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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

##### Interpretation of Part IX

70.—(1) In this Part—

“confession” includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

“Service court” means a court#martial or a Standing Civilian Court; and

“sexual offence” has the meaning given in<sup>F1</sup> Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998].

(2) In this Part references to conviction before a Service court are<sup>F2</sup> references to a finding of guilty which is, or falls to be treated as , the finding of the court.]

(3) Nothing in this Part shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

**F1** 1998 NI 9

**F2** 1996 c. 46

#### *Convictions and acquittals*

##### Proof of convictions and acquittals

71.—(1) Where in any criminal proceedings the fact that a person has in the United Kingdom been convicted or acquitted of an offence otherwise than by a Service court is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

(2) For the purposes of this Article a certificate of conviction or of acquittal—

(a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the clerk of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and

(b) shall, as regards a conviction or acquittal on a summary trial, consist of a copy of the conviction or of the dismissal of the information, signed by the clerk of the court where

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the conviction or acquittal took place or by the clerk of the court, if any, to which a memorandum of the conviction or acquittal was sent;

and a document purporting to be a duly signed certificate of conviction or acquittal under this Article shall be taken to be such a certificate unless the contrary is proved.

(3) References in this Article to the clerk of a court include references to any other person having the custody of the court record.

(4) The method of proving a conviction or acquittal authorised by this Article shall be in addition to and not to the exclusion of any other authorised manner of proving a conviction or acquittal.

### Conviction as evidence of commission of offence

**72.**—(1) In any criminal proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the United Kingdom or by a Service court outside the United Kingdom shall be admissible in evidence for the purpose of proving<sup>F3</sup> that that person committed that offence, where evidence of his having done so is admissible], whether or not any other evidence of his having committed that offence is given.

(2) In any criminal proceedings in which by virtue of this Article a person other than the accused is proved to have been convicted of an offence by or before any court in the United Kingdom or by a Service court outside the United Kingdom, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence,<sup>F4</sup> . . . if the accused is proved to have been convicted of the offence—

- (a) by or before any court in the United Kingdom; or
- (b) by a Service court outside the United Kingdom,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this Article shall prejudice—

- (a) the admissibility in evidence of any conviction which would be admissible apart from this Article; or
- (b) the operation of any statutory provision whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other criminal proceedings made conclusive evidence of any fact.

**F3** Words in art. 72(1) substituted (3.4.2006) by Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)), arts. 1(3), 46(1), Sch. 1 para. 3(2); S.R. 2006/63, art. 2

**F4** Words in art. 72(3) repealed (3.4.2006) by Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)), arts. 1(3), 46, Sch. 1 para. 3(3), Sch. 2; S.R. 2006/63, art. 2

### Provisions supplementary to Article 72

**73.**—(1) Where evidence that a person has been convicted of an offence is admissible by virtue of Article 72, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based—

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the complaint, information, indictment or charge sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any criminal proceedings the contents of any document are admissible in evidence by virtue of paragraph (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(3) Nothing in any of the following—

*Sub#para. (a) rep. by 1996 NI 24*

(b) section 13 of the Powers of Criminal Courts Act 1973<sup>F5</sup> (which makes provision similar to section 8 of that Act of 1950); and

(c) section 392 of the Criminal Procedure (Scotland) Act 1975<sup>F6</sup> (which makes similar provision in respect of convictions on indictment in Scotland);

shall affect the operation of Article 72; and for the purposes of that Article any order made by a court of summary jurisdiction in Scotland under section 182 or 183 of the said Act of 1975 shall be treated as a conviction.

(4) Nothing in Article 72 shall be construed as rendering admissible in any criminal proceedings evidence of any conviction other than a subsisting one.

**F5** 1973 c. 62

**F6** 1975 c. 21

## *Confessions*

### **Confessions**

**74.**—(1) In any criminal proceedings a confession made by an accused person may be given in evidence against him 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 the prosecution 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 against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any criminal proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in paragraph (2).

(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.

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(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) 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) Nothing in Part VIII shall prejudice the admissibility of a confession made by an accused person.

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

(9) <sup>F7</sup> .....

**F7** Art. 74(9) repealed (19.2.2006) by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), s. 5(2)(3), [Sch.](#)

**[<sup>F8</sup>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).]

F8 2004 NI 10

### Confessions by mentally handicapped persons

75.—(1) Without prejudice to the general duty of the court at a trial on indictment<sup>[F9]</sup> with a jury] to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial—

(a) the case against the accused depends wholly or substantially on a confession by him; and

(b) the court is satisfied—

(i) that he is mentally handicapped; and

(ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in sub#paragraphs (a) and (b).

(2) In any case where a person is being tried summarily for an offence it appears to the court that a warning under paragraph (1) would be required if the trial were on indictment<sup>[F10]</sup> with a jury], the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

<sup>[F11]</sup>(2A) In any case where at the trial on indictment without a jury of a person for an offence it appears to the court that a warning under paragraph (1) would be required if the trial were with a jury, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.]

(3) In this Article—

“independent person” does not include a constable or a person employed for, or engaged on, police purposes;

“mentally handicapped” in relation to a person means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; and

“police purposes” includes the purposes of <sup>[F12]</sup>police trainees, police reserve trainees and police cadets appointed under sections 39, 40 and 42 respectively of the Police (Northern Ireland) Act 2000 (c. 32) and of the police support staff].

