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## STATUTORY INSTRUMENTS

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# 2004 No. 1500 (N.I. 9)

## The Criminal Justice (Northern Ireland) Order 2004

- - - - - 10th June 2004

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### Modifications etc. (not altering text)

- C1** Order: functions transferred from Secretary of State to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 4(1)(2), [Sch. 1](#) (with arts. 28-31); [S.I. 2010/977](#), [art. 1\(2\)](#)

## PART I

### INTRODUCTORY

#### Title and commencement

- 1.—(1) This Order may be cited as the Criminal Justice (Northern Ireland) Order 2004.
- (2) The following provisions of this Order shall come into operation on the expiration of one month from the day on which this Order is made—
- (a) this Part;
  - (b) Articles 14, 15, 32, 33, 34 and 36.
- (3) The other provisions of this Order shall come into operation on such day or days as the Secretary of State may by order appoint.

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### Subordinate Legislation Made

- P1** [Art. 1\(3\)](#) power partly exercised: different dates appointed for specified provisions by [S.R. 2004/391](#), [arts. 2, 3](#);
- 18.4.2005 for specified provisions by [S.R. 2005/243](#), [art. 2](#)
- 2.2.2009 for specified provisions by [S.R. 2008/471](#), [art. 2](#), [Sch.](#)

#### Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.
- (2) In this Order—

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“the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12);

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

## PART II

### AMENDMENTS OF POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989

#### Extension of powers to stop and search

3. In Article 3(8) of the 1989 Order (offences for purpose of definition of prohibited article), at the end of sub-paragraph (e) insert—

“; and

offences under Article 3 of the Criminal Damage (Northern Ireland) Order 1977 (NI 4) (destroying or damaging property).”.

#### Bail elsewhere than at police station

4.—(1) Article 32 of the 1989 Order (arrest elsewhere than at police station) is amended as follows—

(a) for paragraph (1) substitute—

“(1) Paragraph (1A) shall apply where a person is, at any place other than a police station—

(a) arrested by a constable for an offence; or

(b) taken into custody by a constable after being arrested for an offence by a person other than a constable.

(1A) The person must be taken by a constable to a police station as soon as practicable after the arrest.

(1B) Paragraph (1A) has effect subject to paragraph (10) and Article 32A.” ;

(b) in paragraph (2) for “paragraph (1)” substitute “ paragraph (1A) ”;

(c) for paragraph (10) substitute—

“(10) A person arrested by a constable at any place other than a police station must be released without bail if the condition in paragraph (10A) is satisfied.

(10A) The condition is that, at any time before the person arrested reaches a police station, a constable is satisfied that there are no grounds for keeping him under arrest or releasing him on bail under Article 32A.” ;

(d) for paragraphs (13) and (14) substitute—

“(13) Nothing in paragraph (1A) or in Article 32A prevents a constable delaying taking a person to a police station or releasing him on bail if the condition in paragraph (13A) is satisfied.

(13A) The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

- (14) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released on bail.” ;
- (e) in paragraph (15) for “paragraph (1)” substitute “ paragraph (1A) or Article 32A ”.
- (2) After Article 32 of the 1989 Order insert—

**“Bail elsewhere than at police station**

**32A.**—(1) A constable may release on bail a person who is arrested or taken into custody in the circumstances mentioned in Article 32(1).

(2) A person may be released on bail under paragraph (1) at any time before he arrives at a police station.

(3) A person released on bail under paragraph (1) must be required to attend a police station.

(4) No other requirement may be imposed on the person as a condition of bail.

(5) The police station which the person is required to attend may be any police station.

**Bail under Article 32A: notices**

**32B.**—(1) Where a constable grants bail to a person under Article 32A, he must give that person a notice in writing before he is released.

(2) The notice must state—

(a) the offence for which he was arrested; and

(b) the ground on which he was arrested.

(3) The notice must inform him that he is required to attend a police station.

(4) It may also specify the police station which he is required to attend and the time when he is required to attend.

(5) If the notice does not include the information mentioned in paragraph (4), the person must subsequently be given a further notice in writing which contains that information.

(6) The person may be required to attend a different police station from that specified in the notice under paragraph (1) or (5) or to attend at a different time.

(7) He must be given notice in writing of such change as is mentioned in paragraph (6) but more than one such notice may be given to him.

**Bail under Article 32A: supplemental**

**32C.**—(1) A person who has been required to attend a police station is not required to do so if he is given notice in writing that his attendance is no longer required.

(2) If a person is required to attend a police station which is not a designated police station he must be—

(a) released; or

(b) taken to a designated police station,

not more than six hours after his arrival.

