

---

STATUTORY RULES OF NORTHERN IRELAND

---

2000 No. 227

**SUPREME COURT, NORTHERN IRELAND**

**CROWN COURT**

**The Crown Court (Amendment) Rules (Northern Ireland) 2000**

*Made . . . . . 10th July 2000*

*Coming into operation in accordance with Rule 1*

*To be laid before Parliament*

We, the Crown Court Rules Committee, in exercise of the powers conferred upon us by section 51(5), 51A(7), (8) and (9), 51C(2) and (3), 51D(5), (6) and (7), 51F(3) and (4) and 52(1) of the Judicature (Northern Ireland) Act 1978(a), Articles 30(3) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(b) and of 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) Rules (Northern Ireland) 2000 and except as provided by paragraph (2) shall come into operation on 21st August 2000.

(2) Rule 3 shall come into operation on the same day as Article 28 of the Criminal Evidence (Northern Ireland) Order 1999 comes into operation.

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

*Amendments to the principal Rules*

**2.** The principal Rules shall be amended as follows—

(a) by inserting after paragraph (1) of rule 12 the following new paragraphs:

“(1A) A person specified in rule 11(1) before whom a recognizance may be entered into may require a person offering himself as surety to a recognizance to produce evidence as to his means and as to his identity and place of abode and to sign a certificate that he is possessed of sufficient means to pay the sum in which he is to be bound under the recognizance.

---

(a) 1978 c. 23, sections 51A, 51C, 51D and 51F were inserted by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25), as modified in its application to Northern Ireland by Schedule 4 to that Act

(b) S.I. 1999/2789 (N.I. 8)

(c) S.R. 1979 No. 90; to which the most recent relevant amendments were made by S.R. 1999 No. 491

(1B) Such certificate shall be attached to or endorsed on the recognizance.”.

(b) rules 66, 67, 68, 69, 70 and 71 shall be re-numbered rules 63, 64, 65, 66, 67 and 68, respectively.

(c) by substituting in Form 11 in the Schedule for the words “paragraph 7”, the words “paragraph 33”.

*Criminal Evidence (Northern Ireland) Order 1999*

3. After rule 44C, there shall be inserted the following new rule:

*“Procedure for applications in proceedings for sexual offences*

**44D.**—(1) Subject to paragraph (9), an application under Article 28(2) of the Criminal Evidence (Northern Ireland) Order 1999 (in this Rule referred to as the “1999 Order”) is made by giving notice in writing to the chief clerk and shall—

(a) be received by the chief clerk within 21 days of the primary disclosure by the prosecutor, or

(b) be accompanied by a full written explanation specifying the reasons why the application could not have been made within the 21 days mentioned above.

(2) Such an application 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 notice of application must be sent to the prosecutor at the same time as it is sent to the chief clerk.

(4) The prosecutor must notify the applicant and the chief clerk, in writing—

(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 the 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 issued within 14 days of his receipt of the notice.

(5) 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.

(6) Where the court makes such a request, the person required to provide the information must 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.

(7) An application under paragraph (1) shall be determined by a judge following a hearing.

(8) The date and time of the hearing must 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 both the applicant and the prosecutor.

(9) 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.

(10) The person making the application under paragraph (9) shall—

(a) give reasons why the applicant failed to make the application in writing in accordance with paragraph (1); and

(b) provide the court with the information set out in paragraph (2).

(11) The chief clerk shall, as soon as possible after the hearing of an application under paragraph (1), give notice of the decision by the judge to—

(a) the applicant or his legal representative; and

(b) the prosecution.

(12) In this Rule “primary disclosure” has the same meaning as in Part I of the Criminal Procedure and Investigations Act 1996(a).”.

#### *Inserting new Part X into principal Rules*

4.—(1) This rule applies in relation to any proceedings for the purpose of which no summons requiring the attendance of a witness has been issued before 21st August 2000 and where this rule does not apply the law in operation immediately before this rule came into operation continues to have effect.

