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STATUTORY INSTRUMENTS

1989 No. 1341

The Police and Criminal Evidence (Northern Ireland) Order 1989

PART IX

EVIDENCE IN CRIMINAL PROCEEDINGS—GENERAL

Miscellaneous

Exclusion of unfair evidence

76.—(1) In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this Article shall—

- (a) prejudice any rule of law requiring a court to exclude evidence; ^{F1} . . .
- (b) ^{F1}

<p>F1 Art. 76(2)(b) and the word immediately preceding repealed (19.2.2006) by Terrorism (Northern Ireland) Act 2006 (c. 4), s. 5(2)(3), Sch.</p>
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Time for taking accused's evidence

77. If at the trial of any person for an offence—

- (a) the defence intends to call two or more witnesses to the facts of the case; and
- (b) those witnesses include the accused,

the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

Abolition of right of accused to make unsworn statement

78.—(1) Subject to paragraphs (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if he gives evidence, he shall do so^{F2} on oath and be liable to cross#examination; but this Article shall not affect the right of the accused, if not represented by counsel or a solicitor, to address the court or jury otherwise than on oath on any matter on which, if he were so represented, counsel or a solicitor could address the court or jury on his behalf.

(2) Nothing in paragraph (1) shall prevent the accused making a statement without being sworn—

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- (a) if it is one which he is required by law to make personally; or
- (b) if he makes it by way of mitigation before the court passes sentence upon him.
- (3) Nothing in this Article shall apply—
 - (a) to a trial which began before the day of the coming into operation of this Article; or
 - (b) to proceedings before a magistrates' court, where—
 - (i) the court, in conducting a preliminary investigation, began to hear the evidence for the prosecution (other than a deposition relating to the arrest or remand of the accused) before that day, or
 - (ii) the court began to conduct a preliminary inquiry before that day.

F2 prosp. insertion by 1999 NI 8

^{F3}**Competence and compellability of accused's spouse^{F4} or civil partner]**

79.—^{F5}(1) In any criminal proceedings the wife or husband of the accused shall be competent to give evidence—

- (a) subject to paragraph (4), for the prosecution; and
- (b) on behalf of the accused or any person jointly charged with the accused.

^{F6}(2) In any criminal proceedings the^{F7} spouse or civil partner] of the accused shall, subject to paragraph (4), be compellable to give evidence on behalf of the accused.

^{F6}(3) In any criminal proceedings the^{F7} spouse or civil partner] of the accused shall, subject to paragraph (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if and only if—

- (a) the offence charged involves an assault on, or injury or a threat of injury to, the^{F7} spouse or civil partner] of the accused or a person who was at the material time under the age of seventeen; or
- (b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub# paragraph (a) or (b).

^{F6}(4) Where a husband and wife are jointly charged with an offence neither spouse shall at the trial be competent or compellable by virtue of paragraph (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(5) In any criminal proceedings a person who has been but is no longer married to the accused shall be^{F8} competent and compellable to give evidence as if that person and the accused had never been married.

[^{F4}(5A) In any criminal proceedings a person who has been but is no longer the civil partner of the accused shall be compellable to give evidence as if that person and the accused had never been civil partners.]

(6) Where in any criminal proceedings the age of any person at any time is material for the purposes of paragraph (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

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^{F5}(7) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

(8) Proviso (d) in section 1 of the Criminal Evidence Act (Northern Ireland) 1923^{F9} (communications between husband and wife) and section 7(2) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951^{F10} so far as it is unrepealed (evidence as to marital intercourse) shall cease to have effect.

- F3** prosp. rep. by 1999 NI 8
- F4** 2004 c. 33
- F5** prosp. rep. by 1999 NI 8
- F6** prosp. subst. by 1999 NI 8
- F7** 2004 c. 33
- F8** prosp. rep. by 1999 NI 8
- F9** 1923 c. 9 (NI)
- F10** 1951 c. 7 (NI)

Modifications etc. (not altering text)

- C1** Art. 79(3)(c) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94(1), **Sch. 6 para. 17** (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)**

VALID FROM 04/05/2010

[^{F11} Rule where accused's spouse [^{F12} or civil partner] not compellable

79A. The failure of the [^{F13} spouse or civil partner] of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.]

