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STATUTORY INSTRUMENTS

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**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; or
- (b) affect, in proceedings such as are mentioned in subsection (1) of section 8 of the Northern Ireland (Emergency Provisions) Act 1978<sup>(1)</sup>, the admissibility under that section of a statement made by the accused.

**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 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—

- (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.

### **Competence and compellability of accused's spouse**

**79.**—(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.

(2) In any criminal proceedings the wife or husband of the accused shall, subject to paragraph (4), be compellable to give evidence on behalf of the accused.

(3) In any criminal proceedings the wife or husband 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 wife or husband 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).

(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 competent and compellable to give evidence as if that person and the accused had never been married.

(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.

(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(2) (communications between husband and wife) and section 7(2) of the Law Reform (Miscellaneous

Provisions) Act (Northern Ireland) 1951<sup>(3)</sup> so far as it is unrepealed (evidence as to marital intercourse) shall cease to have effect.

### **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.

### **Evidence through television links**

**81.**—(1) A person other than the accused may give evidence through a live television link at a preliminary investigation into an indictable offence, at a trial on indictment or on an appeal to the Court of Appeal or the hearing of a reference under section 14 of the Criminal Appeal (Northern Ireland) Act 1980<sup>(4)</sup> if—

- (a) the witness is in Northern Ireland; and
- (b) the witness—
  - (i) will not give evidence otherwise through fear, or
  - (ii) is under the age of 14 and the offence charged is one to which paragraph (3) applies.

(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<sup>(5)</sup>;
- (c) to a sexual offence which is tried on indictment; 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).

(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<sup>(6)</sup> as having been made in the proceedings in which it is given in evidence.

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(3) 1978 c. 5  
(4) 1923 c. 9 (N.I.)  
(5) 1951 c. 7 (N.I.)  
(6) 1980 c. 47

(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;
- (b) Crown Court rules; and
- (c) rules of court.

(7) Where, at a preliminary investigation into an indictable offence, a court grants leave for evidence to be given through a link by virtue of this Article—

- (a) that court may, notwithstanding anything in the Magistrates' Courts (Northern Ireland) Order 1981(7) adjourn the investigation 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 for the purposes of Article 16(1)(d) of that Order to deal with an offence in relation to which an investigation is so adjourned.

(8) In paragraph (7) “designated place” means any place designated under this paragraph by the Lord Chancellor as a place having facilities to receive evidence given through a link by virtue of this Article.