
STATUTORY INSTRUMENTS

2004 No. 1501

The Criminal Justice (Evidence) (Northern Ireland) Order 2004

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Criminal Justice (Evidence) (Northern Ireland) Order 2004.

(2) The following provisions of this Order shall come into operation on the expiration of one month from the day on which this Order is made—

- (a) this Part;
- (b) Article 16;
- (c) Article 35; and
- (d) Articles 44 and 45.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order, “statutory provision” has the meaning assigned to it by section 1(f) of that Act.

PART II
EVIDENCE OF BAD CHARACTER

Introductory

“Bad character”

3. References in this Part to evidence of a person’s “bad character” are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which—

- (a) has to do with the alleged facts of the offence with which the defendant is charged, or
- (b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

Abolition of common law rules

4.—(1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Paragraph (1) is subject to Article 22(1) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purposes of proving his bad character.

Persons other than defendants

Non-defendant's bad character

5.—(1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if—

- (a) it is important explanatory evidence,
- (b) it has substantial probative value in relation to a matter which—
 - (i) is a matter in issue in the proceedings, and
 - (ii) is of substantial importance in the context of the case as a whole, or
- (c) all parties to the proceedings agree to the evidence being admissible.

(2) For the purposes of paragraph (1)(a) evidence is important explanatory evidence if—

- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
- (b) its value for understanding the case as a whole is substantial.

(3) In assessing the probative value of evidence for the purposes of paragraph (1)(b) the court must have regard to the following factors (and to any others it considers relevant)—

- (a) the nature and number of the events, or other things, to which the evidence relates;
- (b) when those events or things are alleged to have happened or existed;
- (c) where—
 - (i) the evidence is evidence of a person's misconduct, and
 - (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,

the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;

- (d) where—
 - (i) the evidence is evidence of a person's misconduct,
 - (ii) it is suggested that that person is also responsible for the misconduct charged, and
 - (iii) the identity of the person responsible for the misconduct charged is disputed,the extent to which the evidence shows or tends to show that the same person was responsible each time.

(4) Except where paragraph (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.

Defendants

Defendant's bad character

6.—(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—

- (a) all parties to the proceedings agree to the evidence being admissible,
- (b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,
- (c) it is important explanatory evidence,
- (d) it is relevant to an important matter in issue between the defendant and the prosecution,
- (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
- (f) it is evidence to correct a false impression given by the defendant, or
- (g) the defendant has made an attack on another person's character.

(2) Articles 7 to 11 contain provisions supplementing paragraph (1).

(3) The court must not admit evidence under paragraph (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that 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.

(4) On an application to exclude evidence under paragraph (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

“Important explanatory evidence”

7. For the purposes of Article 6(1)(c) evidence is important explanatory evidence if—

- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
- (b) its value for understanding the case as a whole is substantial.

“Matter in issue between the defendant and the prosecution”

8.—(1) For the purposes of Article 6(1)(d) the matters in issue between the defendant and the prosecution include—

- (a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;
- (b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.

(2) Where paragraph (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of—

- (a) an offence of the same description as the one with which he is charged, or
- (b) an offence of the same category as the one with which he is charged.

(3) Paragraph (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.

- (4) For the purposes of paragraph (2)—
- (a) two offences are of the same description as each other if the statement of the offence in a complaint or indictment would, in each case, be in the same terms;
 - (b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this Article by an order made by the Secretary of State.
- (5) A category prescribed by an order under paragraph (4)(b) must consist of offences of the same type.
- (6) Only prosecution evidence is admissible under Article 6(1)(d).

“Matter in issue between the defendant and a co-defendant”

9.—(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under Article 6(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant’s defence.

- (2) Only evidence—
- (a) which is to be (or has been) adduced by the co-defendant, or
 - (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,

is admissible under Article 6(1)(e).

“Evidence to correct a false impression”

- 10.—(1) For the purposes of Article 6(1)(f)—
- (a) the defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;
 - (b) evidence to correct such an impression is evidence which has probative value in correcting it.
- (2) A defendant is treated as being responsible for the making of an assertion if—
- (a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him),
 - (b) the assertion was made by the defendant—
 - (i) on being questioned under caution, before charge, about the offence with which he is charged, or
 - (ii) on being charged with the offence or officially informed that he might be prosecuted for it,
 and evidence of the assertion is given in the proceedings,
 - (c) the assertion is made by a witness called by the defendant,
 - (d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or
 - (e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

(3) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.

