
STATUTORY INSTRUMENTS

2004 No. 1501

The Criminal Justice (Evidence) (Northern Ireland) Order 2004

PART III

HEARSAY EVIDENCE

Principal categories of admissibility

Cases where a witness is unavailable

20.—(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if—

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,
- (b) the person who made the statement (“the relevant person”) is identified to the court’s satisfaction, and
- (c) any of the five conditions mentioned in paragraph (2) is satisfied.

(2) The conditions are—

- (a) that the relevant person is dead;
- (b) that the relevant person is unfit to be a witness because of his bodily or mental condition;
- (c) that the relevant person is outside the United Kingdom and it is not reasonably practicable to secure his attendance;
- (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken;
- (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of paragraph (2)(e) “fear” is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

(4) Leave may be given under paragraph (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard—

- (a) to the statement’s contents,
- (b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence),
- (c) in appropriate cases, to the fact that a direction under Article 7 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (special measures direction relating to eligible witness) could be made in relation to the relevant person, and
- (d) to any other relevant circumstances.

(5) A condition set out in any sub-paragraph of paragraph (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that sub-paragraph are caused—

- (a) by the person in support of whose case it is sought to give the statement in evidence, or
- (b) by a person acting on his behalf,

in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).