
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 36

EVIDENCE OF A COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR

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Evidence in the Crown Court of a complainant's previous sexual behaviour

36.1.—(1) An application for leave under section 41(2) of the Youth Justice and Criminal Evidence Act 1999⁽¹⁾ must be made in writing to the Crown Court officer and must either—

- (a) be received by the court officer within 28 days of—
 - (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 53 of the Criminal Justice Act 1991⁽²⁾,
or
 - (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998⁽³⁾, the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to the 1998 Act⁽⁴⁾,
or
 - (v) or within such period as the court may in any particular case determine; or
 - (b) be accompanied by a full written explanation specifying the reasons why the application could not have been made within the 28 days mentioned above.
- (2) Such an application must 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 section 41(3) or (5) of the 1999 Act;

(1) 1999 c. 23.

(2) 1991 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 Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

(3) 1998 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.

(4) 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.

- (c) a summary of any document or other evidence to be submitted in support of such evidence and questions; and
 - (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 must be sent to all the parties to the proceedings at the same time as it is sent to the court officer.
- (4) Where a copy of the application is received by the prosecutor more than 14 days before the date set for the trial to begin, the prosecutor must, within 14 days of the receipt of the application, notify the other parties to the proceedings and the court officer in writing whether or not—
- (a) he opposes the application, giving reasons for any such opposition; and
 - (b) he wishes to be represented at any hearing of the application.
- (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 make observations in writing on the application to the court officer, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties 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 it in determining the application.
- (7) 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.
- (8) An application under paragraph (1) must be determined by a judge of the Crown Court following a hearing if—
- (a) the prosecutor has notified the court officer that he opposes the application; or
 - (b) the copy of the application was received by any of the parties to the proceedings less than 14 days before the date set for the trial to begin.
- (9) An application under paragraph (1) must be determined by a judge of the Crown Court following a hearing in any case where he considers such a hearing is appropriate in the circumstances of the particular case.
- (10) The date and time of the hearing must be—
- (a) determined by the court or the court officer 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 court officer to all the parties to the proceedings.
- (11) Except where paragraph (8) or (9) above applies, an application under paragraph (1) must be determined by a judge of the Crown Court without a hearing.
- (12) The court officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), give notice of the decision and the reasons for it to all the parties to the proceedings.
- (13) An application under section 41(2) of the 1999 Act may be made orally where the application is made after the trial has begun.
- (14) The person making the application under paragraph (13) must—

- (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)(a) to (d).

[Note. Formerly rule 23D of the Crown Court Rules 1982(5). See also section 43 of the Youth Justice and Criminal Evidence Act 1999(6).]

(5) S.I. 1982/1109; amended by S.I. 2000/2987; there are other amending instruments, but none is relevant to this Part.

(6) Section 43 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 284(9).