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STATUTORY INSTRUMENTS

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**1989 No. 1341**

**The Police and Criminal Evidence  
(Northern Ireland) Order 1989**

**PART IX**

**EVIDENCE IN CRIMINAL PROCEEDINGS—GENERAL**

**Interpretation of Part IX**

**70.**—(1) In this Part—

“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;

“Service court” means a court-martial or a Standing Civilian Court; and

“sexual offence” has the meaning given in section 58(5) of the Children and Young Persons Act (Northern Ireland) 1968(1).

(2) In this Part references to conviction before a Service court are references—

(a) as regards a court-martial constituted under the Army Act 1955(2) or the Air Force Act 1955(3), to a finding of guilty which is, or falls to be treated as, a finding of the court duly confirmed;

(b) as regards—

(i) a court-martial; or

(ii) a disciplinary court,

constituted under the Naval Discipline Act 1957(4), to a finding of guilty which is, or falls to be treated as, the finding of the court.

(3) Nothing in this Part shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

*Convictions and acquittals*

**Proof of convictions and acquittals**

**71.**—(1) Where in any criminal proceedings the fact that a person has in the United Kingdom been convicted or acquitted of an offence otherwise than by a Service court is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

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(1) 1957 c. 53  
(2) 1971 c. 36 (N.I.)  
(3) 1968 c. 34 (N.I.)  
(4) 1955 c. 18

- (2) For the purposes of this Article a certificate of conviction or of acquittal—
- (a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the clerk of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and
  - (b) shall, as regards a conviction or acquittal on a summary trial, consist of a copy of the conviction or of the dismissal of the information, signed by the clerk of the court where the conviction or acquittal took place or by the clerk of the court, if any, to which a memorandum of the conviction or acquittal was sent;

and a document purporting to be a duly signed certificate of conviction or acquittal under this Article shall be taken to be such a certificate unless the contrary is proved.

(3) References in this Article to the clerk of a court include references to any other person having the custody of the court record.

(4) The method of proving a conviction or acquittal authorised by this Article shall be in addition to and not to the exclusion of any other authorised manner of proving a conviction or acquittal.

### **Conviction as evidence of commission of offence**

**72.**—(1) In any criminal proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the United Kingdom or by a Service court outside the United Kingdom shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence, whether or not any other evidence of his having committed that offence is given.

(2) In any criminal proceedings in which by virtue of this Article a person other than the accused is proved to have been convicted of an offence by or before any court in the United Kingdom or by a Service court outside the United Kingdom, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence—

- (a) by or before any court in the United Kingdom; or
- (b) by a Service court outside the United Kingdom,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this Article shall prejudice—

- (a) the admissibility in evidence of any conviction which would be admissible apart from this Article; or
- (b) the operation of any statutory provision whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other criminal proceedings made conclusive evidence of any fact.

### **Provisions supplementary to Article 72**

**73.**—(1) Where evidence that a person has been convicted of an offence is admissible by virtue of Article 72, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based—

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the complaint, information, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any criminal proceedings the contents of any document are admissible in evidence by virtue of paragraph (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(3) Nothing in any of the following—

- (a) section 8 of the Probation Act (Northern Ireland) 1950<sup>(5)</sup> (under which a conviction leading to probation or discharge is to be disregarded except as mentioned in that section);
- (b) section 13 of the Powers of Criminal Courts Act 1973<sup>(6)</sup> (which makes provision similar to section 8 of that Act of 1950); and
- (c) section 392 of the Criminal Procedure (Scotland) Act 1975<sup>(7)</sup> (which makes similar provision in respect of convictions on indictment in Scotland);

shall affect the operation of Article 72; and for the purposes of that Article any order made by a court of summary jurisdiction in Scotland under section 182 or 183 of the said Act of 1975 shall be treated as a conviction.

(4) Nothing in Article 72 shall be construed as rendering admissible in any criminal proceedings evidence of any conviction other than a subsisting one.

### *Confessions*

#### **Confessions**

74.—(1) In any criminal proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.

(2) If, in any criminal proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any criminal proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in paragraph (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this Article shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or

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(5) 1955 c. 19  
(6) 1957 c. 53  
(7) 1950 c. 7 (N.I.)

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this paragraph applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Paragraph (5) applies—

- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this Article; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part VIII shall prejudice the admissibility of a confession made by an accused person.

(8) In this Article “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

(9) Nothing in this Article shall have effect in relation to criminal proceedings to which section 8 of the Northern Ireland (Emergency Provisions) Act 1978(8) applies.

### **Confessions by mentally handicapped persons**

**75.—**(1) Without prejudice to the general duty of the court at a trial on indictment to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial—

- (a) the case against the accused depends wholly or substantially on a confession by him; and
- (b) the court is satisfied—
  - (i) that he is mentally handicapped; and
  - (ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in sub-paragraphs (a) and (b).

(2) In any case where a person is being tried summarily for an offence it appears to the court that a warning under paragraph (1) would be required if the trial were on indictment, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(3) In this Article—

“independent person” does not include a constable or a person employed for, or engaged on, police purposes;

“mentally handicapped” in relation to a person means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; and

“police purposes” includes the purposes of police cadets undergoing training with a view to becoming members of the Royal Ulster Constabulary and of civilians employed for the purposes of that Constabulary or of any such cadets.

### *Miscellaneous*

#### **Exclusion of unfair evidence**

**76.**—(1) In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this Article shall—

- (a) prejudice any rule of law requiring a court to exclude evidence; or
- (b) affect, in proceedings such as are mentioned in subsection (1) of section 8 of the Northern Ireland (Emergency Provisions) Act 1978(9), the admissibility under that section of a statement made by the accused.

