

SCHEDULES

SCHEDULE 1

Article 40(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Criminal Evidence Act (Northern Ireland) 1923 (c. 9 (N.I.))

- 1.—(1) Section 1 (competence of accused as witness for the defence) is amended as follows.
- (2) Omit the words from the beginning to “Provided as follows:-”.
- (3) In paragraph (a) of the proviso—
- (a) for “so charged” substitute “charged in criminal proceedings”; and
 - (b) for “in pursuance of this Act” substitute “in the proceedings”.
- (4) In paragraph (e) of the proviso—
- (a) for “and being a witness in pursuance of this Act” substitute “in criminal proceedings who is called as a witness in the proceedings”; and
 - (b) for “the offence charged” substitute “any offence with which he is charged in the proceedings”.
- (5) In paragraph (f) of the proviso—
- (a) for “and called as a witness in pursuance of this Act” substitute “in criminal proceedings who is called as a witness in the proceedings”;
 - (b) for “that wherewith” substitute “one with which”; and
 - (c) in sub-paragraph (i), for “the offence wherewith” substitute “an offence with which”.
- (6) In paragraph (g) of the proviso, for “called as a witness in pursuance of this Act” substitute “charged in criminal proceedings who is called as a witness in the proceedings”.
- (7) Paragraphs (a), (e), (f) and (g) of the proviso shall be respectively numbered as subsections (1), (2), (3) and (4) of the section.

The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (NI 17)

2. In Article 13(3) for “Article 20 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (competence of children as witnesses)” substitute “Article 34 of the Criminal Evidence (Northern Ireland) Order 1999”.

The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)

- 3.—(1) In Article 78(1) (accused to give evidence on oath), after “if he gives evidence, he shall do so” insert “(subject to Articles 33 and 34 of the Criminal Evidence (Northern Ireland) Order 1999)”.
- (2) In Article 79 (competence and compellability of accused’s spouse) omit paragraphs (1) and (7).
- (3) For paragraphs (2) to (4) of Article 79 substitute—

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“(2) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to paragraph (4), be compellable to give evidence on behalf of that person.

(2A) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to paragraph (4), be compellable—

- (a) to give evidence on behalf of any other person charged in the proceedings but only in respect of any specified offence with which that other person is charged; or
- (b) to give evidence for the prosecution but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the wife or husband of a person charged in any proceedings, an offence is a specified offence for the purposes of paragraph (2A) if—

- (a) it involves an assault on, or injury or a threat of injury to, the wife or husband or a person who was at the material time under the age of 16;
- (b) it is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) it 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) or (b).

(4) No person who is charged in any proceedings shall be compellable by virtue of paragraph (2) or (2A) to give evidence in the proceedings.

(4A) References in this Article to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).”.

(4) In paragraph (5) of Article 79, omit “competent and” and, in the shoulder-note, omit “Competence and”.

(5) After Article 79 insert—

“Rule where accused’s spouse not compellable

79A. The failure of the wife or husband of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.”.

The Children’s Evidence (Northern Ireland) Order 1995 (NI 3)

4.—(1) In Article 4(1) for the words “Article 81(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989” substitute “paragraph (1A)”.

(2) After Article 4(1) insert—

“(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).”.

(3) In Article 4(6) for “Article 81(3)(a) or (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989” substitute “paragraph (1A)(a) or (b)” and for “Article 81(3)(c) of that Order” substitute “paragraph (1A)(c)”.

(4) In Article 4(7) for “Article 81(3) of that Order” substitute “paragraph (1A)”.

The Criminal Justice (Northern Ireland) Order 1996 (NI 24)

5.—(1) In Article 47 (offences of intimidating, and of doing or threatening harm to, witnesses, jurors and others), for paragraphs (1) to (3) substitute—

“(1) A person commits an offence if—

- (a) he does an act which intimidates, and is intended to intimidate, another person (“the victim”),
- (b) he does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, and
- (c) he does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

(2) A person commits an offence if—

- (a) he does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, he threatens to do an act which would harm that other person,
- (b) he does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed (“the victim”), or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence, and
- (c) he does or threatens to do it because of that knowledge or belief.

(3) For the purposes of paragraphs (1) and (2) it is immaterial that the act is or would be done, or that the threat is made—

- (a) otherwise than in the presence of the victim; or
- (b) to a person other than the victim.”.

(2) In paragraph (8) (presumption in proceedings for offence under paragraph (2))—

(a) for “he did or threatened to do an act falling within sub-paragraph (a) within the relevant period” substitute

“within the relevant period—

- (a) he did an act which harmed, and was intended to harm, another person, or
- (b) intending to cause another person fear of harm, he threatened to do an act which would harm that other person,

and that he did the act, or (as the case may be) threatened to do the act,”; and

(b) after “to have done the act” insert “or (as the case may be) threatened to do the act”.

The Youth Justice and Criminal Evidence Act 1999 (c. 23)

6. In section 47(2) after paragraph (a) insert—

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“(aa) a direction under Article 7 or 24 of the Criminal Evidence (Northern Ireland) Order 1999 or an order discharging, or (in the case of a direction under Article 7) varying, such a direction;”.