STATUTORY RULES OF NORTHERN IRELAND

2003 No. 485

COUNTY COURTS

County Court (Amendment No. 3) Rules (Northern Ireland) 2003

Made - - - - 19th November 2003

Coming into operation 1st January 2004

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(**1**), in exercise of the powers conferred on us by Article 47 of that Order and Articles 8(6), 25(5), 26(6), 30(3) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(**2**), and all other powers enabling us in that behalf, hereby make the following Rules:

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment No. 3) Rules (Northern Ireland) 2003.

(2) In these Rules, a reference to an Order, Part, Appendix or Form is a reference to that Order, Part, Appendix or Form as numbered in the County Court Rules (Northern Ireland) 1981(**3**).

Amendment to the principal Rules

2.—(1) Order 32 Part IIA shall be amended as follows:

(a) by substituting for sub-paragraph (a) of Rule 6B(7), the following new sub-paragraph –

"(a) a party shall state in the written notification whether he –

(i) disputes that the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order;

(ii) disputes that any of the special measures available would be likely to improve the quality of evidence given by the witness or that such measures (or a combination of them) would be likely to maximise the quality of that evidence; and

(iii) opposes the granting of a special measures direction; and";

(**1**) S.I. 1980/397 (N.I. 3)
(**2**) S.I. 1999/2789 (N.I. 8)
(**3**) S.R. 1981 No. 225; to which the most recent relevant amendment was made by S.R. 2003 No. 295

(b) by inserting after sub-paragraph (c) of Rule 6H(4), the following new sub-paragraph –

"(ca) in relation to each person present at any point during the recording, a statement confirming that the said person when present is visible in the recording;";

(c) by inserting after Rule 6I, the following new Rules –

"**Prohibition on cross-examination of particular witness**

6J.—(1) An application by the prosecutor for a direction under Article 24 of the 1999 Order in relation to any witness shall be made by giving notice in Form 137C to the chief clerk and at the same time the applicant shall serve a copy thereof on every other party to the appeal.

(2) In his application the prosecutor shall state why, in his opinion –

(a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the appellant in person;

(b) the evidence would be improved if a direction were given under Article 24(2) of the 1999 Order; and

(c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application, the chief clerk shall refer it –

(a) if the hearing of the appeal has started, to the Judge hearing the appeal;

(b) if the hearing of the appeal has not started when the application is received, to a Judge for the county court division in which the appeal is to be heard.

(4) Where a copy of a notice under paragraph (1) is served on a party to the appeal more than 14 days before the date set for the hearing of the appeal, that party may, within 14 days, make observations in writing in relation to the application to the chief clerk and shall serve a copy of such observations on every other party to the appeal.

(5) A party on whom a copy of a notice under paragraph (1) is served may notify the chief clerk and every other party to the appeal, in writing, of his opposition to the application and give reasons for it.

(6) Those reasons shall be notified –

(a) within 14 days of the date on which notice of the application was served on him, if that date is more than 14 days before the date set for the hearing of the appeal;

(b) if the hearing of the appeal has begun, in accordance with any directions issued by the Judge hearing the appeal; or

(c) if neither sub-paragraph (a) nor sub-paragraph (b) apply, before the date set for the hearing of the appeal.

(7) Where an application under paragraph (1) is made before the date set for the hearing of the appeal and the application –

(a) is not contested by any party to the appeal, the court may determine the application without a hearing;

(b) is contested by a party to the appeal, the court shall direct a hearing of the application.

(8) Where the application is made after the hearing of the appeal has begun –

(a) the application may be made orally; and

(b) the Judge hearing the appeal may give such directions as he considers appropriate in order to deal with the application.

(9) Where a hearing of the application is to take place, the chief clerk shall notify each party to the appeal 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 made under paragraph (1), notify all the parties to the appeal of the decision and the reasons for it.

(12) A person making an oral application under paragraph (8)(a) shall –

(a) give reasons why the application was not made before the hearing of the appeal commenced; and

(b) provide the court with the information set out in paragraph (2).

Restrictions on cross-examination of witness by the accused person

6K.—(1) This Rule and Rules 6L and 6M apply where an appellant is prevented from cross-examining a witness in person by virtue of Article 22, 23 or 24 of the 1999 Order.

(2) The court shall as early in the proceedings as is reasonably practicable –

(a) explain to the appellant that he is prevented from cross-examining a witness in person; and

(b) invite him to arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The appellant shall within 7 days of the court giving its explanation, or within such other period as the court may in any particular case allow, give notice to the chief clerk in writing as to whether or not he has arranged for a legal representative to act on his behalf.

(4) Where the appellant has arranged for a legal representative to act for him, the notice shall include details of the name and address of the representative.

(5) The chief clerk shall notify all other parties to the appeal of the name and address of any person appointed by the appellant to act on his behalf.