(4) Where it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.

(5) In paragraph (4) “conduct” includes appearance or dress.

(6) Evidence is admissible under Article 6(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under Article 6(1)(f).

“Attack on another person’s character”

11.—(1) For the purposes of Article 6(1)(g) a defendant makes an attack on another person’s character if—

- (a) he adduces evidence attacking the other person’s character,
- (b) he (or any legal representative appointed under Article 26(4) of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or
- (c) evidence is given of an imputation about the other person made by the defendant—
 - (i) on being questioned under caution, before charge, about the offence with which he is charged, or
 - (ii) on being charged with the offence or officially informed that he might be prosecuted for it.

(2) In paragraph (1) “evidence attacking the other person’s character” means evidence to the effect that the other person—

- (a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one), or
- (b) has behaved, or is disposed to behave, in a reprehensible way;

and “imputation about the other person” means an assertion to that effect.

(3) Only prosecution evidence is admissible under Article 6(1)(g).

Stopping the case where evidence contaminated

12.—(1) If on a defendant’s trial before a judge and jury for an offence—

- (a) evidence of his bad character has been admitted under any of sub-paragraphs (c) to (g) of Article 6(1), and
- (b) the court is satisfied at any time after the close of the case for the prosecution that—
 - (i) the evidence is contaminated, and
 - (ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, his conviction of the offence would be unsafe,the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

- (a) a jury is directed under paragraph (1) to acquit a defendant of an offence, and
- (b) the circumstances are such that, apart from this paragraph, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in paragraph (1)(b) in respect of it.

(3) If—

- (a) a jury is required to determine under Article 49A(2) of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#) whether a person charged on an indictment with an offence did the act or made the omission charged,
- (b) evidence of the person's bad character has been admitted under any of sub-paragraphs (c) to (g) of Article 6(1), and
- (c) the court is satisfied at any time after the close of the case for the prosecution that—
 - (i) the evidence is contaminated, and
 - (ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This Article does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

(5) For the purposes of this Article a person's evidence is contaminated where—

- (a) as a result of an agreement or understanding between the person and one or more others, or
- (b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,

the evidence is false or misleading in any respect, or is different from what it would otherwise have been.

Offences committed by a defendant when a child

13.—(1) In proceedings for an offence committed or alleged to have been committed by the defendant when aged 21 or over, evidence of his conviction for an offence when under the age of 14 is not admissible unless—

- (a) both of the offences are triable only on indictment, and
- (b) the court is satisfied that the interests of justice require the evidence to be admissible.

(2) Paragraph (1) applies in addition to Article 6.

General

Assumption of truth in assessment of relevance or probative value

14.—(1) Subject to paragraph (2), a reference in this Part to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true.

(2) In assessing the relevance or probative value of an item of evidence for any purpose of this Part, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter), that no court or jury could reasonably find it to be true.

Court's duty to give reasons for rulings

15.—(1) Where the court makes a relevant ruling—

- (a) it must state in open court (but in the absence of the jury, if there is one) its reasons for the ruling;
 - (b) if it is a magistrates' court, it must cause the ruling and the reasons for it to be entered in the Order Book.
- (2) In this Article “relevant ruling” means—
- (a) a ruling on whether an item of evidence is evidence of a person’s bad character;
 - (b) a ruling on whether an item of such evidence is admissible under Article 5 or 6 (including a ruling on an application under Article 6(3));
 - (c) a ruling under Article 12.

Rules of court

16.—(1) Rules of court may make such provision as appears to the appropriate authority to be necessary or expedient for the purposes of this Order; and the appropriate authority is the authority entitled to make the rules.

(2) The rules may, and, where the party in question is the prosecution, must, contain provision requiring a party who—

- (a) proposes to adduce evidence of a defendant’s bad character, or
- (b) proposes to cross-examine a witness with a view to eliciting such evidence,

to serve on the defendant such notice, and such particulars of or relating to the evidence, as may be prescribed.

(3) The rules may provide that the court or the defendant may, in such circumstances as may be prescribed, dispense with a requirement imposed by virtue of paragraph (2).

(4) In considering the exercise of its powers with respect to costs, the court may take into account any failure by a party to comply with a requirement imposed by virtue of paragraph (2) and not dispensed with by virtue of paragraph (3).

