

2005 No. 80

SUPREME COURT, NORTHERN IRELAND

**The Crown Court (Amendment) Rules
(Northern Ireland) 2005**

Made - - - - - *8th March 2005*

Coming into operation *18th April 2005*

To be laid before Parliament

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(a), Articles 16 and 35 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004(b), 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) Rules (Northern Ireland) 2005 and shall come into operation on 18th April 2005.

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

Amendment to the principal Rules

2.—(1) Rule 2(1) shall be amended by inserting after the definition of “the 1999 Order”, the following definition:

“ “the 2004 Order” means the Criminal Justice (Evidence) (Northern Ireland) Order 2004;”.

(2) After rule 44M there shall be inserted the following new rules –

“Procedure for the admission of evidence of bad character

44N.—(1) A party who wants to adduce evidence of a non-defendant’s bad character or to cross examine a witness with a view to eliciting such evidence, under Article 5 of the 2004 Order shall give notice in writing which shall be in Form 7E in the Schedule.

(2) Notice under paragraph (1) shall be served on the chief clerk and every other party to the proceedings –

- (a) within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996(d) (disclosure by the prosecutor); or

(a) 1978 c. 23
(b) S.I. 2004/1501 (N.I. 10)
(c) S.R. 1979 No. 90; to which the most recent relevant amendment was made by S.R. 2004 No. 233
(d) 1996 c. 25; section 3 was amended by section 82(1) of and paragraph 7(1) of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c. 23) and is prospectively amended by section 32 of the Criminal Justice Act 2003 (c. 44)

(b) as soon as is reasonably practicable, where the application concerns a non-defendant who is to be invited to give, or has given, evidence for a defendant.

(3) Any party who wishes to oppose the application under paragraph (1) shall, within 14 days of the date on which the 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) A prosecutor who wants to adduce evidence of a defendant's bad character or to cross examine a witness with a view to eliciting such evidence, under Article 6 of the 2004 Order, shall give notice in writing which shall be in Form 7F in the Schedule.

(5) Notice under paragraph (4) shall be served on the chief clerk and every other party to the proceedings within 14 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.

(6) A co-defendant who wants to adduce evidence of a defendant's bad character or to cross examine a witness with a view to eliciting such evidence, under Article 6 of the 2004 Order shall give notice in writing which shall be in Form 7F in the Schedule.

(7) Notice under paragraph (6) shall be served on the chief clerk and every other party to the proceedings within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by the prosecutor).

(8) An application by a defendant to exclude bad character evidence shall be by notice in writing which shall be in Form 7G in the Schedule and shall be served on the chief clerk and on every other party to the proceedings within 7 days of the date that notice under paragraph (4) or paragraph (6) was served on him.

(9) A defendant who is entitled to have notice served on him under this rule may waive his entitlement by so informing the Court and the party who would have served the notice.

- (10) The Court may, if it considers that it is in the interests of justice to do so –
- (a) allow notice or application 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 or application required under this rule, either before or after that period expires.

Procedure for the admission of hearsay evidence

440.—(1) This rule shall apply where a party wishes to adduce evidence on one or more of the grounds set out in Article 18(1)(a) to (d) of the 2004 Order and in this rule, such evidence is referred to as "hearsay evidence".

(2) A prosecutor who wants to adduce hearsay evidence shall give notice in writing which shall be in Form 7H in the Schedule.

(3) Notice under paragraph (2) shall be served on the chief clerk and every other party to the proceedings within 14 days from the date of –

- (a) the committal of the defendant;
- (b) service of a notice of transfer under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988(d) (serious fraud cases) or under Article 4 of the

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

Children's Evidence (Northern Ireland) Order 1995(a) (certain cases involving children); or

- (c) the grant of leave to present an indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969(b); or
- (d) the making of an order for retrial.

(4) A defendant who wants to adduce hearsay evidence shall give notice in writing which shall be in Form 7H in the Schedule.

(5) Notice under paragraph (4) shall be served on the chief clerk and every other party to the proceedings within 14 days from the date on which the prosecutor has complied with or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996(c) (disclosure by prosecutor).