(6) Where the court gives its explanation under paragraph (2) to the appellant –

(a) within 7 days of the date set for the commencement of any hearing at which a witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies may be cross-examined, or

(b) after such a hearing has commenced;

the period of 7 days within which the appellant is required to give notice under paragraph (3) shall be reduced in accordance with any direction issued by the court.

(7) Where at the end of the period of 7 days or such other period as the court has allowed, the court has not received notice from the appellant under paragraph (3), it may grant the appellant an extension of time, whether of its own motion or on the application of the appellant.

(8) Before granting an extension of time, the court may direct a hearing at which all parties to the appeal may attend and be heard.

(9) Any extension of time shall be for such period as the court considers appropriate in the circumstances of the case.

(10) The decision of the court as to whether to grant the appellant an extension of time shall be notified to all parties to the appeal by the chief clerk in Form 137D.

Appointment by the court

6L.—(1) Where the court decides, in accordance with Article 26(4) of the 1999 Order, to appoint a qualified legal representative, the chief clerk shall notify all parties to the appeal of the name and address of that representative.

(2) An appointment made by the court under Article 26(4) of the 1999 Order shall, except to such extent as the court may in any particular case determine, terminate at the conclusion of the cross-examination of any witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies.

Appointment arranged by the appellant

6M.—(1) The appellant may arrange for the qualified legal representative, appointed by the court under Article 26(4) of the 1999 Order, to be appointed to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies.

(2) Where such an appointment is made –

(a) both the appellant and the qualified legal representative shall notify the court of the appointment in writing; and

(b) the qualified legal representative shall, from the time of his appointment, act for the appellant as though the arrangement had been made under Article 26(2)(a) of the 1999 Order and shall cease to be the representative of the court under Article 26(4) of the 1999 Order.

(3) Where the court receives notification of the appointment either from the qualified legal representative or from the appellant but not from both, the court shall investigate whether the appointment has been made, and if it concludes that the appointment has not been made, paragraph (2)(b) shall not apply.

(4) The appellant may, notwithstanding an appointment by the court under Article 26(4) of the 1999 Order, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under Article 22, 23 or 24 applies.

(5) Where the appellant arranges for, or informs the court of his intention to arrange for a legal representative to act for him, he shall notify the court in writing within such period as the court may allow, of the name and address of any person appointed to act for him.

(6) Where the court is notified within the time allowed that such an appointment has been made, any qualified legal representative appointed by the court in accordance with Article 26(4) of the 1999 Order shall be discharged.

(7) The chief clerk shall as soon as reasonably practicable after notification is received by the court, or where paragraph (3) applies, after the court is satisfied that the appointment has been made, notify all the parties to the appeal in Form 137E that –

(a) the appointment has been made;

(b) where paragraph (4) applies, of the name and address of the person appointed;

(c) that the person appointed by the court under Article 26(4) of the 1999 Order has been discharged or has ceased to act for the court.

Procedure for applications in proceedings for sexual offences

6N.—(1) Subject to paragraph (10), an application under Article 28(2) of the 1999 Order for leave to adduce evidence of, or ask questions about, any sexual behaviour of the complainant shall be made by giving to the chief clerk notice in Form 137F and shall –

(a) be served on the chief clerk within 14 days from the date of the service of notice of appeal from a decision of a magistrates' court; or

(b) be accompanied by a full written explanation specifying the reasons why the application could not have been served in accordance with sub-paragraph (a).

(2) An application in Form 137F shall contain the following –

(a) a summary of the evidence it is proposed to adduce and of the questions it is proposed to put to any witness;

(b) a full explanation of the reasons why it is considered that the evidence and questions fall within Article 28(3) or (5) of the 1999 Order;

(c) a summary of any document or other evidence to be submitted in support of such evidence and questions;

(d) where it is proposed that a witness give evidence at the hearing of the appeal as to the complainant’s sexual behaviour, the name and date of birth of any such witness.

(3) A copy of the application under paragraph (1) shall be served, by the applicant, on every other party to the appeal at the same time as it is served on the chief clerk.

(4) The prosecutor shall notify the chief clerk and the other parties to the appeal in Form 137G –

(a) whether or not he opposes the application, giving reasons for any such opposition, and

(b) whether or not he wishes to be represented at any hearing of the application,

and where the notice of application is received by the prosecutor more than 14 days before the date set for the hearing of the appeal, the notification must be served by the prosecutor within 14 days of receipt.

(5) Where a copy of the application is received by a party to the appeal other than the prosecutor more than 14 days before the date set for the hearing of the appeal, that party may, within 14 days, make observations in writing in relation to the application to the chief clerk and shall serve a copy of such observations on every other party to the appeal.

(6) In considering any application under this Rule, the court may request a party to the appeal to provide the court with such information as it may specify