(5) Nothing in this Article prejudices the generality of any statutory provision conferring power to make rules of court; and no particular provision of this Article prejudices any general provision of it.

(6) In this Article—

“prescribed” means prescribed by rules of court;

“rules of court” means—

- (a) Crown Court rules;
- (b) rules of court made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23);
- (c) county court rules; and
- (d) magistrates' courts rules.

Interpretation of Part II

17.—(1) In this Part—

“bad character” is to be read in accordance with Article 3;

“criminal proceedings” means criminal proceedings in relation to which the strict rules of evidence apply;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings; and “co-defendant”, in relation to a defendant, means a person charged with an offence in the same proceedings;

“important matter” means a matter of substantial importance in the context of the case as a whole;

“misconduct” means the commission of an offence or other reprehensible behaviour;

“Order Book” means the Order Book required to be kept under rule 19 of the [Magistrates' Courts Rules \(Northern Ireland\) 1984 \(SR 1984 No. 225\)](#);

“probative value”, and “relevant” (in relation to an item of evidence), are to be read in accordance with Article 14;

“prosecution evidence” means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution.

(2) Where a defendant is charged with two or more offences in the same criminal proceedings, this Part (except Article 6(3)) has effect as if each offence were charged in separate proceedings; and references to the offence with which the defendant is charged are to be read accordingly.

(3) Nothing in this Part affects the exclusion of evidence—

- (a) under the rule in section 3 of the Criminal Procedure Act 1865 (c. 18) against a party impeaching the credit of his own witness by general evidence of bad character,
- (b) under Article 28 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (restriction on evidence or questions about complainant’s sexual history), or
- (c) on grounds other than the fact that it is evidence of a person’s bad character.

PART III

HEARSAY EVIDENCE

Hearsay: main provisions

Admissibility of hearsay evidence

18.—(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if—

- (a) any provision of this Part or any other statutory provision makes it admissible,
- (b) any rule of law preserved by Article 22 makes it admissible,
- (c) all parties to the proceedings agree to it being admissible, or
- (d) the court is satisfied that it is in the interests of justice for it to be admissible.

(2) In deciding whether a statement not made in oral evidence should be admitted under paragraph (1)(d), the court must have regard to the following factors (and to any others it considers relevant)—

- (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
- (b) what other evidence has been, or can be, given on the matter or evidence mentioned in sub-paragraph (a);
- (c) how important the matter or evidence mentioned in sub-paragraph (a) is in the context of the case as a whole;
- (d) the circumstances in which the statement was made;

- (e) how reliable the maker of the statement appears to be;
- (f) how reliable the evidence of the making of the statement appears to be;
- (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
- (h) the amount of difficulty involved in challenging the statement;
- (i) the extent to which that difficulty would be likely to prejudice the party facing it.

(3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

Statements and matters stated

19.—(1) In this Part references to a statement or to a matter stated are to be read as follows.

(2) A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.

(3) A matter stated is one to which this Part applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been—

- (a) to cause another person to believe the matter, or
- (b) to cause another person to act or a machine to operate on the basis that the matter is as stated.

Principal categories of admissibility

Cases where a witness is unavailable

20.—(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if—

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,
- (b) the person who made the statement (“the relevant person”) is identified to the court’s satisfaction, and
- (c) any of the five conditions mentioned in paragraph (2) is satisfied.

(2) The conditions are—

- (a) that the relevant person is dead;
- (b) that the relevant person is unfit to be a witness because of his bodily or mental condition;
- (c) that the relevant person is outside the United Kingdom and it is not reasonably practicable to secure his attendance;
- (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken;
- (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of paragraph (2)(e) “fear” is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

(4) Leave may be given under paragraph (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard—

- (a) to the statement’s contents,

- (b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence),
 - (c) in appropriate cases, to the fact that a direction under Article 7 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (special measures direction relating to eligible witness) could be made in relation to the relevant person, and
 - (d) to any other relevant circumstances.
- (5) A condition set out in any sub-paragraph of paragraph (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that sub-paragraph are caused—
- (a) by the person in support of whose case it is sought to give the statement in evidence, or
 - (b) by a person acting on his behalf,
- in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

