



Northern Ireland Office  
Criminal Law Branch  
Criminal Justice Policy Division  
Massey House  
Belfast BT4 3SX

## Criminal Justice Policy Division

28 January 2005

Dear Sir/ Madam,

### **The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (Categories of Offences) Order 2005**

The Northern Ireland Office is currently undertaking a public consultation on proposed subordinate legislation related to revised rules of evidence which allow the disclosure of previous convictions where relevant. These 'bad character' provisions are contained in the Criminal Justice (Evidence) (Northern Ireland) Order 2004. The new subordinate legislation will provide guidance to judges as to whether a defendant's previous convictions in theft cases and cases of sexual offences against young people should be admissible as evidence in court. The draft Statutory Rule is enclosed along with an explanatory note and we invite you to consider the legislation.

Copies of the draft legislation may be obtained free of charge from the address below. They are also available on the Northern Ireland Office website: [www.nio.gov.uk](http://www.nio.gov.uk)

The legislation can be made available on request from the address above in Cantonese, Hindi, Urdu, Arabic, Irish, Ulster-Scots, Braille, large type and audio tape. A text-phone facility is also available by phoning 028 90527668.

The consultation period will extend until **Friday 29 April 2005**. Comments on the proposed legislation should be sent to:

**Categories of Offences Consultation  
Criminal Law Branch  
Northern Ireland Office  
Massey House  
Stoney Road  
Belfast  
BT4 3SX**

**Fax: 028 9052 7507**

**E-mail: [clbranch@nio.x.gsi.gov.uk](mailto:clbranch@nio.x.gsi.gov.uk)**

The Northern Ireland Office is committed to publishing a list of those organisations that comment on these proposals and to making available, to anyone who asks for it, a copy of the comments and of our response to them. If you do not wish your comments to be published in this way, you must make this clear in any response you submit.

If you have any questions concerning the documentation or the consultation process itself please contact Criminal Law Branch who will be pleased to assist you.

If you have any concerns about the consultation process in Northern Ireland, you should contact the Northern Ireland Office's consultation co-ordinator, Dr. Jim Alford, on 02890 527015 or e-mail him at [jim.alford@nio.x.gsi.gov.uk](mailto:jim.alford@nio.x.gsi.gov.uk) . Alternatively, you may wish to write to the address below:

Dr. Jim Alford  
Central Management Unit  
Northern Ireland Office  
Stormont House  
Stormont Estate  
Belfast  
BT4 3SH

Yours sincerely

David Withey  
**Criminal Law Branch**

## **The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (Categories of Offences) Order 2005 – Explanatory Note**

1. The Criminal Justice Act 2003 made a series of important changes to the law to ensure that criminal trials are run more effectively and to reduce the scope for abuse of the system. One of the aspects which it revised was in relation to rules of evidence to allow a defendant's previous convictions to be disclosed to the court where relevant. These revisions are in Part 11 of the Act and are known as the 'bad character' provisions. The aim of this change in the law is to ensure that all possible evidence is available to the court to enable it to reach a just verdict.
2. These provisions were extended to Northern Ireland by way of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 and are due to be commenced in the next few months. The attached draft Order will prescribe the first categories of offences which may be classified as 'similar'.

### **'Bad Character'**

3. The 'bad character' provisions will enable the court to hear about a defendant's previous convictions and other misconduct, where these are relevant to the case. Their use is also subject to their value (in terms of throwing new light on the case) being greater than the risk that such evidence may unduly prejudice the trial. In other words, the court should only hear about a defendant's previous convictions if it is not likely to result in an unfair trial. The decision as to whether previous convictions should be disclosed lies with the judge in the case.
4. As part of the new legislation, the Secretary of State may prescribe categories of offences which are 'of the same type' for use as an indicator that a defendant has a propensity to commit offences of a certain type. This means that in a case where the defendant is accused of committing an offence contained in one of the categories *and* has a previous conviction for an offence in the same category then a case is created for this previous conviction to be used as evidence at his trial. The judge still retains the decision as to the disclosure.

### **The Order**

5. The Order prescribes two categories of offences: 'theft' and 'sexual offences against young persons under 17'. Where a defendant has a previous conviction for an offence which is in the same category (as prescribed by the order) as that with which he is charged, this creates a presumption that the previous conviction should be admitted as evidence. It will still be possible for the defence to argue that such evidence would be prejudicial to the fairness of the trial and therefore should not be admitted.

## **The Categories**

6. The categories contained in the Order cover areas of offending that are of particular concern.

***Theft:*** the offences contained in the category are related directly to an interference with property or the taking of property that belongs to others.

***Sexual offences against persons under the age of 17:*** the offences in this category cover any sexual activity committed in relation to children and young people under the legal age of consent.

7. The absence of categories for other types of offences **do not** prevent previous convictions of other types from being admitted if they demonstrate a propensity to commit a certain type of offence. Further guidance categories may be introduced at a later date.
8. The Northern Ireland Office invites you to consider the draft order and offer any comments on the proposed legislation. The closing date for the consultation is **Friday 29 April 2005**.

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# STATUTORY RULES OF NORTHERN IRELAND

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**2005 No.**

## **CRIMINAL LAW**

The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (Categories of Offences) Order 2005

*Made* .....

