

SCHEDULES

SCHEDULE 1

Article 40(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Criminal Evidence Act (Northern Ireland) 1923 (c. 9 (N.I.))

- 1.—(1) Section 1 (competence of accused as witness for the defence) is amended as follows.
- (2) Omit the words from the beginning to “Provided as follows:-”.
- (3) In paragraph (a) of the proviso—
 - (a) for “so charged” substitute “charged in criminal proceedings”; and
 - (b) for “in pursuance of this Act” substitute “in the proceedings”.
- (4) In paragraph (e) of the proviso—
 - (a) for “and being a witness in pursuance of this Act” substitute “in criminal proceedings who is called as a witness in the proceedings”; and
 - (b) for “the offence charged” substitute “any offence with which he is charged in the proceedings”.
- (5) In paragraph (f) of the proviso—
 - (a) for “and called as a witness in pursuance of this Act” substitute “in criminal proceedings who is called as a witness in the proceedings”;
 - (b) for “that wherewith” substitute “one with which”; and
 - (c) in sub-paragraph (i), for “the offence wherewith” substitute “an offence with which”.
- (6) In paragraph (g) of the proviso, for “called as a witness in pursuance of this Act” substitute “charged in criminal proceedings who is called as a witness in the proceedings”.
- (7) Paragraphs (a), (e), (f) and (g) of the proviso shall be respectively numbered as subsections (1), (2), (3) and (4) of the section.

The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (NI 17)

2. In Article 13(3) for “Article 20 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (competence of children as witnesses)” substitute “Article 34 of the Criminal Evidence (Northern Ireland) Order 1999”.

The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)

- 3.—(1) In Article 78(1) (accused to give evidence on oath), after “if he gives evidence, he shall do so” insert “(subject to Articles 33 and 34 of the Criminal Evidence (Northern Ireland) Order 1999)”.
- (2) In Article 79 (competence and compellability of accused’s spouse) omit paragraphs (1) and (7).
- (3) For paragraphs (2) to (4) of Article 79 substitute—

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“(2) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to paragraph (4), be compellable to give evidence on behalf of that person.

(2A) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to paragraph (4), be compellable—

- (a) to give evidence on behalf of any other person charged in the proceedings but only in respect of any specified offence with which that other person is charged; or
- (b) to give evidence for the prosecution but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the wife or husband of a person charged in any proceedings, an offence is a specified offence for the purposes of paragraph (2A) if—

- (a) it involves an assault on, or injury or a threat of injury to, the wife or husband or a person who was at the material time under the age of 16;
- (b) it 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) it consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub-paragraph (a) or (b).

(4) No person who is charged in any proceedings shall be compellable by virtue of paragraph (2) or (2A) to give evidence in the proceedings.

(4A) References in this Article to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).”.

(4) In paragraph (5) of Article 79, omit “competent and” and, in the shoulder-note, omit “Competence and”.

(5) After Article 79 insert—

“Rule where accused’s spouse not compellable

79A. The failure of the wife or husband 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.”.

The Children’s Evidence (Northern Ireland) Order 1995 (NI 3)

4.—(1) In Article 4(1) for the words “Article 81(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989” substitute “paragraph (1A)”.

(2) After Article 4(1) insert—

“(1A) This paragraph applies to—

- (a) an offence which involves an assault on, or injury or threat of injury to, a person;
- (b) an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968;
- (c) a sexual offence (within the meaning of Part IX of the Police and Criminal Evidence (Northern Ireland) Order 1989); and
- (d) 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).”.

(3) In Article 4(6) for “Article 81(3)(a) or (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989” substitute “paragraph (1A)(a) or (b)” and for “Article 81(3)(c) of that Order” substitute “paragraph (1A)(c)”.

(4) In Article 4(7) for “Article 81(3) of that Order” substitute “paragraph (1A)”.