Business and other documents

21.—(1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if—

- (a) oral evidence given in the proceedings would be admissible as evidence of that matter,
 - (b) the requirements of paragraph (2) are satisfied, and
 - (c) the requirements of paragraph (5) are satisfied, in a case where paragraph (4) requires them to be.
- (2) The requirements of this paragraph are satisfied if—
- (a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office,
 - (b) the person who supplied the information contained in the statement (“the relevant person”) had or may reasonably be supposed to have had personal knowledge of the matters dealt with, and
 - (c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in sub-paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.
- (3) The persons mentioned in sub-paragraphs (a) and (b) of paragraph (2) may be the same person.
- (4) The additional requirements of paragraph (5) must be satisfied if the statement—
- (a) was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation, but
 - (b) was not obtained pursuant to a request under section 7 of the Crime (International Co-operation) Act 2003 (c. 32) or an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988 (c. 33) (which relate to overseas evidence).
- (5) The requirements of this paragraph are satisfied if—
- (a) any of the five conditions mentioned in Article 20(2) is satisfied (absence of relevant person etc), or
 - (b) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he supplied the information and all other circumstances).

(6) A statement is not admissible under this Article if the court makes a direction to that effect under paragraph (7).

(7) The court may make a direction under this paragraph if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of—

- (a) its contents,
- (b) the source of the information contained in it,
- (c) the way in which or the circumstances in which the information was supplied or received, or
- (d) the way in which or the circumstances in which the document concerned was created or received.

Preservation of certain common law rules in relation to hearsay

22.—(1) The following rules of law are preserved.

Public information, etc.

- (1) Any rule of law under which in criminal proceedings—
 - (a) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,
 - (b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them,
 - (c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them, or
 - (d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

Reputation as to character

(2) Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his good or bad character.

Note

The rule is preserved only so far as it allows the court to treat such evidence as proving the matter concerned.

Reputation or family tradition

(3) Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving—

- (a) pedigree or the existence of a marriage,
- (b) the existence of any public or general right, or
- (c) the identity of any person or thing.

Note

The rule is preserved only so far as it allows the court to treat such evidence as proving or disproving the matter concerned.

Res gestae

(4) Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if—

- (a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded,
- (b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement, or
- (c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

Confessions, etc.

(5) Any rule of law relating to the admissibility of confessions or mixed statements in criminal proceedings.

Admissions by agents, etc.

- (6) Any rule of law under which in criminal proceedings—
 - (a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated, or
 - (b) a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated.

Common enterprise

(7) Any rule of law under which in criminal proceedings a statement made by a party to a common enterprise is admissible against another party to the enterprise as evidence of any matter stated.

Expert evidence

(8) Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to his field.

(2) With the exception of the rules preserved by this Article, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.

Inconsistent statements

- 23.**—(1) If in criminal proceedings a person gives oral evidence and—
- (a) he admits making a previous inconsistent statement, or
 - (b) a previous inconsistent statement made by him is proved by virtue of section 3, 4 or 5 of the Criminal Procedure Act 1865 (c. 18),

the statement is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(2) If in criminal proceedings evidence of an inconsistent statement by any person is given under Article 28(2)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

Other previous statements of witnesses

24.—(1) This Article applies where a person (“the witness”) is called to give evidence in criminal proceedings.

(2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

- (3) A statement made by the witness in a document—
 - (a) which is used by him to refresh his memory while giving evidence,

- (b) on which he is cross-examined, and
 - (c) which as a consequence is received in evidence in the proceedings,
- is admissible as evidence of any matter stated of which oral evidence by him would be admissible.
- (4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if—
- (a) any of the following three conditions is satisfied, and
 - (b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.
- (5) The first condition is that the statement identifies or describes a person, object or place.
- (6) The second condition is that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.
- (7) The third condition is that—
- (a) the witness claims to be a person against whom an offence has been committed,
 - (b) the offence is one to which the proceedings relate,
 - (c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence,
 - (d) the complaint was made as soon as could reasonably be expected after the alleged conduct,
 - (e) the complaint was not made as a result of a threat or a promise, and
 - (f) before the statement is adduced the witness gives oral evidence in connection with its subject matter.
- (8) For the purposes of paragraph (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

Supplementary

Additional requirement for admissibility of multiple hearsay

25.—(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless—

- (a) either of the statements is admissible under Article 21, 23 or 24,
- (b) all parties to the proceedings so agree, or
- (c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

(2) In this Article “hearsay statement” means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.

