
STATUTORY INSTRUMENTS

1989 No. 1341

**The Police and Criminal Evidence
(Northern Ireland) Order 1989**

PART IX

EVIDENCE IN CRIMINAL PROCEEDINGS—GENERAL

Miscellaneous

Competence and compellability of accused's spouse

79.—(1) In any criminal proceedings the wife or husband of the accused shall be competent to give evidence—

- (a) subject to paragraph (4), for the prosecution; and
- (b) on behalf of the accused or any person jointly charged with the accused.

(2) In any criminal proceedings the wife or husband of the accused shall, subject to paragraph (4), be compellable to give evidence on behalf of the accused.

(3) In any criminal proceedings the wife or husband of the accused shall, subject to paragraph (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if and only if—

- (a) the offence charged involves an assault on, or injury or a threat of injury to, the wife or husband of the accused or a person who was at the material time under the age of seventeen; or
- (b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub-paragraph (a) or (b).

(4) Where a husband and wife are jointly charged with an offence neither spouse shall at the trial be competent or compellable by virtue of paragraph (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(5) In any criminal proceedings a person who has been but is no longer married to the accused shall be competent and compellable to give evidence as if that person and the accused had never been married.

(6) Where in any criminal proceedings the age of any person at any time is material for the purposes of paragraph (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(7) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

(8) Proviso (d) in section 1 of the Criminal Evidence Act (Northern Ireland) 1923⁽¹⁾ (communications between husband and wife) and section 7(2) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951⁽²⁾ so far as it is unrepealed (evidence as to marital intercourse) shall cease to have effect.

(1) 1978 c. 5
(2) 1978 c. 5