Changes to legislation: *The Children's Evidence (Northern Ireland) Order 1995 is up to date with all changes known to be in force on or before 18 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1995 No. 757 (N.I. 3)

The Children's Evidence (Northern Ireland) Order 1995

- - - - - - 15th March 1995

Title and commencement

1.—(1) This Order may be cited as the Children's Evidence (Northern Ireland) Order 1995.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint[F1].

F1 fully exercised by SR 1996/122

Interpretation

2. The Interpretation Act (Northern Ireland) 1954[F2] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

F2 1954 c. 33 (N.I.)

Art. 3 rep. by 1998 NI 9

Notices of transfer in certain cases involving children

4. —

4.—(1) If a person has been charged with an offence to which**[**[F3] paragraph (1A)**]** applies (sexual offences and offences involving violence or cruelty) and the Director of Public Prosecutions for Northern Ireland is of the opinion—

(a) that the evidence of the offence would be sufficient for the person charged to be committed for trial;

(b) that a child who is alleged—

(i) to be a person against whom the offence was committed; or

(ii) to have witnessed the commission of the offence, will be called as a witness at the trial; and

(c) that, for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded without delay by the Crown Court,

a notice ("notice of transfer") certifying that opinion may be given by or on behalf of the Director to the magistrates' court in whose jurisdiction the offence has been committed.

[F4(1A) This paragraph applies to—

(a) an offence which involves an assault on, or injury or threat of injury to, a person;

(b) an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968;

(c) a sexual offence (within the meaning of Part IX of the Police and Criminal Evidence (Northern Ireland) Order 1989); and

(d) an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub-paragraph (a), (b) or (c).**]**

(2) A notice of transfer shall be given before the magistrates' court—

(a) has commenced hearing the evidence for the prosecution (other than a deposition relating to the arrest or to the remand of the accused) where the court is conducting a preliminary investigation, or

(b) has begun to conduct a preliminary inquiry.

(3) On the giving of a notice of transfer the functions of the magistrates' court shall cease in relation to the case except as provided by paragraph 2 of Schedule 1 or by **[**F5any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003**]**.

(4) The decision to give a notice of transfer shall not be subject to appeal or liable to be questioned in any court.

(5) Schedule 1 (which makes further provision in relation to notices of transfer) shall have effect.

(6) In this Article "child" means a person who—

(a) in the case of an offence falling within**[**F3 paragraph (1A)(a) or (b)**]**, is under 14 years of age or, if he was under that age when any such video recording as is mentioned in Article 81A of that Order was made in respect of him, is under 15 years of age; or

(b) in the case of an offence falling within**[**F3 paragraph (1A)(c)**]**, is under 17 years of age or, if he was under that age when any such video recording was made in respect of him, is under 18 years of age.

(7) Any reference in paragraph (6) to an offence falling within paragraph (a), (b) or (c) of**[**F3 paragraph (1A)**]** includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.

F3 1999 NI 8
F4 1999 NI 8
F5 Words in art. 4(3) substituted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), art. 1(2), **Sch. 4 para. 12(2)**; S.R. 2015/194, art. 2, **Sch.** (with art. 3)

Modifications etc. (not altering text)
C1 Art. 4(1A) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94(1), **Sch. 6 para. 27** (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)**
C2 Art. 4(7) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94(1), **Sch. 6 para. 27** (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)**

[F6]Children's evidence and testimony through television link or video recording and cross-examination of alleged child victims

5.—(1) After Article 81 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (evidence through television links) there shall be inserted—

"**Video recordings of testimony from child witnesses**

81A.—(1) This Article applies in relation to the following proceedings, namely—

(a) trials on indictment for any offence to which Article 81(3) applies;

(b) appeals to the Court of Appeal and hearings of references under section 14 of the Criminal Appeal (Northern Ireland) Act 1980 in respect of any such offence; and

(c) proceedings in juvenile courts for any such offence and appeals to the county court arising out of such proceedings.

(2) In any such proceedings a video recording of an interview which—

(a) is conducted between an adult and a child who is not the accused or one of the accused ("the child witness"); and

(b) relates to any matter in issue in the proceedings,

may, with the leave of the court, be given in evidence in so far as it is not excluded by the court under paragraph (3).

(3) Where a video recording is tendered in evidence under this Article, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give leave under paragraph (2) unless—

(a) it appears that the child witness will not be available for cross-examination;

(b) any rules to which this paragraph applies requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or

(c) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording ought not to be admitted;

and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.