Documents produced as exhibits

26.—(1) This Article applies if on a trial before a judge and jury for an offence—

- (a) a statement made in a document is admitted in evidence under Article 23 or 24, and
- (b) the document or a copy of it is produced as an exhibit.

(2) The exhibit must not accompany the jury when they retire to consider their verdict unless—

- (a) the court considers it appropriate, or

- (b) all the parties to the proceedings agree that it should accompany the jury.

Capability to make statement

27.—(1) Nothing in Article 20, 23 or 24 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he made the statement.

(2) Nothing in Article 21 makes a statement admissible as evidence if any person who, in order for the requirements of Article 21(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned—

- (a) did not have the required capability at that time, or
- (b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.

(3) For the purposes of this Article a person has the required capability if he is capable of—

- (a) understanding questions put to him about the matters stated, and
- (b) giving answers to such questions which can be understood.

(4) Where by reason of this Article there is an issue as to whether a person had the required capability when he made a statement—

- (a) proceedings held for the determination of the issue must take place in the absence of the jury (if there is one);
- (b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;
- (c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

Credibility

28.—(1) This Article applies if in criminal proceedings—

- (a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated, and
- (b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.

(2) In such a case—

- (a) any evidence which (if he had given such evidence) would have been admissible as relevant to his credibility as a witness is so admissible in the proceedings;
- (b) evidence may with the court's leave be given of any matter which (if he had given such evidence) could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party;
- (c) evidence tending to prove that he made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that he contradicted himself.

(3) If as a result of evidence admitted under this Article an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

(4) In the case of a statement in a document which is admitted as evidence under Article 21 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as the maker of the statement for the purposes of paragraphs (1) to (3) above.

Stopping the case where evidence is unconvincing

29.—(1) If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that—

- (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and
- (b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

- (a) a jury is directed under paragraph (1) to acquit a defendant of an offence, and
- (b) the circumstances are such that, apart from this paragraph, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in paragraph (1) in respect of it.

(3) If—

- (a) a jury is required to determine under Article 49A(2) of the Mental Health (Northern Ireland) Order 1986 whether a person charged on an indictment with an offence did the act or made the omission charged, and
- (b) the court is satisfied as mentioned in paragraph (1) above at any time after the close of the case for the prosecution that—
 - (i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and
 - (ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This Article does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

Court's general discretion to exclude evidence

30.—(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if—

- (a) the statement was made otherwise than in oral evidence in the proceedings, and
- (b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.

(2) Nothing in this Part prejudices—

- (a) any power of a court to exclude evidence under Article 76 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (exclusion of unfair evidence), or
- (b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

*Miscellaneous***Expert evidence: preparatory work**

31.—(1) This Article applies if—

- (a) a statement has been prepared for the purposes of criminal proceedings,
- (b) the person who prepared the statement had or may reasonably be supposed to have had personal knowledge of the matters stated,
- (c) notice is given under the appropriate rules that another person (the expert) will in evidence given in the proceedings orally or under section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28) base an opinion or inference on the statement, and
- (d) the notice gives the name of the person who prepared the statement and the nature of the matters stated.

(2) In evidence given in the proceedings the expert may base an opinion or inference on the statement.

(3) If evidence based on the statement is given under paragraph (2) the statement is to be treated as evidence of what it states.

(4) This Article does not apply if the court, on an application by a party to the proceedings, orders that it is not in the interests of justice that it should apply.

(5) The matters to be considered by the court in deciding whether to make an order under paragraph (4) include—

- (a) the expense of calling as a witness the person who prepared the statement;
- (b) whether relevant evidence could be given by that person which could not be given by the expert;
- (c) whether that person can reasonably be expected to remember the matters stated well enough to give oral evidence of them.

(6) Paragraphs (1) to (5) apply to a statement prepared for the purposes of a criminal investigation as they apply to a statement prepared for the purposes of criminal proceedings, and in such a case references to the proceedings are to criminal proceedings arising from the investigation.

(7) The appropriate rules are rules made—

- (a) under Article 80 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (advance notice of expert evidence in Crown Court), or
- (b) under Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) by virtue of section 20(3) of the Criminal Procedure and Investigations Act 1996 (c. 25) (advance notice of expert evidence in magistrates' courts).

Confessions

32.—(1) In the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) the following Article shall be inserted after Article 74—

“Confessions may be given in evidence for co-accused

74A.—(1) In any criminal proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a co-accused) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.