(3) Nothing in Part II of the Criminal Justice (Northern Ireland) Order 2003 (NI 13) (bail in criminal proceedings) applies in relation to bail under Article 32A.

(4) Nothing in Article 32A or 32B or in this Article prevents the re-arrest without a warrant of a person released on bail under Article 32A if new evidence justifying a further arrest has come to light since his release.

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### **Failure to answer to bail under Article 32A**

**32D.**—(1) A constable may arrest without warrant a person who—

- (a) has been released on bail under Article 32A subject to a requirement to attend a specified police station; but
- (b) fails to attend the police station at the specified time.

(2) A person arrested under paragraph (1) must be taken to a police station (which may be the specified police station or any other police station) as soon as practicable after the arrest.

(3) In paragraph (1), “specified” means specified in a notice under paragraph (1) or (5) of Article 32B or, if notice of change has been given under paragraph (7) of that Article, in that notice.

(4) For the purposes of—

- (a) Article 32 (subject to the obligation in paragraph (2)); and
- (b) Article 33,

an arrest under this Article is to be treated as an arrest for an offence.” .

### **Limits on periods of detention without charge**

**5.** In Article 43(1) of the 1989 Order (conditions to be satisfied before detention without charge may be extended from 24 to 36 hours), for sub-paragraph (b) substitute—

“(b) an offence for which he is under arrest is an arrestable offence; and” .

### **Property of detained persons**

**6.**—(1) Article 55 of the 1989 Order (searches of detained persons) is amended as follows.

(2) In paragraph (1) (custody officer at a police station to ascertain and record everything which a detained person has with him) omit “and record or cause to be recorded”.

(3) For paragraph (2) (record of arrested person to be made as part of custody record) substitute—

“(2) The custody officer may record or cause to be recorded all or any of the things which he ascertains under paragraph (1).

(2A) In the case of an arrested person, any such record may be made as part of his custody record.” .

### **Taking fingerprints without consent**

**7.**—(1) Article 61 of the 1989 Order (fingerprinting) is amended as follows.

(2) For paragraphs (3) and (4) (taking of fingerprints without appropriate consent) substitute—

“(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he is detained in consequence of his arrest for a recordable offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and

(b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.” .

(3) Paragraph (5) (authorisation to be given or confirmed in writing) shall cease to have effect.

(4) In paragraph (7) (reasons for taking of fingerprints without consent) for “paragraph (3) or (6)” substitute “ paragraph (3), (4) or (6) ”.

### **Taking non-intimate samples without consent**

8.—(1) Article 63 of the 1989 Order (other samples) is amended as follows.

(2) After paragraph (2) (consent to be given in writing) insert—

“(2A) A non-intimate sample may be taken from a person without the appropriate consent if—

(a) he is in police detention in consequence of his arrest for a recordable offence; and

(b) either he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or he has had such a sample taken but it proved insufficient.” .

(3) In paragraph (3)(a) (taking of samples without appropriate consent) omit “is in police detention or”.

(4) In paragraph (3A) (taking of samples without appropriate consent after charge) for “(whether or not he falls within paragraph (3)(a))” substitute “ (whether or not he is in police detention or held in custody by the police on the authority of a court) ”.

(5) In paragraph (8A) (reasons for taking of samples without consent) for “paragraph (3A)” substitute “ paragraph (2A), (3A) ”.

*Article 9—Amendments (related to the provisions of this Part)*

## **PART III**

### **LIVE LINKS**

#### **Live links in criminal proceedings**

10.—(1) A witness (other than the defendant) may, if the court so directs, give evidence through a live link in the following criminal proceedings.

(2) They are—

(a) a summary trial;

(b) an appeal to a county court arising out of such a trial;

(c) a preliminary investigation or preliminary inquiry into an indictable offence;

(d) a trial on indictment;

(e) an appeal to the Court of Appeal;

(f) the hearing of a reference under section 10 or 12 of the Criminal Appeal Act 1995 (c. 35);

(g) a hearing before a magistrates' court or the Crown Court which is held after the defendant has entered a plea of guilty; and

(h) a hearing before the Court of Appeal under section 80 of the Criminal Justice Act 2003 (c. 44).

