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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 471**

**SUPREME COURT, NORTHERN IRELAND**

The Crown Court (Amendment No.  
3) Rules (Northern Ireland) 2003

Made - - - - 4th November 2003

To be laid before Parliament

Coming into operation 1st December 2003

We, the Crown Court Rules Committee, in exercise of the powers conferred upon us by section 52(1) of the Judicature (Northern Ireland) Act 1978(1), Articles 8(6), 25(5), 26(6), 30(3) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(2), and all other powers enabling us in that behalf, hereby with the concurrence of the Lord Chancellor make the following Rules: –

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Crown Court (Amendment No. 3) Rules (Northern Ireland) 2003 and shall come into operation on 1st December 2003.

(2) In these Rules, “the principal Rules” shall mean the Crown Court Rules (Northern Ireland) 1979(3), and a reference to a rule or a Form by number means the rule or Form so numbered in the principal Rules.

**Revocation of existing Rules**

2.—(1) The following rules are hereby revoked –

- (a) rules 1(2) and 3 of the Crown Court (Amendment) Rules (Northern Ireland) 2000(4); and
- (b) rules 1(2) and 2(a) of the Crown Court (Amendment) Rules (Northern Ireland) 2001(5).

**Amendment to the principal Rules**

3.—(1) For rules 44B and 44BA, there shall be substituted the following new rule:

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(1) 1978 c. 23  
(2) S.I. 1999/2789 (N.I. 8)  
(3) S.R. 1979 No. 90; to which the most recent relevant amendments were made by S.R. 2000 No. 227; S.R. 2001 No. 253 and S.R. 2003 No. 279  
(4) S.R. 2000 No. 227  
(5) S.R. 2001 No. 253

### “Application for special measures directions

**44B.**—(1) An application for a special measures direction under Article 7 of the 1999 Order shall be made by giving notice in writing which shall be in Form 6 in the Schedule.

- (2) If the application is for a special measures direction –
- (a) enabling a witness to give evidence by means of a live link, the information sought in Part 2 of Form 6 shall be provided;
  - (b) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part 3 of Form 6 shall be provided.
- (3) The application under paragraph (1) shall be made within 28 days from the date –
- (a) of the committal of the defendant; or
  - (b) on which Notice of Transfer under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988<sup>(6)</sup> or under Article 4 of the Children’s Evidence (Northern Ireland) Order 1995<sup>(7)</sup> was given; or
  - (c) on which leave to present an indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969<sup>(8)</sup> was given, or
  - (d) on which an order for retrial is made.

(4) The notice under paragraph (1) shall be served on the chief clerk, and at the same time a copy thereof shall be served, by the applicant, on every other party to the proceedings.

(5) Any party on whom a copy of a notice of the application under paragraph (1) is served may oppose the application for a special measures direction in respect of any measure available in relation to the witness, whether or not the question of whether the witness is eligible for assistance by virtue of Article 4 or 5 of the 1999 Order is in issue.

(6) Any party who wishes to oppose the application shall, within 14 days of the date notice of the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition and give reasons for it.

- (7) In order to comply with paragraph (6) –
- (a) a party shall state in the written notification whether he –
    - (i) disputes that the witness is eligible for assistance by virtue of Article 4 or 5 of the 1999 Order;
    - (ii) disputes that any of the special measures available would be likely to improve the quality of evidence given by the witness or that such measures (or a combination of them) would be likely to maximise the quality of that evidence; and
    - (iii) opposes the granting of a special measures direction; and
  - (b) where the application relates to the admission of a copy of a video recording, a party who receives a recording shall provide the information required by rule 44CE(5).

(8) Except where notice is received in accordance with paragraph (6), the Court may –

- (a) determine the application in favour of the applicant without a hearing; or
- (b) direct a hearing.

(9) Where a party to the proceedings notifies the chief clerk in accordance with paragraph (6) of his opposition to the application, the Court shall direct a hearing of the application.

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<sup>(6)</sup> S.I. 1988/1846 (N.I. 16)

<sup>(7)</sup> S.I. 1995/757 (N.I. 3)

<sup>(8)</sup> 1969 c. 15 (N.I.)

(10) Where a hearing of the application is to take place in accordance with paragraphs (8) or (9), the chief clerk shall notify each party to the proceedings of the time and place of the hearing.

(11) A party notified in accordance with paragraph (10) may be present at the hearing and be heard.

(12) The chief clerk shall, as soon as reasonably practicable after the determination of an application under paragraph (1), notify all the parties of the decision in Form 7 in the Schedule, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.”.

(2) In rule 44C(1), for the reference to “rule 44BA(3)”, there shall be substituted a reference to “rule 44B(3)”.