The Criminal Justice (Northern Ireland) Order 1996 (NI 24)

5.—(1) In Article 47 (offences of intimidating, and of doing or threatening harm to, witnesses, jurors and others), for paragraphs (1) to (3) substitute—

“(1) A person commits an offence if—

- (a) he does an act which intimidates, and is intended to intimidate, another person (“the victim”),
- (b) he does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, and
- (c) he does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

(2) A person commits an offence if—

- (a) he does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, he threatens to do an act which would harm that other person,
- (b) he does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed (“the victim”), or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence, and
- (c) he does or threatens to do it because of that knowledge or belief.

(3) For the purposes of paragraphs (1) and (2) it is immaterial that the act is or would be done, or that the threat is made—

- (a) otherwise than in the presence of the victim; or
- (b) to a person other than the victim.”.

(2) In paragraph (8) (presumption in proceedings for offence under paragraph (2))—

(a) for “he did or threatened to do an act falling within sub-paragraph (a) within the relevant period” substitute

“within the relevant period—

- (a) he did an act which harmed, and was intended to harm, another person, or
- (b) intending to cause another person fear of harm, he threatened to do an act which would harm that other person,

and that he did the act, or (as the case may be) threatened to do the act,”; and

(b) after “to have done the act” insert “or (as the case may be) threatened to do the act”.

The Youth Justice and Criminal Evidence Act 1999 (c. 23)

6. In section 47(2) after paragraph (a) insert—

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- “(aa) a direction under Article 7 or 24 of the Criminal Evidence (Northern Ireland) Order 1999 or an order discharging, or (in the case of a direction under Article 7) varying, such a direction;”.

SCHEDULE 2

Article 40(2).

TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation

1.—(1) In this Schedule—

“the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989;

“commencement date”, in relation to any provisions of this Order and proceedings of any description, means the date on which those provisions come into operation in relation to such proceedings;

“continuing proceedings” (except in paragraph 2) means proceedings instituted before the commencement date;

“existing special measures power” means any power of the court to make an order or give leave, in the exercise of its inherent jurisdiction, for the taking of measures in relation to a witness which are similar to those which could be provided for by a special measures direction.

(2) For the purposes of this Schedule—

(a) proceedings other than proceedings on appeal are to be taken to be instituted—

(i) where a justice of the peace issues a summons under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981, when the complaint for the offence is made;

(ii) where a justice of the peace issues a warrant for the arrest of any person under that Article, when the complaint for the offence is made;

(iii) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge;

(iv) where an indictment is presented under the authority of section 2(2)(c), (d), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969, when the indictment is presented to the court;

and where the application of this head would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times; and

(b) proceedings on appeal are to be taken to be instituted at the time when the notice of appeal is given or (as the case may be) the reference under section 10 or 12 of the Criminal Appeal Act 1995 is made.

Special measures under Part II

2.—(1) A special measures direction may be given in relation to a witness in continuing proceedings unless the court has before the specified date—

- (a) given leave in relation to the witness in connection with those proceedings under Article 81 (evidence through television links) or Article 81A (video recordings of testimony of child witnesses) of the 1989 Order, or

(b) exercised any existing special measures power in relation to the witness in connection with those proceedings.

(2) The repeals made by this Order shall not affect the continued operation in relation to a witness in continuing proceedings of Article 81 or 81A of the 1989 Order where before the specified date leave was given in relation to the witness in connection with those proceedings by virtue of Article 81 or Article 81A, as the case may be.

(3) Nothing in this Order affects the continued operation in relation to a witness in continuing proceedings of any order made or leave given under any existing special measures power exercised by the court before the specified date in relation to the witness in connection with those proceedings.

(4) In this paragraph—

- (a) “continuing proceedings” means proceedings instituted before the specified date;
- (b) “the specified date”, in relation to a witness in any proceedings, means such date as may be specified by the Secretary of State in a notice given to the court in question under Article 6(2), where the date is expressed to apply—
 - (i) for the purposes of this paragraph, and
 - (ii) in relation to any description of witnesses and proceedings within which the witness and the proceedings fall.