(3) A direction may be given under this Article—

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- (a) on an application by a party to the proceedings; or
  - (b) of the court's own motion.
- (4) But a direction may not be given under this Article unless—
- (a) the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link;
  - (b) it has been notified by the Secretary of State that suitable facilities for receiving evidence through a live link are available in the county court division in which it appears to the court that the proceedings will take place; and
  - (c) that notification has not been withdrawn.
- (5) The withdrawal of such a notification is not to affect a direction given under this Article before that withdrawal.
- (6) In deciding whether to give a direction under this Article the court must consider all the circumstances of the case.
- (7) Those circumstances include in particular—
- (a) the availability of the witness;
  - (b) the need for the witness to attend in person;
  - (c) the importance of the witness's evidence to the proceedings;
  - (d) the views of the witness;
  - (e) the suitability of the facilities at the place where the witness would give evidence through a live link;
  - (f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.
- (8) The court must state in open court its reasons for refusing an application for a direction under this Article and, if it is a magistrates' court, must cause them to be entered in the Order Book.

### **Effect of, and rescission of, direction**

**11.**—(1) Paragraph (2) applies where the court gives a direction under Article 10 for a person to give evidence through a live link in particular proceedings.

(2) The person concerned may not give evidence in those proceedings after the direction is given otherwise than through a live link (but this is subject to the following provisions of this Article).

(3) The court may rescind a direction under Article 10 if it appears to the court to be in the interests of justice to do so.

(4) Where it does so, the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under Article 10 in relation to him.

(5) A direction under Article 10 may be rescinded under paragraph (3)—

- (a) on an application by a party to the proceedings; or
- (b) of the court's own motion.

(6) But an application may not be made under paragraph (5)(a) unless there has been a material change of circumstances since the direction was given.

(7) The court must state in open court its reasons—

- (a) for rescinding a direction under Article 10; or
- (b) for refusing an application to rescind such a direction,

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

### **Magistrates' courts permitted to sit at other locations**

**12.**—(1) This Article applies where—

- (a) a magistrates' court is minded to give a direction under Article 10 for evidence to be given through a live link in proceedings before the court; and
- (b) suitable facilities for receiving such evidence are not available at any court-house in which the court can (apart from paragraph (2)) lawfully sit.

(2) The court may sit for the purposes of the whole or any part of the proceedings at any place at which such facilities are available and which has been appointed for the purposes of this Article by the Secretary of State.

### **Warning to jury**

**13.**—(1) This Article applies where, as a result of a direction under Article 10, evidence has been given through a live link in proceedings before the Crown Court.

(2) The judge may give the jury (if there is one) such direction as he thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

### **Rules of court**

**14.**—(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Rules of court may in particular make provision—

- (a) as to the procedure to be followed in connection with applications under Article 10 or 11; and
- (b) as to the arrangements or safeguards to be put in place in connection with the operation of live links.

(3) The provision which may be made by virtue of paragraph (2)(a) includes provision—

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application under Article 10 unless there has been a material change of circumstances;
- (c) for the manner in which confidential or sensitive information is to be treated in connection with an application under Article 10 or 11 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) Nothing in this Article is to be taken as affecting the generality of any statutory provision conferring power to make rules of court.

### **Interpretation of Part III**

**15.**—(1) In this Part—

“judge” includes, in relation to a magistrates' court, resident magistrate;

“Order Book” means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984 (SR 1984 No. 225);

“rules of court” means—

- (a) magistrates' court rules;

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- (b) county court rules;
  - (c) Crown Court rules; and
  - (d) rules made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23);
- “witness”, in relation to any criminal proceedings, means a person called or proposed to be called, to give evidence in the proceedings.

(2) In this Part “live link” means a live television link or other arrangement by which a witness, while at a place in the United Kingdom which is outside the building where the proceedings are being held, is able to see and hear a person at the place where the proceedings are being held and to be seen and heard by the following persons.

(3) They are—

- (a) the defendant or defendants;
- (b) the judge and the jury (if there is one);
- (c) legal representatives acting in the proceedings; and
- (d) any interpreter or other person appointed by the court to assist the witness.

(4) The extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing is to be disregarded for the purposes of paragraph (2).

(5) Nothing in this Part is to be regarded as affecting any power of a court—

- (a) to make an order, give directions or give leave of any description in relation to any witness (including the defendant or defendants); or
- (b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise).

## PART IV

### PROSECUTION APPEALS

#### *Introduction*

#### **Introduction**

**16.**—(1) In relation to a trial on indictment, the prosecution is to have the rights of appeal for which provision is made by this Part.

- (2) But the prosecution is to have no right of appeal under this Part in respect of—
  - (a) a ruling that a jury be discharged; or
  - (b) a ruling from which an appeal lies to the Court of Appeal by virtue of any other statutory provision.
- (3) An appeal under this Part is to lie to the Court of Appeal.
- (4) Such an appeal may be brought only with the leave of the judge or the Court of Appeal.