(6) Any party who wishes to oppose the application under paragraph (2) or (4) shall, within 14 days of the date the notice of the application was served on him, notify the chief clerk and every other party to the proceedings, in writing in Form 7I in the Schedule, of his opposition.

(7) A party who is entitled to have notice served on him under this rule may waive his entitlement by so informing the Court and the party who would have served the notice.

- (8) The Court may, if it considers that it is in the interests of justice to do so, –
 - (a) dispense with the requirement to give notice of intention to adduce hearsay evidence;
 - (b) allow notice required under this rule to be given in a different form, or orally; or
 - (c) abridge or extend the time for service of a notice required under this rule, either before or after that period expires.”

(3) The Schedule to the principal Rules shall be amended by inserting after Form 7D, the new Forms 7E to 7I in the Schedule to these Rules.

Dated 3rd March 2005

Brian Kerr
J. M. Nicholson
J. Gillen
Gordon Kerr
Corinne E. Philpott
J. Wilson
Paul G. Copeland
Barra McGrory

Signed by authority of the Lord Chancellor

I concur

Baroness Ashton of Upholland
Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Dated 8th March 2005

(a) S.I. 1995/757 (N.I. 3)
(b) 1969 c. 15 (N.I.)
(c) 1996 c. 25

SCHEDULE

Rule 2(3)

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

FORM 7E

Rule 44N(1)

IN THE CROWN COURT IN NORTHERN IRELAND

Application for leave to adduce evidence of non-defendant’s bad character

(Article 5 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

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 –

- within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by the prosecutor); or
- as soon as reasonably practicable, where the application concerns a non-defendant who is to be invited to give, or has given, evidence for a defendant.

<i>Details required</i>	<i>Notes</i>
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Details of applicant

Name:

Address:

Case details

The Crown Court at:

Crown Court Bill Number:

Name of defendant(s):

Charges:

Date of – committal for trial*
 giving of notice of transfer*
 leave given to present indictment*
 order for retrial*
 next court appearance*

* delete as appropriate

Details of the application

Please provide the following details:

- * the particulars of the bad character evidence including how it is to be adduced or elicited in the proceedings (including the names of the relevant non-defendant and other relevant witnesses); and
- * the grounds for the admission of evidence of a non-defendant’s bad character under Article 5 of the 2004 Order.

Article 5 of the 2004 Order.

Please attach any relevant documentation.

Extension of time for service

Please indicate whether you are applying for an extension of time for service.

If the answer is yes, please provide details:

Dated this day of 20 .

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.

Note to party who receives a copy of this application:

If you wish to oppose this application you are required within 14 days of the date the notice of the application was served on you, to notify the chief clerk and every other party to the proceedings, in writing, of your opposition, giving reasons for it.

IN THE CROWN COURT IN NORTHERN IRELAND

Notice of intention to adduce evidence of defendant's bad character

(Article 6 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

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.

Where the notice is given by the prosecutor, it shall be served within 14 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.

Where the notice is given by a co-defendant, it shall be served within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (*disclosure by the prosecutor*).

Details required

Notes

Details of party giving notice

Name:

Address:

Case details

The Crown Court at:

Crown Court Bill Number:

Name of defendant(s):

Charges:

Date of – committal for trial*
 giving of notice of transfer*
 leave given to present indictment*
 order for retrial*
 next court appearance*

* delete as appropriate

Details of the notice

To the named defendant:

You are hereby given notice that bad character evidence, particulars of which are detailed below, is to be adduced or elicited in these proceedings.

The particulars of that bad character evidence are as follows:

In this section include:

- (a) a description of the bad character evidence and how it is to be adduced or elicited in the proceedings (including the names of any relevant witnesses);
- (b) the grounds for the admission of evidence of the defendant's bad character under Article 6 of the 2004 Order;

Details required

Notes

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- (c) why the admission of that evidence is in the interests of justice, where Article 13 of the Order applies (evidence of conviction when under 14 used in proceedings for offence committed as an adult).
Please attach any relevant documentation.
-

Extension of time for service

Please indicate whether you are applying for an extension of time for service.

