
STATUTORY INSTRUMENTS

2004 No. 1501

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

PART III

HEARSAY EVIDENCE

Principal categories of admissibility

Cases where a witness is unavailable

20.—(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if—

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,
- (b) the person who made the statement (“the relevant person”) is identified to the court's satisfaction, and
- (c) any of the five conditions mentioned in paragraph (2) is satisfied.

(2) The conditions are—

- (a) that the relevant person is dead;
- (b) that the relevant person is unfit to be a witness because of his bodily or mental condition;
- (c) that the relevant person is outside the United Kingdom and it is not reasonably practicable to secure his attendance;
- (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken;
- (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of paragraph (2)(e) “fear” is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

(4) Leave may be given under paragraph (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard—

- (a) to the statement's contents,
- (b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence),
- (c) in appropriate cases, to the fact that a direction under Article 7 of the Criminal Evidence (Northern Ireland) Order 1999 (NI 8) (special measures direction relating to eligible witness) could be made in relation to the relevant person, and
- (d) to any other relevant circumstances.

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(5) A condition set out in any sub-paragraph of paragraph (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that sub-paragraph are caused—

- (a) by the person in support of whose case it is sought to give the statement in evidence, or
- (b) by a person acting on his behalf,

in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

Business and other documents

21.—(1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if—

- (a) oral evidence given in the proceedings would be admissible as evidence of that matter,
- (b) the requirements of paragraph (2) are satisfied, and
- (c) the requirements of paragraph (5) are satisfied, in a case where paragraph (4) requires them to be.

(2) The requirements of this paragraph are satisfied if—

- (a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office,
- (b) the person who supplied the information contained in the statement (“the relevant person”) had or may reasonably be supposed to have had personal knowledge of the matters dealt with, and
- (c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in sub-paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

(3) The persons mentioned in sub-paragraphs (a) and (b) of paragraph (2) may be the same person.

(4) The additional requirements of paragraph (5) must be satisfied if the statement—

- (a) was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation, but

[^{F1}(b) was not obtained pursuant to—

- (i) a request under section 7 of the Crime (International Co-operation) Act 2003,
- (ii) an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988, or
- (iii) an order under Part 2 of the Criminal Justice (European Investigation Order) Regulations 2017,

(all of which relate to overseas evidence).]

(5) The requirements of this paragraph are satisfied if—

- (a) any of the five conditions mentioned in Article 20(2) is satisfied (absence of relevant person etc), or
- (b) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he supplied the information and all other circumstances).

(6) A statement is not admissible under this Article if the court makes a direction to that effect under paragraph (7).

(7) The court may make a direction under this paragraph if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of—

- (a) its contents,
- (b) the source of the information contained in it,
- (c) the way in which or the circumstances in which the information was supplied or received, or
- (d) the way in which or the circumstances in which the document concerned was created or received.

F1 Art. 21(4)(b) substituted (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\)](#), reg. 1(1), [Sch. 3 para. 10](#) (with reg. 3)

Preservation of certain common law rules in relation to hearsay

22.—(1) The following rules of law are preserved.

Public information, etc.

- (1) Any rule of law under which in criminal proceedings—
- (a) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,
 - (b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them,
 - (c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them, or
 - (d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

Reputation as to character

(2) Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his good or bad character.

Note

The rule is preserved only so far as it allows the court to treat such evidence as proving the matter concerned.

Reputation or family tradition

(3) Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving—

- (a) pedigree or the existence of a marriage,
- (b) the existence of any public or general right, or
- (c) the identity of any person or thing.

Note

The rule is preserved only so far as it allows the court to treat such evidence as proving or disproving the matter concerned.

Res gestae

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(4) Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if—

- (a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded,
- (b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement, or
- (c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

Confessions, etc.

(5) Any rule of law relating to the admissibility of confessions or mixed statements in criminal proceedings.

Admissions by agents, etc.

(6) Any rule of law under which in criminal proceedings—

- (a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated, or
- (b) a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated.

Common enterprise

(7) Any rule of law under which in criminal proceedings a statement made by a party to a common enterprise is admissible against another party to the enterprise as evidence of any matter stated.

Expert evidence

(8) Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to his field.

(2) With the exception of the rules preserved by this Article, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.

Inconsistent statements

23.—(1) If in criminal proceedings a person gives oral evidence and—

- (a) he admits making a previous inconsistent statement, or
- (b) a previous inconsistent statement made by him is proved by virtue of section 3, 4 or 5 of the Criminal Procedure Act 1865 (c. 18),

the statement is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(2) If in criminal proceedings evidence of an inconsistent statement by any person is given under Article 28(2)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

Other previous statements of witnesses

24.—(1) This Article applies where a person (“the witness”) is called to give evidence in criminal proceedings.

(2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

- (3) A statement made by the witness in a document—
- (a) which is used by him to refresh his memory while giving evidence,
 - (b) on which he is cross-examined, and
 - (c) which as a consequence is received in evidence in the proceedings,
- is admissible as evidence of any matter stated of which oral evidence by him would be admissible.
- (4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if—
- (a) any of the following three conditions is satisfied, and
 - (b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.
- (5) The first condition is that the statement identifies or describes a person, object or place.
- (6) The second condition is that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.
- (7) The third condition is that—
- (a) the witness claims to be a person against whom an offence has been committed,
 - (b) the offence is one to which the proceedings relate,
 - (c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence,
 - (d) the complaint was made as soon as could reasonably be expected after the alleged conduct,
 - (e) the complaint was not made as a result of a threat or a promise, and
 - (f) before the statement is adduced the witness gives oral evidence in connection with its subject matter.
- (8) For the purposes of paragraph (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- [art. 21\(4\)\(b\)\(iv\)](#) and word inserted by [2019 c. 5 s. 10\(4\)\(b\)](#)