(2) If, in any criminal proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.

(3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any criminal proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in paragraph (2) above to be proved in the proceedings on the balance of probabilities.

(4) The fact that a confession is wholly or partly excluded in pursuance of this Article shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this paragraph applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Paragraph (5) above applies—

- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this Article; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this Article “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).”.

(2) Subject to paragraph (1), nothing in this Part makes a confession by a defendant admissible if it would not be admissible under Article 74 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

(3) In paragraph (2) “confession” has the meaning given by Article 70 of that Order.

Representations other than by a person

33.—(1) Where a representation of any fact—

- (a) is made otherwise than by a person, but
- (b) depends for its accuracy on information supplied (directly or indirectly) by a person,

the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.

(2) Paragraph (1) does not affect the operation of the presumption that a mechanical device has been properly set or calibrated.

Evidence at retrial

34. For paragraphs 2 and 2A of Schedule 1 to the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (depositions) there is substituted—

“Evidence

2.—(1) Evidence given at a retrial ordered under section 6 of this Act must be given orally if it was given orally at the original trial, unless—

- (a) all the parties to the retrial agree otherwise;
- (b) Article 20 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 applies (admissibility of hearsay evidence where a witness is unavailable); or
- (c) the witness is unavailable to give evidence, otherwise than as mentioned in paragraph (2) of that Article, and Article 18(1)(d) of that Order applies (admission of hearsay evidence under residual discretion).

(2) On a retrial ordered under section 6 of this Act, Article 42(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (reading of depositions) shall not apply to the depositions of any person who gave evidence at the original trial.”

*General***Rules of court**

35.—(1) Rules of court may make such provision as appears to the appropriate authority to be necessary or expedient for the purposes of this Part; and the appropriate authority is the authority entitled to make the rules.

(2) The rules may make provision about the procedure to be followed and other conditions to be fulfilled by a party proposing to tender a statement in evidence under any provision of this Part.

(3) The rules may require a party proposing to tender the evidence to serve on each party to the proceedings such notice, and such particulars of or relating to the evidence, as may be prescribed.

(4) The rules may provide that the evidence is to be treated as admissible by agreement of the parties if—

- (a) a notice has been served in accordance with provision made under paragraph (3), and
- (b) no counter-notice in the prescribed form objecting to the admission of the evidence has been served by a party.

(5) If a party proposing to tender evidence fails to comply with a prescribed requirement applicable to it—

- (a) the evidence is not admissible except with the court's leave;
- (b) where leave is given the court or jury may draw such inferences from the failure as appear proper;
- (c) the failure may be taken into account by the court in considering the exercise of its powers with respect to costs.

(6) In considering whether or how to exercise any of its powers under paragraph (5) the court shall have regard to whether there is any justification for the failure to comply with the requirement.

(7) A person shall not be convicted of an offence solely on an inference drawn under paragraph (5) (b).

(8) Nothing in this Article prejudices the generality of any statutory provision conferring power to make rules of court; and no particular provision of this Article prejudices any general provision of it.

(9) In this Article—

“prescribed” means prescribed by rules of court;

“rules of court” means—

- (a) Crown Court rules;
- (b) rules of court made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23);
- (c) county court rules; and
- (d) magistrates' courts rules.

Proof of statements in documents

36. Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either—

- (a) the document, or
- (b) (whether or not the document exists) a copy of the document or of the material part of it, authenticated in whatever way the court may approve.

Interpretation of Part III

37.—(1) In this Part—

“copy”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“criminal proceedings” means criminal proceedings in relation to which the strict rules of evidence apply;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings;

“document” means anything in which information of any description is recorded;

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device.

(2) Article 19 (statements and matters stated) contains other general interpretative provisions.

(3) Where a defendant is charged with two or more offences in the same criminal proceedings, this Part has effect as if each offence were charged in separate proceedings.

Repeals

38. In the [Criminal Justice \(Evidence, Etc.\) \(Northern Ireland\) Order 1988 \(NI 17\)](#) the following provisions (which relate to documentary evidence and are to some extent superseded by provisions of this Part) are repealed—

- (a) Part II;
- (b) Schedule 1.

