

2006 No. 499

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Crown Court (Amendment) Rules (Northern Ireland) 2006

Made - - - - - *5th December 2006*
Coming into operation - - - - - *8th January 2007*
To be laid before Parliament

The Crown Court Rules Committee makes the following Rules in exercise of the powers conferred by section 52(1) and 53A of the Judicature (Northern Ireland) Act 1978(a), Article 80A(7) of the Police and Criminal Evidence (Northern Ireland) Order 1989(b), section 49 of the Criminal Justice Act 2003(c) and section 20 of the Domestic Violence, Crime and Victims Act 2004(d).

Citation and Commencement

1. These Rules may be cited as the Crown Court (Amendment) Rules (Northern Ireland) 2006 and shall come into operation on 8th January 2007.

Amendment to the Crown Court Rules (Northern Ireland) 1979(e)

2.—(1) For rule 20, there shall be substituted the following new rule—

“Form of an indictment

20.—(1) Subject to paragraph (2), an indictment shall be in Form 3 in the Schedule.

(2) Where the Court makes an order under section 17 of the Domestic Violence, Crime and Victims Act 2004 for a trial to take place on the basis that the trial of some, but not all, of the counts included in the indictment shall be conducted without a jury, an indictment shall be in Form 3A in the Schedule.”

(2) After rule 44A, there shall be inserted the following new rules—

(a) 1978 c.23 to which the most recent relevant amendment was made by the Constitutional Reform Act 2005 (c.4)
(b) S.I. 1989/1341 (N.I.12). Article 80A was inserted by Article 31 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I.13)) as amended by Article 24 of the Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I.15))
(c) 2003 c.44, as modified in its application to Northern Ireland by section 50 of that Act
(d) 2004 c.28, as modified in its application to Northern Ireland by paragraph 6 of Schedule 1 to that Act
(e) S.R. 1979 No. 90 to which the most recent relevant amendment was made by S.R. 2005 No. 80

“Trial without jury where danger of jury tampering

44AA.—(1) An application by the prosecution for a trial to be conducted without a jury under section 44 of the Criminal Justice Act 2003 (*danger of jury tampering*) shall be made by giving notice in writing which shall be in Form 5 in the Schedule.

(2) The notice under paragraph (1) shall be served on the chief clerk and every other party to the proceedings 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(a) or under Article 4 of the Children’s Evidence (Northern Ireland) Order 1995(b) 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(c) was given, or
- (d) on which an order for retrial is made.

(3) Where the grounds for making an application under paragraph (1) do not arise until after the expiry of the time limit specified above, the prosecution shall make the application as soon as reasonably practicable.

(4) Any party who wishes to oppose the application under paragraph (1) shall, within 14 days of the date that notice of the application was served on him, notify the chief clerk and every other party to the proceedings, in writing, of his opposition giving reasons for it.

(5) An application under paragraph (1) shall be determined by a judge at a hearing on or after the arraignment of the accused and the chief clerk shall notify the parties of the time and place of any such hearing.

(6) A party notified in accordance with paragraph (5) may be present at the hearing and be heard.

(7) 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 5A in the Schedule.

(8) An application to the judge of the Crown Court for leave to appeal under section 47(1) of the Criminal Justice Act 2003 shall be made orally within two days of the making of the order or ruling to which it relates.

(9) Unless the application is made on the occasion of the order or ruling to which it relates, the appellant shall serve notice in writing thereof, specifying the grounds of the application on the chief clerk and on every other party to the proceedings directly affected by the order or ruling which is the subject of the application for leave to appeal.

(10) The Court may, if it considers that it is in the interests of justice to do so—

- (a) allow a notice required under this rule to be given in a different form, or orally; or
- (b) extend or abridge the time for service of a notice required under this rule, either before or after that period expires.

Trial by jury of sample counts only

44AB.—(1) An application under section 17 of the Domestic Violence, Crime and Victims Act 2004 (*application by prosecution for certain counts to be tried without a jury*) shall be made by giving notice in writing which shall be in Form 5B in the Schedule.

