
STATUTORY INSTRUMENTS

2004 No. 1501 (N.I. 10)

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

- - - - - 10th June 2004

Modifications etc. (not altering text)

- C1** Order: transfer of functions from Secretary of State to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 4(1)(2), [Sch. 1](#) (with arts. 28-31); S.I. 2010/977, [art. 1\(2\)](#)

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Criminal Justice (Evidence) (Northern Ireland) Order 2004.

(2) The following provisions of this Order shall come into operation on the expiration of one month from the day on which this Order is made—

- (a) this Part;
- (b) Article 16;
- (c) Article 35; and
- (d) Articles 44 and 45.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Subordinate Legislation Made

- P1** [Art. 1\(3\)](#) power partly exercised: 6.9.2004 appointed for specified provisions by [S.R. 2004/392](#), [art. 2](#); 18.4.2005 appointed for specified provisions by [S.R. 2005/242](#), [art. 2](#); 3.4.2006 appointed for specified provisions by [S.R. 2006/63](#), [art. 2](#)

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

- (2) In this Order, “statutory provision” has the meaning assigned to it by section 1(f) of that Act.

PART II

EVIDENCE OF BAD CHARACTER

Introductory

“Bad character”

3. References in this Part to evidence of a person's “bad character” are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which—

- (a) has to do with the alleged facts of the offence with which the defendant is charged, or
- (b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

Abolition of common law rules

4.—(1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Paragraph (1) is subject to Article 22(1) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purposes of proving his bad character.

Persons other than defendants

Non-defendant's bad character

5.—(1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if—

- (a) it is important explanatory evidence,
 - (b) it has substantial probative value in relation to a matter which—
 - (i) is a matter in issue in the proceedings, and
 - (ii) is of substantial importance in the context of the case as a whole, or
 - (c) all parties to the proceedings agree to the evidence being admissible.
- (2) For the purposes of paragraph (1)(a) evidence is important explanatory evidence if—
- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
 - (b) its value for understanding the case as a whole is substantial.
- (3) In assessing the probative value of evidence for the purposes of paragraph (1)(b) the court must have regard to the following factors (and to any others it considers relevant)—
- (a) the nature and number of the events, or other things, to which the evidence relates;
 - (b) when those events or things are alleged to have happened or existed;
 - (c) where—
 - (i) the evidence is evidence of a person's misconduct, and
 - (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,

the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;

(d) where—

- (i) the evidence is evidence of a person's misconduct,
 - (ii) it is suggested that that person is also responsible for the misconduct charged, and
 - (iii) the identity of the person responsible for the misconduct charged is disputed,
- the extent to which the evidence shows or tends to show that the same person was responsible each time.

(4) Except where paragraph (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.

Defendants

Defendant's bad character

6.—(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—

- (a) all parties to the proceedings agree to the evidence being admissible,
- (b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,
- (c) it is important explanatory evidence,
- (d) it is relevant to an important matter in issue between the defendant and the prosecution,
- (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
- (f) it is evidence to correct a false impression given by the defendant, or
- (g) the defendant has made an attack on another person's character.

(2) Articles 7 to 11 contain provisions supplementing paragraph (1).

(3) The court must not admit evidence under paragraph (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(4) On an application to exclude evidence under paragraph (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

“Important explanatory evidence”

7. For the purposes of Article 6(1)(c) evidence is important explanatory evidence if—

- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
- (b) its value for understanding the case as a whole is substantial.

“Matter in issue between the defendant and the prosecution”

8.—(1) For the purposes of Article 6(1)(d) the matters in issue between the defendant and the prosecution include—

- (a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;
 - (b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.
- (2) Where paragraph (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of—
- (a) an offence of the same description as the one with which he is charged, or
 - (b) an offence of the same category as the one with which he is charged.
- (3) Paragraph (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.
- (4) For the purposes of paragraph (2)—
- (a) two offences are of the same description as each other if the statement of the offence in a complaint or indictment would, in each case, be in the same terms;
 - (b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this Article by an order made by the Secretary of State.
- (5) A category prescribed by an order under paragraph (4)(b) must consist of offences of the same type.
- (6) Only prosecution evidence is admissible under Article 6(1)(d).
- [^{F1}(7) Where—
- (a) a defendant has been convicted of an offence under the law of any country outside Northern Ireland (“the previous offence”), and
 - (b) the previous offence would constitute an offence under the law of Northern Ireland (“the corresponding offence”) if it were done in Northern Ireland at the time of the trial for the offence with which the defendant is now charged (“the current offence”),
- paragraph (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.
- (8) For the purposes of paragraph (2)—
- (a) the previous offence is of the same description as the current offence, if the corresponding offence is of that same description, as set out in paragraph (4)(a);
 - (b) the previous offence is of the same category as the current offence, if the current offence and the corresponding offence belong to the same category of offences prescribed as mentioned in paragraph (4)(b).]

F1 Art. 8(7)(8) added (18.4.2011) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 144, 182(5), [Sch. 17 para. 2\(2\)](#) (with [s. 180](#) and transitional, transitory and savings provisions in [Sch. 22 para. 40](#)); [S.R. 2011/182](#), [art. 2\(d\)\(i\)](#)

“Matter in issue between the defendant and a co-defendant”

9.—(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under Article 6(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

(2) Only evidence—

- (a) which is to be (or has been) adduced by the co-defendant, or
- (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,

is admissible under Article 6(1)(e).

“Evidence to correct a false impression”

10.—(1) For the purposes of Article 6(1)(f)—

- (a) the defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;
- (b) evidence to correct such an impression is evidence which has probative value in correcting it.

(2) A defendant is treated as being responsible for the making of an assertion if—

- (a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him),
- (b) the assertion was made by the defendant—
 - (i) on being questioned under caution, before charge, about the offence with which he is charged, or
 - (ii) on being charged with the offence or officially informed that he might be prosecuted for it,

and evidence of the assertion is given in the proceedings,

- (c) the assertion is made by a witness called by the defendant,
- (d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or
- (e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

(3) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.

(4) Where it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.

(5) In paragraph (4) “conduct” includes appearance or dress.

(6) Evidence is admissible under Article 6(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under Article 6(1)(f).

“Attack on another person's character”

11.—(1) For the purposes of Article 6(1)(g) a defendant makes an attack on another person's character if—

- (a) he adduces evidence attacking the other person's character,
- (b) he (or any legal representative appointed under Article 26(4) of the Criminal Evidence (Northern Ireland) Order 1999 (NI 8) to cross-examine a witness in his interests) asks