STATUTORY RULES OF NORTHERN IRELAND

2008 No. 505

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Crown Court (Amendment) Rules (Northern Ireland) 2008

Made - - - - 18th December 2008

To be laid before Parliament

Coming into operation 2nd February 2009

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(**1**), Article 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(**2**) and Article 14 of the Criminal Justice (Northern Ireland) Order 2004(**3**).

Citation and Commencement

1. These Rules may be cited as the Crown Court (Amendment) Rules (Northern Ireland) 2008 and shall come into operation on 2nd February 2009.

Amendment to the Crown Court Rules (Northern Ireland) 1979

2. The Crown Court Rules (Northern Ireland) 1979(**4**) are amended as follows—

(1) after Rule 44P, insert the following new Rules—

"**Evidence by live link by witness (other than the defendant)**

44Q.—(1) An application for a direction under Article 10 of the Criminal Justice (Northern Ireland) Order 2004 for a witness (other than the defendant) to give evidence through a live link shall be made by giving notice in writing which shall be in Form 7L.

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

(a) of the committal of the defendant; or

(**1**) 1978 c.23 to which the most recent relevant amendment was made by paragraphs 26 and 28 of Schedule 5 to the Constitutional Reform Act 2005 (c.4)
(**2**) S.I. 1999/2789 (N.I. 8)
(**3**) S.I. 2004/1500 (N.I. 9)
(**4**) S.R. 1979/90.to which the most recent relevant amendment was made by S.R. 2006 No. 499

(b) on which Notice of Transfer under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988(**5**) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995(**6**) 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(**7**) was given; or

(d) on which an order for retrial is made; or

(e) on which a plea of guilty was entered.

(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 who wishes to oppose the application shall, within 14 days of the date that 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.

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

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

(b) direct a hearing.

(6) Where a party to the proceedings notifies the chief clerk in accordance with paragraph (4) of his opposition to the application, the Court shall direct a hearing of the application.

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

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

(9) 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 7M in the Schedule, and, where a direction is given, the notification shall state—

(a) if known, the place where the witness will give evidence;

(b) where the witness is to give evidence on behalf of the prosecutor or where disclosure is required by section 6A(2) of the Criminal Procedure and Investigations Act 1996, the name of witness;

(c) the location of the Court at which the proceedings will be held; and

(d) any conditions specified by the Court in accordance with paragraph (10).

(10) In determining an application under paragraph (1), the Court may specify that as a condition of the direction, 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.

(11) 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.

(**5**) S.I. 1988/1846 (N.I.16)
(**6**) S.I. 1995/757 (N.I.13)
(**7**) 1969 c.15 (N.I.)

Application for rescission of a direction

44R.—(1) An application to rescind a direction for a witness to give evidence through a live link under Article 11(5)(a) of Criminal Justice (Northern Ireland) Order 2004 shall be made in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the direction was made.

(2) An application under paragraph (1) shall be served on the chief clerk and on every other party to the proceedings as soon as is reasonably practicable after the change in circumstances occurs.

(3) Any party on whom a copy of the notice under paragraph (2) is served may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (4)–(9) and (11) of Rule 44Q shall apply to an application to rescind a live link direction as they apply to an application for a live link direction.

Application by the accused for live link direction

44S.—(1) An application by the accused for a live link direction under Article 21A of the 1999 Order shall be made by giving notice in writing, which shall be in Form 7N.

(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 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; or

(e) on which a plea of guilty was entered.

(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 live link direction, whether or not the question of whether the conditions set out in Article 21A(4) or (5) of the 1999 Order 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 live link direction by virtue of Article 21A(4) or (5) of the 1999 Order; and

(b) it is in the interests of justice for the accused to give evidence through a live link.

(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 paragraphs (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 reasonably practicable after the determination of an application under paragraph (1), notify all the parties of the decision in Form 7O.

(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.

(13) Where a live link direction is made enabling the accused to give evidence by means of a live link, he shall be accompanied at the live link only by persons acceptable to a judge of the Crown Court.

Discharge of live link direction

44T.—(1) Subject to paragraph (3), an application to discharge a live link direction under Article 21A(7) of the 1999 Order shall be made in writing.

(2) An 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 44S shall apply to an application to discharge a live link direction as they apply to an application for a live link direction.";

(2) in the Schedule, after Form 7K, insert new Forms 7L, 7M, 7N and 7O as set out in the Schedule to these Rules.

Brian Kerr
M J Higgins
T A Burgess
Gordon Kerr
Dated 5th December 2008 *C McCorry*

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
Dated 18th December 2008 Ministry of Justice

SCHEDULE Rule 2(2)

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

Rule 44Q(1)

"Form 7L

IN THE CROWN COURT IN NORTHERN IRELAND

APPLICATION FOR DIRECTION FOR WITNESS TO GIVE EVIDENCE THROUGH A LIVE LINK

(Article 10 of the Criminal Justice (Northern Ireland) Order 2004)

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; or
(e) on which a plea of guilty is entered.

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.

Details Required	*Notes*
Details of applicant: Name: Address:	