(3) In rules 44CA(1), 44CA(2)(b), 44CB(4), 44CC(4) and 44CE(6), for each reference to “rule 44BA”, there shall be substituted a reference to “rule 44B”.

(4) Rule 44CD shall be amended as follows –

(a) in paragraph (1), for the reference to “rule 44BA(2)(a)”, there shall be substituted a reference to “rule 44B(2)(a)”;

(b) in paragraph (2) –

(i) for the words “a witness”, there shall be substituted the words “a child witness”;

(ii) for the reference to “rule 44BA(6)”, there shall be substituted a reference to “rule 44B(6)”;

(c) in paragraph (3), for the words “a witness”, there shall be substituted the words “a child witness”.

(5) Rule 44CE shall be amended as follows –

(a) in paragraph (2), for the reference to “rule 44BA(1)”, there shall be substituted a reference to “rule 44B(1)”;

(b) in paragraph (4)(c)(i), for the reference to “their name,” there shall be substituted a reference to “his name,” and

(c) after paragraph (4)(c), there shall be inserted the following new paragraph:

“(ca) in relation to each person present at any point during the recording, a statement confirming that the said person when present is visible in the recording;”.

(6) After rule 44CF, there shall be inserted the following new rules:

**“Prohibition on cross-examination of particular witness**

**44D.—**(1) An application by the prosecutor for a direction under Article 24 of the 1999 Order in relation to any witness shall be made by giving notice in writing to the chief clerk and at the same time the applicant shall serve a copy thereof on every other party to the proceedings.

(2) In an application under paragraph (1), the prosecutor shall state why, in his opinion –

(a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the defendant in person;

(b) the evidence would be improved if a direction were given under Article 24(2) of the 1999 Order; and

(c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application, the chief clerk shall refer it –

- (a) if the trial has started, to the trial judge;
- (b) if the trial has not started when the application is received –
  - (i) to the judge who has been designated to conduct the trial; or
  - (ii) if no judge has been designated for that purpose, to such judge as may be designated for the purposes of hearing that application.
- (4) Where a copy of a notice under paragraph (1) is served on a party to the proceedings more than 14 days before the date set for the trial to begin, that party may, within 14 days, make observations in writing in relation to the application to the chief clerk and shall serve a copy of such observations on every other party to the proceedings.
- (5) A party on whom a copy of a notice is served in accordance with paragraph (1) may notify the chief clerk and every other party to the proceedings, in writing, of his opposition to the application and give reasons for it.
- (6) Those reasons shall be notified –
  - (a) within 14 days of the date the notice of application was served on him, if that date is more than 14 days before the date set for the trial to begin;
  - (b) if the trial has begun, in accordance with any directions issued by the trial judge; or
  - (c) if neither sub-paragraph (a) nor sub-paragraph (b) apply, before the date set for the trial to begin.
- (7) Where the application made in accordance with paragraph (1) is made before the date set for the trial to begin and the application –
  - (a) is not contested by any party to the proceedings, the Court may determine the application without a hearing;
  - (b) is contested by a party to the proceedings, the Court shall direct a hearing of the application.
- (8) Where the application is made after the trial has begun –
  - (a) the application may be made orally; and
  - (b) the trial judge may give such directions as he considers appropriate to deal with the application.
- (9) Where a hearing of the application is to take place, the chief clerk shall notify each party to the proceedings of the time and place of the hearing.
- (10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.
- (11) The chief clerk shall, as soon as reasonably practicable after the determination of an application made in accordance with paragraph (1), notify all the parties to the proceedings of the decision and the reasons for it.
- (12) A person making an oral application under paragraph (8)(a) shall –
  - (a) give reasons why the application was not made before the trial commenced; and
  - (b) provide the Court with the information set out in paragraph (2).

**Restrictions on cross-examination of witness by the accused person**

**44E.—**(1) This rule and rules 44F and 44G apply where a defendant is prevented from cross-examining a witness in person by virtue of Article 22, 23 or 24 of the 1999 Order.

- (2) The Court shall as early in the proceedings as is reasonably practicable –

- (a) explain to the defendant that he is prevented from cross-examining a witness in person; and
- (b) invite him to arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The defendant shall within 7 days of the Court giving its explanation, or within such other period as the Court may in any particular case allow, give notice to the chief clerk as to whether or not he has arranged for a legal representative to act on his behalf.

(4) Where the defendant has arranged for a legal representative to act for him, the notice under paragraph (3) shall include details of the name and address of the representative.

(5) The chief clerk shall notify all other parties to the proceedings of the name and address of any person appointed by the defendant to act on his behalf.