#### **Modifications etc. (not altering text)**

- C2** Art. 16(4) excluded (1.8.2007) by [Justice and Security \(Northern Ireland\) Act 2007 \(c. 6\), ss. 5\(9\), 53\(4\)](#) (with [s. 8\(1\)\(3\)](#)); [S.I. 2007/2045, art. 2\(2\)](#), (with transitional provisions in art. 3)



### *General right of appeal in respect of rulings*

#### **General right of appeal in respect of rulings**

17.—(1) This Article applies where a judge makes a ruling in relation to a trial on indictment at an applicable time and the ruling relates to one or more offences included in the indictment.

(2) The prosecution may appeal in respect of the ruling in accordance with this Article.

(3) The ruling is to have no effect whilst the prosecution is able to take any steps under paragraph (4).

(4) The prosecution may not appeal in respect of the ruling unless, following the making of the ruling—

(a) it informs the court that it intends to appeal; or

(b) it requests an adjournment to consider whether to appeal and if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.

(5) If the prosecution requests an adjournment under paragraph (4)(b), the judge may grant such an adjournment.

(6) Where the ruling relates to two or more offences—

(a) any one or more of those offences may be the subject of the appeal; and

(b) if the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.

(7) Where—

(a) the ruling is a ruling that there is no case to answer; and

(b) the prosecution, at the same time that it informs the court in accordance with paragraph (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge in relation to the trial on indictment at an applicable time and which relate to the offence or offences which are the subject of the appeal,

that other ruling, or those other rulings, are also to be treated as the subject of the appeal.

(8) The prosecution may not inform the court in accordance with paragraph (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of the appeal, the defendant in relation to that offence should be acquitted of that offence if either of the conditions mentioned in paragraph (9) is fulfilled.

(9) Those conditions are—

(a) that leave to appeal to the Court of Appeal is not obtained; and

(b) that the appeal is abandoned before it is determined by the Court of Appeal.

(10) If the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, the ruling mentioned in paragraph (1) is to continue to have no effect in relation to the offence or offences which are the subject of the appeal whilst the appeal is pursued.

(11) If and to the extent that a ruling has no effect in accordance with this Article—

(a) any consequences of the ruling are also to have no effect;

(b) the judge may not take any steps in consequence of the ruling; and

(c) if he does so, any such steps are also to have no effect.

(12) Where the prosecution has informed the court of its agreement under paragraph (8) and either of the conditions mentioned in paragraph (9) is fulfilled, the judge or the Court of Appeal must order that the defendant in relation to the offence or each offence concerned be acquitted of that offence.

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(13) In this Article “applicable time”, in relation to a trial on indictment, means any time (whether before or after the commencement of the trial) before the time when the judge starts his summing-up to the jury.

(14) The reference in paragraph (13) to the time when the judge starts his summing-up to the jury includes the time when the judge would start his summing-up if there were a jury.

### **Expedited and non-expedited appeals**

**18.**—(1) Where the prosecution informs the court in accordance with Article 17(4) that it intends to appeal, the judge must decide whether or not the appeal should be expedited.

(2) If the judge decides that the appeal should be expedited, he may order an adjournment.

(3) If the judge decides that the appeal should not be expedited, he may—

- (a) order an adjournment; or
- (b) discharge the jury (if one has been sworn).

(4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in paragraph (3)(a) or (b).

### **Continuation of proceedings for offences not affected by ruling**

**19.**—(1) This Article applies where the prosecution informs the court in accordance with Article 17(4) that it intends to appeal.

(2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

### **Determination of appeal by Court of Appeal**

**20.**—(1) On an appeal under Article 17, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) Paragraphs (3) to (5) apply where the appeal relates to a single ruling.

(3) Where the Court of Appeal confirms the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

- (a) order that proceedings for that offence may be resumed in the Crown Court;
- (b) order that a fresh trial may take place in the Crown Court for that offence;
- (c) order that the defendant in relation to that offence be acquitted of that offence.

[<sup>F1</sup>(5) But the Court of Appeal may not make an order under paragraph (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under paragraph (4)(a) or (b).]

(6) Paragraphs (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.

(7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in paragraph (4)(a) to (c) (but subject to paragraph (5)).

**F1** Art. 20(5) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 45, 153(7) (with Sch. 27 para. 17); S.I. 2008/1586, art. 2(1), Sch. 1 para. 24 (with art. 2(3), Sch. 2)

### *Right of appeal in respect of evidentiary rulings*

#### **Right of appeal in respect of evidentiary rulings**

**21.**—(1) The prosecution may, in accordance with this Article and Article 22, appeal in respect of—

- (a) a single qualifying evidentiary ruling; or
- (b) two or more qualifying evidentiary rulings.

(2) A “qualifying evidentiary ruling” is an evidentiary ruling of a judge in relation to a trial on indictment which is made at any time (whether before or after the commencement of the trial) before the opening of the case for the defence.