(4) In considering whether any part of a recording ought to be excluded under paragraph (3), the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(5) Where a video recording is admitted under this Article—

(a) the child witness shall be called by the party who tendered it in evidence;

(b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with adequately in his recorded testimony.

(6) Where a video recording is given in evidence under this Article, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly—

(a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;

(b) no such statement shall be capable of corroborating any other evidence given by him;

and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).

(7) In this Article "child" means a person who—

(a) in the case of an offence falling within Article 81(3)(a) or (b), is under 14 years of age or, if he was under that age when the video recording was made, is under 15 years of age; or

(b) in the case of an offence falling within Article 81(3)(c), is under 17 years of age or, if he was under that age when the video recording was made, is under 18 years of age.

(8) Any reference in paragraph (7) to an offence falling within sub-paragraph (a), (b) or (c) of Article 81(3) includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.

(9) In this Article—

"statement" includes any representation of fact, whether made in words or otherwise;

"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.

(10) A magistrates' court conducting a preliminary investigation or a preliminary inquiry may consider any video recording as respects which leave under paragraph (2) is to be sought at the trial, notwithstanding that the child witness is not called at the committal proceedings.

(11) Without prejudice to the generality of any statutory provision conferring power to make rules to which this paragraph applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(12) Nothing in this Article shall prejudice the admissibility of any video recording which would be admissible apart from this Article.

(13) The rules to which paragraphs (3)(b) and (11) apply are—

(a) Crown Court rules;

(b) rules of court;

(c) county court rules; and

(d) magistrates' courts rules.

Cross-examination of alleged child victims

81B.—(1) No person who is charged with an offence to which Article 81(3) applies shall cross-examine in person any witness who—

(a) is alleged—

(i) to be a person against whom the offence was committed; or

(ii) to have witnessed the commission of the offence; and

(b) is a child, or is to be cross-examined following the admission under Article 81A of a video recording of testimony from him.

(2) Paragraph (7) of Article 81A shall apply for the purposes of this Article as it applies for the purposes of that Article, but with the omission of the references to a person being, in the cases there mentioned, under the age of 15 years or under the age of 18 years.".

(2) In Article 81 of the Police and Criminal Evidence (Northern Ireland) Order 1989[F7] (evidence through television links)—

(a) in paragraph (1) for the words from "at a preliminary investigation" to "1980" substitute "in proceedings to which paragraph (1A) applies"; and

(b) in sub-paragraph (1)(b)(ii) for "under the age of 14 and the offence charged" substitute "a child, or is to be cross-examined following the admission under Article 81A of a video recording of testimony from him, and the offence";

(c) after paragraph (1) there shall be inserted—

"(1A) This paragraph applies—

(a) to preliminary investigations or preliminary inquiries into indictable offences, to trials on indictment, appeals to the Court of Appeal and hearings of references under section 14 of the Criminal Appeal (Northern Ireland) Act 1980;

(b) except in a case where paragraph (1)(b)(i) applies, to proceedings in juvenile courts and appeals to the county court arising out of such proceedings; and

(c) in a case to which paragraph (1)(b)(i) applies, to proceedings in juvenile courts being preliminary investigations or preliminary inquiries into indictable offences.";

(d) in paragraph (3)(c) the words "which is tried on indictment" shall be omitted;

(e) after paragraph (6)(a) insert—

"(aa) county court rules;";

(f) in paragraph (7)—

(i) for "preliminary investigation into an indictable offence" there shall be substituted "preliminary investigation or a preliminary inquiry into an indictable offence or in proceedings before a juvenile court or on an appeal to the county court arising out of such proceedings";

(ii) in sub-paragraph (a), for "the Magistrates' Courts (Northern Ireland) Order 1981 adjourn the investigation" substitute "any statutory provision adjourn the investigation, inquiry, proceedings or appeal, as the case may require";

(iii) in sub-paragraph (b) the words "for the purposes of Article 16(1)(d) of that Order" shall be omitted and after "investigation" there shall be inserted "or inquiry or any proceedings or appeal";

(g) after paragraph (8) insert—

"(9) Paragraph (7) of Article 81A shall apply for the purposes of this Article as it applies for the purposes of that Article, but with the omission of the references to a person being, in the cases there mentioned, under the age of 15 years or under the age of 18 years.".

F6 prosp. rep. by 1999 NI 8 sch.3
F7 1989 NI 12

Article 6—Amendments and repeals