Children and Young Persons Act (Northern Ireland) 1968 (c. 34)

5. In section 58 (4) (e) for “101” substitute “100A or 101”.

6. In Schedule 1 in the entry relating to the Mental Health Act (Northern Ireland) 1961 for “101” substitute “100A or 101”.

*Magistrates’ Courts (Northern Ireland) Order 1981
(S.I. 1981/1675 (N.I. 26))*

7. In Article 29 (1) after “six months” insert “or with an offence under section 1 (1) (b) of the Vagrancy Act 1898 (soliciting or importuning by men for immoral purposes) where the immoral purpose is the commission of a homosexual act”.

8. In Schedule 2—

(a) before paragraph 6 insert—

“5A. Offences under section 11 of the Criminal Law Amendment Act 1885.”;

(b) at the end insert—

“16. Offences under Article 7 (1) of the Homosexual Offences (Northern Ireland) Order 1982.”.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the law of Northern Ireland by causing homosexual acts between two consenting male adults in private to cease to be criminal offences. There are exceptions for mental patients, members of the forces and merchant seamen. The maximum punishments for certain homosexual offences are in some cases reduced and in others increased. The Order makes it an offence for a man to procure the commission of buggery between two other men and for a man or a woman knowingly to live on the earnings of male prostitution or to be concerned in the keeping of a homosexual brothel.

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