(2) The principal Rules shall be amended by adding after Part IX the new Part X set out in the Schedule to these Rules.

*Amendment to the Crown Court (Amendment No. 2) Rules (Northern Ireland)  
1999*

**5.** In rule 2 of the Crown Court (Amendment No. 2) Rules (Northern Ireland) 1999(a) for the words “rule 65” there shall be substituted the words “rule 62”.

*R. D. Carswell*

*J. M. Nicholson*

*J. Gillen*

*C. Adair*

*J. O. Brady*

*Francis Keenan*

*J. W. Wilson*

*A. R. Hart*

*Paul G. Copeland*

Dated 15th June 2000

I concur

*Irvine of Lairg, C.*

Dated 10th July 2000

“PART X  
WITNESS SUMMONSES

*Interpretation*

**69.** In this Part of these Rules, unless the context otherwise requires:—

“the applicant” means the applicant in relation to an application to which that rule applies;

“the directed person” and “the stipulated evidence, document or thing” have the same meaning as in section 51A (10) of the Act; and

“a scheduled offence” means an offence which is scheduled within the meaning of section 1 of the Northern Ireland (Emergency Provisions) Act 1996(a).

*Application for witness summons*

**70.**—(1) This rule applies to an application under section 51A of the Act for the issue of a witness summons.

(2) Subject to paragraphs (8) to (10), the application shall be made in writing to the chief clerk and shall—

(a) contain a brief description of the stipulated evidence, document or thing;

(b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material evidence;

(c) set out the reason why the applicant considers that the directed person will not voluntarily attend as a witness or produce the document or thing; and

(d) if the witness summons is proposed to require the directed person to produce a document or thing—

(i) inform the directed person of his right to make representations in writing and at a hearing, under paragraph (5); and

(ii) state whether the applicant seeks a requirement also to be imposed under section 51B of the Act (advance production) and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.

(3) The application shall be supported by an affidavit—

(a) setting out any charge on which the proceedings concerned are based;

(b) specifying the stipulated evidence, document or thing in such a way as to enable the directed person to identify it;

(c) specifying grounds for believing that the directed person is likely to be able to give the stipulated evidence or to produce the stipulated document or thing;

(d) specifying grounds for believing that the stipulated evidence is likely to be material evidence or, as the case may be, that the stipulated document or thing is likely to be material evidence.

(4) A copy of the application and the supporting affidavit shall be served on the directed person at the same time as it is served on the chief clerk.

(5) The directed person may, within 7 days of receiving a copy of the application under paragraph (4), inform, in writing, the chief clerk whether or not he wishes to make representations, concerning the issue of the witness summons proposed to be directed to him, at a hearing and may also make written representations to the chief clerk.

(6) The chief clerk shall—

(a) if the directed person indicates that he wishes to have the application considered at a hearing, fix a time, date and place for the hearing;

(b) if the directed person does not indicate in accordance with paragraph (5) that he wishes to make representations at a hearing, refer the application to a judge of the Crown Court for determination with or without a hearing; and

(c) notify the applicant and, where sub-paragraph (a) applies, the directed person of the time, date and place fixed for any hearing of the application.

(7) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(8) In the case of an application for a witness summons which it is proposed shall require the directed person to give evidence but not to produce any document or thing, that application may be made orally to a judge or in writing and, in such a case—

(a) paragraphs (3) to (7) shall not have effect; and

(b) the application shall, in addition to the matters set out in sub-paragraphs (a) to (c) of paragraph (2), specify—

(i) any charge on which the proceedings concerned are based; and

(ii) the grounds for believing that the directed person is likely to be able to give the stipulated evidence.

(9) Subject to paragraph (10), in the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made within 7 days of the date fixed for trial, the chief clerk shall refer the notice of application—

(a) where the offence charged is a scheduled offence, to such judge as has been designated by the Lord Chief Justice for the purposes of hearing the application;

(b) in any other case, to the trial judge, or such other judge as may be available,

to determine the application or to give such directions as the judge to whom the notice is referred considers appropriate, and paragraphs (2)(d)(i) and (4) to (6) shall not have effect.

