
STATUTORY INSTRUMENTS

2004 No. 1501

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

PART III

HEARSAY EVIDENCE

Hearsay: main provisions

Admissibility of hearsay evidence

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

- (a) any provision of this Part or any other statutory provision makes it admissible,
- (b) any rule of law preserved by Article 22 makes it admissible,
- (c) all parties to the proceedings agree to it being admissible, or
- (d) the court is satisfied that it is in the interests of justice for it to be admissible.

(2) In deciding whether a statement not made in oral evidence should be admitted under paragraph (1)(d), the court must have regard to the following factors (and to any others it considers relevant)—

- (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
- (b) what other evidence has been, or can be, given on the matter or evidence mentioned in sub-paragraph (a);
- (c) how important the matter or evidence mentioned in sub-paragraph (a) is in the context of the case as a whole;
- (d) the circumstances in which the statement was made;
- (e) how reliable the maker of the statement appears to be;
- (f) how reliable the evidence of the making of the statement appears to be;
- (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
- (h) the amount of difficulty involved in challenging the statement;
- (i) the extent to which that difficulty would be likely to prejudice the party facing it.

(3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

Statements and matters stated

19.—(1) In this Part references to a statement or to a matter stated are to be read as follows.

(2) A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.

(3) A matter stated is one to which this Part applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been—

- (a) to cause another person to believe the matter, or
- (b) to cause another person to act or a machine to operate on the basis that the matter is as stated.

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.

(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
- (b) was not obtained pursuant to a request under section 7 of the Crime (International Co-operation) Act 2003 (c. 32) or an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988 (c. 33) (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.

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

- (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.

Supplementary

Additional requirement for admissibility of multiple hearsay

25.—(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless—

- (a) either of the statements is admissible under Article 21, 23 or 24,
- (b) all parties to the proceedings so agree, or
- (c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

(2) In this Article “hearsay statement” means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.

Documents produced as exhibits

26.—(1) This Article applies if on a trial before a judge and jury for an offence—

- (a) a statement made in a document is admitted in evidence under Article 23 or 24, and
- (b) the document or a copy of it is produced as an exhibit.

(2) The exhibit must not accompany the jury when they retire to consider their verdict unless—

- (a) the court considers it appropriate, or
- (b) all the parties to the proceedings agree that it should accompany the jury.

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.

Credibility

- 28.**—(1) This Article applies if in criminal proceedings—
- (a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated, and
 - (b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.
- (2) In such a case—
- (a) any evidence which (if he had given such evidence) would have been admissible as relevant to his credibility as a witness is so admissible in the proceedings;
 - (b) evidence may with the court’s leave be given of any matter which (if he had given such evidence) could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party;
 - (c) evidence tending to prove that he made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that he contradicted himself.
- (3) If as a result of evidence admitted under this Article an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.
- (4) In the case of a statement in a document which is admitted as evidence under Article 21 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as the maker of the statement for the purposes of paragraphs (1) to (3) above.

Stopping the case where evidence is unconvincing

- 29.**—(1) If on a defendant’s trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that—
- (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and
 - (b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

- (a) a jury is directed under paragraph (1) to acquit a defendant of an offence, and
- (b) the circumstances are such that, apart from this paragraph, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in paragraph (1) in respect of it.

(3) If—

- (a) a jury is required to determine under Article 49A(2) of the Mental Health (Northern Ireland) Order 1986 whether a person charged on an indictment with an offence did the act or made the omission charged, and
- (b) the court is satisfied as mentioned in paragraph (1) above at any time after the close of the case for the prosecution that—
 - (i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and
 - (ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This Article does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

Court's general discretion to exclude evidence

30.—(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if—

- (a) the statement was made otherwise than in oral evidence in the proceedings, and
- (b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.

(2) Nothing in this Part prejudices—

- (a) any power of a court to exclude evidence under Article 76 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#) (exclusion of unfair evidence), or
- (b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

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.”.

General

Rules of court

35.—(1) Rules of court may make such provision as appears to the appropriate authority to be necessary or expedient for the purposes of this Part; and the appropriate authority is the authority entitled to make the rules.

(2) The rules may make provision about the procedure to be followed and other conditions to be fulfilled by a party proposing to tender a statement in evidence under any provision of this Part.

(3) The rules may require a party proposing to tender the evidence to serve on each party to the proceedings such notice, and such particulars of or relating to the evidence, as may be prescribed.

(4) The rules may provide that the evidence is to be treated as admissible by agreement of the parties if—

- (a) a notice has been served in accordance with provision made under paragraph (3), and
- (b) no counter-notice in the prescribed form objecting to the admission of the evidence has been served by a party.

(5) If a party proposing to tender evidence fails to comply with a prescribed requirement applicable to it—

- (a) the evidence is not admissible except with the court's leave;
- (b) where leave is given the court or jury may draw such inferences from the failure as appear proper;
- (c) the failure may be taken into account by the court in considering the exercise of its powers with respect to costs.

(6) In considering whether or how to exercise any of its powers under paragraph (5) the court shall have regard to whether there is any justification for the failure to comply with the requirement.

(7) A person shall not be convicted of an offence solely on an inference drawn under paragraph (5) (b).

(8) Nothing in this Article prejudices the generality of any statutory provision conferring power to make rules of court; and no particular provision of this Article prejudices any general provision of it.

(9) In this Article—

“prescribed” means prescribed by rules of court;

“rules of court” means—

- (a) Crown Court rules;
- (b) rules of court made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23);
- (c) county court rules; and

- (d) magistrates' courts rules.

Proof of statements in documents

36. Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either—

- (a) the document, or
- (b) (whether or not the document exists) a copy of the document or of the material part of it, authenticated in whatever way the court may approve.

Interpretation of Part III

37.—(1) In this Part—

“copy”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“criminal proceedings” means criminal proceedings in relation to which the strict rules of evidence apply;

“defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings;

“document” means anything in which information of any description is recorded;

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device.

(2) Article 19 (statements and matters stated) contains other general interpretative provisions.

(3) Where a defendant is charged with two or more offences in the same criminal proceedings, this Part has effect as if each offence were charged in separate proceedings.

Repeals

38. In the [Criminal Justice \(Evidence, Etc.\) \(Northern Ireland\) Order 1988 \(NI 17\)](#) the following provisions (which relate to documentary evidence and are to some extent superseded by provisions of this Part) are repealed—

- (a) Part II;
- (b) Schedule 1.