(3) The prosecution may not appeal in respect of a single qualifying evidentiary ruling unless the ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

(4) The prosecution may not appeal in respect of two or more qualifying evidentiary rulings unless each ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

(5) If the prosecution intends to appeal under this Article, it must before the opening of the case for the defence inform the court—

- (a) of its intention to do so; and
- (b) of the ruling or rulings to which the appeal relates.

(6) In respect of the ruling, or each ruling, to which the appeal relates—

- (a) the qualifying offence, or at least one of the qualifying offences, to which the ruling relates must be the subject of the appeal; and
- (b) any other offence to which the ruling relates may, but need not, be the subject of the appeal.

(7) The prosecution must, at the same time that it informs the court in accordance with paragraph (5), inform the court of the offence or offences which are the subject of the appeal.

(8) For the purposes of this Article, the case for the defence opens when, after the conclusion of the prosecution evidence, the earliest of the following events occurs—

- (a) evidence begins to be adduced by or on behalf of a defendant;
- (b) it is indicated to the court that no evidence will be adduced by or on behalf of a defendant;
- (c) a defendant's case is opened, as permitted by section 2 of the Criminal Procedure Act 1865 (c. 18).

(9) In this Article—

“evidentiary ruling” means a ruling which relates to the admissibility or exclusion of any prosecution evidence;

“qualifying offence” means—

- (a) an offence described in Schedule 2;
- (b) an offence of aiding, abetting, counselling or procuring the commission of an offence described in Schedule 2.

(10) The Secretary of State may by order amend that Schedule by doing any one or more of the following—

- (a) adding a description of offence;

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- (b) removing a description of offence for the time being included;
- (c) modifying a description of offence for the time being included.

(11) Nothing in this Article affects the right of the prosecution to appeal in respect of an evidentiary ruling under Article 17.

#### **Condition that evidentiary ruling significantly weakens prosecution case**

**22.**—(1) Leave to appeal may not be given in relation to an appeal under Article 21 unless the judge or, as the case may be, the Court of Appeal is satisfied that the relevant condition is fulfilled.

(2) In relation to an appeal in respect of a single qualifying evidentiary ruling, the relevant condition is that the ruling significantly weakens the prosecution's case in relation to the offence or offences which are the subject of the appeal.

(3) In relation to an appeal in respect of two or more qualifying evidentiary rulings, the relevant condition is that the rulings taken together significantly weaken the prosecution's case in relation to the offence or offences which are the subject of the appeal.

#### **Expedited and non-expedited appeals**

**23.**—(1) Where the prosecution informs the court in accordance with Article 21(5), the judge must decide whether or not the appeal should be expedited.

(2) If the judge decides that the appeal should be expedited, he may order an adjournment.

(3) If the judge decides that the appeal should not be expedited, he may—

- (a) order an adjournment; or
- (b) discharge the jury (if one has been sworn).

(4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in paragraph (3)(a) or (b).

#### **Continuation of proceedings for offences not affected by ruling**

**24.**—(1) This Article applies where the prosecution informs the court in accordance with Article 21(5).

(2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

#### **Determination of appeal by Court of Appeal**

**25.**—(1) On an appeal under Article 21, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) In addition, the Court of Appeal must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

- (a) order that proceedings for that offence be resumed in the Crown Court;
- (b) order that a fresh trial may take place in the Crown Court for that offence;
- (c) order that the defendant in relation to that offence be acquitted of that offence.

(3) But no order may be made under paragraph (2)(c) in respect of an offence unless the prosecution has indicated that it does not intend to continue with the prosecution of that offence.

#### **Reversal of rulings**

**26.** The Court of Appeal may not reverse a ruling on an appeal under this Part unless it is satisfied—

- (a) that the ruling was wrong in law;
- (b) that the ruling involved an error of law or principle; or
- (c) that the ruling was a ruling that it was not reasonable for the judge to have made.

*Miscellaneous and supplemental*

**Appeals to the House of Lords**

27.—(1) The Criminal Justice (Northern Ireland) Act 1980 (c. 47) is amended as follows.

(2) In the heading to Part II (appeal to the House of Lords from decision under Part I) for “from decision under Part I” substitute “ from Court of Appeal ”.

(3) In section 31(1) (right of appeal to the House of Lords) after “Order 1988” insert “ or Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) ”.

(4) In section 35 (bail on appeal by the defendant) after “preparatory hearings)” insert “ or Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) ”.

**Costs**

28.—(1) The Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10) is amended as follows.

