STATUTORY RULES OF NORTHERN IRELAND

2005 No. 162

MAGISTRATES' COURTS

The Magistrates' Courts (Amendment) Rules (Northern Ireland) 2005

Made - - - - 22nd March 2005

Coming into operation 18th April 2005

The Lord Chancellor in exercise of the powers conferred upon him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**), Articles 16 and 35 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004(**2**), and all other powers enabling him in that behalf, on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules, a reference to a Rule, Schedule or a Form by a number means the Rule, Schedule or Form so numbered in the Magistrates' Courts Rules (Northern Ireland) 1984(**3**).

Amendment to the principal Rules

2.—(1) Rule 2(3) shall be amended by inserting after the definition of "the 1999 Act", the following definition:

"(e) "the 2004 Order" means the Criminal Justice (Evidence) (Northern Ireland) Order 2004;".

(2) After Rule 149AQ there shall be inserted the following new Rules –

"**Procedure for the admission of evidence of bad character**

149AR.—(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 Form 88A.

(**1**) S.I. 1981/1675 (N.I. 26)
(**2**) S.I. 2004/1501 (N.I. 10)
(**3**) S.R. 1984 No. 225; to which the most recent relevant amendments were made by S.R. 2004 No. 299 and S.R. 2004 No. 433

(2) Notice under paragraph (1) shall be served on the clerk of petty sessions and on 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(**4**) (disclosure by the prosecutor); or

(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 clerk of petty sessions and every other party to the proceedings, in Form 88B, of his opposition.

(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 Form 88C.

(5) Notice under paragraph (4) shall be served on the clerk of petty sessions and on every other party to the proceedings at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

(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 Form 88C.

(7) Notice under paragraph (6) shall be served on the clerk of petty sessions and 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.

(8) An application by a defendant to exclude bad character evidence shall be in Form 88D and shall be served on the clerk of petty sessions and on every other party to the proceedings within 7 days from the date on which the 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 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.

Procedure for the admission of hearsay evidence

149AS.—(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 Form 88E.

(3) Notice under paragraph (2) shall be served on the clerk of petty sessions and on every other party to the proceedings at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by prosecutor).

(**4**) 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, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44)

(4) A defendant who wants to adduce hearsay evidence shall give notice in Form 88E.

(5) Notice under paragraph (4) shall be served on the clerk of petty sessions and 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.

(6) Any party who wishes to oppose the application under paragraph (2) or (4) shall, within 14 days of the date on which notice of the application was served on him, notify the clerk of petty sessions and every other party to the proceedings, in Form 88F, of his opposition.

(7) A party who is entitled to have notice served on him by 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 a 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) Schedule 1 shall be amended by inserting after Form 88, the new Forms 88A to 88F in the Schedule to these Rules.

Signed by authority of the Lord Chancellor

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

Dated 22nd March 2005

SCHEDULE Rule 2(3)

FORMS TO BE INSERTED IN THE MAGISTRATES' COURTS RULES (NORTHERN IRELAND) 1984

FORM 88AMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rules 149AR(1))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 5)**Application for leave to adduce evidence of non-defendant's bad character**

of

Complainant

Petty Sessions District of

of

Defendant

County Court Division of

Details required	*Notes*
Details of applicant	
Name:	
Address:	
Case details	
Court venue:	The venue of the court hearing the case.
Date of next court appearance	
Charges:	Give brief details (including date and location of offence) of those charges to which this application applies.
Name of the PSNI Central Process Office:	
Central Process Office or District Command Unit reference number:	
DPP reference number:	
Details of the application	
Please provide the following details:	
• the particulars of the said 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	*Article 5 of the 2004 Order*

Details required	*Notes*
• the grounds for the admission of evidence of a non-defendant's bad character under 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 state your reasons:	

Dated this day of 20 .

Applicant

To the Clerk of Petty Sessions for the petty sessions district of

And to

(Insert names and addresses of each of the other parties to the proceedings)

NOTE:

This form should be served on the clerk of petty sessions and 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.

The notice served on the clerk of petty sessions 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, and, where known, with the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

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 clerk of petty sessions and every other party to the proceedings, in Form 88B, of your opposition

FORM 88BMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rule 149AR(3))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 5)**Notice of opposition to the admission of evidence of a non-defendant's bad character**