(6) Where the Court gives its explanation under paragraph (2) to the defendant –

- (a) within 7 days of the date set for the commencement of any hearing at which a witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies may be cross-examined, or
- (b) after such a hearing has commenced,

the period of 7 days within which the defendant is required to give notice under paragraph (3) shall be reduced in accordance with any direction issued by the Court.

(7) Where at the end of the period of 7 days or such other period as the Court has allowed, the Court has not received notice from the defendant under paragraph (3), it may grant the defendant an extension of time, whether of its own motion or on the application of the defendant.

(8) Before granting an extension of time, the Court may direct a hearing at which all parties to the proceedings may attend and be heard.

(9) Any extension of time shall be for such period as the Court considers appropriate in the circumstances of the case.

(10) The decision of the Court as to whether or not to grant the defendant an extension of time shall be notified to all parties to the proceedings by the chief clerk.

### **Appointment by the Court**

**44F.**—(1) Where the Court decides, in accordance with Article 26(4) of the 1999 Order, to appoint a qualified legal representative, the chief clerk shall notify all parties to the proceedings of the name and address of that representative.

(2) An appointment made by the Court under Article 26(4) of the 1999 Order shall, except to such extent as the Court may in any particular case determine, terminate at the conclusion of the cross-examination of any witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies.

### **Appointment arranged by the defendant**

**44G.**—(1) The defendant may arrange for the qualified legal representative, appointed by the Court under Article 26(4) of the 1999 Order, to be appointed to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies.

(2) Where such an appointment is made –

- (a) both the defendant and the qualified legal representative shall notify the Court of the appointment; and

(b) the qualified legal representative shall, from the time of his appointment, act for the defendant as though the arrangement had been made under Article 26(2)(a) of the 1999 Order and shall cease to be the representative of the Court under Article 26(4) of the 1999 Order.

(3) Where the Court receives notification of the appointment either from the qualified legal representative or from the defendant but not from both, the Court shall investigate whether the appointment has been made, and if it concludes that the appointment has not been made, paragraph (2)(b) shall not apply.

(4) The defendant may, notwithstanding an appointment by the Court under Article 26(4) of the 1999 Order, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under Article 22, 23 or 24 applies.

(5) Where the defendant arranges for, or informs the Court of his intention to arrange for a legal representative to act for him, he shall notify the Court within such period as the Court may allow, of the name and address of any person appointed to act for him.

(6) Where the Court is notified within the time allowed that such an appointment has been made, any qualified legal representative appointed by the Court in accordance with Article 26(4) of the 1999 Order shall be discharged.

(7) The chief clerk shall as soon as reasonably practicable after notification is received by the Court, or where paragraph (3) applies, after the Court is satisfied that the appointment has been made, notify all the parties to the proceedings –

- (a) that the appointment has been made;
- (b) where paragraph (4) applies, of the name and address of the person appointed;
- (c) that the person appointed by the Court under Article 26(4) of the 1999 Order has been discharged or has ceased to act for the Court.

#### **Procedure for applications in proceedings for sexual offences**

**44H.**—(1) Subject to paragraph (10), an application under Article 28(2) of the 1999 Order for leave to adduce evidence of, or ask questions about, any sexual behaviour of a complainant shall be made by giving to the chief clerk notice in writing and shall –

- (a) be made within 28 days from the date –
    - (i) of the committal of the defendant; or
    - (ii) on which Notice of Transfer under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 or under Article 4 of the Children’s Evidence (Northern Ireland) Order 1995 was given; or
    - (iii) on which leave to present an indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 was given; or
    - (iv) on which an order for retrial is made; or
  - (b) be accompanied by a full written explanation specifying the reasons why the application could not have been made within the specified period.
- (2) An application under paragraph (1) shall contain the following –
- (a) a summary of the evidence it is proposed to adduce and of the questions it is proposed to put to any witness;
  - (b) a full explanation of the reasons why it is considered that the evidence and questions fall within Article 28(3) or (5) of the 1999 Order;
  - (c) a summary of any document or other evidence to be submitted in support of such evidence and questions;

