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STATUTORY INSTRUMENTS

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**2004 No. 1501**

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

**PART IV  
OTHER EVIDENCE**

*Video Recording*

**Evidence by video recording**

**39.**—(1) This Article applies where—

- (a) a person is called as a witness in proceedings for —
  - (i) an offence triable only on indictment, or
  - (ii) a prescribed relevant offence,
- (b) the person claims to have witnessed (whether visually or in any other way)—
  - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence, or
  - (ii) events closely connected with such events,
- (c) he has previously given an account of the events in question (whether in response to questions asked or otherwise),
- (d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in sub-paragraph (b)),
- (e) a video recording was made of the account,
- (f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded, and
- (g) the recording is played in the proceedings in accordance with the direction.

(2) If, or to the extent that, the witness in his oral evidence in the proceedings asserts the truth of the statements made by him in the recorded account, they shall be treated as if made by him in that evidence.

(3) A direction under paragraph (1)(f)—

- (a) may not be made in relation to a recorded account given by the defendant;
- (b) may be made only if it appears to the court that—
  - (i) the witness's recollection of the events in question is likely to have been significantly better when he gave the recorded account than it will be when he gives oral evidence in the proceedings, and
  - (ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in paragraph (4).

(4) Those matters are—

- (a) the interval between the time of the events in question and the time when the recorded account was made;
  - (b) any other factors that might affect the reliability of what the witness said in that account;
  - (c) the quality of the recording;
  - (d) any views of the witness as to whether his evidence in chief should be given orally or by means of the recording.
- (5) For the purposes of paragraph (2) it does not matter if the statements in the recorded account were not made on oath.
- (6) In this Article—
- “prescribed” means of a description specified in an order made by the Secretary of State;
  - “relevant offence” means an offence—
- (a) to which paragraph (1)(a)(i) does not apply, and
  - (b) which is triable on indictment.

#### **Video evidence: further provisions**

**40.**—(1) Where a video recording is admitted under Article 39, the witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account.

(2) The reference in paragraph (1)(f) of Article 39 to the admission of a recording includes a reference to the admission of part of the recording; and references in that Article and this one to the video recording or to the witness’s recorded account shall, where appropriate, be read accordingly.

(3) In considering whether any part of a recording should not be admitted under Article 39, the court must consider—

- (a) whether admitting that part would carry a risk of prejudice to the defendant, and
- (b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) A court may not make a direction under Article 39(1)(f) in relation to any proceedings unless—

- (a) the Secretary of State has notified the court that arrangements can be made, in the county court division in which it appears to the court that the proceedings will take place, for implementing directions under that Article, and
- (b) the notice has not been withdrawn.

(5) Nothing in Article 39 affects the admissibility of any video recording which would be admissible apart from that Article.

#### *Documents to refresh memory*

#### **Use of documents to refresh memory**

**41.**—(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if—

- (a) he states in his oral evidence that the document records his recollection of the matter at that earlier time, and

- (b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) Where—

- (a) a person giving oral evidence in criminal proceedings about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time,
- (b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and
- (c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

*Interpretation of Part IV*

**Interpretation of Part IV**

**42.** In this Part—

“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, but not including any recording of sounds or moving image;

“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;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track.