(2) The notice under paragraph (1) shall be accompanied by a copy of the indictment in Form 3A in the Schedule which it would be intended to present if the Court makes an order for the trial to take on the basis that the trial of some, but not all, of the counts included in

(a) S.I. 1988/1846 (N.I.16)
(b) S.I. 1995/757 (N.I.3)
(c) 1969 c.15 (N.I.)

the indictment may be conducted without a jury and shall be served on the chief clerk and every other party to the proceedings 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 or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995 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 was given, or
- (d) on which an order for retrial is made.

(3) Any party who wishes to oppose the application under paragraph (1) shall, within 14 days of the date that notice of the application was served on him, notify the chief clerk and every other party to the proceedings, in writing, of his opposition giving reasons for it.

(4) An application under paragraph (1) shall be determined by a judge at a hearing on or after the arraignment of the accused and the chief clerk shall notify the parties of the time and place of any such hearing.

(5) A party notified in accordance with paragraph (4) may be present at the hearing and be heard.

(6) 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 5C in the Schedule.

(7) An application to the judge of the Crown Court for leave to appeal under section 18A(1) of the Domestic Violence, Crime and Victims Act 2004 shall be made orally within two days of the making of the order or ruling to which it relates.

(8) Unless the application is made on the occasion of the order or ruling to which it relates, the appellant shall serve notice in writing thereof, specifying the grounds of the application, on the chief clerk and on every other party to the proceedings directly affected by the order or ruling which is the subject of the application for leave to appeal.

(9) The Court may, if it considers that it is in the interests of justice to do so—

- (a) allow a notice required under this rule to be given in a different form, or orally; or
- (b) extend the time for service of a notice required under this rule, either before or after that period expires.”

(3) After rule 44O, there shall be inserted the following new rule—

“Evidence by live link where witness is outside the United Kingdom

44P.—(1) An application for leave under Article 80A(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 for a witness (other than the accused) who is outside the United Kingdom to give evidence through a live link shall be made by giving notice in writing which shall be in Form 7J in the Schedule.

(2) The notice under paragraph (1) shall be served on the chief clerk and every other party to the proceedings 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^(a) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995^(b) 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^(c) was given, or

(a) S.I. 1988/1846 (N.I.16)
(b) S.I. 1995/757 (N.I.13)
(c) 1969 c.15 (N.I.)

(d) on which an order for retrial is made.

(3) Any party who wishes to oppose the application under paragraph (1) shall, within 14 days of the date on which notice of the application was served on him, notify the chief clerk and every other party to the proceedings in writing, of his opposition giving reasons for it.

(4) Except where notice is received in accordance with paragraph (3), the Court may—

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

(5) Where a party to the proceedings notifies the chief clerk in accordance with paragraph (3) of his opposition to the application, the Court shall direct a hearing of the application.

(6) Where a hearing is to take place in accordance with paragraphs (4) or (5), the chief clerk shall notify each party to the proceedings of the time and place of the hearing.

(7) A party notified in accordance with paragraph (6) may be present at the hearing and be heard.

(8) The chief clerk shall, as soon as reasonably practicable after determination of an application under paragraph (1), notify all parties of the decision of the court in Form 7K and, where leave is granted, the notification shall state—

- (a) the country in which the witness will give evidence;
- (b) if known, the place where the witness will give evidence;
- (c) where the witness is to give evidence on behalf of the prosecutor or where the disclosure is required by section 5(7) of the Criminal Procedure and Investigations Act 1996(a) (alibi), the name of the witness;
- (d) the location of the Court at which the trial will be held; and
- (e) any conditions specified by the Court in accordance with paragraph (9).

(9) In determining an application under paragraph (1), the Court may specify that as a condition of the grant of leave the witness should give evidence in the presence of a specified person who is able and willing to answer under oath or affirmation any questions the Court may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

(10) The Court may, if it considers that it is in the interests of justice to do so—

- (a) allow a notice required under this rule to be given in a different form, or orally; or
- (b) abridge or extend the time for service of a notice required under this rule, either before or after that period expires.”

(4) The Schedule shall be amended as follows—

- (a) by inserting after Form 3, the new Form 3A in the Schedule to these Rules;
- (b) by inserting after Form 4, the new Forms 5 to 5C in the Schedule to these Rules;
- (c) by inserting after Form 7I, the new forms 7J and 7K in the Schedule to these Rules.