(10) In the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made during the trial, such application shall be made orally to the trial judge, to determine the application or to give such directions as he considers appropriate, and in such a case—

(a) paragraphs (3) to (7) shall not have effect; and

(b) the application shall, in addition to the matters set out in sub-paragraphs (a) to (c) of paragraph (2), specify the grounds for believing that the directed person is likely to be able to produce the document or thing.

*Application that summons be of no further effect*

**71.**—(1) This rule applies to an application under section 51C of the Act

(2) The application shall be made in writing to the chief clerk as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under section 51B of the Act.

(3) The application shall state that the applicant concludes that the requirement imposed by the witness summons under section 51A(2) of the Act is no longer needed.

(4) If a direction is given under section 51C of the Act following the application, the chief clerk shall notify the person to whom the witness summons is directed as to the effect of the direction.

*Application to make summons issued on application ineffective*

**72.**—(1) This rule applies to an application under section 51D of the Act.

(2) The application shall be made in writing to the chief clerk and shall—

(a) state that the applicant was not served with notice of the application to issue the summons and that he was neither present nor represented at any hearing of that application; and

(b) set out the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence.

(3) On receiving the application, the chief clerk shall—

(a) serve notice of the application on the person on whose application the witness summons was issued;

(b) refer the application, where the offence charged is a scheduled offence, to such judge as has been designated by the Lord Chief Justice for the purposes of determining the application;

(c) refer the application, in any other case—

(i) if the trial has started, to the trial judge; or

(ii) if the application is received before the start of the trial, either to the judge who has been designated to conduct the trial, or if no judge has been designated for that purpose, to the judge who issued the witness summons to which the application relates.

(4) The court shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons was issued have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(5) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

(a) the applicant can produce that document or thing, but

(b) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

the applicant must, unless the judge directs otherwise, arrange for the document or thing to be available at the hearing of the application.

(6) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(7) The chief clerk shall notify the applicant and the person on whose application the witness summons was issued of the decision of the court in relation to the application.

*Application to make summons issued of court's own motion ineffective*

**73.**—(1) Rule 72 shall apply to an application under section 51F of the Act as it applies to an application under section 51D of that Act, subject to the following modifications.

(2) Paragraphs (2)(a) and (3)(a) shall be omitted.

(3) In paragraphs (4) and (7), the words “and the person on whose application the witness summons was issued” shall be omitted.

(4) In paragraph (4), for the words “(where they agree to do so)”, there shall be substituted the words “(where he agrees to do so)”.

## EXPLANATORY NOTE

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

These Rules amend the Crown Court Rules (Northern Ireland) 1979 to:

- allow evidence of a surety's means to be sought;
- insert a new rule 44D to make provision for the procedure to be followed on an application for leave, under Article 28(2) of the Criminal Evidence (Northern Ireland) Order 1999, to introduce evidence or to ask questions in cross-examination about the sexual behaviour of the complainant, at a trial of a person charged with a sexual offence;
- insert a new Part X to make provision concerning applications under sections 51A, 51C, 51D and 51F of the Judicature (Northern Ireland) Act 1978 (inserted by section 66 of the Criminal Procedure and Investigations Act 1996) which introduce a new statutory system for summoning a witness to attend the Crown Court; and
- correct existing numbering errors in the Rules.

£2.50

Published by The Stationery Office Limited

Printed in the UK by The  
Stationery Office Limited  
under the authority and  
superintendence of Carol  
Tullo, Controller of  
Her Majesty's Stationery  
Office being the Government  
Printer for Northern Ireland and  
the Officer appointed to print the  
Acts of the Northern Ireland Assembly

Dd. 600252. C4 8/00. Gp. 130. 14567.