If the answer is yes, please provide details:

Dated this day of 20 .

Applicant

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.

Note to defendant:

An application by a defendant to exclude bad character evidence shall be in Form 7G and shall be served on the chief clerk and on every other party to the proceedings within 7 days of the date the notice of intention to adduce the evidence of bad character was served on him.

IN THE CROWN COURT IN NORTHERN IRELAND

Application to exclude evidence of defendant's bad character

(Articles 6 and 13 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

This form should be served on the chief clerk and on every other party to the proceedings within 7 days of the date on which the notice of intention to adduce evidence of the defendant's bad character was served on the defendant.

<i>Details required</i>	<i>Notes</i>
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Details of the defendant(s)

Name:

Address:

Date of birth:

If you are in custody, please give your prison number and the address of the establishment in which you are detained:

Case details

The Crown Court at:

Crown Court Bill Number:

Charges:

Date of – committal for trial*	* delete as appropriate
giving of notice of transfer*	
leave given to present indictment*	
order for retrial*	
next court appearance*	

Date on which you were served with notice of intention to adduce evidence of bad character in these proceedings:

Details of the application

Include the following information:

- (a) why the admission of bad character evidence would have such an adverse effect on the fairness of the proceedings that the Court should not admit it.
- (b) details as to the length of time between the matters to which the bad character evidence relates and the matters which form the subject of the offence charged.
- (c) if you are applying for the exclusion of this evidence on grounds other than Article 6(3) of the 2004 Order, please set out such objections.

Note that an application to exclude this evidence under Article 6(3) of the 2004 Order can only be made if you have been notified of a party's intention to adduce this evidence under Article 6(1)(d) (it is relevant to an important matter in issue between the defendant and the prosecutor) or Article 6(1)(g) (that the defendant has made an attack on another person's character). Article 6(4) of the 2004 Order.

Details required

Notes

Offences committed by the defendant when a child

If you are applying to exclude evidence of a previous conviction for an offence when under the age of 14, state

Article 13(1) of the 2004 Order.

- (a) whether the offence for which you received a conviction when under the age of 14 was an offence triable only on indictment; and
 - (b) why it would not be in the interests of justice for that evidence to be admitted.
-

Extension of time for service

Please indicate whether you are applying for an extension of time for service.

If the answer is yes, state your reasons:

Dated this day of 20 .

Applicant
[Solicitor for Defendant]

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.

IN THE CROWN COURT IN NORTHERN IRELAND

Notice of intention to adduce hearsay evidence

(Article 18 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

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.

Where the notice is given by the prosecutor, it shall be served not more than 14 days after –

- (a) the committal of the defendant;
- (b) the service of a notice of transfer under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (serious fraud cases) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995 (certain cases involving children); or
- (c) the grant of leave to present an indictment under section 2(2)(e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969; or
- (d) the making of an order for retrial.

Where the notice is given by a defendant, it shall be served not more than 14 days after the prosecutor has complied with or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by prosecutor).

*Details required**Notes***Case details**

The Crown Court at:

Crown Court Bill Number:

Name of defendant(s):

Charges:

Date of – committal for trial*
 giving of notice of transfer*
 leave given to present indictment*
 order for retrial*
 next court appearance*

* Delete as appropriate

Details of party giving notice

Surname:

Forename:

Address:

State the name and address of the party giving notice of hearsay evidence. (If in custody give address where detained)

Details of the notice:

To the named recipient of the notice:

I hereby give you notice of my intention to adduce hearsay evidence, details of which are set out below, in these proceedings.