(a) 1996 c.25

*Brian Kerr
T A Burgess
Corinne E Philpott
Eilis McDermott
Cathal McCorry
Barra McGrory*

Dated 23rd November 2006

Signed by the authority of the Lord Chancellor

In exercise of the powers conferred by section 53A(3) of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

Bridget Prentice
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Dated 5th December 2006

SCHEDULE

Rule 2(4)

FORMS TO BE INSERTED INTO THE CROWN COURT RULES
(NORTHERN IRELAND) 1979

Form 3A

Rule 20(2)

IN THE CROWN COURT IN NORTHERN IRELAND

**Form of indictment for use where an application is to be made under section
17(2) of the Domestic Violence, Crime and Victims Act 2004 for trial by jury of
sample counts only**

INDICTMENT

The Queen v A.B.

COURT OF TRIAL: The Crown Court at

DATE: [i.e. date on which the indictment is to be presented.]

CHARGE[S]:-

A.B. is charged as follows:-

PART 1

Count 1

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

Count 2

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

[and so on, stating the offence and particulars thereof for each count charged in the indictment
which is to be tried by a jury]

PART 2

Section 1: counts associated with Count 1 in Part 1 of this indictment.

Count 1.1

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

Count 1.2

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

[and so on, stating the offence and particulars thereof for each count associated with Count 1 in Part 1 of this indictment]

Section 2: counts associated with Count 2 in Part 1 of this indictment.

Count 2.1

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

Count 2.2

STATEMENT OF OFFENCE

PARTICULARS OF OFFENCE

[and so on, stating the offence and particulars thereof for each count associated with Count 2 in Part 1 of this indictment]

IN THE CROWN COURT IN NORTHERN IRELAND

Form of application for a trial without jury under section 44 of the Criminal Justice Act 2003 (jury tampering)

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 be used where the reasons for making the application do not arise until after the time limits outlined above have expired.

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

This Form should be served on the chief clerk, and at the same time a copy thereof shall be served on every other party to the proceedings.

<i>Details Required</i>	<i>Notes</i>
Details of Applicant PPS Office: PPS Reference Number:	
Case Details The Crown Court at: Crown Court Bill Number:	
Date of— committal for trial* order for retrial* notice of transfer*	*Delete as appropriate

IN THE CROWN COURT IN NORTHERN IRELAND

Notice of decision of application for trial without jury under section 44 of the Criminal Justice Act 2003 (Jury Tampering)

<p>Case Details</p> <p>The Crown Court at:</p> <p>Crown Court Bill number:</p> <p>Name of Defendant(s):</p> <p>Defendant's Solicitor:</p>	
<p>Application made by:</p> <p>PPS Office:</p> <p>PPS Reference:</p> <p>Date of Application:</p>	

Result

An application for trial without jury under section 44 of the Criminal Justice Act 2003 is granted*/refused*.

The Court is satisfied*/not satisfied* that there is evidence of a real and present danger that jury tampering would take place.

The Court is satisfied*/not satisfied* that notwithstanding any steps which might reasonably be taken to prevent jury tampering, the likelihood that jury tampering would take place is so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

* Delete as appropriate

Dated this day of 20 .

Chief Clerk

IN THE CROWN COURT IN NORTHERN IRELAND

Form of application for a trial by jury of sample counts only under section 17 of the Domestic Violence, Crime and Victims Act 2004

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

This Form should be served on the chief clerk, and at the same time a copy thereof shall be served on every other party to the proceedings.

<i>Details Required</i>	<i>Notes</i>
<p>Details of applicant:</p> <p>PPS Office:</p> <p>PPS Reference Number:</p>	
<p>Case Details:</p> <p>The Crown Court at:</p> <p>Crown Court Bill Number:</p>	
<p>Date of—</p> <p>committal for trial*</p> <p>order for retrial*</p>	<p>*Delete as appropriate</p>

IN THE CROWN COURT IN NORTHERN IRELAND

Notice of decision on an application for trial by jury of sample counts under section 17 of the Domestic Violence, Crime and Victims Act 2004

<p>Case Details:</p> <p>The Crown Court at:</p> <p>Crown Court Bill number:</p> <p>Name of Defendant(s):</p> <p>Defendant's solicitor:</p>	
<p>Application made by:</p> <p>PPS Office:</p> <p>PPS Reference:</p> <p>Date of Application:</p>	

Result:

The application under section 17 of the Domestic Violence, Crime and Victims Act 2004 for a trial to take place on the basis that the trial of some, but not all, of the counts included in the indictment may be conducted without a jury is granted*/refused*.

