STATUTORY RULES OF NORTHERN IRELAND

# 2004 No. 233

# SUPREME COURT, NORTHERN IRELAND

## The Crown Court (Amendment) Rules (Northern Ireland) 2004

*Made - - - - 17th May 2004*

*To be laid before Parliament*

*Coming into operation in accordance with rule 1*

We, the Crown Court Rules Committee, in exercise of the powers conferred upon us by section 52(1) of the Judicature (Northern Ireland) Act 1978(**1**), section 10 of the Criminal Justice (International Co-operation) Act 1990(**2**) and section 49 of the Crime (International Co-operation) Act 2003(**3**) and all other powers enabling us in that behalf, hereby with the concurrence of the Lord Chancellor make the following Rules:

### Citation, commencement and interpretation

**1.**—(1) These Rules may be cited as the Crown Court (Amendment) Rules (Northern Ireland) 2004 and subject to paragraph (2) shall come into operation on 11th June 2004.

(2) Paragraphs (1), (2) and (4) of rule 2 below shall come into operation on the same day as section 46 of the Youth Justice and Criminal Evidence Act 1999(**4**) comes into force.

(3) In these Rules, "the principal Rules" shall mean the Crown Court Rules (Northern Ireland) 1979(**5**), and a reference to a rule, a Part or a Form by number means the rule, Part or Form so numbered in the principal Rules.

### Amendment to the principal Rules

**2.**—(1) Rule 2(1) shall be amended by inserting after the definition of the "Taxing Master", the following definition:

""the 1999 Act" means the Youth Justice and Criminal Evidence Act 1999.".

(2) After rule 44H, there shall be inserted the following new rules:

(**1**) 1978 c. 23
(**2**) 1990 c. 5
(**3**) 2003 c. 32; section 49 is supplemented by section 3(4)(b) of, and paragraph 4 of Schedule 1, and paragraphs 8, 10 and 17 of Schedule 2 to, the 2003 Act
(**4**) 1999 c. 23
(**5**) S.R. 1979 No. 90; to which the most recent relevant amendments were made by S.R. 1991 No. 327, S.R. 2003 No. 279 and S.R. 2003 No. 471

"**Application for reporting direction**

**44I.**—(1) An application by a party to any criminal proceedings for a reporting direction under section 46 of the 1999 Act in relation to a witness in those proceedings may be made at any time after the commencement of the proceedings by giving notice in writing which shall be in Form 7A in the Schedule.

(2) For the purpose of this rule, rule 44J and rule 44K, proceedings commence on 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(**6**) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995(**7**) 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(**8**) 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, by the applicant, on every other party to the proceedings.

(4) Any party who wishes to oppose the application shall, within 7 days of the date that notice of the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition giving reasons for it.

(5) In order to comply with paragraph (4) a party shall state in the written notification whether he –

(a) disputes that the witness is eligible for protection under section 46 of the 1999 Act; and

(b) disputes that the granting of protection would be likely to improve the quality of evidence given by the witness or the level of co-operation given by the witness to any party to the proceedings in connection with the party's preparation of its case.

**Application for excepting direction**

**44J.**—(1) An application for a direction under section 46(9) of the 1999 Act ("an excepting direction") may be made at any time after the commencement of the proceedings if a reporting direction has been given by the Court in respect of a witness in those proceedings.

(2) The application under paragraph (1) may be made by –

(a) any party to those proceedings; or

(b) any person who, although not a party to the proceedings, is directly affected by a reporting direction given in relation to a witness in those proceedings or could be so affected if the Court in determining an application gave a reporting direction.

(3) An application for an excepting direction may be made –

(a) orally at the time the reporting direction is given; or

(b) by giving notice in writing which shall be in Form 7B in the Schedule.

(4) An applicant for an excepting direction shall state why, in his opinion –

(a) the effect of the restrictions imposed (or which the applicant for the reporting direction seeks to have imposed) places a substantial and unreasonable restriction on the reporting of the proceedings; and

(**6**) S.I. 1988/1846 (N.I. 16)
(**7**) S.I. 1995/757 (N.I. 3)
(**8**) 1969 c. 15 (N.I.)

(b) it is in the public interest to remove or relax those restrictions.

(5) Where the application for an excepting direction is made in writing, the notice under paragraph (3)(b) shall be served on the chief clerk, and at the same time a copy thereof shall be served, by the applicant, on every other party or, as the case may be, every party to those proceedings.

(6) Any party who wishes to oppose the application shall, within 7 days of the date that notice of the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition giving reasons for it.