- (d) where it is proposed that a witness at the trial give evidence as to the complainant's sexual behaviour, the name and date of birth of any such witness.
- (3) A copy of the application under paragraph (1) shall be served, by the applicant, on every other party to the proceedings at the same time as it is served on the chief clerk.
- (4) The prosecutor shall notify the chief clerk and the other parties to the proceedings –
  - (a) whether or not he opposes the application, giving reasons for any such opposition, and
  - (b) whether or not he wishes to be represented at any hearing of the application,and where the notice of application is received by the prosecutor more than 14 days before the date set for the trial to begin, the notification must be served by the prosecutor within 14 days of receipt.
- (5) Where a copy of the application is received by a party to the proceedings other than the prosecutor more than 14 days before the date set for the trial to begin, that party may, within 14 days, make observations in writing in relation to the application to the chief clerk and shall serve a copy of such observations on every other party to the proceedings.
- (6) In considering any application under this rule, the Court may request a party to the proceedings to provide the Court with such information as it may specify and which the Court considers would assist in determining the application.
- (7) Where the Court makes such a request, the person required to provide the information shall do so within 14 days of the Court making the request or by such time as the Court considers appropriate in the circumstances of the case.
- (8) An application under paragraph (1) shall be determined by a judge following a hearing.
- (9) The date and time of the hearing shall be –
  - (a) determined by the chief clerk after taking into consideration –
    - (i) any time which a party to the proceedings has been given to respond to a request for information; and
    - (ii) the date fixed for any other hearing relevant to the proceedings; and
  - (b) notified by the chief clerk to all the parties to the proceedings.
- (10) An application under Article 28(2) of the 1999 Order may be made orally to the trial judge where the application is made after the trial has begun.
- (11) The person making the application under paragraph (10) shall –
  - (a) give reasons why the applicant failed to make the application in accordance with paragraph (1); and
  - (b) provide the Court with the information set out in paragraph (2).
- (12) The chief clerk shall, as soon as reasonably practicable after the hearing of an application under paragraph (1), give notice of the decision of the judge to all the parties to the proceedings.”.
- (7) The Schedule to the principal Rules shall be amended as follows –
  - (a) Form 5 shall be deleted;
  - (b) for Form 6, there shall be substituted the new Form 6 in the Schedule to these Rules; and
  - (c) in the title to Form 7, for the reference to “Rule 44BA”, there shall be substituted a reference to “Rule 44B”.

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Dated 29th October 2003

*R. D. Carswell*  
*A. R. Hart*  
*J. Wilson*  
*P. Lynch*

Signed by authority of the Lord Chancellor  
I concur

Dated 4th November 2003

*Lord Filkin*  
Parliamentary Under Secretary of State,  
Department for Constitutional Affairs



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SCHEDULE

Rule 3(7)

FORMS TO BE SUBSTITUTED IN THE CROWN COURT RULES (NORTHERN IRELAND) 1979

FORM 6 IN THE CROWN COURT IN NORTHERN IRELAND FORM OF APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER ARTICLE 7 OF THE CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

Rule 44B

An application should be made within 28 days from –

- (a) the date of the committal of the defendant; or
- (b) the date on which Notice of Transfer under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 or under Article 4 of the Children’s Evidence (Northern Ireland) Order 1995 was given; or
- (c) the date on which leave to present an indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 was given; or
- (d) the date on which an order for retrial is made.

This Form may also be used where an extension of time has been granted for the making of this application.

A copy of this Form shall be given at the same time to the other party or parties to the case.

PART 1

TO BE COMPLETED BY ALL APPLICANTS

<i>Details required</i>	<i>Notes</i>
<p><b>Details of witness</b></p> <p>Name of witness:</p> <p>Date of birth of witness:</p> <p>If an application has been made to tender in evidence a video recording of testimony from the witness, give the date and (if known) result of that application:</p> <p>If the applicant is the prosecutor, give the name of the witness (otherwise leave blank):</p>	<p>An application by the defence for evidence to be given through a live link or by means of a video recording need not disclose who that witness is, except to the extent that the disclosure is required by section 5(7) of the Criminal Procedure and Investigations Act 1996.</p>
<p><b>Case details</b></p> <p>Name of PSNI Central Process Office:</p> <p>Central Process Office or District Command Unit reference number:</p> <p>DPP reference number:</p> <p>Defendant(s): Surname:</p> <p style="padding-left: 40px;">Forenames:</p> <p>Court venue:</p> <p>Date of next Court appearance:</p> <p>Charges:</p>	<p>The venue of the Court hearing the case.</p> <p>Give brief details (including date and location of offence) of those charges to which this application applies.</p>



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<i>Details required</i>	<i>Notes</i>
(b) the name of the person who it is proposed will accompany the witness: (c) the occupation of this person: (d) the relationship (if any) of this person to the witness:	could lead to the identification of the witness.
<b>Grounds</b> State why it is believed that this person should accompany the witness:	

PART 3

TO BE COMPLETED IF THE APPLICATION IS TO TENDER IN EVIDENCE A VIDEO RECORDING UNDER ARTICLE 15 OF THE CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