The Court is satisfied*/not satisfied* that the following three conditions are fulfilled:

1. That the number of counts included in the indictment is likely to mean that a trial by jury involving all of those counts would be impracticable.
2. That each count or group of counts which is to be tried with a jury can be regarded as a sample of counts which are to be tried without a jury.
3. That it is in the interests of justice for an order under Article 17(2) of the Domestic Violence, Crime and Victims Act 2004 to be made.

*Delete where appropriate

Dated this day of 20 .

Chief Clerk

IN THE CROWN COURT IN NORTHERN IRELAND

APPLICATION FOR LEAVE FOR WITNESS (OTHER THAN THE ACCUSED) WHO IS OUTSIDE THE UNITED KINGDOM TO GIVE EVIDENCE THROUGH A LIVE LINK

(Article 80A of the Police and Criminal Evidence (Northern Ireland) Order 1989)

An application should 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 or under Article 4 of the Children’s Evidence (Northern Ireland) Order 1995 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 was given; or
- (d) 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.

This Form should be served on the chief clerk, and at the same time a copy thereof shall be served on every other party to the proceedings.

<i>Details Required</i>	<i>Notes</i>
<p>Details of applicant:</p> <p>Name:</p> <p>Address:</p> <p>Case Details:</p> <p>The Crown Court at:</p> <p>Crown Court Bill Number:</p>	

<p>Name of defendant(s):</p> <p>Charges:</p> <p>Date of— committal for trial*</p> <p>giving of notice of transfer*</p> <p>leave to present an indictment*</p> <p>order for retrial*</p> <p>next court appearance*</p>	<p>*Delete as appropriate</p>
<p>Details of Witness</p> <p>Name of witness:</p> <p>Date of Birth of Witness:</p>	<p>An application by the defence for evidence to be given by live link 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 (alibi)</p>
<p>Details of Application</p> <p>State the reasons given by the application in support of this application:</p> <p>Country in which the witness will give evidence:</p> <p>Place from which the witness will give evidence (if known):</p>	
<p>Extension of time for service</p> <p>Please indicate whether you are applying for an extension of time for service.</p> <p>If the answer is yes, please state your reasons:</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)

NOTES:

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.

Any party who wishes to oppose the application shall, within 14 days of the date on which notice of the application was served on him, notify the Chief Clerk and every other party to the proceedings, in writing, of his opposition, giving reasons for it.

IN THE CROWN COURT IN NORTHERN IRELAND

**NOTICE OF DECISION ON APPLICATION FOR LEAVE FOR WITNESS
(OTHER THAN THE ACCUSED) WHO IS OUTSIDE THE UNITED
KINGDOM TO GIVE EVIDENCE THROUGH A LIVE LINK**

(Article 80A of the Police and Criminal Evidence (Northern Ireland) Order 1989)

Case Details

The Crown Court at:

Crown Court Bill Number:

Defendant(s): Surname:
Forenames:

Upon hearing of an application by _____ (name of applicant), on
(date application heard) under Article 80A of the Police and Criminal
Evidence (Northern Ireland) Order 1989 for leave for a witness outside the United Kingdom to
give evidence through a live link, the court made an order to the following effect, viz—
Leave granted*/refused on the following grounds*—

To be completed where leave is granted:

Country in which the witness will give evidence:

Place where the witness will give evidence (if known):

Where the witness is to give evidence on behalf of the prosecutor, or where disclosure is required
by section 5(7) of the Criminal Procedure and Investigations Act 1996, the name of the witness:

The location of the Court at which the trial will be held:

Name of person specified by the Court under Rule 44P(9), in whose presence the witness shall
give evidence (if applicable):

This _____ day of _____ 20 .

