STATUTORY RULES OF NORTHERN IRELAND

2005 No. 158

SUPREME COURT, NORTHERN IRELAND

The Criminal Appeal (Retrial for Serious Offences) Rules (Northern Ireland) 2005

Mades - - - -	*21st March 2005*
To be laid before Parliament	
Coming into operation	*18th April 2005*

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(**1**) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby with the concurrence of the Lord Chancellor, exercise those powers, the powers under section 93 of the Criminal Justice Act 2003(**2**), and all other powers enabling us in that behalf as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Appeal (Retrial for Serious Offences) Rules (Northern Ireland) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules –

"Court" means the Court of Appeal of Northern Ireland;

"the 2003 Act" means the Criminal Justice Act 2003;

"the chief clerk" means the chief clerk of the Crown Court before which the acquitted person is to be retried;

"the proper officer" means the Master (Queen's Bench and Appeals) and includes any other officer of the Supreme Court directed by the Lord Chief Justice to exercise the powers and duties of the Master (Queen's Bench and Appeals); and

"section 76 application" means an application made by a prosecutor under section 76(1) or (2) of the 2003 Act.

(**1**) 1978 c. 23
(**2**) 2003 c. 44

Forms

2. Any reference in these Rules to a Form means a reference to a form set out in the Schedule or a form to the same effect.

Notice of a section 76 application

3.—(1) Notice of a section 76 application shall be in Form 1 and shall be served by the prosecutor, pursuant to section 80(1) of the 2003 Act, on the proper officer and a copy thereof shall be served by the prosecutor, pursuant to section 80(2) of the 2003 Act, on the acquitted person.

(2) The notice under paragraph (1) shall, where practicable, be accompanied by –

(a) relevant witness statements which are relied upon as forming new and compelling evidence of guilt of the acquitted person as well as any relevant witness statements from the original trial;

(b) any unused statements which might reasonably be considered capable of undermining the section 76 application or of assisting an acquitted person's application to oppose that application under rule 4;

(c) a copy of the indictment and paper exhibits from the original trial; and

(d) copies of the transcript of the summing up and any other relevant transcripts from the original trial; and

(e) any other documents relied upon to support the section 76 application.

(3) As soon as practicable after service of the notice under paragraph (1) on the acquitted person, the prosecutor shall file with the proper officer an affidavit of service which exhibits a copy of that notice.

Response of the acquitted person

4.—(1) An acquitted person may oppose the section 76 application by serving a response in Form 2 on the prosecutor and the proper officer which –

(a) indicates if he is also seeking an order under section 80(6) of the 2003 Act for –

(i) the production of any document, exhibit or other thing; or

(ii) a witness to attend for examination and to be examined before the Court; and

(b) exhibits any relevant documents.

(2) The acquitted person shall serve that response within 28 days of the date on which notice under rule 3(1) was served on him.

(3) The Court may extend the period for service of the response under paragraph (2), either before or after that period expires.

Examination of witnesses or evidence by the Court

5.—(1) Prior to the hearing of a section 76 application, a party to that application may apply to the Court for an order under section 80(6) of the 2003 Act for –

(a) the production of any document, exhibit or other thing; or

(b) a witness to attend for examination and to be examined before the Court.

(2) An application under paragraph (1) shall –

(a) be in Form 3 and shall be served on the proper officer, and at the same time a copy thereof shall be served, by the applicant, on every other party to the section 76 application; and

(b) set out the reasons why the order was not sought from the Court when –

(i) the notice was served on the proper officer under rule 3, if the application is made by the prosecutor; or

(ii) the response was served on the proper officer under rule 4, if the application is made by the acquitted person; and

(c) be made not less than 14 days before the date set for the hearing of the section 76 application.

(3) Where the Court makes an order under section 80(6) of the 2003 Act of its own motion or on the application of the prosecutor, the proper officer shall notify every party to the section 76 application of the order and the reasons for it.

Bail or custody orders in the Court of Appeal

6. Rules 5 to 13 of Order 79 of the Rules of the Supreme Court (Northern Ireland) 1980(**3**) shall apply to bail or custody orders made in the Court of Appeal under section 90 of the 2003 Act.

Application for restrictions on publication

7.—(1) An application by the Director of Public Prosecutions under section 82 of the 2003 Act for restrictions on publication shall be in Form 4 and shall be served on the proper officer and, subject to paragraph (2), at the same time a copy thereof shall be served by the prosecutor on the acquitted person.

