STATUTORY RULES OF NORTHERN IRELAND

2003 No. 471

SUPREME COURT, NORTHERN IRELAND

The Crown Court (Amendment No. 3) Rules (Northern Ireland) 2003

Made - - - -	*4th November 2003*
To be laid before Parliament	
Coming into operation	*1st December 2003*

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**), 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 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 No. 3) Rules (Northern Ireland) 2003 and shall come into operation on 1st December 2003.

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

Revocation of existing Rules

2.—(1) The following rules are hereby revoked –

(a) rules 1(2) and 3 of the Crown Court (Amendment) Rules (Northern Ireland) 2000(**4**); and

(b) rules 1(2) and 2(a) of the Crown Court (Amendment) Rules (Northern Ireland) 2001(**5**).

Amendment to the principal Rules

3.—(1) For rules 44B and 44BA, there shall be substituted the following new rule:

(**1**) 1978 c. 23
(**2**) S.I. 1999/2789 (N.I. 8)
(**3**) S.R. 1979 No. 90; to which the most recent relevant amendments were made by S.R. 2000 No. 227; S.R. 2001 No. 253 and S.R. 2003 No. 279
(**4**) S.R. 2000 No. 227
(**5**) S.R. 2001 No. 253

"**Application for special measures directions**

44B.—(1) An application for a special measures direction under Article 7 of the 1999 Order shall be made by giving notice in writing which shall be in Form 6 in the Schedule.

(2) If the application is for a special measures direction –

(a) enabling a witness to give evidence by means of a live link, the information sought in Part 2 of Form 6 shall be provided;

(b) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part 3 of Form 6 shall be provided.

(3) 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(**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.

(4) 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.

(5) Any party on whom a copy of a notice of the application under paragraph (1) is served may oppose the application for a special measures direction in respect of any measure available in relation to the witness, whether or not the question of whether the witness is eligible for assistance by virtue of Article 4 or 5 of the 1999 Order is in issue.

(6) Any party who wishes to oppose the application shall, within 14 days of the date notice of the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition and give reasons for it.

(7) In order to comply with paragraph (6) –

(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 or 5 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

(b) where the application relates to the admission of a copy of a video recording, a party who receives a recording shall provide the information required by rule 44CE(5).

(8) Except where notice is received in accordance with paragraph (6), the Court may –

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

(b) direct a hearing.

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

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

(10) Where a hearing of the application is to take place in accordance with paragraphs (8) or (9), the chief clerk shall notify each party to the proceedings of the time and place of the hearing.

(11) A party notified in accordance with paragraph (10) may be present at the hearing and be heard.

(12) 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 7 in the Schedule, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.".

(2) In rule 44C(1), for the reference to "rule 44BA(3)", there shall be substituted a reference to "rule 44B(3)".

(3) In rules 44CA(1), 44CA(2)(b), 44CB(4), 44CC(4) and 44CE(6), for each reference to "rule 44BA", there shall be substituted a reference to "rule 44B".

(4) Rule 44CD shall be amended as follows –

(a) in paragraph (1), for the reference to "rule 44BA(2)(a)", there shall be substituted a reference to "rule 44B(2)(a)";

(b) in paragraph (2) –

(i) for the words "a witness", there shall be substituted the words "a child witness";

(ii) for the reference to "rule 44BA(6)", there shall be substituted a reference to "rule 44B(6)"; and

(c) in paragraph (3), for the words "a witness", there shall be substituted the words "a child witness".

(5) Rule 44CE shall be amended as follows –

(a) in paragraph (2), for the reference to "rule 44BA(1)", there shall be substituted a reference to "rule 44B(1)";

(b) in paragraph (4)(c)(i), for the reference to "their name," there shall be substituted a reference to "his name," and

(c) after paragraph (4)(c), there shall be inserted the following new 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;".

(6) After rule 44CF, there shall be inserted the following new rules:

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

44D.—(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 writing to the chief clerk and at the same time the applicant shall serve a copy thereof on every other party to the proceedings.

(2) In an application under paragraph (1), 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 defendant 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 trial has started, to the trial judge;

(b) if the trial has not started when the application is received –

(i) to the judge who has been designated to conduct the trial; or

(ii) if no judge has been designated for that purpose, to such judge as may be designated for the purposes of hearing that application.

(4) Where a copy of a notice under paragraph (1) is served on a party to the proceedings more than 14 days before the date set for the trial to begin, 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 proceedings.

(5) A party on whom a copy of a notice is served in accordance with paragraph (1) may notify the chief clerk and every other party to the proceedings, 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 the notice of application was served on him, if that date is more than 14 days before the date set for the trial to begin;

(b) if the trial has begun, in accordance with any directions issued by the trial judge; or

(c) if neither sub-paragraph (a) nor sub-paragraph (b) apply, before the date set for the trial to begin.

(7) Where the application made in accordance with paragraph (1) is made before the date set for the trial to begin and the application –

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

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

(8) Where the application is made after the trial has begun –

(a) the application may be made orally; and

(b) the trial judge may give such directions as he considers appropriate 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 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 made in accordance with paragraph (1), notify all the parties to the proceedings 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 trial commenced; and

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

Restrictions on cross-examination of witness by the accused person

44E.—(1) This rule and rules 44F and 44G apply where a defendant 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 defendant 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 defendant 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 as to whether or not he has arranged for a legal representative to act on his behalf.

(4) Where the defendant has arranged for a legal representative to act for him, the notice under paragraph (3) shall include details of the name and address of the representative.

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

(6) Where the Court gives its explanation under paragraph (2) to the defendant –

(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 defendant 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 defendant under paragraph (3), it may grant the defendant an extension of time, whether of its own motion or on the application of the defendant.

(8) Before granting an extension of time, the Court may direct a hearing at which all parties to the proceedings 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 or not to grant the defendant an extension of time shall be notified to all parties to the proceedings by the chief clerk.

Appointment by the Court

44F.—(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 proceedings 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 defendant

44G.—(1) The defendant 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 defendant and the qualified legal representative shall notify the Court of the appointment; and