# 1989 No. 294

# SUPREME COURT, NORTHERN IRELAND

# CROWN COURT

## The Crown Court (Serious Fraud) Rules (Northern Ireland) 1989

*Made* . . . . . *25th July 1989*

*Coming into operation* . . *1st September 1989*

*To be laid before Parliament*

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(**a**), Articles 5(6), 6 and 8 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988(**b**) and of all other powers enabling us in that behalf, hereby with the concurrence of the Lord Chancellor make the following Rules:—

### PART I

### INTRODUCTION

*Citation and commencement*

**1.** These Rules may be cited as the Crown Court (Serious Fraud) Rules (Northern Ireland) 1989 and shall come into operation on 1st September 1989.

*Interpretation*

**2.**—(1) In these Rules unless the context otherwise requires

"the chief clerk" means the chief clerk of the Court at the place where a case is to be tried and includes such other member of the Northern Ireland Court Service as may be authorised to act on his behalf for the purpose in question.

"the Order" means the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988; and a reference to an Article by number is a reference to the Article so numbered in the Order.

(2) Any reference in these Rules to a form by number is a reference to that form so numbered in the Schedule to these Rules.

(3) The forms set out in the Schedule to these Rules or forms substantially to the like effect may be used with such variations as the circumstances may require.

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(**a**) 1978 c. 23
(**b**) S.I. 1988/1846 (N.I. 16)

*Service of documents*

**3.**—(1) Any notice or other document which is required by these rules to be given to any person may be served personally on that person or sent to him by post at his usual or last known residence or place of business in Northern Ireland or, in the case of a company, at the company's registered office in Northern Ireland.

(2) If the person to be served is acting by a solicitor, the notice or other document may be served by delivering it, or sending it by post to the solicitor's address for service.

## PART II

## DISMISSAL OF TRANSFERRED CHARGES

*Oral applications for dismissal*

**4.**—(1) Where notice of transfer has been given under Article 3 and a person to whom it relates intends to apply orally under Article 5(1) for any charge in the case to be dismissed, he shall give notice in writing in Form 1 of his intention to the chief clerk.

(2) A notice of intention to make such an application shall be given not later than 28 days after the day on which notice of transfer was given, and a copy thereof shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(3) The time for giving notice may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (4) below.

(4) An application for an extension of time for giving notice shall be made in writing in Form 1 specifying the grounds of the application and shall be sent to the chief clerk; and a copy thereof shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(5) The chief clerk shall give notice in Form 3 of the judge's decision on an application under paragraph (3) above—

(*a*) to the applicant;

(*b*) to the authority by or on behalf of whom notice of transfer was given; and

(*c*) to any other person to whom the notice of transfer relates.

(6) A notice of intention to make an application under Article 5(1) shall be accompanied by a copy of any material on which the applicant relies and shall—

(*a*) specify the charge or charges to which it relates; and

(*b*) state whether the leave of the judge is sought under Article 5(3) to adduce oral evidence on the application, indicating which witnesses it is proposed to call at the hearing.

(7) Where leave is sought from the judge for oral evidence to be given on an application, notice of his decision, including, if leave has been granted, an indication of what witnesses are to be called, shall be given by the chief clerk

in Form 3 to the authority by or on behalf of whom the notice of transfer was given and to any other party to whom the notice of transfer relates.

(8) Where an application for dismissal under Article 5(1) is to be made orally, the chief clerk shall list the application for hearing before a judge of the Crown Court.

*Written applications for dismissal*

**5.**—(1) A written application for dismissal under Article 5(1) shall be made in Form 1.

(2) The application shall be sent to the chief clerk and shall be accompanied by a copy of any statement or other document, and identify any article, on which the applicant relies.

(3) A copy of the application and of any accompanying documents shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(4) A written application for dismissal shall be made not later than 28 days after the day on which notice of transfer was given unless the time for making the application is extended, either before or after it expires, by the Crown Court; and paragraphs (4) and (5) of rule 4 above shall apply for the purposes of this paragraph as if references therein to giving notice of intention to make an oral application were references to making a written application under this rule.

*Reply by prosecution*

**6.**—(1) Not later than seven days from the date of service of notice of intention to apply orally for the dismissal of any charge contained in a notice of transfer, the authority by or on behalf of whom notice of transfer was given may apply to the Crown Court for leave under Article 5(3) to adduce oral evidence at the hearing of the application, indicating what witnesses it is proposed to call.

(2) Not later than seven days from the date of receiving a copy of an application for dismissal under rule 5(2) above, the authority by or on behalf of whom notice of transfer was given may apply to the Crown Court for an oral hearing of the application.

(3) An application under paragraph (1) or (2) above shall be made in writing in Form 2 to the chief clerk specifying the grounds of the application and, in the case of an application under paragraph (2) above, stating whether the leave of the judge is sought under Article 5(3) to adduce oral evidence and, if so, indicating what witnesses it is proposed to call.