Protection of witnesses from cross-examination by accused in person

3. Nothing in Part III applies in relation to proceedings instituted before the commencement date for that Part.

Protection of complainants in proceedings for sexual offences

4.—(1) Nothing in Part IV applies in relation to continuing proceedings in which leave has been given before the commencement date for that Part—

- (a) under Article 4 of the Sexual Offences (Northern Ireland) Order 1978, or
- (b) (in the case of proceedings to which Article 4 does not apply) in the exercise of any similar power of the court exercisable by virtue of its inherent jurisdiction.

(2) Nothing in this Order affects the continued operation of any leave so given in relation to any such proceedings.

Competence of witnesses and capacity to be sworn

5. Nothing in Part V applies in relation to proceedings instituted before the commencement date for that Part.

Inferences from silence

6. The amendments made by Article 36—

- (a) apply only to proceedings instituted on or after the commencement date for that Article; but
- (b) so apply whether the relevant failure or refusal on the part of the accused took place before or after that date.

Status: This is the original version (as it was originally made).

SCHEDULE 3

Article 40(3).

REPEALS

| Chapter or Number | Short title | Extent of repeal |
|-------------------|---|---|
| 1923 c. 9 (N.I.). | The Criminal Evidence Act (Northern Ireland) 1923. | In section 1, the words from the beginning to “Provided as follows:-”. |
| 1978 NI 5. | The Sexual Offences (Northern Ireland) Order 1978. | Article 1(2). Articles 4 and 5. |
| 1979 c. 2. | The Customs and Excise Management Act 1979. | Sections 75A(6)(d). In section 118A(6)(f) the words “Article 68 of the Police and Criminal Evidence (Northern Ireland) Order 1989”. |
| 1986 NI 6. | The Companies (Northern Ireland) Order 1986. | In Article 658(3), the words from “This is subject” to the end. |
| 1988 NI 17. | The Criminal Justice Evidence, Etc.) (Northern Ireland) Order 1988. | In Article 3(1), sub-paragraph (c) and the word “and” preceding it. In Article 4(1), sub-paragraph (c) and the word “and” preceding it. |
| 1989 NI 12. | The Police and Criminal Evidence (Northern Ireland) Order 1989. | In Article 67(1), the words from “and “statement”” to the end. Article 68. Article 79(1). In Article 79(5) the words “competent and”. Article 79(7). Article 81. Article 81A. Article 81B. Schedule 3. In Schedule 6, paragraph 16(1). |
| 1994 c. 9. | The Finance Act 1994. | In section 22(2)(f) the words “Article 68 of the Police and |

| Chapter or Number | Short title | Extent of repeal |
|-------------------|--|--|
| | | Criminal Evidence (Northern Ireland) Order 1989 and”. |
| | | In Schedule 7, in paragraph 1(6)(f) the words “Article 68 of the Police and Criminal Evidence (Northern Ireland) Order 1989 and”. |
| 1994 c. 23. | The Value Added Tax Act 1994. | In Schedule 11, in paragraph 6(6)(d) the words “Article 68 of the Police and Criminal Evidence (Northern Ireland) Order 1989 and”. |
| 1995 c. 35. | The Criminal Appeal Act 1995. | In Schedule 2, paragraph 18. |
| 1995 NI 3. | The Children’s Evidence (Northern Ireland) Order 1995. | Article 5. |
| | | In Schedule 2, paragraph 11. |
| 1996 c. 8. | The Finance Act 1996. | In Article 5, in paragraph 2(6)(e) the words “Article 68 of the Police and Criminal Evidence (Northern Ireland) Order 1989 and”. |
| 1996 c. 25. | The Criminal Procedure and Investigations Act 1996. | Section 62. |
| | | In Schedule 4, paragraph 25. |
| 1997 NI 21. | The Civil Evidence (Northern Ireland) Order 1997. | In Schedule 1, paragraph 4. |
| 1998 NI 9. | The Criminal Justice (Children) (Northern Ireland) Order 1998. | Article 20. In Schedule 5, paragraphs 9, 31, 37 and 38. |