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STATUTORY INSTRUMENTS

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**2004 No. 1501**

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

**PART III**

**HEARSAY EVIDENCE**

*Supplementary*

**Additional requirement for admissibility of multiple hearsay**

**25.**—(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless—

- (a) either of the statements is admissible under Article 21, 23 or 24,
- (b) all parties to the proceedings so agree, or
- (c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

(2) In this Article “hearsay statement” means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.

**Documents produced as exhibits**

**26.**—(1) This Article applies if on a trial before a judge and jury for an offence—

- (a) a statement made in a document is admitted in evidence under Article 23 or 24, and
  - (b) the document or a copy of it is produced as an exhibit.
- (2) The exhibit must not accompany the jury when they retire to consider their verdict unless—
- (a) the court considers it appropriate, or
  - (b) all the parties to the proceedings agree that it should accompany the jury.

**Capability to make statement**

**27.**—(1) Nothing in Article 20, 23 or 24 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he made the statement.

(2) Nothing in Article 21 makes a statement admissible as evidence if any person who, in order for the requirements of Article 21(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned—

- (a) did not have the required capability at that time, or
  - (b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.
- (3) For the purposes of this Article a person has the required capability if he is capable of—

- (a) understanding questions put to him about the matters stated, and
  - (b) giving answers to such questions which can be understood.
- (4) Where by reason of this Article there is an issue as to whether a person had the required capability when he made a statement—
- (a) proceedings held for the determination of the issue must take place in the absence of the jury (if there is one);
  - (b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;
  - (c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

### **Credibility**

**28.**—(1) This Article applies if in criminal proceedings—

- (a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated, and
- (b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.

(2) In such a case—

- (a) any evidence which (if he had given such evidence) would have been admissible as relevant to his credibility as a witness is so admissible in the proceedings;
- (b) evidence may with the court's leave be given of any matter which (if he had given such evidence) 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;
- (c) evidence tending to prove that he made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that he contradicted himself.

(3) If as a result of evidence admitted under this Article an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

(4) In the case of a statement in a document which is admitted as evidence under Article 21 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as the maker of the statement for the purposes of paragraphs (1) to (3) above.

### **Stopping the case where evidence is unconvincing**

**29.**—(1) If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that—

- (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and
- (b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

- (a) a jury is directed under paragraph (1) to acquit a defendant of an offence, and

(b) the circumstances are such that, apart from this paragraph, the defendant could if acquitted of that offence be found guilty of another offence,  
the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in paragraph (1) in respect of it.

(3) If—

(a) a jury is required to determine under Article 49A(2) of the Mental Health (Northern Ireland) Order 1986 whether a person charged on an indictment with an offence did the act or made the omission charged, and

(b) the court is satisfied as mentioned in paragraph (1) above at any time after the close of the case for the prosecution that—

(i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and

(ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This Article does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

#### **Court's general discretion to exclude evidence**

**30.**—(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if—

(a) the statement was made otherwise than in oral evidence in the proceedings, and

(b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.

(2) Nothing in this Part prejudices—

(a) any power of a court to exclude evidence under Article 76 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (exclusion of unfair evidence), or

(b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).