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*Status: Point in time view as at 01/01/2006.*

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## STATUTORY INSTRUMENTS

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# 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<sup>F1</sup>.

**F1** fully exercised by SR 1996/122

### Interpretation

2. The Interpretation Act (Northern Ireland) 1954<sup>F2</sup> 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<sup>F3</sup> 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.

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- [<sup>F4</sup>(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 subparagraph (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<sup>F5</sup> Article 29(2)(e) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981<sup>F6</sup>.
- (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<sup>F3</sup> 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<sup>F3</sup> 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<sup>F3</sup> 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** prosp. subst. by 2003 NI 10

**F6** 1981 NI 8

**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)

**F7 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;

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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<sup>F8</sup> (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.”.

**F7** prosp. rep. by [1999 NI 8 sch.3](#)

**F8** [1989 NI 12](#)

*Article 6—Amendments and repeals*

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## SCHEDULES

### SCHEDULE 1

Article 4(5)

#### NOTICE OF TRANSFER: PROCEDURE IN LIEU OF COMMITMENT

##### Contents of notice of transfer

**1.—(1)** A notice of transfer shall specify the proposed place of trial; and in selecting that place the Director of Public Prosecutions for Northern Ireland shall have regard to the considerations to which a magistrates' court committing a person for trial is required by section 48(1) of the Judicature (Northern Ireland) Act 1978<sup>F9</sup> to have regard when selecting the place at which he is to be tried.

(2) A notice of transfer shall specify the charge or charges to which it relates and include or be accompanied by such additional material as regulations under paragraph 3 may require.

**F9** 1978 c. 23

##### Remand

**2.—(1)** If a magistrates' court has remanded in custody a person to whom a notice of transfer relates, it shall have power—

- (a) to order that he shall be safely kept in custody until delivered in due course of law; or
- (b) to release him on bail that is to say, by directing him to appear before the Crown Court for trial.

(2) Where—

- (a) a person's release on bail under sub-paragraph (1)(b) is conditional on his providing one or more sureties; and
- (b) the court fixes the amount in which a surety is to be bound with a view to his entering into his recognisance subsequently,

the court shall in the meantime make an order such as is mentioned in sub-paragraph (1)(a).

(3) Where a notice of transfer is given after a person to whom it relates has been remanded on bail to appear before a magistrates' court on an appointed day, the requirement that he shall so appear shall cease on the giving of the notice unless the notice states that it is to continue.

(4) Where that requirement ceases by virtue of sub-paragraph (3), it shall be the duty of the person in question to appear before the Crown Court at the place specified by the notice of transfer as the proposed place of trial or at any place substituted for it by a direction under section 48(2) or (3) of the Judicature (Northern Ireland) Act 1978.

(5) If, in a case where the notice states that the requirement mentioned in sub-paragraph (3) is to continue, a person to whom the notice relates appears before the magistrates' court, the court shall have—

- (a) the powers and duties conferred on a magistrates' court by sub-paragraph (1) but subject as there provided; and

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- (b) power to enlarge, in the surety's absence, a recognisance conditioned in accordance with Article 47(1)(b) or 48 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F10</sup> so that the surety is bound to secure that the person charged appears also before the Crown Court.

**F10** 1981 NI 26

## Regulations

### 3.—(1) The Attorney General—

- (a) shall by regulations make provision requiring a copy of a notice of transfer, together with [<sup>F11</sup>copies of the documents containing the evidence (including oral evidence)] on which any charge to which it relates is based, to be given—
- (i) to any person to whom the notice of transfer relates; and
  - (ii) to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial; and
- (b) may by regulations make such further provision in relation to notices of transfer, including provision as to the duties of the Director of Public Prosecutions for Northern Ireland in relation to such notices, as appears to him to be appropriate.

[<sup>F12</sup>(1A) Regulations under sub-paragraph (1)(a) may provide that there shall be no requirement for copies of documents to accompany the copy of the notice of transfer if they are referred to, in documents sent with the notice of transfer, as having already been supplied.]

(2) Regulations made under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946<sup>F13</sup> shall apply accordingly.

**F11** Words in Sch. 1 para. 3(1)(a) substituted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 45(5) (as modified in its application to Northern Ireland by Sch. 4 para. 18)

**F12** Sch. 1 para. 3(1A) inserted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 45(6) (as modified in its application to Northern Ireland by Sch. 4 para. 18)

**F13** 1946 c.36

## Applications for dismissal

4.—(1) Where a notice of transfer has been given, any person to whom the notice relates may, at any time before he is arraigned (and whether or not an indictment has been preferred against him), apply orally or in writing to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial or at any place substituted for it by a direction mentioned in paragraph 2(4), for the charge, or any of the charges, in the case to be dismissed.

(2) The judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) which is the subject of any such application if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.

(3) No oral application may be made under sub-paragraph (1) unless the applicant has given the Crown Court mentioned in that sub-paragraph written notice of his intention to make the application.

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(4) Oral evidence may be given on such an application only with the leave of the judge or by his order; and the judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.