F9 Words in art. 75(1) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 61(2); S.I. 2006/3422, art. 2(b)(c)

F10 Words in art. 75(2) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 61(3); S.I. 2006/3422, art. 2(b)(c)

F11 Art. 75(2A) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 61(4); S.I. 2006/3422, art. 2(b)(c)

F12 Art. 75(3): words in definition of "police purposes" substituted (1.3.2007) by Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)), arts. 1(2), 38(2)

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**Modifications etc. (not altering text)**

**C1** Art. 75 applied (with modifications) (1.12.2007) by Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007 (S.R. 2007/464), arts. 3-15, Sch. 1, Sch. 2

*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; <sup>F13</sup> . . .
- (b) <sup>F13</sup> .....

**F13** 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.

**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<sup>F14</sup> 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.

**F14** prosp. insertion by 1999 NI 8

**<sup>F15</sup>Competence and compellability of accused's spouse<sup>F16</sup> or civil partner]**

**79.**—<sup>F17</sup>(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.

<sup>F18</sup>(2) In any criminal proceedings the<sup>F19</sup> spouse or civil partner] of the accused shall, subject to paragraph (4), be compellable to give evidence on behalf of the accused.

<sup>F18</sup>(3) In any criminal proceedings the<sup>F19</sup> 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<sup>F19</sup> 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).

<sup>F18</sup>(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<sup>F20</sup> competent and compellable to give evidence as if that person and the accused had never been married.

[<sup>F16</sup>(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.

<sup>F17</sup>(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<sup>F21</sup> (communications between husband and wife) and section 7(2) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951<sup>F22</sup> so far as it is unrepealed (evidence as to marital intercourse) shall cease to have effect.

**F15** prosp. rep. by 1999 NI 8

**F16** 2004 c. 33

**F17** prosp. rep. by 1999 NI 8

**F18** prosp. subst. by 1999 NI 8

**F19** 2004 c. 33

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**F20** prosp. rep. by 1999 NI 8

**F21** 1923 c. 9 (NI)

**F22** 1951 c. 7 (NI)

**Modifications etc. (not altering text)**

**C2** 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

**[<sup>F23</sup> Rule where accused's spouse [<sup>F24</sup> or civil partner] not compellable**

**79A.** The failure of the [<sup>F25</sup> 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.]

**F23** 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)

**F24** 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.**

**F25** 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.

**[<sup>F26</sup> 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[<sup>F27</sup> (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<sup>[F28]</sup>, 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.

[  
<sup>F29</sup>(9) In this Article, “judge” includes, in relation to a magistrates' court, resident magistrate.]]

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| <p><b>F26</b> 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, <b>art. 2</b></p> <p><b>F27</b> 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, <b>art. 2(b)</b></p> <p><b>F28</b> 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, <b>art. 2(a)</b>, Sch. 1 paras. 10, 12(a)</p> <p><b>F29</b> 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, <b>art. 2(b)</b></p> |
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### Evidence through television links

<sup>F30</sup>**81.**—(1) A person other than the accused may give evidence through a live television link<sup>[F31]</sup> 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<sup>[F31]</sup> 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.

<sup>[F31]</sup>(1A) This paragraph applies—

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- (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<sup>F32</sup> section 10 of the Criminal Appeal Act 1995];
  - (b) except in a case where paragraph (1)(b)(i) applies, to proceedings in<sup>F33</sup> [magistrates] courts and<sup>F32</sup>, 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<sup>F34</sup>;
  - (c) to a sexual offence<sup>F31</sup>. . . ; 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).

<sup>F35</sup>(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).]

- (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>F36</sup> 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;
  - <sup>F31</sup>(aa) county court rules;]
  - (b) Crown Court rules; and

(c) rules of court.

(7) Where, at a<sup>F31</sup> preliminary investigation or a preliminary inquiry into an indictable offence or in proceedings before a<sup>F33</sup> 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<sup>F31</sup> 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<sup>F31</sup> . . . to deal with an offence in relation to which an investigation<sup>F31</sup> 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<sup>F37</sup>, after consultation with the Lord Chief Justice,] as a place having facilities to receive evidence given through a link by virtue of this Article.

<sup>F31</sup>(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.]

**F30** 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](#)

**F31** 1995 NI 3

**F32** 1995 c. 35

**F33** 1998 NI 9

**F34** 1968 c. 34 (NI)

**F35** 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)

**F36** 1979 NI 19

**F37** 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)

### <sup>F38</sup>Video recordings of testimony from child witnesses

<sup>F39</sup>**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<sup>F40</sup> section 10 of the Criminal Appeal Act 1995] in respect of any such offence; and

(c) proceedings in<sup>F41</sup> magistrates] courts for any such offence<sup>F40</sup>, 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).

*Status: Point in time view as at 15/11/2007. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: The Police and Criminal Evidence (Northern Ireland) Order 1989, PART IX is up to date with all changes known to be in force on or before 24 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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).

[  
<sup>F42</sup>(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).

(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.]

**F38** 1995 NI 3

**F39** 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**

**F40** 1995 c. 35

**F41** 1998 NI 9

**F42** 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:**

Point in time view as at 15/11/2007. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

The Police and Criminal Evidence (Northern Ireland) Order 1989, PART IX is up to date with all changes known to be in force on or before 24 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.