(2) Where –

(a) the application under paragraph (1) is made in accordance with section 82(6) of the 2003 Act before notice of a section 76 application has been served on the acquitted person; and

(b) the Director of Public Prosecutions has indicated that there are reasons why the acquitted person should not be notified of the application under paragraph (1),

the Court may direct that the application shall not be served on the acquitted person until notice of a section 76 application has been served on that person.

(3) Where the Court makes an order for restrictions on publication under section 82(1) of the 2003 Act of its own motion or on application of the Director of Public Prosecutions (other than one made in accordance with paragraph (2)), the proper officer shall notify every party to the proceedings of the order and the reasons for it.

Variation or revocation of restrictions on publication

8.—(1) An application by the acquitted person or the Director of Public Prosecutions under section 82(7) of the 2003 Act to vary or revoke an order for restrictions on publication may be made at any time after that order was made.

(2) The application under paragraph (1) shall be made by giving notice in writing which –

(a) shall specify the grounds upon which the applicant seeks to have the order for restrictions on publication varied or, as the case may be, revoked; and

(b) shall be served, by the applicant, on the proper officer and, subject to paragraph (3), on every other party to the section 76 application.

(3) Where the application under paragraph (1) is made by the Director of Public Prosecutions and –

(a) notice of a section 76 application has not been given in accordance with rule 3; and

(**3**) S.R. 1980 No. 346

(b) the Director of Public Prosecutions has indicated that there are reasons why the acquitted person should not be notified of an application for restrictions on publication,

the Court may direct that the application shall not be served on the acquitted person until notice of a section 76 application is served on that person.

(4) Where the Court makes an order varying or revoking restrictions on publication under section 82(7) of the 2003 Act of its own motion or on application (other than one made in accordance with paragraph (3)), the proper officer shall notify every party to the proceedings of the order and the reasons for it.

Assistance of Crown Court

9. The proper officer may require the Crown Court at the place of the original trial to provide the Court with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 10 of the 2003 Act or these Rules.

Notice of the determination of the application

10.—(1) The Court may –

(a) give its determination of the section 76 application at the conclusion of the hearing; or

(b) reserve its determination of the section 76 application.

(2) Where paragraph (1)(b) applies, the proper officer shall, as soon as reasonably practicable after the Court determines the section 76 application, notify every party to the proceedings of that determination.

(3) As soon as reasonably practicable after the Court makes an order under section 77 of the 2003 Act that the acquitted person be retried, the proper officer shall serve notice of the order on the chief clerk.

Notice of application to set aside order for retrial

11.—(1) If an acquitted person has not been arraigned before the end of two months after the date on which the order under section 77 of the 2003 Act was made, he may apply to the Court to set aside the order.

(2) An application under paragraph (1) shall be in Form 5 and shall be served on the proper officer and at the same time a copy thereof shall be served by the applicant, on the prosecutor.

Leave to arraign

12.—(1) If the acquitted person has not been arraigned before the end of two months after the date on which the order under section 77 of the 2003 Act was made, the prosecutor may apply to the Court for leave to arraign.

(2) An application under paragraph (1) shall be in Form 5 and shall be served on the proper officer and at the same time a copy thereof shall be served by the prosecutor on the acquitted person.

Abandonment of the application

13.—(1) A section 76 application may be abandoned by the prosecutor at any time before the hearing of that application.

(2) Notice of abandonment shall be in Form 6 and shall be served on the proper officer and, at the same time, a copy thereof shall be served by the prosecutor, on the acquitted person.

(3) As soon as reasonably practicable after receiving a notice under paragraph (2), the proper officer shall send a copy thereof endorsed with the date of receipt to the prosecutor and the acquitted person.

Service

14. Any notice or other document required to be served by these Rules shall be served in accordance with rule 30 of the Criminal Appeal (Northern Ireland) Rules 1968(**4**).

Brian Kerr
Patrick Coghlin
J. M. Nicholson
Anthony Campbell
Paul Girvan
Mark Horner
Bernard McCloskey
Tony Caher
Dated 14th March 2005 *Caroline A. McGonagle*

Signed by the authority of the Lord Chancellor
I concur

Baroness Ashton of Upholland
Parliamentary Under-Secretary of State,
Dated 21st March 2005 Department for Constitutional Affairs

(**4**) S.R. 1968 No. 218