- F11** Art. 79A inserted (4.5.2010) by Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)), arts. 1(2), 40(1), Sch. 1 para. 3(5); S.R. 2010/142, **art. 2**, Sch. paras. 2, 5(1)(b)
- F12** Words in art. 79A inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(3), 263(10)(d), **Sch. 29 para. 89(b)**; S.I. 2005/3255, art. 2(1)(2), **Sch.**
- F13** Words in art. 79A substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(3), 263(10)(d), **Sch. 29 para. 89(a)**; S.I. 2005/3255, art. 2(1)(2), **Sch.**

Advance notice of expert evidence in Crown Court

80.—(1) Crown Court rules may make provision for—

- (a) requiring any party to criminal proceedings before the court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and
- (b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of sub#paragraph (a) from adducing that evidence without the leave of the court.

(2) Crown Court rules made by virtue of this Article may specify the kinds of expert evidence to which they apply and may exempt facts or matters of any description specified in the rules.

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VALID FROM 13/11/2006

[^{F14}Evidence through live links

80A.—(1) In this Article live link means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by—

- (a) the judge and the jury (if there is one);
- (b) legal representatives acting in the proceedings; and
- (c) any interpreter or other person appointed to assist the witness.

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

(3) Where the court gives leave, a witness[^{F15} (other than the accused)] who is outside the United Kingdom may give evidence through a live link in proceedings to which this Article applies.

(4) This Article applies—

- (a) to preliminary investigations or preliminary inquiries into indictable offences;
- (b) to trials on indictment;
- (c) to appeals to the Court of Appeal; and
- (d) to hearings of references under section 10 of the Criminal Appeal Act 1995 (c. 35).

(5) A statement made on oath by a person outside the United Kingdom and given in evidence through a link by virtue of this Article shall be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 (NI 19) as having been made in the proceedings in which it is given in evidence.

(6) Where in proceedings before a magistrates' court—

- (a) evidence is given by means of a live link by virtue of this Article, but
- (b) suitable facilities for receiving such evidence are not available at any court-house in which that court can (apart from this paragraph) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at a place designated by the Lord Chancellor[^{F16}, after consultation with the Lord Chief Justice,] as a place having facilities to receive evidence given through a live link.

(7) Without prejudice to any power to make such rules, magistrates' courts rules, Crown Court rules and rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(8) References in this Article to a person being able to see or hear, or be seen or heard by, another person are to be taken as not applying to the extent that either of them is unable to see or hear by reason of any impairment of sight or hearing.

[^{F17}(9) In this Article, “judge” includes, in relation to a magistrates' court, resident magistrate.]]

F14 Art. 80A inserted (13.11.2006) by [Criminal Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/1247 \(N.I. 13\)\)](#), arts. 1(3), 31; S.R. 2006/451, **art. 2**

F15 Words in art. 80A(3) inserted (18.9.2006) by [Criminal Justice \(Northern Ireland\) Order 2005 \(S.I. 2005/1965 \(N.I. 15\)\)](#), arts. 1(2), 24(1)(a); S.R. 2006/368, **art. 2(b)**

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- F16** Words in art. 80A(6) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 78; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(a)
- F17** Art. 80A(9) added (18.9.2006) by Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15)), arts. 1(2), 24(1)(b); S.R. 2006/368, art. 2(b)

Evidence through television links

F1881.—(1) A person other than the accused may give evidence through a live television link^{F19} in proceedings to which paragraph (1A) applies] if—

- (a) the witness is in Northern Ireland; and
- (b) the witness—
 - (i) will not give evidence otherwise through fear, or
 - (ii) is^{F19} a child, or is to be cross-examined following the admission under Article 81A of a video recording of testimony from him, and the offence] is one to which paragraph (3) applies.

