2011 CHAPTER 24

PART 1 N.I.

VICTIMS AND WITNESSES

CHAPTER 2 N.I.

VULNERABLE AND INTIMIDATED WITNESSES

Special measures for vulnerable and intimidated witnesses

Eligibility for special measures: age of child witnesses N.I.

7.—(1) The Criminal Evidence (Northern Ireland) Order 1999 (NI 8) is amended as follows.

(2) In Article 4(1)(a) (witnesses eligible because under 17) for "17" substitute " 18 ".

(3) In Article 9 (special provisions relating to child witnesses)—

(a) in paragraph (8) for "17" substitute " 18 ", and

(b) in paragraph (9)(b) for "17" substitute " 18 ".

(4) In Article 10 (extension of Article 9 to certain witnesses)—

(a) in the title for "17" substitute " 18 ", and

(b) in paragraph (1)(a)(ii) for "17" substitute " 18 ".

Commencement Information

I1 S. 7 in operation at 1.1.2012 by S.R. 2011/370, **art. 3(a)**

Special measures directions for child witnesses N.I.

8.—(1) Article 9 of the Criminal Evidence (Northern Ireland) Order 1999 (NI 8) (special provisions relating to child witnesses) is amended in accordance with subsections (2) to (6).

(2) In paragraph (1) omit sub-paragraph (b).

(3) In paragraph (2)(a) for "(7)" substitute " (4C) ".

(4) In paragraph (4)—

(a) omit the "and" at the end of sub-paragraph (b), and

(b) after sub-paragraph (b) insert—

"(ba) if the witness informs the court of the witness's wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence; and".

(5) After paragraph (4) insert—

"(4A) Where as a consequence of all or part of the primary rule being disapplied under paragraph (4)(ba) a witness's evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in Article 11 for the evidence or that part of it.

(4B) The requirement in paragraph (4A) is subject to the following limitations—

(a) if the witness informs the court of the witness's wish that the requirement in paragraph (4A) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and

(b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(4C) In making a decision under paragraph (4)(ba) or (4B)(a), the court must take into account the following factors (and any others it considers relevant)—

(a) the age and maturity of the witness;

(b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in

paragraph (3) or (as the case may be) in accordance with the requirement in paragraph (4A);

(c) the relationship (if any) between the witness and the accused;

(d) the witness's social and cultural background and ethnic origins;

(e) the nature and alleged circumstances of the offence to which the proceedings relate.”.

(6) Omit paragraphs (5) to (7).

(7) In Article 10 of that Order (extension of provisions of Article 9)—

(a) in paragraph (1) omit sub-paragraph (b), and

(b) for paragraph (2) substitute—

“(2) Paragraphs (2) to (4) and (4C) of Article 9, so far as relating to the giving of a direction complying with the requirement contained in Article 9(3)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that Article).”.

Commencement Information

I2 S. 8 in operation at 1.1.2012 by S.R. 2011/370, **art. 3(a)**

Special provisions relating to sexual offences **N.I.**

9 After Article 10 of the Criminal Evidence (Northern Ireland) Order 1999 (NI 8) insert—

“**Special provisions relating to sexual offences**

10A.—(1) This Article applies where in criminal proceedings relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings.

(2) This Article does not apply if the place of trial is a magistrates' court.

(3) This Article does not apply if the complainant is an eligible witness by reason of Article 4(1)(a) (whether or not the complainant is an eligible witness by reason of any other provision of Article 4 or 5).

(4) If a party to the proceedings makes an application under Article 7(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under Article 15 (video recorded evidence in chief).

(5) Paragraph (6) applies if—

(a) a party to the proceedings makes a request under paragraph (4) with respect to the complainant; and

(b) the court determines for the purposes of Article 7(2) that the complainant is eligible for assistance by virtue of Article 4(1)(b) or 5.

(6) The court must—

(a) first have regard to paragraphs (7) to (9); and

(b) then have regard to Article 7(2);

and for the purposes of Article 7(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this Article is to be treated as if it were a measure determined by the court, pursuant to Article 7(2)(a) and (b)(i), to be one that (whether on its own or with any other special measures) would be likely to maximise, so far as practicable, the quality of the complainant's evidence.

(7) The court must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under Article 15.

(8) The requirement in paragraph (7) has effect subject to Article 15(2).

(9) The requirement in paragraph (7) does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the complainant's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the complainant would have that result or for any other reason).

(10) In this Article "relevant recording", in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant.".

Commencement Information

I3 S. 9 in operation at 1.1.2012 by S.R. 2011/370, **art. 3(a)**

Evidence by live link: presence of supporter N.I.

10.—(1) In Article 12 of the Criminal Evidence (Northern Ireland) Order 1999 (NI 8) (evidence by live link) after paragraph (1) insert—

"(1A) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.

(1B) In determining who may accompany the witness, the court must have regard to the wishes of the witness.".

(2) In Article 15 of that Order (video recorded evidence in chief) after paragraph (9) insert—

"(9A) If the court directs under paragraph (9) that evidence is to be given by live link, it may also make such provision in that direction as it could make under Article 12(1A) in a special measures direction.".