(2) After section 4(1) (prosecution costs on appeal to be met by the accused) insert—

“(1A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) it may, subject to rules made pursuant to section 7, make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

(1B) Costs ordered to be paid under subsection (1A) may include the cost of any transcript of a record of proceedings made in accordance with rules of court under section 21 of the Criminal Appeal (Northern Ireland) Act 1980.” .

(3) In section 4(2A) (defence costs on an appeal to be met by the Secretary of State) after “Order 1988” insert “ or under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) ”.

**Effect on time limits in relation to preliminary stages**

29.—(1) In Article 12 of the Criminal Justice (Northern Ireland) Order 2003 (NI 13) (power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings) after paragraph (6) insert—

“(7) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) shall be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned.” .

(2) In section 72 of the Terrorism Act 2000 (c. 11) (power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings for scheduled offences) after subsection (6) insert—

“(7) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (prosecution appeals) shall be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned” .

*Status: Point in time view as at 02/02/2009.*

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## Restrictions on reporting

- 30.**—(1) Except as provided by this Article no publication shall include a report of—
- (a) anything done under Article 17, 18, 21, 22 or 23;
  - (b) an appeal under this Part;
  - (c) an appeal under Part II of the 1980 Act in relation to an appeal under this Part; or
  - (d) an application for leave to appeal in relation to an appeal mentioned in sub-paragraph (b) or (c).
- (2) The judge may order that paragraph (1) is not to apply, or is not to apply to a specified extent, to a report of—
- (a) anything done under Article 17, 18, 21, 22 or 23; or
  - (b) an application to the judge for leave to appeal to the Court of Appeal under this Part.
- (3) The Court of Appeal may order that paragraph (1) is not to apply, or is not to apply to a specified extent, to a report of—
- (a) an appeal to the Court of Appeal under this Part;
  - (b) an application to that Court for leave to appeal to it under this Part; or
  - (c) an application to that Court for leave to appeal to the House of Lords under Part II of the 1980 Act.
- (4) The House of Lords may order that paragraph (1) is not to apply, or is not to apply to a specified extent, to a report of—
- (a) an appeal to that House under Part II of the 1980 Act; or
  - (b) an application to that House for leave to appeal to it under Part II of that Act.
- (5) Where there is only one defendant and he objects to the making of an order under paragraph (2), (3) or (4)—
- (a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of the defendant, that it is in the interests of justice to do so; and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (6) Where there are two or more defendants and one or more of them object to the making of an order under paragraph (2), (3) or (4)—
- (a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of each of the defendants, that it is in the interests of justice to do so; and
  - (b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.
- (7) Paragraph (1) does not apply to the inclusion in a publication of a report of—
- (a) anything done under Article 17, 18, 21, 22 or 23;
  - (b) an appeal under this Part;
  - (c) an appeal under Part II of the 1980 Act in relation to an appeal under this Part; or
  - (d) an application for leave to appeal in relation to an appeal mentioned in sub-paragraph (b) or (c),

at the conclusion of the trial of the defendant or the last of the defendants to be tried.

(8) Paragraph (1) does not apply to a report which contains only one or more of the following matters—

- (a) the identity of the court and the name of the judge;
- (b) the names, ages, home addresses and occupations of the defendant or defendants and witnesses;
- (c) the offence or offences, or a summary of them, with which the defendant or defendants are charged;
- (d) the names of the legal representatives in the proceedings;
- (e) where the proceedings are adjourned, the date and place to which they are adjourned;
- (f) any arrangements as to bail;
- (g) whether—
  - (i) the Northern Ireland Legal Services Commission funded a right to representation as part of the costs of criminal defence services provided by the Commission under the Access to Justice (Northern Ireland) Order 2003 (NI 10); or
  - (ii) legal aid under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) (which was repealed by the Access to Justice (Northern Ireland) Order 2003) was granted to the defendant or any of the defendants.

(9) The addresses that may be included in a report by virtue of paragraph (8) are addresses—

- (a) at any relevant time; and
- (b) at the time of their inclusion in the publication.

(10) Nothing in this Article affects any prohibition or restriction by virtue of any other statutory provision on the inclusion of any matter in a publication.

(11) In this Article—

“programme service” has the same meaning as in the Broadcasting Act 1990 (c. 42);

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings;

“relevant time” means a time when events giving rise to the charges to which the proceedings relate are alleged to have occurred;

“relevant programme” means a programme included in a programme service;

“the 1980 Act” means the Criminal Appeal (Northern Ireland) Act 1980 (c. 47).

### **Offences in connection with reporting**

**31.—**(1) This Article applies if a publication includes a report in contravention of Article 30.

(2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.

(3) Where the publication is a relevant programme—

- (a) any body corporate engaged in providing the programme service in which the programme is included; and
- (b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

is guilty of an offence.

