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STATUTORY INSTRUMENTS

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**1999 No. 2789**

**The Criminal Evidence (Northern Ireland) Order 1999**

**PART III**

**PROTECTION OF WITNESSES FROM CROSS-  
EXAMINATION BY ACCUSED IN PERSON**

*General prohibitions*

**Complainants in proceedings for sexual offences**

**22.** No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

- (a) in connection with that offence, or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

**Child complainants and other child witnesses**

**23.—(1)** No person charged with an offence to which this Article applies may in any criminal proceedings cross-examine in person a protected witness, either—

- (a) in connection with that offence, or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

(2) For the purposes of paragraph (1) a “protected witness” is a witness who—

- (a) either is the complainant or is alleged to have been a witness to the commission of the offence to which this Article applies, and
- (b) either is a child or falls to be cross-examined after giving evidence in chief (whether wholly or in part)—
  - (i) by means of a video recording made (for the purposes of Article 15) at a time when the witness was a child, or
  - (ii) in any other way at any such time.

(3) The offences to which this Article applies are—

- (a) a sexual offence within the meaning of the Criminal Justice (Children) (Northern Ireland) Order 1998;
- (b) a violent offence within the meaning of that Order;
- (c) kidnapping, false imprisonment, or an offence under section 1 or 2 of the Child Abduction Act 1984; ;

- (d) any offence (not within any of the preceding sub-paragraphs) which involves an assault on, or injury or a threat of injury to, any person.
- (4) In this Article “child” means—
  - (a) where the offence falls within paragraph (3)(a), a person under the age of 17; or
  - (b) where the offence falls within paragraph (3)(b), (c) or (d), a person under the age of 14.
- (5) For the purposes of this Article “witness” includes a witness who is charged with an offence in the proceedings.

*Prohibition imposed by court*

**Direction prohibiting accused from cross-examining particular witness**

**24.—**(1) This Article applies where, in a case where neither of Articles 22 and 23 operates to prevent an accused in any criminal proceedings from cross-examining a witness in person—

- (a) the prosecutor makes an application for the court to give a direction under this Article in relation to the witness, or
- (b) the court of its own motion raises the issue whether such a direction should be given.
- (2) If it appears to the court—
  - (a) that the quality of evidence given by the witness on cross-examination—
    - (i) is likely to be diminished if the cross-examination (or further cross-examination) is conducted by the accused in person, and
    - (ii) would be likely to be improved if a direction were given under this Article, and
  - (b) that it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the accused from cross-examining (or further cross-examining) the witness in person.

(3) In determining whether paragraph (2)(a) applies in the case of a witness the court must have regard, in particular, to—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;
- (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);
- (c) any behaviour on the part of the accused at any stage of the proceedings, both generally and in relation to the witness;
- (d) any relationship (of whatever nature) between the witness and the accused;
- (e) whether any person (other than the accused) is or has at any time been charged in the proceedings with a sexual offence or an offence to which Article 23 applies, and (if so) whether Article 22 or 23 operates or would have operated to prevent that person from cross-examining the witness in person;
- (f) any direction under Article 7 which the court has given, or proposes to give, in relation to the witness.

(4) For the purposes of this Article—

- (a) “witness”, in relation to an accused, does not include any other person who is charged with an offence in the proceedings; and
- (b) any reference to the quality of a witness’s evidence shall be construed in accordance with Article 4(5).

### **Further provisions about directions under Article 24**

**25.**—(1) Subject to paragraph (2), a direction has binding effect from the time it is made until the witness to whom it applies is discharged.

In this Article “direction” means a direction under Article 24.

(2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
- (b) of its own motion.

(3) In paragraph (2) “the relevant time” means—

- (a) the time when the direction was given, or
- (b) if a previous application has been made under that paragraph, the time when the application (or last application) was made.

(4) The court must state in open court its reasons for—

- (a) giving, or
- (b) refusing an application for, or for the discharge of, or
- (c) discharging,

a direction and, if it is a magistrates' court, must cause them to be entered in the Order Book.

(5) Rules of court may make provision—

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for discharging, a direction;
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

### *Cross-examination on behalf of accused*

### **Defence representation for purposes of cross-examination**

**26.**—(1) This Article applies where an accused is prevented from cross-examining a witness in person by virtue of Article 22, 23 or 24.

(2) Where it appears to the court that this Article applies, it must—

- (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
- (b) require the accused to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.

(3) If by the end of the period mentioned in paragraph (2)(b) either—

- (a) the accused has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness, or
- (b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused.

(4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the accused.

(5) A person so appointed shall not be responsible to the accused.

(6) Rules of court may make provision—

(a) as to the time when, and the manner in which, paragraph (2) is to be complied with;

(b) in connection with the appointment of a legal representative under paragraph (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.

(7) Rules made in pursuance of paragraph (6)(b) may make provision for the application, with such modifications as are specified in the rules, of any of the provisions of Part I of the Criminal Procedure and Investigations Act 1996 (disclosure of material in connection with criminal proceedings).

(8) For the purposes of this Article—

(a) any reference to cross-examination includes (in a case where a direction is given under Article 24 after the accused has begun cross-examining the witness) a reference to further cross-examination;

(b) “qualified legal representative” means a legal representative who has a right of audience in relation to the proceedings before the court.

### **Warning to jury**

**27.**—(1) Where on a trial on indictment an accused is prevented from cross-examining a witness in person by virtue of Article 22, 23 or 24, the judge must give the jury (if there is one) such warning (if any) as the judge considers necessary to ensure that the accused is not prejudiced—

(a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person;

(b) where the witness has been cross-examined by a legal representative appointed under Article 26(4), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the accused’s own legal representative.

(2) Paragraph (8)(a) of Article 26 applies for the purposes of this Article as it applies for the purposes of Article 26.