

STATUTORY INSTRUMENTS

1999 No. 2789 (N.I. 8)

The Criminal Evidence (Northern Ireland) Order 1999

12th October 1999

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\(2\)](#)
- C2** Order: transfer of functions from Lord Chancellor 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), 15(1), [Sch. 17 para. 51](#) (with arts. 15(6), 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 Evidence (Northern Ireland) Order 1999.
- (2) 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\(2\)](#) power partly exercised: 1.6.2000 appointed for specified provisions by [S.R. 2000/211](#), [art. 2](#); 14.6.2000 appointed for specified provisions by [S.R. 2000/218](#), [art. 2](#); 30.6.2003 appointed for specified provisions by [S.R. 2003/323](#), [art. 2](#), [Sch.](#); 1.12.2003 appointed for specified provisions by [S.R. 2003/476](#), [arts. 2, 3, 4](#); 8.11.2004 appointed for specified provisions by [S.R. 2004/468](#), [art. 2](#); 21.12.2004 appointed for specified provisions by [S.R. 2004/531](#), [art. 2](#); 1.3.2007 appointed for specified provision by [S.R. 2007/176](#), [art. 2](#); 1.8.2009 appointed for specified provision by [S.R. 2009/275](#), [art. 2](#); 4.5.2010 appointed for specified provisions by [S.R. 2010/142](#), [art. 2](#), [Sch.](#)

Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order—

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“accused”, in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate (whether or not he has been convicted);

“the complainant”, in relation to any offence (or alleged offence), means a person against or in relation to whom the offence was (or is alleged to have been) committed;

“judge” includes, in relation to a magistrates’ court, the resident magistrate^{F1} . . . [^{F2}and (in the case of a youth court) any lay magistrate];

“picture” includes a likeness however produced;

“the prosecutor” means any person acting as prosecutor, whether an individual or body;

“rules of court” means Crown Court rules, magistrates’ courts rules, county court rules or rules made under section 55 of the Judicature (Northern Ireland) Act 1978;

“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;

“witness”, in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings.

(3) Nothing in this Order shall affect any power of a court to exclude evidence at its discretion (whether by preventing questions being put or otherwise) which is exercisable apart from this Order.

F1 2002 c. 26

F2 Art. 2(2): words added (2.2.2009) in the definition of “judge” by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 82(3); S.R. 2008/472, art. 2(4), Sch. Pt. IV

Meaning of “sexual offence” and other references to offences

3.—(1) In this Order “sexual offence” means—

(a) ^{F3}

(b) ^{F3}

(c) ^{F3}

(d) ^{F3}

(e) ^{F3}

(f) ^{F3}

(g) ^{F3}

(gg) ^{F3}

^{F4}(ga)

[^{F5}(h) any offence under any provision of the Sexual Offences (Northern Ireland) Order 2008.]

[^{F6}(1A) In this Order “a slavery or human trafficking offence” means an offence under—

(a) section 57, 58, 58A or 59 of the Sexual Offences Act 2003 (trafficking for sexual exploitation);

(b) section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for exploitation);

(c) section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour); or

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- (d) section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery, servitude, forced or compulsory labour and human trafficking).]

(2) In this Order any reference (including a reference having effect by virtue of this paragraph) to an offence of any description (“the substantive offence”) is to be taken to include a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, the substantive offence.

- F3** Art. 3(1)(a)-(gg) repealed (2.2.2009) by Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1(3), 81, 83, Sch. 1 para. 27(2)(a), **Sch. 3**; S.R. 2008/510, **art. 2**
- F4** Art. 3(1)(ga) repealed (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), s. 28(2), **Sch. 5**
- F5** Art. 3(1)(h) inserted (2.2.2009) by Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1(3), 81, **Sch. 1 para. 27(2)(c)**; S.R. 2008/510, **art. 2**
- F6** Art. 3(1A) inserted (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), **ss. 24(2), 28(2)**

Modifications etc. (not altering text)