<i>Details required</i>	<i>Notes</i>
<p>Grounds for adducing hearsay evidence</p> <p>On which of the following grounds do you intend to adduce hearsay evidence?</p> <p>(a) Any statutory provision makes it admissible; <input type="checkbox"/></p> <p>(b) Any rule of law preserved by Article 22, Criminal Justice (Evidence) (Northern Ireland) Order 2004: <input type="checkbox"/></p> <p>(c) All parties to the proceedings agree to it being admissible; or <input type="checkbox"/></p> <p>(d) It is in the interests of justice for it to be admissible. <input type="checkbox"/></p> <p>Further details of grounds:</p>	<p>Tick as appropriate. Specify which provision of the 2004 Order or other statute, or which rule of law preserved by Article 22 you rely on to adduce the evidence.</p> <p>Where box (d) is ticked, you must specify which of the factors set out in Article 18(2) of the 2004 Order and explain how they are relevant.</p>

<p>Details of hearsay evidence</p> <p>The details of the hearsay evidence are as follows:</p>	<p>Give brief details of the evidence that you want to adduce as hearsay evidence.</p> <p>A complete copy of that evidence must be attached to this notice, if it has not already been served on the other parties.</p>
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<p>Extension of time</p> <p>Are you applying for an extension of time within which to give this notice?</p> <p>If yes, state your reasons:</p>	
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Dated this day of 20 .

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.

Note to party who receives a copy of this application:

If you wish to oppose the admission of hearsay evidence, you are required, within 14 days of the date the notice was served on you, to serve notice of your opposition in Form 7I on the chief clerk and every other party to the proceedings.

IN THE CROWN COURT IN NORTHERN IRELAND

Notice of opposition to the admission of hearsay evidence

(Article 18 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

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 within 14 days of the date on which the notice of intention to adduce hearsay evidence was served.

<i>Details required</i>	<i>Notes</i>
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Case details

The Crown Court at:

Crown Court Bill Number:

Name of defendant(s):

Charges:

Date of – committal for trial*
 giving of notice of transfer*
 leave given to present indictment*
 order for retrial*
 next court appearance*

* Delete as appropriate

Details of party giving notice

Surname:

Forename:

Address:

State the name and address of the party giving notice of hearsay evidence. (If in custody give address where detained)

Details of the notice

The details of the hearsay evidence are as follows:

Give brief details of the evidence that you want to exclude from the proceedings. Specify whether you object to all or part of that evidence.

Grounds for excluding hearsay evidence

Set out the grounds for excluding the hearsay evidence that you object to.

Any relevant skeleton argument or case law that might bear on the issue may be attached to this notice.

Extension of time

Are you applying for an extension of time within which to give this notice?

If yes, state your reasons:

Dated this day of 20 .

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.

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- applications to adduce evidence of bad character under Part II of the Criminal Justice (Evidence) (Northern Ireland) Order 2004; and
- notice of intention to adduce hearsay evidence under Part III of that Order.

Rule 2(2) inserts a new rule 44N, which prescribes the procedure to be followed on an application to:

- adduce evidence of the bad character of persons other than the defendant or to cross examine a witness with a view to eliciting such evidence (new rules 44N(1) and (2));
- oppose the admission of evidence the bad character of persons other than the defendant (new rule 44N(3));
- adduce evidence of a defendant’s bad character or to cross examine a witness with a view to eliciting such evidence (new rule 44N(4) to (7));
- exclude evidence of a defendant’s bad character (new rule 44N(8)).

New rule 44N(9) provides that the defendant may waive service of any application or notice. The Court may also allow a notice or application to be given in a different form or orally, and may abridge or extend any of the time limits (new rule 44N(10)).

Rule 2(2) also inserts a new rule 44O, which prescribes the procedure to be followed on an application to –

- adduce hearsay evidence (new rules 44O(1) to (5));
- oppose the admission of hearsay evidence (new rule 44O(6)).

New rule 44O(7) provides that a party may waive his entitlement to be served with any notice under new rule 44O.

New rule 44O(8) provides that the Court may dispense with the requirement to give notice, may allow a notice or application to be given in a different form or orally and may abridge or extend any of the time limits for service of a notice under new rule 44O.

Rule 2(3) amends the Schedule to the principal Rules by inserting new Forms 7E to 7I for use in connection with applications prescribed by these Rules.

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