^{F19}(1A) This paragraph applies—

- (a) to preliminary investigations or preliminary inquiries into indictable offences, to trials on indictment, appeals to the Court of Appeal and hearings of references under^{F20} section 10 of the Criminal Appeal Act 1995];
 - (b) except in a case where paragraph (1)(b)(i) applies, to proceedings in^{F21} magistrates] courts and^{F20}, appeals to the county court arising out of such proceedings and hearings of references under section 12 of the Criminal Appeal Act 1995 so arising]; and
 - (c) in a case to which paragraph (1)(b)(i) applies, to proceedings in juvenile courts being preliminary investigations or preliminary inquiries into indictable offences.]
- (2) Evidence may not be given through a link by virtue of this Article without leave of the court.
- (3) This paragraph applies—
- (a) to an offence which involves an assault on, or injury or threat of injury to, a person;
 - (b) to an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968^{F22};
 - (c) to a sexual offence^{F19}. . . ; and
 - (d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub# paragraph (a), (b) or (c).

^{F23}(3A) Where the court gives leave under paragraph (2) for a witness falling within paragraph (1) (b)(ii) to give evidence through a live television link, then, subject to paragraph (3B), the witness concerned may not give evidence otherwise than through a live television link.

(3B) In a case falling within paragraph (3A) the court may give permission for the witness to give evidence otherwise than through a live television link if it appears to the court to be in the interests of justice to give such permission.

(3C) Permission may be given under paragraph (3B)—

- (a) on an application by a party to the case, or
- (b) of the court's own motion;

but no application may be made under sub-paragraph (a) unless there has been a material change of circumstances since the leave was given under paragraph (2).]

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(4) Subject to Article 89, the Secretary of State may by order—

(a) direct that this Article shall apply—

(i) to a witness falling within head (i) or (ii) of paragraph (1)(b) who is in Great Britain, or

(ii) to any witness who is outside the United Kingdom; and

(b) provide that a statement made on oath by such a witness and given in evidence through a link by virtue of this Article shall be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979^{F24} as having been made in the proceedings in which it is given in evidence.

(5) Without prejudice to the generality of any statutory provision conferring power to make rules to which this paragraph applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(6) The rules to which paragraph (5) applies are—

(a) magistrates' courts rules;

[^{F19}(aa) county court rules;]

(b) Crown Court rules; and

(c) rules of court.

(7) Where, at a [^{F19} preliminary investigation or a preliminary inquiry into an indictable offence or in proceedings before a [^{F21} magistrates] court or on an appeal to the county court arising out of such proceedings], a court grants leave for evidence to be given through a link by virtue of this Article—

(a) that court may, notwithstanding anything in [^{F19} any statutory provision adjourn the investigation, inquiry, proceedings or appeal, as the case may require] and order that it be held at such time and at such designated place as may be specified in the order; and

(b) a court sitting at a designated place shall, by virtue of this paragraph, have jurisdiction^{F19} . . . to deal with an offence in relation to which an investigation [^{F19} or inquiry or any proceedings or appeal] is so adjourned.

(8) In paragraph (7) “designated place” means any place designated under this paragraph by the Lord Chancellor [^{F25}, after consultation with the Lord Chief Justice,] as a place having facilities to receive evidence given through a link by virtue of this Article.

[^{F19}(9) Paragraph (7) of Article 81A shall apply for the purposes of this Article as it applies for the purposes of that Article, but with the omission of the references to a person being, in the cases there mentioned, under the age of 15 years or under the age of 18 years.]

F18 Art. 81 repealed (30.6.2003 and 1.12.2003 for certain purposes, otherwise prosp.) by [Criminal Evidence \(Northern Ireland\) Order 1999 \(S.I. 1999/2789 \(N.I. 8\)\)](#), arts. 1(2), 40(3), **Sch. 3**; S.R. 2003/323, art. 2, **Sch.**; S.R. 2003/476, **art. 2**

F19 1995 NI 3

F20 1995 c. 35

F21 1998 NI 9

F22 1968 c. 34 (NI)

F23 Art. 81(3A)-(3C) inserted (4.7.1996 with application as mentioned in s. 62(3) of the amending Act) by [Criminal Procedure and Investigations Act 1996 \(c. 25\)](#), s. 62(1) (as modified in its application to Northern Ireland by Sch. 4 para. 25)

F24 1979 NI 19

F25 Words in art. 81(8) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(2), 148(1), Sch. 5 para. 79; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(a)

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[^{F26}Video recordings of testimony from child witnesses

^{F27}81A.—(1) This Article applies in relation to the following proceedings, namely—

- (a) trials on indictment for any offence to which Article 81(3) applies;
- (b) appeals to the Court of Appeal and hearings of references under [^{F28} section 10 of the Criminal Appeal Act 1995] in respect of any such offence; and
- (c) proceedings in [^{F29} magistrates] courts for any such offence [^{F28}, appeals to the county court arising out of such proceedings and hearings of references under section 12 of the Criminal Appeal Act 1995 so arising].

