
STATUTORY INSTRUMENTS

1999 No. 2789

The Criminal Evidence (Northern Ireland) Order 1999

PART V

COMPETENCE OF WITNESSES AND CAPACITY TO BE SWORN

Competence of witnesses

Competence of witnesses to give evidence

31.—(1) At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.

(2) Paragraph (1) has effect subject to paragraphs (3) and (4).

(3) A person is not competent to give evidence in criminal proceedings if it appears to the court that he is not a person who is able to—

- (a) understand questions put to him as a witness, and
- (b) give answers to them which can be understood.

(4) A person charged in criminal proceedings is not competent to give evidence in the proceedings for the prosecution (whether he is the only person, or is one of two or more persons, charged in the proceedings).

(5) In paragraph (4) the reference to a person charged in criminal proceedings does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

Determining competence of witnesses

32.—(1) Any question whether a witness in criminal proceedings is competent to give evidence in the proceedings, whether raised—

- (a) by a party to the proceedings, or
- (b) by the court of its own motion,

shall be determined by the court in accordance with this Article.

(2) It is for the party calling the witness to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in paragraph (1) the court shall treat the witness as having the benefit of any directions under Article 7 which the court has given, or proposes to give, in relation to the witness.

(4) Any proceedings held for the determination of the question shall take place in the absence of the jury (if there is one).

(5) Expert evidence may be received on the question.

(6) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.

Giving of sworn or unsworn evidence

Determining whether witness to be sworn

33.—(1) Any question whether a witness in criminal proceedings may be sworn for the purpose of giving evidence on oath, whether raised—

- (a) by a party to the proceedings, or
- (b) by the court of its own motion,

shall be determined by the court in accordance with this Article.

(2) The witness may not be sworn for that purpose unless—

- (a) he has attained the age of 14, and
- (b) he has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) The witness shall, if he is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced (by any party).

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in paragraph (2)(b).

(5) Any proceedings held for the determination of the question mentioned in paragraph (1) shall take place in the absence of the jury (if there is one).

(6) Expert evidence may be received on the question.

(7) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.

(8) For the purposes of this Article a person is able to give intelligible testimony if he is able to—

- (a) understand questions put to him as a witness, and
- (b) give answers to them which can be understood.

Reception of unsworn evidence

34.—(1) Paragraphs (2) and (3) apply to a person (of any age) who—

- (a) is competent to give evidence in criminal proceedings, but
- (b) (by virtue of Article 33(2)) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings of a person to whom this paragraph applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this paragraph applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(4) A court in criminal proceedings shall accordingly receive in evidence any evidence given unsworn in pursuance of paragraph (2) or (3).

(5) Where a person (“the witness”) who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe for the purposes of any of sections 2(1), 12(2) and 13A(3) of the Criminal Appeal (Northern Ireland) Act 1980 (grounds for allowing appeals) by reason only that it appears to

the Court of Appeal that the witness was a person falling within Article 33(2) (and should accordingly have given his evidence on oath).

Penalty for giving false unsworn evidence

35.—(1) This Article applies where a person gives unsworn evidence in criminal proceedings in pursuance of Article 34(2) or (3).

(2) If such a person wilfully gives false evidence in such circumstances that, had the evidence been given on oath, he would have been guilty of perjury, he shall be guilty of an offence and liable on summary conviction to—

- (a) imprisonment for a term not exceeding 6 months, or
- (b) a fine not exceeding level 3 on the standard scale,

or both.

(3) In relation to a person under the age of 14, paragraph (2) shall have effect as if for the words following “on summary conviction” there were substituted “to a fine not exceeding level 1 on the standard scale”.