(5) No leave or order under sub-paragraph (4) shall be given or made in relation to oral evidence from a child (within the meaning of Article 4) who is alleged—

- (a) to be a person against whom an offence to which the notice of transfer relates was committed; or
- (b) to have witnessed the commission of such an offence.

(6) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but that person does not do so, the judge may disregard any document indicating the evidence that he might have given.

(7) Dismissal of the charge, or all the charges, against the applicant shall have the same effect as a refusal by a magistrates' court to commit for trial, except that no further proceedings may be brought on a dismissed charge except by means of the presentment of an indictment such as is specified in paragraph (c), (d), (e) or (f) of section 2(2) of the Grand Jury (Abolition) Act (Northern Ireland) 1969<sup>F14</sup>.

(8) Crown Court Rules may make provision for the purposes of this paragraph and, without prejudice to the generality of this sub-paragraph, may make provision—

- (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
- (b) as to the contents and form of notices or other documents;
- (c) as to the manner in which evidence is to be submitted; and
- (d) as to persons to be served with notices or other material.

**F14** 1969 c. 15 (N.I.)

## Reporting restrictions

5.—(1) Except as provided by this paragraph, it shall not be lawful—

- (a) to publish in Northern Ireland a written report of an application under paragraph 4(1); or
- (b) to include in a relevant programme for reception in Northern Ireland a report of such an application,

if (in either case) the report contains any matter other than that permitted by this paragraph.

(2) An order that sub-paragraph (1) shall not apply to reports of an application under paragraph 4(1) may be made by the judge dealing with the application.

(3) Where in case of 2 or more accused one of them objects to the making of an order under sub-paragraph (2), the judge shall make the order if, and only if, he is satisfied, after hearing the representations of the accused, that it is in the interests of justice to do so.

(4) An order under sub-paragraph (2) shall not apply to reports of proceedings under sub-paragraph (3), but any decision of the court to make or not to make such an order may be contained in reports published or included in a relevant programme before the time authorised by sub-paragraph (5).

(5) It shall not be unlawful under this paragraph to publish or include in a relevant programme a report of an application under paragraph 4(1) containing any matter other than that permitted by sub-paragraph (8) where the application is successful.

(6) Where—



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- (a) 2 or more persons were jointly charged; and
- (b) applications under paragraph 4(1) are made by more than one of them,

sub-paragraph (5) shall have effect as if for the words “the application is” there were substituted the words “all the applications are”.

(7) It shall not be unlawful under this paragraph to publish or include in a relevant programme a report of an unsuccessful application at the conclusion of the trial of the person charged, or of the last of the persons charged to be tried.

(8) The following matters may be contained in a report published or included in a relevant programme without an order under sub-paragraph (2) before the time authorised by [<sup>F15</sup>sub-paragraphs (5) and (7)], that is to say—

- (a) the identity of the court and the name of the judge;
- (b) the names, ages, home addresses and occupations of the accused and witnesses;
- (c) the offence or offences, or a summary of them, with which the accused is or are charged;
- (d) the names of counsel and solicitors engaged in the proceedings;
- (e) where the proceedings are adjourned, the date and place to which they are adjourned;
- (f) the arrangements as to bail;

<sup>F16</sup>(g) whether legal aid was granted to the accused or any of the accused.

(9) The addresses that may be published or included in a relevant programme under sub-paragraph (8) are addresses—

- (a) at any relevant time; and
- (b) at the time of their publication or inclusion in a relevant programme.

(10) If a report is published or included in a relevant programme in contravention of this paragraph, the following persons, that is to say—

- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;
- (c) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of the editor of a newspaper;

shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) Proceedings for an offence under this paragraph shall not be instituted otherwise than by or with the consent of the Attorney General.

(12) Sub-paragraph (1) shall be in addition to, and not in derogation from, the provisions, of any other statutory provision with respect to the publication of reports of court proceedings.

(13) In this paragraph—

“publish”, in relation to report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;

“relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990<sup>F17</sup>);

“relevant time” means a time when events giving rise to the charges to which the proceedings relate occurred.

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- F15** Words in Sch. 1 para. 5(8) substituted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 45(7) (as modified in its application to Northern Ireland by Sch. 4 para. 18)
- F16** prosp. subst. by 2003 NI 10
- F17** 1990 c. 42

### Avoidance of delay

- 6.—(1) Where a notice of transfer has been given in relation to any case—
- (a) the Crown Court before which the case is to be tried; and
  - (b) any magistrates' court which exercises any functions under paragraph 2 or<sup>F18</sup> Article 29(2)(e) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981<sup>F19</sup> in relation to the case,

shall, in exercising any of its powers in relation to the case, have regard to the desirability of avoiding prejudice to the welfare of any relevant child witness that may be occasioned by unnecessary delay in bringing the case to trial.

(2) In this paragraph “child” has the same meaning as in Article 4 and “relevant child witness” means a child who will be called as a witness at the trial and who is alleged—

- (a) to be a person against whom an offence to which the notice of transfer relates was committed; or
- (b) to have witnessed the commission of such an offence.

- F18** prosp. subst. by 2003 NI 10
- F19** 1981 NI 8

### Schedule 2—Amendments

### Schedule 3—Repeals

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