



2011 CHAPTER 24

**PART 1**

VICTIMS AND WITNESSES

CHAPTER 2

VULNERABLE AND INTIMIDATED WITNESSES

*Evidence of certain accused persons*

**Examination of accused through intermediary**

**12.**—(1) After Article 21B of the Criminal Evidence (Northern Ireland) Order 1999 (NI 8) insert—

**“Examination of accused through intermediary**

**21BA.**—(1) This Article applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.

(2) [<sup>F1</sup>Subject to paragraph (2A),] the court may, on the application of the accused, give a direction under paragraph (3) if it is satisfied—

- (a) that the condition in paragraph (5) is or, as the case may be, the conditions in paragraph (6) are met in relation to the accused; and
- (b) that giving the direction is necessary in order to ensure that the accused receives a fair trial.

[<sup>F1</sup>(2A) A court may not give a direction under paragraph (3) unless—

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*Changes to legislation: There are currently no known outstanding effects for the Justice Act (Northern Ireland) 2011, Cross Heading: Evidence of certain accused persons. (See end of Document for details)*

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- (a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court; and
- (b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn.]

(3) A direction under this paragraph is a direction that provides for any examination of the accused to be conducted through an interpreter or other person approved by the court for the purposes of this Article (“an intermediary”).

- (4) The function of an intermediary is to communicate—
  - (a) to the accused, questions put to the accused, and
  - (b) to any person asking such questions, the answers given by the accused in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question.

(5) Where the accused is aged under 18 when the application is made the condition is that the accused's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning.

(6) Where the accused has attained the age of 18 when the application is made the conditions are that—

- (a) the accused suffers from a mental disorder (within the meaning of the Mental Health (Northern Ireland) Order 1986) or otherwise has a significant impairment of intelligence and social functioning; and
- (b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

(7) Any examination of the accused in pursuance of a direction under paragraph (3) must take place in the presence of such persons as rules of court or the direction may provide and in circumstances in which—

- (a) the judge and legal representatives acting in the proceedings are able to see and hear the examination of the accused and to communicate with the intermediary;
- (b) the jury (if there is one) are able to see and hear the examination of the accused; and
- (c) where there are two or more accused in the proceedings, each of the other accused is able to see and hear the examination of the accused.

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For the purposes of this paragraph any impairment of eyesight or hearing is to be disregarded.

(8) Where two or more legal representatives are acting for a party to the proceedings, paragraph (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(9) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that the person will faithfully perform the function of an intermediary.

(10) Article 3 of the Perjury (Northern Ireland) Order 1979 (perjury) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

### **Further provision as to directions under Article 21BA(3)**

**21BB.**—(1) The court may discharge a direction given under Article 21BA(3) at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the accused receives a fair trial (but this does not affect the power to give a further direction under Article 21BA(3) in relation to the accused).

(2) The court may vary (or further vary) a direction given under Article 21BA(3) at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the accused receives a fair trial.

(3) The court may exercise the power in paragraph (1) or (2) of its own motion or on an application by a party.

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

- (a) giving, varying or discharging a direction under Article 21BA(3), or
- (b) refusing an application for, or for the variation or discharge of, a direction under Article 21BA(3),

and, if it is a magistrates' court, it must cause those reasons to be entered in the Order Book.”.

(2) In the heading of Part 2A of that Order after “LIVE LINK” insert “ AND INTERMEDIARY ”.

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#### **Textual Amendments**

- F1** Words in s. 12(1) inserted (26.4.2013) by [Criminal Justice Act \(Northern Ireland\) 2013 \(c. 7\)](#), [ss. 11\(2\)\(3\)](#), [15\(1\)](#)
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#### **Commencement Information**

- I1** S. 12 in operation at 10.5.2013 for specified purposes by [S.R. 2013/125](#), [art. 2](#)

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- I2** S. 12 in operation at 11.11.2013 for specified purposes by [S.R. 2013/252, art. 2](#)
- I3** S. 12 in operation at 1.4.2015 for specified purposes by [S.R. 2015/158, art. 2](#)
- I4** S. 12 in operation at 3.4.2017 for specified purposes by [S.R. 2017/6, art. 2](#)

**Changes to legislation:**

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