*To be laid before Parliament* .....

*Coming into force* .....

The Secretary of State, in exercise of the powers conferred upon him by Article 8(4)(b) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004<sup>1</sup>, hereby makes the following Order.

1. This Order may be cited as the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (Categories of Offences) Order 2005 and shall come into operation on -

2.-(1) The categories of offences set out in Parts 1 and 2 of the Schedule to this Order are hereby prescribed for the purposes of Article 8(4)(b) of the 2004 Order.

(2) Two offences are of the same category as each other if they are included in the same Part of the Schedule.

**Northern Ireland Office**

**One of Her Majesty's  
Principal Secretaries of State**

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<sup>1</sup> S.I. 2004 No. 1501 (N.I. 10)

## **SCHEDULE**

### **Prescribed Categories of Offences**

#### **PART 1**

#### **THEFT CATEGORY**

1. An offence under section 7 of the Theft Act (Northern Ireland) 1969<sup>2</sup> (theft).
2. An offence under section 8 of that Act (robbery).
3. An offence under section 9 of that Act (burglary).
4. An offence under section 10 of that Act (aggravated burglary).
5. An offence under section 12 of that Act (taking motor vehicle or other conveyance without authority).
6. An offence under section 21 of that Act (handling stolen goods).
7. An offence under section 24 of that Act (going equipped for stealing).
8. An offence under Article 5 of the Theft (Northern Ireland) Order 1978<sup>3</sup> (making off without payment).
9. An offence under Article 172A of the Road Traffic (Northern Ireland) Order 1981<sup>4</sup> (aggravated vehicle taking).
10. An offence of –
  - (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule; or
  - (b) attempting to commit an offence so specified.

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<sup>2</sup> 1969 c.16

<sup>3</sup> 1978 S.I. No. 1407 (NI 23)

<sup>4</sup> 2004 S.I. No. 1991 (NI 15)

## PART 2

### SEXUAL OFFENCES (PERSONS UNDER THE AGE OF 17) CATEGORY

1. Rape if committed in relation to a person under the age of 17.
2. An offence under section 52 of the Offences against the Person Act 1861<sup>5</sup> (indecent assault upon a female person) if it was committed in relation to a person under the age of 17.
3. An offence under section 53 or 54 of that Act (abduction of a woman) if it was committed in relation to a person under the age of 17.
4. An offence under section 2 of the Criminal Law Amendment Act 1885<sup>6</sup> (c.69) (procurement of a girl under 21) if it was committed in relation to a person under the age of 17.
5. An offence under section 3 of that Act (procuring defilement of a woman using threats, etc.) if it was committed in relation to a person under the age of 17.
6. An offence under section 4 of that Act (unlawful carnal knowledge of a girl under 14)
7. An offence under section 5 of that Act (unlawful carnal knowledge of a girl under 17)
8. An offence under section 7 of that Act (abduction of girl under 18)
9. An offence under section 1 of the Punishment of Incest Act 1908<sup>7</sup> (incest by males) if it was committed in relation to a person under the age of 17.
10. An offence under section 2 of that Act (incest by females) if it was committed in relation to a person under the age of 17.
11. An offence under section 21 of the Children and Young Persons Act (Northern Ireland) 1968<sup>8</sup> (causing or encouraging seduction, etc. of a girl under 17).
12. An offence under section 22 of that Act (indecent conduct towards a child).
13. An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978<sup>9</sup> (indecent photographs of children).
14. An offence under Article 9 of the Criminal Justice (Northern Ireland) Order 1980<sup>10</sup> (inciting girl under 16 to have incestuous sexual intercourse).

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<sup>5</sup> 1861 (c.100)

<sup>6</sup> 1885 (c.69)

<sup>7</sup> 1908 (c.45)

<sup>8</sup> 1968 (c.34)

<sup>9</sup> S.I. 1978/1047 (N.I.17)

<sup>10</sup> S.I. 1980/704 (N.I.6)

15. An offence under Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988<sup>11</sup> (possession of indecent photograph of child).
16. An offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003<sup>12</sup> (buggery) if it was committed in relation to a person under the age of 17.
17. An offence under Article 20 of that Order (assault with intent to commit buggery) if it was committed in relation to a person under the age of 17.
18. An offence under Article 21 of that Order (indecent assault on a male) if it was committed in relation to a person under the age of 17.
19. An offence under section 15 of the Sexual Offences Act 2003<sup>13</sup> (meeting a child following sexual grooming etc.).
20. An offence under any of sections 16 to 19 or 47 to 50 of this Act (abuse of trust, prostitution, child pornography)
21. An offence of -
  - (a) attempting, conspiring or inciting to commit that offence; or
  - (b) aiding and abetting, counselling or procuring the commission of that offence

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<sup>11</sup> S.I. 1988/1847 (N.I.17)

<sup>12</sup> S.I. 2003/1247 (N.I.13)

<sup>13</sup> 2003 (c.42)

## **EXPLANATORY NOTE**

### **(This note is not part of the Order)**

Article 8(4)(b) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 provides that 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 an offence of the same category as the one with which he is charged. Article 84(4)(b) provides that two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of that section by an order made by the Secretary of State.

The categories prescribed by this Order are theft and sexual offences (persons under the age of 17). Each category consists of offences of the same type.