**Variation or revocation**

**44K.**—(1) An application to –

(a) revoke a reporting direction; or

(b) vary or revoke an excepting direction,

may be made at any time after the commencement of the proceedings.

(2) The application under paragraph (1) may be made by –

(a) any party to the proceedings in which the direction was given; or

(b) any person who, although not a party to those proceedings is, in the opinion of the Court, directly affected by the direction.

(3) The application under paragraph (1) shall be made by giving notice in writing which shall be in Form 7C in the Schedule which –

(a) shall specify the grounds upon which the applicant seeks to have the direction varied or, as the case may be, revoked; and

(b) shall be served, by the applicant, on the chief clerk and on every other party or, as the case may be, every party to the proceedings.

(4) Any party who wishes to oppose the application shall, within 7 days of the date the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition and give reasons for it.

**Hearings**

**44L.**—(1) Subject to paragraph (2), the Court may –

(a) determine any application made under rule 44I, 44J or 44K without a hearing; or

(b) direct a hearing of any such application.

(2) Where a party to the proceedings notifies the chief clerk of his opposition to an application under rule 44I, 44J or, as the case may be, 44K, the Court shall direct a hearing of that application.

(3) Where a hearing of an application is to take place in accordance with this rule, the chief clerk shall notify each party to the proceedings of the time and place of the hearing.

(4) A party notified in accordance with paragraph (3) may be present at the hearing and be heard.

(5) Before determining an application, the Court may hear and take into account representations made to it by any person who in the Court's opinion has a legitimate interest in the application before it.

(6) The chief clerk shall, as soon as reasonably practicable after the determination of an application under rule 44I, 44J or 44K, notify all the parties to the proceedings of the decision of the Court in Form 7D in the Schedule.

**Hearings in camera**

**44M.** If in any proceedings a prosecutor or defendant has served notice under rule 44A(1) of his intention to apply for an order that all or part of a trial be held in camera, any application under rule 44I, 44J or 44K relating to a witness in those proceedings need not identify the witness by name or date of birth."

(3) For Part VIII, there shall be substituted the new Part VIII in Schedule 1 to these Rules.

(4) The Schedule to the principal Rules shall be amended by inserting after Form 7, the new Forms 7A to 7D in Schedule 2 to these Rules.

*Brian Kerr*
*J. M. Nicholson*
*A. R. Hart*
*Paul G. Copeland*
*Barra McGrory*
*J. Wilson*

Dated 13th May 2004

Signed by authority of the Lord Chancellor
I concur

*Lord Filkin*
Parliamentary Under-Secretary of State,
Department for Constitutional Affairs

Dated 17th May 2004

SCHEDULE 1 Rule 2(3)

# "PART VIII

APPLICATIONS UNDER THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

**Interpretation**

55. In this Part of these Rules:

"the Act" means the Crime (International Co-operation) Act 2003(**9**); a reference to a section or a Schedule by a number is a reference to the section or Schedule so numbered in the Act; and expressions which are defined in the Act have the same meaning as in the Act.

**Notice required to accompany process served outside the United Kingdom**

56.—(1) The notice which by virtue of section 3(4)(b) shall accompany any process served outside the United Kingdom shall, so far as is reasonably practicable, give the information specified in paragraphs (2) and (4).

(2) The notice shall –

(a) state that the person required by the process to appear as a party or attend as a witness may obtain information about his rights in connection with such requirement from the relevant authority; and

(b) give the particulars specified in paragraph (4) about that authority.

(3) The "relevant authority" where the process is served –

(a) at the request of the prosecuting authority, is that prosecuting authority;

(b) at the request of the defendant, or of the prosecutor in the case of a private prosecution, is the Court by which the process is served.

(4) The particulars referred to in paragraph (2) are –

(a) the name and address of the prosecuting authority or, as the case may be, the Court, together with its telephone and fax numbers and e-mail address;

(b) the name of a person at the prosecuting authority or, as the case may be, the Court who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.

(5) Where section 3(3) applies, the chief clerk shall require any process served outside the United Kingdom to be accompanied by –

(a) any translation which is provided under section 3(3)(b); and

(b) any translation of the information required to be given by this rule which is provided to him.

**Proof of service outside the United Kingdom**

57.—(1) The service on any person under section 4(1) of any process issued or made may be proved in any proceedings by a certificate given by or on behalf of the Secretary of State.

(2) A statement in any such certificate as is mentioned in paragraph (1) –

(**9**) 2003 c. 32