(4) In the case of any other publication, any person publishing it is guilty of an offence.

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(5) For the purposes of this Article, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Proceedings for an offence under this Article may not be instituted otherwise than by or with the consent of—

- (a) before the relevant date, the Attorney General for Northern Ireland; or
- (b) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.

(8) In paragraph (7) “the relevant date” means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.

### **Rules of court**

**32.**—(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Without limiting paragraph (1), rules of court may in particular make provision—

- (a) for time limits which are to apply in connection with any provisions of this Part;
- (b) as to procedures to be applied in connection with this Part;
- (c) enabling a single judge of the Court of Appeal to give leave to appeal under this Part or to exercise the power of the Court of Appeal under Article 17(12).

(3) Nothing in this Article is to be taken as affecting the generality of any statutory provision conferring powers to make rules of court.

### **Interpretation of Part IV**

**33.**—(1) In this Part—

“programme service” has the meaning given by Article 30(11);

“publication” has the meaning given by Article 30(11);

“qualifying evidentiary ruling” is to be construed in accordance with Article 21(2);

“the relevant condition” is to be construed in accordance with Article 22(2) and (3);

“relevant programme” has the meaning given by Article 30(11);

“rules of court” means—

- (a) Crown Court rules; and
- (b) rules made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23);

“ruling” includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement.

(2) Any reference in this Part (other than Article 32(2)(c)) to a judge is a reference to a judge of the Crown Court.

(3) There is to be no right of appeal under this Part in respect of a ruling in relation to which the prosecution has previously informed the court of its intention to appeal under either Article 17(4) or 21(5).



(4) Where a ruling relates to two or more offences but not all of those offences are the subject of an appeal under this Part, nothing in this Part is to be regarded as affecting the ruling so far as it relates to any offence which is not the subject of the appeal.

(5) Where two or more defendants are charged jointly with the same offence, the provisions of this Part are to apply as if the offence, so far as relating to each defendant, were a separate offence (so that, for example, any reference in this Part to a ruling which relates to one or more offences includes a ruling which relates to one or more of those separate offences).

## PART V SUPPLEMENTARY

### Orders

**34.**—(1) Any order made by the Secretary of State under this Order may contain—

- (a) any supplementary, incidental or consequential provision; and
- (b) any transitory, transitional or saving provision,

which the Secretary of State considers necessary or expedient.

(2) An order containing provision made under—

- (a) Article 21(10); or
- (b) Article 36(1),

shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

*Article 35—Repeals*

### Supplementary and consequential provision, etc

**36.**—(1) The Secretary of State may by order make—

- (a) any supplementary, incidental or consequential provision; and
- (b) any transitory, transitional or saving provision,

which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Order.

(2) An order under paragraph (1) may, in particular—

- (a) provide for any provision of this Order which comes into operation before another such provision has come into operation to have effect, until that other provision has come into operation, with such modifications as are specified in the order; and
- (b) amend or repeal any statutory provision passed or made before the making of this Order.

(3) Nothing in this Article limits the power by virtue of Article 34(1)(b) to include transitional or saving provision in an order under Article 1(3).

(4) The amendments that may be made under paragraph (2)(b) are in addition to those made by any other provision of this Order.

**Status:** Point in time view as at 02/02/2009.

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## SCHEDULES

### *Schedule 1—Amendments*

#### <sup>F2</sup>SCHEDULE 2

Article 21

#### QUALIFYING OFFENCES FOR PURPOSES OF ARTICLE 21

**F2** By [Sexual Offences \(Northern Ireland\) Order 2008 \(S.I. 2008/1769 \(N.I. 2\)\)](#), arts. 1(3), 81, [Sch. 1 para. 33\(2\)\(3\)](#) and [S.R. 2008/510](#), [art. 2](#) it is provided that "new paras. 7A and 10A shall be inserted (2.2.2009) in Sch. 4". The reference to Sch. 4 rather than Sch. 2 is an apparent error which has been reported to the relevant Department and will be corrected in due course.

#### Offences Against the Person

##### ***Murder***

1. Murder.

##### ***Attempted murder***

2. An offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (NI 13) of attempting to commit murder.

##### ***Soliciting murder***

3. An offence under section 4 of the Offences against the Person Act 1861 (c. 100).

##### ***Manslaughter***

4. Manslaughter.

##### ***[<sup>F3</sup>Corporate manslaughter***

- 4A An offence under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007.]

