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STATUTORY INSTRUMENTS

1988 No. 1847 (N.I. 17)

NORTHERN IRELAND

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

Made 26th October 1988

Laid before Parliament 10th November 1988

Coming into operation in accordance with Article 1

ARRANGEMENT OF ORDER

Article

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At the Court at Buckingham Palace, the 26th day of October 1988

Present,

The Queen's Most Excellent Majesty in Council

1988 c. 33 Whereas this Order is made only for purposes corresponding to those of the following provisions of the Criminal Justice Act 1988, namely Part II, Part III (except section 32) and sections 47 and 160:

1974 c. 28 Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 168 of that Act of 1988) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

(2) The following provisions, namely—

(a) Articles 12 to 15;

(b) Article 16, in so far as it relates to the provisions mentioned in sub-paragraph (c); and

(c) paragraph 1 of Schedule 2 and Part I of Schedule 3,

shall come into operation on the expiration of 2 months from the day on which this Order is made.

(3) The other provisions of this Order shall come into operation on such day as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly. 1954 c. 33 (N.I.)

(2) In this Order “statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954.

PART II

DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

First-hand hearsay

3.—(1) Subject—

(a) to paragraph (4); and

(b) to paragraph 2A of Schedule 1 to the Criminal Appeal (Northern Ireland) Act 1980,

1980 c. 47

a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if—

(i) the requirements of one of the sub-paragraphs of paragraph (2) are satisfied; or

(ii) the requirements of paragraph (3) are satisfied.

(2) The requirements mentioned in paragraph (1)(i) are—

(a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;

(b) that—

(i) the person who made the statement is outside the United Kingdom; and

(ii) it is not reasonably practicable to secure his attendance; or

(c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.

(3) The requirements mentioned in paragraph (1)(ii) are—

(a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and

(b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.

(4) Paragraph (1) does not render admissible a confession made by an accused person that would not otherwise be admissible in law.

Business etc. documents

4.—(1) Subject—

(a) to paragraphs (3) and (4); and

- 1980 c. 47
- (b) to paragraph 2A of Schedule 1 to the Criminal Appeal (Northern Ireland) Act 1980,
a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied—
- (i) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and
 - (ii) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.
- (2) Paragraph (1) applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it—
- (a) in the course of a trade, business, profession or other occupation; or
 - (b) as the holder of a paid or unpaid office.
- (3) Paragraph (1) does not render admissible a confession made by an accused person that would not otherwise be admissible in law.
- (4) A statement prepared otherwise than in accordance with Article 9 or an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988 or under Article 10 or 11 for the purposes—
- 1988 c. 33
- (a) of pending or contemplated criminal proceedings; or
 - (b) of a criminal investigation,
- shall not be admissible by virtue of paragraph (1) unless—
- (i) the requirements of one of the sub-paragraphs of paragraph (2) of Article 3 are satisfied; or
 - (ii) the requirements of paragraph (3) of that Article are satisfied; or
 - (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

Principles to be followed by the court

- 5.—(1) If, having regard to all the circumstances—
- (a) the Crown Court—
 - (i) on a trial on indictment; or
 - (ii) on the hearing of an application under Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (application for dismissal of charges of fraud transferred from magistrates' court to Crown Court); or
 - (b) the Court of Appeal; or

- (c) the county court on an appeal from a magistrates' court; or
- (d) a magistrates' court in summary proceedings within the meaning of Article 2(3) of the Magistrates' Courts (Northern Ireland) Order 1981,

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is of the opinion that in the interests of justice a statement which is admissible by virtue of Article 3 or 4 nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

(2) Without prejudice to the generality of paragraph (1), it shall be the duty of the court to have regard—

- (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;
- (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
- (c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and
- (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement 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.

Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations

6. Where a statement which is admissible in criminal proceedings by virtue of Article 3 or 4 appears to the court to have been prepared, otherwise than in accordance with Article 9 or an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988 or under Article 10 or 11, for the purposes—

1988 c. 33

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

the statement shall not be given in evidence in any criminal proceedings without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice; and in considering whether its admission would be in the interests of justice, it shall be the duty of the court to have regard—

- (i) to the contents of the statement;
- (ii) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement 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
- (iii) to any other circumstances that appear to the court to be relevant.

Proof of statements contained in documents

7. Where a statement contained in a document is admissible as evidence in criminal proceedings, it may be proved—

- (a) by the production of that document; or
- (b) (whether or not that document is still in existence) by the production of a copy of that document, or of the material part of it,

authenticated in such manner as the court may approve; and it is immaterial for the purposes of this Article how many removes there are between a copy and the original.

Documentary evidence—supplementary

8.—(1) Nothing in this Part shall prejudice—

- (a) the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of this Part; or
- (b) any power of a court to exclude at its discretion a statement admissible by virtue of this Part.

(2) Schedule 1 shall have effect for the purpose of supplementing this Part.

