STATUTORY RULES OF NORTHERN IRELAND

# 2013 No. 82

# COURT OF JUDICATURE, NORTHERN IRELAND

## PROCEDURE

## The Crown Court (Amendment) Rules (Northern Ireland) 2013

*Made - - - - 25th March 2013*

*Coming into operation in accordance with Rule 1*

The Crown Court Rules Committee, in exercise of the powers conferred by sections 52(1) and 53A of the Judicature (Northern Ireland) Act 1978(**1**), and Articles 17(5), 21BA(9) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(**2**) makes the following Rules.

### Citation and Commencement

**1.** These Rules shall be cited as the Crown Court (Amendment) Rules (Northern Ireland) 2013 and shall come into operation on the day after Articles 17, 21BA and 21BB of the Criminal Evidence (Northern Ireland) Order 1999 come into operation.

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

**2.** The Crown Court Rules (Northern Ireland) 1979(**3**) are amended as follows—

(1) In Rule 3(1), omit "under these Rules";

(2) In Rule 44B, after paragraph (2)(b), insert —

"(c) enabling an examination of a witness to be conducted through an intermediary—

(i) the information sought in Part 4 of Form 6; and

(ii) any relevant report, including an intermediary's assessment,

shall be provided.";

(3) In Rule 44CE, after paragraph (4)(c)(iii) insert —

"(iv) whether or not the person present was there to act as an intermediary for a witness, and, if so, whether an application under Article 17 of the 1999 Order for the use of an intermediary

(**1**) 1978 c.23 to which the most recent relevant amendments were made by the Constitutional Reform Act 2005 c.4 and paragraph 6 of Schedule 17, and paragraphs 14 and 26 of Schedule 18, to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No. 976).

(**2**) 1999 No.2789 (N.I.8) to which the most recent relevant amendments were made by S.I. 2008 No. 1216 (N.I.1).

(**3**) S.R. 1979 No.90 to which the most recent relevant amendments were made by S.R.2003 No.471 and S.R. 2008 No.505.

has been made or will be made, and whether the intermediary made the declaration as set out in Form 7Q before acting.";

(4) After Rule 44T, insert —

"**Application by the accused for a direction allowing the examination of the accused through an intermediary**

**44U.**—(1) An application by the accused for direction allowing the accused to be examined through an intermediary under Article 21BA of the 1999 Order shall be made in Form 7N and shall include –

(a) the information sought in Part C of Form 7N; and

(b) any relevant report, including an intermediary's assessment.

(2) The application under paragraph (1) shall be made within 28 days from the date—

(a) of the committal of the defendant; or

(b) on which the 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) The notice under paragraph (1) shall be served on the chief clerk and at the same time a copy thereof shall be served on every other party to the proceedings.

(4) Any party on whom a copy of the notice of the application under paragraph (1) is served may oppose the application for a direction allowing the use of an intermediary, whether or not the question of the conditions set out in Article 21BA (5) or (6) of the 1999 Order for the use of an intermediary is in issue.

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

(6) In order to comply with paragraph (5), a party shall state in the written notification whether he disputes that –

(a) the accused is eligible for a direction allowing the use of an intermediary by virtue of Article 21BA (5) or (6) of the 1999 Order as appropriate; and

(b) allowing the accused to be examined through an intermediary is necessary in order to ensure that the accused receives a fair trial.

(7) Except where notice is received in accordance with paragraph (5), the Court may —

(a) determine the application in favour of the applicant without a hearing; or

(b) direct a hearing.

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

(9) Where a hearing of the application is to take place in accordance with paragraph (7) or (8), the chief clerk shall notify each party to the proceedings of the time and place of the hearing.

(10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.

(11) The chief clerk shall, as soon as practicable, after the determination of an application under paragraph (1), notify all the parties of the decision in Form 7P.

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

(a) allow a 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.

**Discharge or variation of a direction allowing the examination of accused by an intermediary**

**44V.**—(1) Subject to paragraph (3), an application to discharge or vary a direction allowing the examination of the accused by an intermediary shall be made in writing.

(2) Any application under paragraph (1) shall be served on the chief clerk and on each party to the proceedings as soon as reasonably practicable.

(3) Paragraphs (4) to (12) of Rule 44U shall apply to an application to discharge or vary a direction allowing the examination of the accused by an intermediary as they apply to an application for such a direction.

**Declaration by an intermediary acting for either a witness or an accused**

**44W.**—(1) The declaration required to be taken by an intermediary under Article 17(5) or 21BA (9) of the 1999 Order shall be as set out in Form 7Q.

(2) A copy of the declaration made by the intermediary shall be served on the chief clerk and on each party to the proceedings at the time an application for the use of an intermediary under rule 44B or rule 44U is being made, or as soon as reasonably practicable thereafter.";

(5) Omit Rule 48; and

(6) In the Schedule —

(a) in Form 6 —

(i) in Part 3, in the section entitled "Details of those present while recording made", insert at the end of that section —

"Was an intermediary used during the video-recording? If yes, please complete Part 4 of this form, providing details of the intermediary. Please indicate whether the intermediary made the necessary declaration as set out in Form 7Q before acting.

Has the Court already approved the use of an intermediary under Article 17 of the 1999 Order? If not, will an application be made?"; and

(ii) after Part 3, insert Part 4 as set out in Schedule 1 to these Rules;

(b) in Form 7, after "Special Measures direction under Article [11] [12] [13] [14] [15]", insert "[17]";

(c) for Form 7N, substitute the new Form 7N as set out in Schedule 2 to these Rules; and

(d) after Form 7O, insert Forms 7P and 7Q as set out in Schedule 3 to these Rules.

*Declan Morgan*
*M.J.Higgins*
*R.E.Weir*
*Brian Archer*
*M.P.Finegan*
Dated 20th March 2013 *P.Atchison*

In exercise of the powers conferred by section 55A(3) and (5) of the Judicature (Northern Ireland) Act 1978, I allow these Rules
Sealed with the Official Seal of the Department of Justice on 25th March 2013

L.S.

*David Ford*
Minister of Justice

SCHEDULE 1 Rule 2(6)(a)(ii)

# "PART 4

**To be completed if the application is to allow the examination of a witness through an intermediary**

| *Details required* | *Notes* |
|---|---|
| **Details of the application -**<br>(a) what is the name of the proposed intermediary: | An application by the defence need not disclose the name of the intermediary if disclosure could lead to the identification of the witness. |
| (b) what is the occupation of this person: | |
| (c) list any relevant skills or professional qualifications: | |
| (d) what is the relationship (if any) of this person to the witness: | |
| (e) is the proposed intermediary registered with the Department of Justice: | |
| (f) describe the witness' communication needs, and the proposed arrangements for questioning the witness. Attach any relevant report, including an intermediary's assessment. Ground rules for questioning may be discussed between the court, the legal representatives and the intermediary before the witness gives evidence to establish (a) how questions should be put to help the witness understand them and (b) how the proposed intermediary will alert the court if the witness has not understood or needs a break. | |
| (g) has the intermediary made a declaration? If yes, please attach a copy. If a declaration has not yet been made, a copy of it must be submitted to the Court as soon as reasonably practicable after having been made. | |
| (h) has an intermediary been used in any other part of the investigation or pre-trial preparation, including a video-recorded interview: | |

| | |
|---|---|
| (i) if an intermediary was used in a video-recorded interview, is it intended that an application will be made to have the video-recording admitted as evidence in chief: | |
| (ii) was that intermediary used in any other part of the investigation, pre-trial preparation | |