
STATUTORY INSTRUMENTS

2004 No. 1501

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

PART III

HEARSAY EVIDENCE

Supplementary

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.