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 1968 c. 34 (N.I.) Children and Young Persons Act (Northern Ireland) 1968—

"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

(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

1968 c. 34 (N.I.) **13.**—(1) Subsection (2) of section 57 of the Children and Young Persons Act (Northern Ireland) 1968 (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 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.

PART IV

MISCELLANEOUS AND SUPPLEMENTARY

Corruption

1889 c. 69 **14.**—(1) The following paragraph shall be substituted for paragraph (a) of section 2 of the Public Bodies Corrupt Practices Act 1889 (penalty for corruption in office)—

“(a) be liable—

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and

(ii) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both; and”.

1906 c. 34 (2) In subsection (1) of section 1 of the Prevention of Corruption Act 1906 (punishment of corrupt transactions with agents) for the words from “shall be liable” to the end of the subsection there shall be substituted the words “shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.”.

(3) Nothing in this Article shall affect the punishment for an offence committed before this Article comes into operation.

Summary offence of possession of indecent photograph of child

15.—(1) It is an offence for a person to have any indecent photograph of a child (meaning in this Article a person under the age of 16) in his possession.

(2) Where a person is charged with an offence under paragraph (1), it shall be a defence for him to prove—

- (a) that he had a legitimate reason for having the photograph in his possession; or
- (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
- (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) A person shall be liable on summary conviction of an offence under paragraph (1) to a fine not exceeding level 5 on the standard scale.

(4) Proceedings for an offence under paragraph (1) shall not be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(5) Articles 2(2) and (3), 7(1) and 8 of the Protection of Children (Northern Ireland) Order 1978 shall have effect as if any reference in them to that Order included a reference to this Article. 1978 NI 17

(6) Possession before this Article comes into operation is not an offence.

Amendments and repeals

16.—(1) Schedule 2 (which makes minor and consequential amendments) shall have effect.

(2) The statutory provisions mentioned in Schedule 3 are hereby repealed to the extent set out in the third column of that Schedule.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

Article 8(2).

SCHEDULE 1

DOCUMENTARY EVIDENCE—SUPPLEMENTARY

1. Where a statement is admitted as evidence in criminal proceedings by virtue of Part II—

- (a) any evidence which, if the person making the statement had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
- (b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him in cross-examination as relevant 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 that person, whether before or after making the statement, made (whether orally or not) some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

2. A statement which is given in evidence by virtue of Part II shall not be capable of corroborating evidence given by the person making it.

3. In estimating the weight, if any, to be attached to such a statement regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

4. 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 Part II.

1971 c. 36 (N.I.) 5. Expressions used in Part II and in Part I of the Civil Evidence Act (Northern Ireland) 1971 are to be construed in Part II in accordance with section 6 of that Act.

6. In Part II "confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.

Article 16(1).

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Protection of Children (Northern Ireland) Order 1978 (1978 NI 17)

1.—(1) In Article 4(1)—

- (a) for sub-paragraphs (a) and (b) substitute the words "that there is an indecent photograph of a child in any premises in the petty sessions district for which he acts"; and
- (b) omit the words from "taken" to the end.

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(2) In Article 5—

- (a) in paragraph (3), omit the words from “taken” to “distributed or shown”; and
- (b) in paragraph (5), after “Article 3(1)” insert “or Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988”.

The Criminal Appeal (Northern Ireland) Act 1980 (c. 47)

2. In Schedule 1, after paragraph 2 insert the following paragraph—

“2A. Subject to paragraph 2 above, evidence given orally at the original trial must be given orally at the retrial.”.

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Article 16(2).

SCHEDULE 3

REPEALS

PART I

REPEALS HAVING EFFECT IN ACCORDANCE WITH ARTICLE 1(2)

Chapter or Number	Short title	Extent of repeal
1916 c. 64.	The Prevention of Corruption Act 1916.	Sections 1 and 3.
1968 c. 34 (N.I.).	The Children and Young Persons Act (Northern Ireland) 1968.	Section 57(2).
1978 NI 17.	The Protection of Children (Northern Ireland) Order 1978.	In Article 4(1), the words from "taken" to the end. In Article 5(3), the words from "taken" to "distributed or shown".

PART II

REPEALS HAVING EFFECT ON APPOINTED DAY

Chapter or Number	Short title	Extent of repeal
1965 c. 15 (N.I.).	The Criminal Evidence Act (Northern Ireland) 1965.	The whole Act.
1969 c. 48.	The Post Office Act 1969.	Section 93(4).
1981 NI 26.	The Magistrates' Courts (Northern Ireland) Order 1981.	In Schedule 5, paragraph 10.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made only for purposes corresponding to those of Part II, Part III (except section 32) and sections 47 and 160 of the Criminal Justice Act 1988. It extends only to Northern Ireland

Part II of the Order deals with the admissibility of documentary evidence in criminal proceedings and Part III contains other provisions about evidence in such proceedings.

In Part IV, Article 14 increases the maximum penalties for corruption and Article 15 creates the summary offence of possessing an indecent photograph of a child.