(4) Notice of the judge's determination upon an application under paragrapah (1) or (2) above, indicating what witnesses (if any) are to be called shall be served in Form 3 by the chief clerk on the authority making the application and on any other party to whom the notice of transfer relates.

(5) Where, having received the material specified in rule 4(6) or, as the case may be, rule 5(2) above, the authority by or on behalf of whom notice of transfer was given proposes to adduce in reply thereto any written comments or any further evidence, the authority shall serve any such comments, copies

of the statements or other documents outlining the evidence of any proposed witnesses and copies of any further documents on the chief clerk not later than fourteen days from the date of receiving the said material, and shall at the same time serve copies thereof on all parties to whom the notice of transfer relates.

(6) The time for—

(*a*) making an application under paragraph (1) or (2) above; or

(*b*) serving any material on the chief clerk under paragraph (5) above,

may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (7) below.

(7) An application for an extension of time under paragraph (6) above shall be made in writing in Form 2 and shall be served on the chief clerk; and a copy thereof shall be served at the same time on the applicant for dismissal and on any other person to whom the notice of transfer relates.

*Determination of applications for dismissal — procedural matters*

**7.**—(1) A judge may grant leave for a witness to give oral evidence on an application for dismissal notwithstanding that notice of intention to call the witness has not been given in accordance with the foregoing provisions of these rules.

(2) Where an application for dismissal is determined otherwise than at an oral hearing, the chief clerk shall as soon as practicable, send to all the parties to the case a notice, in Form 4, of the outcome of the application.

*Amendment of Crown Court Rules (Northern Ireland) 1979*

**8.** For Rule 44 of the Crown Court Rules (Northern Ireland) 1979(**a**) there shall be substituted the following new rule:—

"44. The periods specified for the purposes of paragraphs (*a*) and (*b*) of section 48(5) of the Act shall be 8 days and 14 weeks respectively, and accordingly the trial of a person committed by a magistrates' court or whose case has been transferred to the Crown Court under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988—

(*a*) shall not begin until the expiration of 8 days beginning with the date of his committal or the date of the giving of the notice of transfer as the case may be, except with his consent and the consent of the prosecutor, and

(*b*) shall, unless the court has otherwise ordered, begin not later than the expiration of 14 weeks beginning with the date of his committal or the date of the giving of the notice of transfer, as the case may be".

## PART III

## PREPARATORY HEARINGS

*Form of application for a preparatory hearing*

**9.**—(1) An application in pursuance of Article 6(2) shall be made in writing in Form 5 to the chief clerk and shall include a concise statement of the

(**a**) S.R. 1979 No. 90

grounds, having regard to the matters specified in paragraph (1) of that Article, for the making of the application.

(2) The person making the application shall at the same time serve a copy thereof on the other party or, if there is more than one, each of the other parties in the case.

*Time for making application*

**10.**—(1) An application for a preparatory hearing shall be made—

(*a*) not later than 28 days from the presentment of the indictment; and

(*b*) in any event before the arraignment of the defendant.

(2) The time specified by rule 10(1)(*a*) for making an application for a preparatory hearing may be extended, either before or after it expires, on an application made in accordance with paragraph (3) below.

(3) An application for an extension of time under paragraph (2) above shall be made in writing in Form 5, specifying the grounds of the application and served on the chief clerk, and a copy thereof shall be served on the other party or if there is more than one, each of the other parties in the case.

(4) The chief clerk shall give notice of the judge's decision on an application under paragraph (2) above to the applicant and to the other party or, if there is more than one, each of the other parties in the case.

*Notification of order for preparatory hearing*

**11.** Notice of an order for a preparatory hearing shall be given in Form 6 and shall be served by the chief clerk on each person indicted and on the prosecution.

*Disclosure of prosecution case*

**12.** Where an order is made under Article 6(3) or 8(4) for the prosecution to prepare and serve any documents, the order shall identify the documents to be served and require the prosecution to serve a copy of each such document on each person indicted; and the chief clerk shall serve a copy of the order on each person indicted and on the prosecution.

*Defence disclosure*

**13.**—(1) Where an order is made under Article 6(4) or 8(5) the chief clerk shall serve a copy of the order in Form 7 on each party to whom the order applies and on the prosecution.

(2) Except to the extent that disclosure is required by section 1 of the Evidence of Alibi Act (Northern Ireland) 1972(**a**) a statement required by virtue of an order under Article 8(5) need not disclose who will give evidence and the order shall include a statement to that effect.

(3) The order shall include a warning that if any party departs from the case which he disclosed at the preparatory hearing, or fails to comply with a requirement imposed at the hearing—

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(a) 1972 c. 6 (N.I.)