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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

*Miscellaneous*

**Expert evidence: preparatory work**

**31.**—(1) This Article applies if—

- (a) a statement has been prepared for the purposes of criminal proceedings,
- (b) the person who prepared the statement had or may reasonably be supposed to have had personal knowledge of the matters stated,
- (c) notice is given under the appropriate rules that another person (the expert) will in evidence given in the proceedings orally or under section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28) base an opinion or inference on the statement, and
- (d) the notice gives the name of the person who prepared the statement and the nature of the matters stated.

(2) In evidence given in the proceedings the expert may base an opinion or inference on the statement.

(3) If evidence based on the statement is given under paragraph (2) the statement is to be treated as evidence of what it states.

(4) This Article does not apply if the court, on an application by a party to the proceedings, orders that it is not in the interests of justice that it should apply.

(5) The matters to be considered by the court in deciding whether to make an order under paragraph (4) include—

- (a) the expense of calling as a witness the person who prepared the statement;
- (b) whether relevant evidence could be given by that person which could not be given by the expert;
- (c) whether that person can reasonably be expected to remember the matters stated well enough to give oral evidence of them.

(6) Paragraphs (1) to (5) apply to a statement prepared for the purposes of a criminal investigation as they apply to a statement prepared for the purposes of criminal proceedings, and in such a case references to the proceedings are to criminal proceedings arising from the investigation.

(7) The appropriate rules are rules made—

- (a) under Article 80 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (advance notice of expert evidence in Crown Court), or

- (b) under Article 13 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) by virtue of section 20(3) of the Criminal Procedure and Investigations Act 1996 (c. 25) (advance notice of expert evidence in magistrates' courts).

## Confessions

**32.—(1)** In the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) the following Article shall be inserted after Article 74—

### “Confessions may be given in evidence for co-accused

**74A.—(1)** In any criminal proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a co-accused) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.

(2) If, in any criminal proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.

(3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any criminal proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in paragraph (2) above to be proved in the proceedings on the balance of probabilities.

(4) The fact that a confession is wholly or partly excluded in pursuance of this Article shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this paragraph applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Paragraph (5) above applies—

- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this Article; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this Article “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).”.

(2) Subject to paragraph (1), nothing in this Part makes a confession by a defendant admissible if it would not be admissible under Article 74 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989](#).

(3) In paragraph (2) “confession” has the meaning given by Article 70 of that Order.

### **Representations other than by a person**

**33.**—(1) Where a representation of any fact—

(a) is made otherwise than by a person, but

(b) depends for its accuracy on information supplied (directly or indirectly) by a person,

the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.

(2) Paragraph (1) does not affect the operation of the presumption that a mechanical device has been properly set or calibrated.

### **Evidence at retrial**

**34.** For paragraphs 2 and 2A of Schedule 1 to the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (depositions) there is substituted—

#### *“Evidence*

**2.**—(1) Evidence given at a retrial ordered under section 6 of this Act must be given orally if it was given orally at the original trial, unless—

(a) all the parties to the retrial agree otherwise;

(b) Article 20 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 applies (admissibility of hearsay evidence where a witness is unavailable); or

(c) the witness is unavailable to give evidence, otherwise than as mentioned in paragraph (2) of that Article, and Article 18(1)(d) of that Order applies (admission of hearsay evidence under residual discretion).

(2) On a retrial ordered under section 6 of this Act, Article 42(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (reading of depositions) shall not apply to the depositions of any person who gave evidence at the original trial.”