**F3** [Sch. 2 para. 4A](#) and cross-heading inserted (6.4.2008) by [Corporate Manslaughter and Corporate Homicide Act 2007 \(c. 19\)](#), ss. 26, 27(1), [Sch. 2 para. 4](#); [S.I. 2008/401](#), [art. 2\(1\)](#)

##### ***Wounding or causing grievous bodily harm with intent***

5. An offence under section 18 of the Offences against the Person Act 1861 (c. 100).

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### ***Kidnapping***

6. Kidnapping.

## Sexual Offences

### ***Rape***

7. Rape.

### ***Attempted rape***

8. An offence under section 2 of the Attempted Rape, etc., Act (Northern Ireland) 1960 (c. 3).

### ***Intercourse with a girl under fourteen***

9. An offence under section 4 of the Criminal Law Amendment Act 1885 (c. 69) of unlawfully and carnally knowing a girl under fourteen.

### ***Incest by a man with a girl under fourteen***

10. An offence under section 1(1) of the Punishment of Incest Act 1908 (c. 45) alleged to have been committed with a girl under fourteen.

## Drugs Offences

### ***Unlawful importation of Class A drug***

11. An offence under section 50(2) of the Customs and Excise Management Act 1979 (c. 2) alleged to have been committed in respect of a Class A drug (as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38)).

### ***Unlawful exportation of Class A drug***

12. An offence under section 68(2) of the Customs and Excise Management Act 1979 alleged to have been committed in respect of a Class A drug (as defined by section 2 of the Misuse of Drugs Act 1971).

### ***Fraudulent evasion in respect of Class A drug***

13. An offence under section 170(1) or (2) of the Customs and Excise Management Act 1979 alleged to have been committed in respect of a Class A drug (as defined by section 2 of the Misuse of Drugs Act 1971).

### ***Producing or being concerned in production of Class A drug***

14. An offence under section 4(2) of the Misuse of Drugs Act 1971 alleged to have been committed in relation to a Class A drug (as defined by section 2 of that Act).

### ***Supplying or offering to supply Class A drug***

15. An offence under section 4(3) of the Misuse of Drugs Act 1971 alleged to have been committed in relation to a Class A drug (as defined by section 2 of that Act).

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## Theft Offences

### ***Robbery***

16. An offence under section 8(1) of the Theft Act (Northern Ireland) 1969 (c. 16) where it is alleged that, at some time during the commission of the offence, the defendant had in his possession a firearm or imitation firearm (as defined by Article 2(2) of the Firearms (Northern Ireland) Order 2004 (NI 3)).

## Criminal Damage Offences

### ***Arson endangering life***

17. An offence under Article 3(2) of the Criminal Damage (Northern Ireland) Order 1977 (NI 4) alleged to have been committed by destroying or damaging property by fire.

### ***Causing explosion likely to endanger life or property***

18. An offence under section 2 of the Explosive Substances Act 1883 (c. 3).

### ***Intent or conspiracy to cause explosion likely to endanger life or property***

19. An offence under section 3(1)(a) of the Explosive Substances Act 1883.

## War Crimes and Terrorism

### ***Genocide, crimes against humanity and war crimes***

20. An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17).

### ***Grave breaches of the Geneva Conventions***

21. An offence under section 1 of the Geneva Conventions Act 1957 (c. 52).

### ***Directing terrorist organisation***

22. An offence under section 56 of the Terrorism Act 2000 (c. 11).

### ***Hostage-taking***

23. An offence under section 1 of the Taking of Hostages Act 1982 (c. 28).

### ***Hijacking and Other Offences Relating to Aviation, Maritime and Rail Security***

#### ***Hijacking of aircraft***

24. An offence under section 1 of the Aviation Security Act 1982 (c. 36).

#### ***Destroying, damaging or endangering the safety of aircraft***

25. An offence under section 2 of the Aviation Security Act 1982.

#### ***Hijacking of ships***

26. An offence under section 9 of the Aviation and Maritime Security Act 1990 (c. 31).

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***Seizing or exercising control of fixed platforms***

27. An offence under section 10 of the Aviation and Maritime Security Act 1990.

***Destroying ships or fixed platforms or endangering their safety***

28. An offence under section 11 of the Aviation and Maritime Security Act 1990.

***Hijacking of Channel Tunnel trains***

29. An offence under Article 4 of the Channel Tunnel (Security) Order 1994 (S.I.1994/570).

***Seizing or exercising control of Channel Tunnel system***

30. An offence under Article 5 of the Channel Tunnel (Security) Order 1994 (S.I.1994/570).

**Conspiracy**

***Conspiracy***

31. An offence under Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of conspiracy to commit an offence listed in this Schedule.

***Schedule 3—Repeals***

**Status:**

Point in time view as at 02/02/2009.

**Changes to legislation:**

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