
STATUTORY INSTRUMENTS

1988 No. 1847

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

PART III

OTHER PROVISIONS ABOUT EVIDENCE IN CRIMINAL PROCEEDINGS

Issue of letters of request

9.—(1) Where on an application made in accordance with the following provisions of this Article it appears to a resident magistrate or judge that criminal proceedings—

- (a) have been instituted; or
- (b) are likely to be instituted if evidence is obtained for the purpose,

he may order that a letter of request shall be issued to a court or tribunal or appropriate authority specified in the order and exercising jurisdiction in a place outside the United Kingdom, requesting it to assist in obtaining for the purposes of the proceedings evidence specified in the letter.

(2) In paragraph (1) “appropriate authority” means any central authority designated by a state to receive requests for assistance in legal matters.

(3) An application for an order under this Article may be made by a prosecuting authority.

(4) If proceedings have already been instituted, a person charged with an offence in the proceedings may make such an application.

(5) Without prejudice to the generality of any statutory provision conferring power to make them—

- (a) Crown Court rules;
- (b) rules of court;
- (c) county court rules; and
- (d) magistrates' courts rules,

may make such provision as appears to the authority making any of them to be necessary or expedient for the purposes of this Article and in particular for the appointment of a person before whom evidence may be taken in pursuance of a letter of request.

(6) In exercising the discretion conferred by Article 5 in relation to a statement contained in evidence taken in pursuance of a letter of request, the court shall have regard—

- (a) to whether it was possible to challenge the statement by questioning the person who made it; and
- (b) to whether the local law allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken.

Expert reports

10.—(1) An expert report shall be admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) If it is proposed that the person making the report shall not give oral evidence, the report shall only be admissible with the leave of the court.

(3) For the purpose of determining whether to give leave the court shall have regard—

- (a) to the contents of the report;
- (b) to the reasons why it is proposed that the person making the report shall not give oral evidence;
- (c) to any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (d) to any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making it could have given oral evidence.

(5) In this Article “expert report” means a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

Form of evidence and glossaries

11. For the purpose of helping members of juries to understand complicated issues of fact or technical terms Crown Court rules may make provision—

- (a) as to the furnishing of evidence in any form, notwithstanding the existence of admissible material from which the evidence to be given in that form would be derived; and
- (b) as to the furnishing of glossaries for such purposes as may be specified;

in any case where the court gives leave for, or requires, evidence or a glossary to be so furnished.

Evidence of persons under 14 in committal proceedings

12. The following section shall be substituted for section 58 of the Children and Young Persons Act (Northern Ireland) 1968(1)—

“Evidence of persons under 14 in committal proceedings for assault, sexual offences etc.

58.—(1) In any proceedings before a magistrates' court conducting a preliminary investigation into an offence to which this section applies—

- (a) a child shall not be called as a witness for the prosecution; but
- (b) any statement made by or taken from a child shall be admissible in evidence of any matter of which his oral testimony would be admissible,

except in a case where the application of this subsection is excluded under subsection (3).

(2) This section applies—

- (a) to an offence which involves an assault, or injury or a threat of injury to, a person;
- (b) to an offence under section 20 (cruelty to persons under 16);
- (c) to a sexual offence; and

(1) 1968 c. 34 (N.I.)

- (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 paragraph (a), (b) or (c).
- (3) The application of subsection (1) is excluded—
- (a) where at or before the time when the statement is tendered in evidence the defence objects to its admission; or
 - (b) where the prosecution requires the attendance of the child for the purpose of establishing the identity of any person; or
 - (c) where the court is satisfied that it has not been possible to obtain from the child a statement that may be given in evidence under this section; or
 - (d) where the investigation into the offence takes place after the court has discontinued to try it summarily and the child has given evidence in the summary trial.
- (4) Where in the course of a preliminary investigation into an offence to which this section applies, a resident magistrate decides under Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981 to deal with the offence summarily, a statement admitted in pursuance of this section shall not be deemed to be evidence of the matters to which it relates.
- (5) In this section “sexual offence” means any offence under any of the following provisions, namely—
- (a) sections 48, 52 to 55, 61 and 62 of the Offences against the Person Act 1861;
 - (b) sections 2 to 8, 11 and 13 of the Criminal Law Amendment Act 1885;
 - (c) section 1 of the Vagrancy Act 1898;
 - (d) sections 1 and 2 of the Punishment of Incest Act 1908;
 - (e) section 7(4) of the Criminal Law Amendment Act 1912;
 - (f) section 2 of the Attempted Rape, etc. Act (Northern Ireland) 1960;
 - (g) sections 21 and 22 of the Children and Young Persons Act (Northern Ireland) 1968;
 - (h) Article 3 of the Protection of Children (Northern Ireland) Order 1978;
 - (i) Article 9 of the Criminal Justice (Northern Ireland) Order 1980;
 - (j) Articles 7 and 8 of the Homosexual Offences (Northern Ireland) Order 1982;
 - (k) Articles 122 and 123 of the Mental Health (Northern Ireland) Order 1986.
- (6) Nothing in Article 33 of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply to a statement to which this section applies.”.

Abolition of requirement of corroboration for unsworn evidence of children

13.—(1) Subsection (2) of section 57 of the Children and Young Persons Act (Northern Ireland) 1968⁽²⁾ (under which, where the unsworn evidence of a child of tender years admitted by virtue of that section is given on behalf of the prosecution, the accused is not liable to be convicted unless that evidence is corroborated by some other material evidence in support thereof implicating him) shall cease to have effect.

(2) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a child is abrogated in

(2) 1968 c. 34 (N.I.)

relation to cases where such a warning is required by reason only that the evidence is the evidence of a child.

(3) Unsworn evidence admitted by virtue of section 57 of the Children and Young Persons Act (Northern Ireland) 1968 may corroborate evidence (sworn or unsworn) given by any other person.