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STATUTORY INSTRUMENTS

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**1999 No. 2789**

**The Criminal Evidence (Northern Ireland) Order 1999**

**PART V**

**COMPETENCE OF WITNESSES AND CAPACITY TO BE SWORN**

*Competence of witnesses*

**Competence of witnesses to give evidence**

**31.**—(1) At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.

(2) Paragraph (1) has effect subject to paragraphs (3) and (4).

(3) A person is not competent to give evidence in criminal proceedings if it appears to the court that he is not a person who is able to—

- (a) understand questions put to him as a witness, and
- (b) give answers to them which can be understood.

(4) A person charged in criminal proceedings is not competent to give evidence in the proceedings for the prosecution (whether he is the only person, or is one of two or more persons, charged in the proceedings).

(5) In paragraph (4) the reference to a person charged in criminal proceedings does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

**Determining competence of witnesses**

**32.**—(1) Any question whether a witness in criminal proceedings is competent to give evidence in the proceedings, whether raised—

- (a) by a party to the proceedings, or
- (b) by the court of its own motion,

shall be determined by the court in accordance with this Article.

(2) It is for the party calling the witness to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in paragraph (1) the court shall treat the witness as having the benefit of any directions under Article 7 which the court has given, or proposes to give, in relation to the witness.

(4) Any proceedings held for the determination of the question shall take place in the absence of the jury (if there is one).

(5) Expert evidence may be received on the question.

(6) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.