<i>Details required</i>	<i>Notes</i>
<b>Video recording(s)</b> Statement as to circumstances in which video recording made:  Date(s) of video recording(s): Time(s) of video recording(s):  Location and normal function of premises where video recording made:	These details need to be completed only to the extent that the information is not contained in the video recording itself.  Give the times at which recording began and finished, including details of any interruptions.  Give address of premises where recording made and state the usual function of those premises.
<b>Details of those present while recording made</b> Give details of each person present at any point during the recording:  In relation to each person present at any point during the recording, a statement confirming that the person is visible in the recording when present:	Include name, age and occupation of anyone present; time for which present; relationship (if any) to witness and to the defendant.
<b>Equipment used</b> Give a description of the equipment used for the recording:	The description shall include the following information – number and type of cameras used (fixed or mobile); the number and location of microphones; the video format used; and whether it offered single or multiple recording facilities and if it did which were used.
<b>Recordings of part only of an interview</b> State whether the video recording contains part only of the interview with the witness:	A copy of any video recordings of other parts of the interview with the witness which it is not proposed to tender in evidence shall also be provided to the Court and the other parties. The details of each such recording shall be given as above. Use separate sheets where necessary.

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<i>Details required</i>	<i>Notes</i>
<p><b>Details of copy</b></p> <p>State in respect of each video recording whether it is a copy, and give the following details in respect of each copy –</p> <p>Name and address of person who has the mastertape:</p> <p>When, and by whom, the copy was made:</p>	
<p><b>Attendance and supply of copies</b></p> <p>Is the witness willing and able to attend the trial for cross-examination?</p> <p>Have copies of the video recording(s) to which this application relates been disclosed to the other parties?</p> <p>Has a copy of this notice and the video recording(s) to which it relates been served on each party to the proceedings?</p> <p>Has the agreement of the other parties to the video recording(s) being tendered as evidence been sought?</p>	<p>Where the application is by the defendant, the video recording(s) do not have to be served on the prosecution until the close of the prosecution case at the trial.</p>

Dated this     day of                                     20     .

Applicant  
[Solicitor for Applicant]

To the Chief Clerk of the Crown Court sitting at

And to

(insert names and addresses of each of the other parties to the proceedings)

NOTE:

The notice served on the Chief Clerk shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

### EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules amend the Crown Court Rules (Northern Ireland) 1979 (“the principal Rules”) and contain provisions relating to Part II (Special measures directions in case of vulnerable and intimidated witnesses), Part III (Protection of witnesses from cross-examination by accused in

person) and Part IV (Protection of complainants in proceedings for sexual offences) of the Criminal Evidence (Northern Ireland) Order 1999 (“the 1999 Order”).

Rule 2 revokes specified rules in the Crown Court (Amendment) Rules (Northern Ireland) 2000 and the Crown Court (Amendment) Rules (Northern Ireland) 2001. These rules, which have never been commenced, prescribed procedures to be followed on applications under certain Articles in Parts III and IV of the 1999 Order. Equivalent provision is now made by rule 3(6).

Rule 3(1) substitutes for existing *rules 44B and 44BA* of the principal Rules, a new rule 44B which sets out the procedure to be followed on an application for a special measures direction.

Paragraphs (2) to (5) of Rule 3 make a number of minor amendments to the principal Rules to take account of:

- the extension of Part 2 of the 1999 Order to vulnerable and intimidated witnesses in the Crown Court; and
- the substitution of a new rule 44B.

Rule 3(6) inserts *new rules 44D to 44H* into the principal Rules.

*New rule 44D* provides for an application by a prosecutor for a direction under Article 24 of the 1999 Order preventing a defendant from cross-examining a witness in person.

*New rule 44E* prescribes the time when, and the manner in which, a legal representative is to be appointed to act for the defendant for the purpose of cross-examining any witness whom the defendant is prevented from cross-examining in person by virtue of Article 22, 23 or 24 of the 1999 Order.

*New rule 44F* provides for the procedure to be followed when the Court appoints a qualified legal representative where the defendant fails to appoint a legal representative to act for him. *New rule 44G* details the procedures where the defendant subsequently arranges for a legal representative to act for him.

*New rule 44H* provides for the procedure to be followed on an application for leave under Article 28(2) of the 1999 Order, to introduce evidence or to ask questions in cross-examination about the sexual behaviour of the complainant, in criminal proceedings relating to a person charged with a sexual offence.

Rule 3(7) amends the Schedule to the principal Rules, by:

- deleting Form 5;
- substituting for Form 6, the new Form 6 in the Schedule to these Rules; and
- making a minor amendment to the title of Form 7.