## STATUTORY INSTRUMENTS

# 2005 No. 384

# The Criminal Procedure Rules 2005

# PART 35 EVIDENCE OF BAD CHARACTER

## **Contents of this Part**

When this Part applies	rule 35.1
Introducing evidence of non-defendant's bad character	rule 35.2
Opposing introduction of evidence of non- defendant's bad character	rule 35.3
Prosecutor introducing evidence of defendant's bad character	rule 35.4
Co-defendant introducing evidence of defendant's bad character	rule 35.5
Defendant applying to exclude evidence of his own bad character	rule 35.6
Methods of giving notice	rule 35.7
Courts power to vary requirements under this Part	rule 35.8
Defendant waiving right to receive notice	rule 35.9

# When this Part applies

**35.1.** This Part applies in a magistrates' court and in the Crown Court when a party wants to introduce evidence of bad character as defined in section 98 of the Criminal Justice Act 2003(1).

[Note. For the introduction of evidence of bad character in the Court of Appeal see rule 68.21.]

## Introducing evidence of non-defendant's bad character

**35.2.** A party who wants to introduce evidence of a non-defendant's bad character or who wants to cross-examine a witness with a view to eliciting that evidence, under section 100 of the Criminal Justice Act 2003 must apply in the form set out in the Practice Direction and the application must be received by the court officer and all other parties to the proceedings—

- (a) not more than 14 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996(2) (disclosure by the prosecutor); or
- (b) 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.

[Note. Formerly rule 72A(1) of the Magistrates' Courts Rules 1981(3) and rule 23E(1) of the Crown Court Rules 1982(4).]

# Opposing introduction of evidence of non-defendant's bad character

**35.3.** A party who receives a copy of an application under rule 35.2 may oppose that application by giving notice in writing to the court officer and all other parties to the proceedings not more than 14 days after receiving that application.

[Note. Formerly rule 72A(2) of the Magistrates' Courts Rules 1981 and rule 23E(2) of the Crown Court Rules 1982.]

## Prosecutor introducing evidence of defendant's bad character

- **35.4.**—(1) A prosecutor who wants to introduce evidence of a defendant's bad character or who wants to cross-examine a witness with a view to eliciting that evidence, under section 101 of the Criminal Justice Act 2003 must give notice in the form set out in the Practice Direction to the court officer and all other parties to the proceedings.
  - (2) Notice under paragraph (1) must be given—
    - (a) in a case to be tried in a magistrates' court, at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996; and
    - (b) in a case to be tried in the Crown Court, not more than 14 days after—
      - (i) the committal of the defendant, or
      - (ii) the consent to the preferment of a bill of indictment in relation to the case, or
      - (iii) the service of notice of transfer under section 4(1) of the Criminal Justice Act 1987(5) (notices of transfer) or under section 53(1) of the Criminal Justice Act 1991(6) (notices of transfer in certain cases involving children), or
      - (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(7) (sending cases to the Crown Court) the service of copies of the documents

<sup>(2) 1996</sup> c. 25; section 3 is amended the Regulation of Investigatory Powers Act 2000 (c. 23), Schedule 4, paragraph 7(1). It is further amended by the Criminal Justice Act 2003 (c. 44), section 32 and Schedule 36, Part 3, paragraphs 20 and 21, with effect from a date to be appointed.

<sup>(3)</sup> S.I. 1981/552; amended by S.I. 2004/2993; there are other amending instruments but none is relevant to this Part.

<sup>(4)</sup> S.I. 1982/1109, amended by S.I. 2004/2991; there are other amending instruments but none is relevant to this Part.

<sup>(5) 1987</sup> c. 38; section 4 was amended by the Criminal Justice Act 1988 (c. 33), section 144(1) and (2), the Legal Aid Act 1988 (c. 34), Schedule 5, paragraph 22, the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 29, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 65 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraphs 38 and 39. Section 4 is repealed by the Criminal Justice Act 2003 (c. 44), section 41 and Schedule 3, Part 2, paragraph 58(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

<sup>(6) 1991</sup> c. 53; section 53 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 49, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 93 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraph 47. Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

<sup>(7) 1998</sup> c. 37; section 51 is substituted, together with new sections 51A to 51E, by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14 and 18, with effect from a date to be appointed.

containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to that Act(8).

[Note. Formerly rule 72A(3) of the Magistrates' Courts Rules 1981 and rule 23E(3) of the Crown Court Rules 1982.]

#### Co-defendant introducing evidence of defendant's bad character

**35.5.** A co-defendant who wants to introduce evidence of a defendant's bad character or who wants to cross-examine a witness with a view to eliciting that evidence under section 101 of the Criminal Justice Act 2003 must give notice in the form set out in the Practice Direction to the court officer and all other parties to the proceedings not more than 14 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

[Note. Formerly rule 72A(4) of the Magistrates' Courts Rules 1981 and rule 23E(4) of the Crown Court Rules 1982.]

# Defendant applying to exclude evidence of his own bad character

**35.6.** A defendant's application to exclude bad character evidence must be in the form set out in the Practice Direction and received by the court officer and all other parties to the proceedings not more than 7 days after receiving a notice given under rules 35.4 or 35.5.

[Note. Formerly rule 72A(5) of the Magistrates' Courts Rules 1981 and rule 23E(5) of the Crown Court Rules 1982.]

## Methods of giving notice

**35.7.** Where this rule requires a notice or application to be given or sent it may, with the consent of the addressee, be sent by fax or other means of electronic communication.

[Note. Formerly rule 72A(8) of the Magistrates' Courts Rules 1981 and rule 23E(8) of the Crown Court Rules 1982.]

## Court's power to vary requirements under this Part

- **35.8.** The court may—
  - (a) allow a notice or application required under this rule to be given in a different form, or orally; or
  - (b) shorten a time-limit under this rule or extend it even after it has expired.

[Note. Formerly rule 72A(7) of the Magistrates' Courts Rules 1981 and rule 23E(7) of the Crown Court Rules 1982.]

# Defendant waiving right to receive notice

**35.9.** A defendant entitled to receive a notice under this Part may waive his entitlement by so informing the court and the party who would have given the notice.

[Note. Formerly rule 72A(6) of the Magistrates' Courts Rules 1981 and rule 23E(6) of the Crown Court Rules 1982.]

<sup>(8)</sup> Paragraph 1 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), section 67(1) and Schedule 15, Part 3; it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14, 20(1) and (2), with effect from a date to be appointed.

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