(2) In any such proceedings a video recording of an interview which—

- (a) is conducted between an adult and a child who is not the accused or one of the accused (“the child witness”); and
- (b) relates to any matter in issue in the proceedings,

may, with the leave of the court, be given in evidence in so far as it is not excluded by the court under paragraph (3).

(3) Where a video recording is tendered in evidence under this Article, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give leave under paragraph (2) unless—

- (a) it appears that the child witness will not be available for cross-examination;
- (b) any rules to which this paragraph applies requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
- (c) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording ought not to be admitted;

and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.

(4) In considering whether any part of a recording ought to be excluded under paragraph (3), the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(5) Where a video recording is admitted under this Article—

- (a) the child witness shall be called by the party who tendered it in evidence;
- (b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with adequately in his recorded testimony.

(6) Where a video recording is given in evidence under this Article, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly—

- (a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;
- (b) no such statement shall be capable of corroborating any other evidence given by him;

and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).

[
^{F30}(6A) Where the court gives leave under paragraph (2) the child witness shall not give relevant evidence (within the meaning given by paragraph (6D)) otherwise than by means of the video recording; but this is subject to paragraph (6B).

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(6B) In a case falling within paragraph (6A) the court may give permission for the child witness to give relevant evidence (within the meaning given by paragraph (6D)) otherwise than by means of the video recording if it appears to the court to be in the interests of justice to give such permission.

(6C) Permission may be given under paragraph (6B)—

- (a) on an application by a party to the case, or
- (b) of the court's own motion;

but no application may be made under sub-paragraph (a) unless there has been a material change of circumstances since the leave was given under paragraph (2).

(6D) For the purposes of paragraphs (6A) and (6B) evidence is relevant evidence if—

- (a) it is evidence in chief on behalf of the party who tendered the video recording, and
- (b) it relates to matter which, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under paragraph (3).]

(7) In this Article “child” means a person who—

- (a) in the case of an offence falling within Article 81(3)(a) or (b), is under 14 years of age or, if he was under that age when the video recording was made, is under 15 years of age; or
- (b) in the case of an offence falling within Article 81(3)(c), is under 17 years of age or, if he was under that age when the video recording was made, is under 18 years of age.

(8) Any reference in paragraph (7) to an offence falling within sub-paragraph (a), (b) or (c) of Article 81(3) includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.

(9) In this Article—

“statement” includes any representation of fact, whether made in words or otherwise;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

(10) A magistrates' court conducting a preliminary investigation or a preliminary inquiry may consider any video recording as respects which leave under paragraph (2) is to be sought at the trial, notwithstanding that the child witness is not called at the committal proceedings.

(11) Without prejudice to the generality of any statutory provision conferring power to make rules to which this paragraph applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(12) Nothing in this Article shall prejudice the admissibility of any video recording which would be admissible apart from this Article.

(13) The rules to which paragraphs (3)(b) and (11) apply are—

- (a) Crown Court rules;
- (b) rules of court;
- (c) county court rules; and
- (d) magistrates' courts rules.]

F26 1995 NI 3

F27 Art. 81A repealed (30.6.2003 for certain purposes, 1.12.2003 for certain purposes, otherwise prosp.) by Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)), arts. 1(2), 40(3), **Sch. 3**; S.R. 2003/323, art. 2, **Sch.**; S.R. 2003/476, **art. 2**

F28 1995 c. 35

F29 1998 NI 9

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F30 Art. 81A(6A)-(6D) inserted (4.7.1996 with application as mentioned in s. 62(3) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 62(2) (as modified in its application to Northern Ireland by Sch. 4 para. 25)

Art. 81B rep. by 1999 NI 8

Status:

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