STATUTORY RULES OF NORTHERN IRELAND

2003 No. 279

SUPREME COURT, NORTHERN IRELAND

The Crown Court (Amendment No. 2) Rules (Northern Ireland) 2003

Made - - - -	*29th May 2003*
To be laid before Parliament	
Coming into operation	*30th June 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) 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. 2) Rules (Northern Ireland) 2003 and shall come into operation on 30th June 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.

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 Order" means the Criminal Evidence (Northern Ireland) Order 1999.".

(2) Rule 36(8)(a) shall be amended by substituting for the words "shall not be in open court", the words "may take place in private".

(3) Rule 44B shall be amended as follows –

(a) in paragraph (1), sub-paragraph (b) shall be revoked;

(**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. 1996 No. 71 and S.R. 2003 No. 71

(b) in paragraph (7)(a), the words ", and in the case of a witness coming within paragraph (1)(b), the name, occupation and relationship, (if any) to the witness of the person, (if known) who is to accompany the witness" shall be deleted; and

(c) in paragraph (12), sub-paragraph (a) shall be revoked.

(4) After rule 44B, there shall be inserted the following new rule:

"**Application for special measures directions**

44BA.—(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(**4**) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995(**5**) 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(**6**) 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(1)(a) 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(1)(a) of the 1999 Order; and

(ii) 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.

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

(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.

(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 must state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence."

(5) For rule 44C, there shall be substituted the following new rule:

"**Application for an extension of time**

44C.—(1) An application may be made in writing for the period of 28 days specified in rule 44BA(3) to be extended.

(2) The application may be made either before or after that period has expired.

(3) The application shall be accompanied by a statement setting out the reasons why the applicant is or was unable to make the application within that period, and the application and the statement shall be served by the applicant on the chief clerk and on every other party to the proceedings.

(4) An application for an extension of time under this rule shall be determined by a judge without a hearing unless the judge otherwise directs.

(5) The chief clerk shall notify all the parties of the judge's decision.".

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

"**Late applications**

44CA.—(1) Notwithstanding the requirements of rule 44BA –

(a) an application may be made for a special measures direction orally at the trial; or

(b) the Court may of its own motion raise the issue whether a special measures direction should be given.

(2) Where an application is made in accordance with paragraph (1)(a) –

(a) the applicant must state the reasons for the late application; and

(b) the Court must be satisfied that the applicant was unable to make the application in accordance with rule 44BA.

(3) The Court shall determine before making a special measures direction –

(a) whether to allow other parties to the proceedings to make representations on the question;

(b) the time allowed for making such representations (if any); and

(c) whether the question should be determined following a hearing at which the parties to the proceedings may be heard.

Discharge or variation of a special measures direction

44CB.—(1) An application to discharge or vary a special measures direction under Article 8(2) of the 1999 Order shall be made in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the direction was made.

(2) An application under paragraph (1) shall be served, by the applicant, on the chief clerk and on each party to the proceedings as soon as reasonably practicable after the change of circumstances occurs.

(3) Any party on whom an application is served in accordance with paragraph (2) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of rule 44BA shall apply to an application to discharge or vary a special measures direction as they apply to an application for a direction.

Renewal application following a material change of circumstances

44CC.—(1) Where an application for a special measures direction has been refused by the Court, the application may only be renewed ("renewal application") where there has been a material change of circumstances since the Court refused the application.

(2) The applicant shall –

(a) specify in the renewal application each material change of circumstances which is alleged to have occurred; and

(b) serve the renewal application on the chief clerk, and on each party to the proceedings, as soon as reasonably practicable after the change occurs.

(3) Any party on whom the application is served in accordance with paragraph (2)(b) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of rule 44BA and rules 44CD and 44CE shall apply to a renewal application as they apply to the application which was refused.

Application for special measures direction for witness to give evidence by means of a live link

44CD.—(1) Where the application for a special measures direction is made in accordance with rule 44BA(2)(a), for a witness to give evidence by means of a live link, the following provisions of this rule shall also apply.

(2) Subject to paragraph (3), a party who seeks to oppose an application for a witness to give evidence by means of a live link must, in order to comply with rule 44BA(6), state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness's evidence.

(3) Paragraph (2) does not apply in relation to a witness in need of special protection within the meaning of Article 9(1)(b) of the 1999 Order.

(4) Where a special measures direction is made enabling a witness to give evidence by means of a live link, that witness shall be accompanied at the live link only by persons acceptable to a judge of the Crown Court.

Video recording of testimony from witnesses

44CE.—(1) Where an application is made for a special measures direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the following provisions of this rule shall also apply.

(2) Notice of the application made in accordance with rule 44BA(1) shall be accompanied by the video recording (or, as the case may be, a copy of the video recording) which it is proposed to tender in evidence and shall include –

(a) the name of the defendant and the offence to be charged;

(b) the name and date of birth of the witness in respect of whom the application is made;

(c) the date on which the video recording was made;

(d) a statement as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness;

(e) a statement that, in the opinion of the applicant, either –

(i) the witness is available for cross-examination; or

(ii) the witness is not available for cross-examination and the parties have agreed that there is no need for the witness to be so available;

(f) a statement of the circumstances in which the video recording was made which complies with paragraph (4); and

(g) the date on which the video recording was disclosed to the other party or parties.

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, the application must specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4).

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) shall include the following information, except in so far as it is contained in the recording itself: –

(a) the times at which the recording commenced and finished, including details of interruptions;

(b) the location at which the recording was made and the usual function of the premises;

(c) in relation to each person present at any point during, or immediately before, the recording –

(i) their name, age and occupation;

(ii) the time for which each person was present; and

(iii) the relationship, if any, of each person to the witness and to the defendant;

(d) in relation to the equipment used for the recording –

(i) a description of the equipment;

(ii) the number of cameras used;

(iii) whether the cameras were fixed or mobile;

(iv) the number and location of the microphones;

(v) the video format used; and

(vi) whether it offered single or multiple recording facilities and, if so, which were used; and

(e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) A party who receives a copy of a recording under paragraph (2) shall within 14 days of the date on which it was served on him, notify the applicant and the chief clerk, in writing –