#### **Time for taking accused's evidence**

**77.** If at the trial of any person for an offence—

- (a) the defence intends to call two or more witnesses to the facts of the case; and
- (b) those witnesses include the accused,

the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

#### **Abolition of right of accused to make unsworn statement**

**78.**—(1) Subject to paragraphs (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if he gives evidence, he shall do so on oath and be liable to cross-examination; but this Article shall not affect the right of the accused, if not represented by counsel or a solicitor, to address the court or jury otherwise than on oath on any matter on which, if he were so represented, counsel or a solicitor could address the court or jury on his behalf.

(2) Nothing in paragraph (1) shall prevent the accused making a statement without being sworn—

- (a) if it is one which he is required by law to make personally; or
- (b) if he makes it by way of mitigation before the court passes sentence upon him.

(3) Nothing in this Article shall apply—

- (a) to a trial which began before the day of the coming into operation of this Article; or
- (b) to proceedings before a magistrates' court, where—
  - (i) the court, in conducting a preliminary investigation, began to hear the evidence for the prosecution (other than a deposition relating to the arrest or remand of the accused) before that day, or
  - (ii) the court began to conduct a preliminary inquiry before that day.

#### **Competence and compellability of accused's spouse**

**79.**—(1) In any criminal proceedings the wife or husband of the accused shall be competent to give evidence—

- (a) subject to paragraph (4), for the prosecution; and
  - (b) on behalf of the accused or any person jointly charged with the accused.
- (2) In any criminal proceedings the wife or husband of the accused shall, subject to paragraph (4), be compellable to give evidence on behalf of the accused.
- (3) In any criminal proceedings the wife or husband of the accused shall, subject to paragraph (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if and only if—
- (a) the offence charged involves an assault on, or injury or a threat of injury to, the wife or husband of the accused or a person who was at the material time under the age of seventeen; or
  - (b) the offence charged 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) the offence charged 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) Where a husband and wife are jointly charged with an offence neither spouse shall at the trial be competent or compellable by virtue of paragraph (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.
- (5) In any criminal proceedings a person who has been but is no longer married to the accused shall be competent and compellable to give evidence as if that person and the accused had never been married.
- (6) Where in any criminal proceedings the age of any person at any time is material for the purposes of paragraph (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.
- (7) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.
- (8) Proviso (d) in section 1 of the Criminal Evidence Act (Northern Ireland) 1923<sup>(10)</sup> (communications between husband and wife) and section 7(2) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951<sup>(11)</sup> so far as it is unrepealed (evidence as to marital intercourse) shall cease to have effect.

### **Advance notice of expert evidence in Crown Court**

- 80.**—(1) Crown Court rules may make provision for—
- (a) requiring any party to criminal proceedings before the court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and
  - (b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of sub-paragraph (a) from adducing that evidence without the leave of the court.
- (2) Crown Court rules made by virtue of this Article may specify the kinds of expert evidence to which they apply and may exempt facts or matters of any description specified in the rules.

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(10) 1978 c. 5

(11) 1978 c. 5

### **Evidence through television links**

**81.**—(1) A person other than the accused may give evidence through a live television link at a preliminary investigation into an indictable offence, at a trial on indictment or on an appeal to the Court of Appeal or the hearing of a reference under section 14 of the Criminal Appeal (Northern Ireland) Act 1980<sup>(12)</sup> if—

- (a) the witness is in Northern Ireland; and
- (b) the witness—
  - (i) will not give evidence otherwise through fear, or
  - (ii) is under the age of 14 and the offence charged is one to which paragraph (3) applies.

(2) Evidence may not be given through a link by virtue of this Article without leave of the court.

(3) This paragraph applies—

- (a) to an offence which involves an assault on, or injury or threat of injury to, a person;
- (b) to an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968<sup>(13)</sup>;
- (c) to a sexual offence which is tried on indictment; 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 subparagraph (a), (b) or (c).

(4) Subject to Article 89, the Secretary of State may by order—

- (a) direct that this Article shall apply—
  - (i) to a witness falling within head (i) or (ii) of paragraph (1)(b) who is in Great Britain, or
  - (ii) to any witness who is outside the United Kingdom; and
- (b) provide that a statement made on oath by such a witness and given in evidence through a link by virtue of this Article shall be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979<sup>(14)</sup> as having been made in the proceedings in which it is given in evidence.

(5) Without prejudice to the generality of any statutory provision conferring power to make rules to which this paragraph applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(6) The rules to which paragraph (5) applies are—

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

(7) Where, at a preliminary investigation into an indictable offence, a court grants leave for evidence to be given through a link by virtue of this Article—

- (a) that court may, notwithstanding anything in the Magistrates' Courts (Northern Ireland) Order 1981<sup>(15)</sup> adjourn the investigation and order that it be held at such time and at such designated place as may be specified in the order; and

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<sup>(12)</sup> 1923 c. 9 (N.I.)

<sup>(13)</sup> 1951 c. 7 (N.I.)

<sup>(14)</sup> 1980 c. 47

<sup>(15)</sup> 1968 c. 34 (N.I.)

(b) a court sitting at a designated place shall, by virtue of this paragraph, have jurisdiction for the purposes of Article 16(1)(d) of that Order to deal with an offence in relation to which an investigation is so adjourned.

(8) In paragraph (7) “designated place” means any place designated under this paragraph by the Lord Chancellor as a place having facilities to receive evidence given through a link by virtue of this Article.