Commencement Information

I4 S. 10 in operation at 1.1.2012 by S.R. 2011/370, **art. 3(a)**

Video-recorded evidence in chief: supplementary testimony N.I.

11.—(1) Article 15 of the Criminal Evidence (Northern Ireland) Order 1999 (video recorded evidence in chief) is amended as follows.

(2) In paragraph (5) for sub-paragraph (b) substitute—

"(b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness's recorded testimony.".

(3) In paragraph (7)—

(a) for "paragraph (5)(b)(ii)" substitute " paragraph (5)(b) ", and

(b) in sub-paragraph (a) omit the words from "if there" to "relevant time,".

(4) Omit paragraph (8) (definition of "the relevant time").

(5) In paragraph (9) for "paragraph (5)(b)(ii)" substitute " paragraph (5)(b) ".

Commencement Information

I5 S. 11 in operation at 1.1.2012 by S.R. 2011/370, **art. 3(a)**

Evidence of certain accused persons

Examination of accused through intermediary N.I.

12.—(1) After Article 21B of the Criminal Evidence (Northern Ireland) Order 1999 (NI 8) insert—

"**Examination of accused through intermediary**

21BA.—(1) This Article applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.

(2) **[**[F1]Subject to paragraph (2A),**]** the court may, on the application of the accused, give a direction under paragraph (3) if it is satisfied—

(a) that the condition in paragraph (5) is or, as the case may be, the conditions in paragraph (6) are met in relation to the accused; and

(b) that giving the direction is necessary in order to ensure that the accused receives a fair trial.

[[F1](2A) A court may not give a direction under paragraph (3) unless—

(a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court; and

(b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn.**]**

(3) A direction under this paragraph is a direction that provides for any examination of the accused to be conducted through an interpreter or other person approved by the court for the purposes of this Article ("an intermediary").

(4) The function of an intermediary is to communicate—

(a) to the accused, questions put to the accused, and

(b) to any person asking such questions, the answers given by the accused in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question.

(5) Where the accused is aged under 18 when the application is made the condition is that the accused's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning.

(6) Where the accused has attained the age of 18 when the application is made the conditions are that—

(a) the accused suffers from a mental disorder (within the meaning of the Mental Health (Northern Ireland) Order 1986) or otherwise has a significant impairment of intelligence and social functioning; and

(b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

(7) Any examination of the accused in pursuance of a direction under paragraph (3) must take place in the presence of such persons as rules of court or the direction may provide and in circumstances in which—

(a) the judge and legal representatives acting in the proceedings are able to see and hear the examination of the accused and to communicate with the intermediary;

(b) the jury (if there is one) are able to see and hear the examination of the accused; and

(c) where there are two or more accused in the proceedings, each of the other accused is able to see and hear the examination of the accused.

For the purposes of this paragraph any impairment of eyesight or hearing is to be disregarded.

(8) Where two or more legal representatives are acting for a party to the proceedings, paragraph (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(9) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that the person will faithfully perform the function of an intermediary.

(10) Article 3 of the Perjury (Northern Ireland) Order 1979 (perjury) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

Further provision as to directions under Article 21BA(3)

21BB.—(1) The court may discharge a direction given under Article 21BA(3) at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the accused receives a fair trial (but this does not affect the power to give a further direction under Article 21BA(3) in relation to the accused).

(2) The court may vary (or further vary) a direction given under Article 21BA(3) at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the accused receives a fair trial.

(3) The court may exercise the power in paragraph (1) or (2) of its own motion or on an application by a party.

(4) The court must state in open court its reasons for—

(a) giving, varying or discharging a direction under Article 21BA(3), or

(b) refusing an application for, or for the variation or discharge of, a direction under Article 21BA(3),

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

(2) In the heading of Part 2A of that Order after “LIVE LINK” insert “ AND INTERMEDIARY ”.

Textual Amendments

F1 Words in s. 12(1) inserted (26.4.2013) by Criminal Justice Act (Northern Ireland) 2013 (c. 7), **ss. 11(2)(3)**, 15(1)

Commencement Information

I6 S. 12 in operation at 10.5.2013 for specified purposes by S.R. 2013/125, **art. 2**

I7 S. 12 in operation at 11.11.2013 for specified purposes by S.R. 2013/252, **art. 2**

I8 S. 12 in operation at 1.4.2015 for specified purposes by S.R. 2015/158, **art. 2**

I9 S. 12 in operation at 3.4.2017 for specified purposes by S.R. 2017/6, **art. 2**

Witnesses protected from cross-examination by accused in person

Age of child complainant N.I.

13 In Article 23 of the Criminal Evidence (Northern Ireland) Order 1999 (child complainants and other child witnesses) in paragraph (4)(a) for "17" substitute " 18 ".

Commencement Information

I10 S. 13 in operation at 1.1.2012 by S.R. 2011/370, **art. 3(b)**

Changes to legislation:
There are currently no known outstanding effects for the Justice Act (Northern Ireland) 2011, CHAPTER 2.