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STATUTORY INSTRUMENTS

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**1997 No. 2983**

**The Civil Evidence (Northern Ireland) Order 1997**

*Safeguards in relation to hearsay evidence*

**Power to call witness for cross-examination on hearsay statement**

4.—(1) Rules of court may provide that, where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.

(2) Without prejudice to any other power to adjourn proceedings, where, in accordance with rules of court made by virtue of paragraph (1), the court gives a party leave to call the maker of a statement as a witness, the court may adjourn the proceedings, on such terms as to costs or other matters as it thinks fit, for the purpose—

- (a) of enabling the witness to be brought before the court; or
- (b) of giving the party concerned a proper opportunity to investigate the statement or the credibility of the witness.

**Considerations relevant to weighing of hearsay evidence**

5.—(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard shall be had, in particular, to whether the party by whom the hearsay evidence is adduced gave notice to the other party or parties to the proceedings of his intention to adduce the hearsay evidence and, if so, to the sufficiency of the notice given.

(3) Regard may also be had, in particular, to the following—

- (a) whether it would have been reasonable and practicable for the party by whom the evidence is adduced to have produced the maker of the original statement as a witness;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

### **Competence and credibility**

6.—(1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who at the time he made the statement was not competent as a witness.

(2) In paragraph (1) “not competent as a witness” means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if he satisfies the requirements of Article 169(4)(a) and (b) of the Children (Northern Ireland) Order 1995 (conditions for reception of unsworn evidence of child).

(3) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness—

- (a) evidence which, if he had been so called, would have been admissible for the purpose of attacking his credibility as a witness is admissible for that purpose in the proceedings;
- (b) evidence may, with the leave of the court, be adduced of any matter which, if he had been called as a witness, could have been put to him in cross-examination in relation to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that, whether before or after he made the statement, he made another statement inconsistent with it is admissible for the purpose of showing that he has contradicted himself; and
- (d) evidence which, if he had been so called, would have been admissible for the purpose of supporting his credibility as a witness is admissible for that purpose in the proceedings, but, in the case of evidence of another statement made by that person, only with the leave of the court;

and where evidence of another statement which is admissible by virtue of sub-paragraph (c) or (d) is adduced accordingly, it shall also be admissible as evidence of the matters stated.