- C3** Art. 3(2) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94(1), **Sch. 6 para. 38** (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)**

PART II

SPECIAL MEASURES DIRECTIONS IN CASE OF VULNERABLE AND INTIMIDATED WITNESSES

Modifications etc. (not altering text)

- C4** Pt. II applied (with modifications) (18.9.2006) by Anti-social Behaviour (Northern Ireland) Order 2004 (S.I. 2004/1988 (N.I. 12)), art. 6C(2)(3)(4) (as inserted by Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15)), arts. 1(2)(a), 6); S.R. 2006/368, **art. 2(a)**
- C5** Pt. II applied (with modifications) (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **s. 34(1)(2)63(2)**; S.I. 2016/553, **reg. 2**

Preliminary

Witnesses eligible for assistance on grounds of age or incapacity

4.—(1) For the purposes of this Part a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this Article—

- (a) if under the age of [F718] at the time of the hearing; or
- (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within paragraph (2).

(2) The circumstances falling within this paragraph are—

- (a) that the witness—
- (i) suffers from mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, or

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(ii) otherwise has a significant impairment of intelligence and social functioning;

(b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In paragraph (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of Article 7(2) in relation to the witness.

(4) In determining whether a witness falls within paragraph (1)(b) the court must consider any views expressed by the witness.

(5) In this Part references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

F7 Word in [art. 4\(1\)\(a\)](#) substituted (1.1.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\), ss. 7\(2\), 111\(3\)](#) (with [s. 106\(4\), Sch. 6 para. 2](#)); [S.R. 2011/370, art. 3\(a\)](#)

Witnesses eligible for assistance on grounds of fear or distress about testifying

5.—(1) For the purposes of this Part a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this paragraph if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(2) In determining whether a witness falls within paragraph (1) the court must take into account, in particular—

(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) such of the following matters as appear to the court to be relevant, namely—

(i) the social and cultural background and ethnic origins of the witness,

(ii) the domestic and employment circumstances of the witness, and

(iii) any religious beliefs or political opinions of the witness;

(d) any behaviour towards the witness on the part of—

(i) the accused,

(ii) members of the family or associates of the accused, or

(iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence [^{F8}or a slavery or human trafficking offence] is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this paragraph unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this paragraph.

F8 Words in [art. 5\(4\)](#) inserted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\), ss. 24\(3\), 28\(2\)](#)

Special measures available to eligible witnesses

6.—(1) For the purposes of this Part—

- (a) the provision which may be made by a special measures direction by virtue of each of Articles 11 to 18 is a special measure available in relation to a witness eligible for assistance by virtue of Article 4; and
- (b) the provision which may be made by such a direction by virtue of each of Articles 11 to 16 is a special measure available in relation to a witness eligible for assistance by virtue of Article 5;

but this paragraph has effect subject to paragraph (2).

(2) Where (apart from this paragraph) a special measure would, in accordance with paragraph (1) (a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless—

- (a) the court has been notified by the Secretary of State that relevant arrangements may be made available in the district in which it appears to the court that the proceedings will take place, and
- (b) the notice has not been withdrawn.

(3) In paragraph (2) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that paragraph relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the court before the notice is withdrawn.

(5) The Secretary of State may by order make such amendments of this Part as he considers appropriate for altering the special measures which, in accordance with paragraph (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of Article 4 or (as the case may be) Article 5, whether—

- (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness,
- (b) by the addition—
 - (i) (with or without modifications) of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of the other of those Articles, or
 - (ii) of any new measure, or
- (c) by the removal of any measure.

Special measures directions

Special measures direction relating to eligible witness

7.—(1) This Article applies where in any criminal proceedings—

- (a) a party to the proceedings makes an application for the court to give a direction under this Article in relation to a witness in the proceedings other than the accused, or
- (b) the court of its own motion raises the issue whether such a direction should be given.

(2) Where the court determines that the witness is eligible for assistance by virtue of Article 4 or 5, the court must then—