Chief Clerk of the Crown Court

*Delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Crown Court Rules (Northern Ireland) 1979 (“the principal Rules”) to prescribe the procedure relating to—

- applications for trial without a jury under section 44 of the Criminal Justice Act 2003 where the judge is satisfied that there is a real and present danger of jury tampering;
- applications for trial by jury of sample counts only under section 17 of the Domestic Violence, Crime and Victims Act 2004, where the judge is satisfied that it would be impracticable to try all the counts by jury and that each count to be tried by the jury can be regarded as a sample of counts which could accordingly be tried without a jury.
- applications for leave for a witness (other than the accused) who is outside the United Kingdom to give evidence by live link.

Rule 2(1) substitutes a new rule 20 into the principal Rules to provide that, where the Court makes an order for a trial to take place on the basis that the trial of some, but not all, of the counts included in the indictment shall be conducted without a jury, an indictment shall be in Form 3A in the Schedule.

Rule 2(2) inserts a new rules 44AA and 44AB into the principal Rules. *New rule 44AA(1)* provides that an application for trial without jury shall be made by giving notice in the prescribed form. *New rule 44AA(2)* sets out the time limits for making such an application. *New rule 44AA(3)* provides that, where the grounds for making the application do not arise until after the expiry of the prescribed time limit, the prosecution shall make the application as soon as reasonably practicable.

New rule 44AA(4) sets out the procedure to be followed by any party who wishes to oppose the application. The chief clerk shall notify the parties of the time and place for the hearing of an application (*new rule 44AA(5)*) and a party notified may be present at the hearing and be heard (*new rule 44AA(6)*). *New rule 44AA(7)* provides that the chief clerk shall notify the parties of the decision of the Court.

New rule 44AA(8) provides that an application for leave to appeal shall be made orally within two days of the making of the order or ruling which is to be appealed in accordance with the procedure set out in new rule 44AA(9).

New rule 44AA(10) provides that the Court may extend or abridge the time for service of any notice under that rule and may allow notice to be given in a different form or orally.

New rule 44AB(1) provides that an application for trial by jury of sample counts only shall be made by giving notice in the prescribed form. *New rule 44AB(2)* sets out the time limits for making such an application and provides that the notice shall be accompanied by a copy of the indictment in Form 3A.

New rule 44AB(3) sets out the procedure to be followed by any party who wishes to oppose the application. The chief clerk shall notify the parties of the time and place for the hearing of an application (*new rule 44AB(4)*) and a party notified may be present at the hearing and be heard (*new rule 44AB(5)*). *New rule 44AB(6)* provides that the chief clerk shall notify the parties of the decision of the Court.

New rule 44AB(7) provides that an application for leave to appeal shall be made orally within two days of the making of the order or ruling which is to be appealed in accordance with the procedure set out in *new rule 44AB(8)*.

New rule 44AB(9) provides that the Court may extend or abridge the time for service of any notice under that rule and may allow notice to be given in a different form or orally.

Rule 2(3) inserts new rule 44P into the principal Rules. *New rule 44P(1)* provides that such an application shall be made by giving notice in the prescribed form. *New rule 44P(2)* sets out the time limits for making such an application. *New rule 44P(3)* sets out the procedure to be followed by any party who wishes to oppose the application.

New rules 44P(4) to (7) provide that the Court may direct a hearing of an application where notice of opposition is given or where the Court considers that it is appropriate to do so and provide that where no notice of opposition is received, the Court may determine the application in favour of the applicant without a hearing.

New rule 44P(8) provides that the chief clerk shall notify the parties of the decision of the Court and, where leave is granted, prescribes certain information which shall be set out in that notification.

New rule 44P(9) provides that when dealing with an application for a witness outside the United Kingdom to give evidence by live link, the Court may specify, as a condition of granting leave, that the witness should give evidence in the presence of a particular person who is able to answer under oath or affirmation any questions the Court may put as to the circumstances in which the evidence is given.

New rule 44P(10) provides that the Court may abridge or extend the time for service of any notice under that Rule and may allow notice to be given in a different form, or orally.

Rule 2(4) amends the Schedule to the principal Rules to insert new Forms 3A, 5 to 5C, 7J and 7K for use in connection with applications prescribed by these Rules.