PART IV OTHER EVIDENCE

Video Recording

Evidence by video recording

- 39.**—(1) This Article applies where—
- (a) a person is called as a witness in proceedings for —
 - (i) an offence triable only on indictment, or
 - (ii) a prescribed relevant offence,
 - (b) the person claims to have witnessed (whether visually or in any other way)—
 - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence, or
 - (ii) events closely connected with such events,
 - (c) he has previously given an account of the events in question (whether in response to questions asked or otherwise),
 - (d) the account was given at a time when those events were fresh in the person’s memory (or would have been, assuming the truth of the claim mentioned in sub-paragraph (b)),
 - (e) a video recording was made of the account,
 - (f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded, and
 - (g) the recording is played in the proceedings in accordance with the direction.
- (2) If, or to the extent that, the witness in his oral evidence in the proceedings asserts the truth of the statements made by him in the recorded account, they shall be treated as if made by him in that evidence.
- (3) A direction under paragraph (1)(f)—
- (a) may not be made in relation to a recorded account given by the defendant;
 - (b) may be made only if it appears to the court that—
 - (i) the witness’s recollection of the events in question is likely to have been significantly better when he gave the recorded account than it will be when he gives oral evidence in the proceedings, and
 - (ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in paragraph (4).
- (4) Those matters are—
- (a) the interval between the time of the events in question and the time when the recorded account was made;
 - (b) any other factors that might affect the reliability of what the witness said in that account;
 - (c) the quality of the recording;
 - (d) any views of the witness as to whether his evidence in chief should be given orally or by means of the recording.
- (5) For the purposes of paragraph (2) it does not matter if the statements in the recorded account were not made on oath.

(6) In this Article—

“prescribed” means of a description specified in an order made by the Secretary of State;

“relevant offence” means an offence—

- (a) to which paragraph (1)(a)(i) does not apply, and
- (b) which is triable on indictment.

Video evidence: further provisions

40.—(1) Where a video recording is admitted under Article 39, the witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account.

(2) The reference in paragraph (1)(f) of Article 39 to the admission of a recording includes a reference to the admission of part of the recording; and references in that Article and this one to the video recording or to the witness’s recorded account shall, where appropriate, be read accordingly.

(3) In considering whether any part of a recording should not be admitted under Article 39, the court must consider—

- (a) whether admitting that part would carry a risk of prejudice to the defendant, and
- (b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) A court may not make a direction under Article 39(1)(f) in relation to any proceedings unless—

- (a) the Secretary of State has notified the court that arrangements can be made, in the county court division in which it appears to the court that the proceedings will take place, for implementing directions under that Article, and
- (b) the notice has not been withdrawn.

(5) Nothing in Article 39 affects the admissibility of any video recording which would be admissible apart from that Article.

Documents to refresh memory

Use of documents to refresh memory

41.—(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if—

- (a) he states in his oral evidence that the document records his recollection of the matter at that earlier time, and
- (b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) Where—

- (a) a person giving oral evidence in criminal proceedings about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time,
- (b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and
- (c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

Interpretation of Part IV

Interpretation of Part IV

42. In this Part—

“criminal proceedings” means criminal proceedings in relation to which the strict rules of evidence apply;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings;

“document” means anything in which information of any description is recorded, but not including any recording of sounds or moving image;

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“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.

PART V

SUPPLEMENTARY PROVISIONS

Saving

43. No provision of this Order has effect in relation to criminal proceedings begun before the commencement of that provision.

Supplementary and consequential provision

44.—(1) The Secretary of State may by order make—

(a) any supplementary, incidental or consequential provision, and

(b) any transitory, transitional or saving provision,

which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Order.

(2) An order under paragraph (1) may, in particular—

(a) provide for any provision of this Order which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order, and

(b) amend or repeal any statutory provision.

(3) Nothing in this Article limits the power by virtue of Article 45(1)(b) to include transitional or saving provision in an order under Article 1.

(4) The amendments that may be made under paragraph (2)(b) are in addition to those made by or under any other provision of this Order.

Orders

45.—(1) Any power of the Secretary of State to make an order under this Order includes power to make—

- (a) any supplementary, incidental or consequential provision, and
- (b) any transitory, transitional or saving provision,

which the Secretary of State considers necessary or expedient.

(2) An order including provision made under Article 8(4)(b), 39(6) or 44(1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

Consequential amendments and repeals

46.—(1) The consequential amendments specified in Schedule 1 shall have effect.

(2) The statutory provisions specified in Schedule 2 are repealed to the extent specified.

A. K. Galloway
Clerk of the Privy Council