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STATUTORY INSTRUMENTS

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**2013 No. 1554**

**The Criminal Procedure Rules 2013**

**PART 35**

**EVIDENCE OF BAD CHARACTER**

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**When this Part applies**

**35.1.** This Part applies—

- (a) in a magistrates' court and in the Crown Court;
- (b) where a party wants to introduce evidence of bad character, within the meaning of section 98 of the Criminal Justice Act 2003<sup>(1)</sup>.

*[Note. Under section 98 of the Criminal Justice Act 2003, evidence of a person's bad character means evidence of, or of a disposition towards, misconduct on that person's part, other than evidence that—*

- (a) has to do with the alleged facts of the offence; or*
- (b) is evidence of misconduct in connection with the investigation or prosecution.*

*Under section 100(1) of the Criminal Justice Act 2003, evidence of a non-defendant's bad character is admissible if—*

- (a) it is important explanatory evidence;*
- (b) it has substantial probative value in relation to a matter which—*
  - (i) is a matter in issue in the proceedings, and*
  - (ii) is of substantial importance in the context of the case as a whole; or*
- (c) all parties to the proceedings agree to the evidence being admissible.*

*The section explains requirements (a) and (b). Unless the parties agree to the evidence being admissible, it may not be introduced without the court's permission.*

*Under section 101(1) of the Criminal Justice Act 2003, evidence of a defendant's bad character is admissible if—*

- (a) *all parties to the proceedings agree to the evidence being admissible;*
- (b) *the evidence is introduced by the defendant, or is given in answer to a question asked by the defendant in cross-examination which was intended to elicit that evidence;*
- (c) *it is important explanatory evidence;*
- (d) *it is relevant to an important matter in issue between the defendant and the prosecution;*
- (e) *it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;*
- (f) *it is evidence to correct a false impression given by the defendant; or*
- (g) *the defendant has made an attack on another person's character.*

*Sections 102 to 106 of the Act supplement those requirements. The court must not admit evidence under (d) or (g) if, on an application by the defendant, the court concludes that to do so would be unfair.]*

### **Content of application or notice**

**35.2.**—(1) A party who wants to introduce evidence of bad character must—

- (a) make an application under rule 35.3, where it is evidence of a non-defendant's bad character;
- (b) give notice under rule 35.4, where it is evidence of a defendant's bad character.

(2) An application or notice must—

- (a) set out the facts of the misconduct on which that party relies,
- (b) explain how that party will prove those facts (whether by certificate of conviction, other official record, or other evidence), if another party disputes them, and
- (c) explain why the evidence is admissible.

*[Note. The Practice Direction sets out forms of application and notice for use in connection with rules 35.3 and 35.4.*

*The fact that a person was convicted of an offence may be proved under—*

- (a) *section 73 of the Police and Criminal Evidence Act 1984***(2)** *(conviction in the United Kingdom or European Union); or*
- (b) *section 7 of the Evidence Act 1851***(3)** *(conviction outside the United Kingdom).*

*See also sections 117 and 118 of the Criminal Justice Act 2003 (admissibility of evidence contained in business and other documents).*

*Under section 10 of the Criminal Justice Act 1967***(4)**, *a party may admit a matter of fact.]*

### **Application to introduce evidence of a non-defendant's bad character**

**35.3.**—(1) This rule applies where a party wants to introduce evidence of the bad character of a person other than the defendant.

(2) That party must serve an application to do so on—

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(2) 1984 c. 60; section 73 was amended by section 90(1) of, and paragraphs 125 and 128 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and paragraph 285 of Schedule 8 to, the Courts Act 2003 (c. 39).  
(3) 1851 c. 99.  
(4) 1967 c. 80.

- (a) the court officer; and
  - (b) each other party.
- (3) The applicant must serve the application—
- (a) as soon as reasonably practicable; and in any event
  - (b) not more than 14 days after the prosecutor discloses material on which the application is based (if the prosecutor is not the applicant).
- (4) A party who objects to the introduction of the evidence must—
- (a) serve notice on—
    - (i) the court officer, and
    - (ii) each other partynot more than 14 days after service of the application; and
  - (b) in the notice explain, as applicable—
    - (i) which, if any, facts of the misconduct set out in the application that party disputes,
    - (ii) what, if any, facts of the misconduct that party admits instead,
    - (iii) why the evidence is not admissible, and
    - (iv) any other objection to the application.
- (5) The court—
- (a) may determine an application—
    - (i) at a hearing, in public or in private, or
    - (ii) without a hearing;
  - (b) must not determine the application unless each party other than the applicant—
    - (i) is present, or
    - (ii) has had at least 14 days in which to serve a notice of objection;
  - (c) may adjourn the application; and
  - (d) may discharge or vary a determination where it can do so under—
    - (i) section 8B of the Magistrates' Courts Act 1980(5) (ruling at pre-trial hearing in a magistrates' court), or
    - (ii) section 9 of the Criminal Justice Act 1987(6), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(7) (ruling at preparatory or other pre-trial hearing in the Crown Court).

*[Note. The Practice Direction sets out a form of application for use in connection with this rule.*

*See also rule 35.5 (reasons for decisions must be given in public).]*

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(5) 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(6) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(7) 1996 c. 25; section 31 was amended by sections 310, 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

### **Notice to introduce evidence of a defendant's bad character**

**35.4.**—(1) This rule applies where a party wants to introduce evidence of a defendant's bad character.

- (2) That party must serve notice on—
  - (a) the court officer; and
  - (b) each other party.
- (3) A prosecutor who wants to introduce such evidence must serve the notice not more than—
  - (a) 28 days after the defendant pleads not guilty, in a magistrates' court; or
  - (b) 14 days after the defendant pleads not guilty, in the Crown Court.
- (4) A co-defendant who wants to introduce such evidence must serve the notice—
  - (a) as soon as reasonably practicable; and in any event
  - (b) not more than 14 days after the prosecutor discloses material on which the notice is based.
- (5) A party who objects to the introduction of the evidence must—
  - (a) apply to the court to determine the objection;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other partynot more than 14 days after service of the notice; and
  - (c) in the application explain, as applicable—
    - (i) which, if any, facts of the misconduct set out in the notice that party disputes,
    - (ii) what, if any, facts of the misconduct that party admits instead,
    - (iii) why the evidence is not admissible,
    - (iv) why it would be unfair to admit the evidence, and
    - (v) any other objection to the notice.
- (6) The court—
  - (a) may determine an application—
    - (i) at a hearing, in public or in private, or
    - (ii) without a hearing;
  - (b) must not determine the application unless the party who served the notice—
    - (i) is present, or
    - (ii) has had a reasonable opportunity to respond;
  - (c) may adjourn the application; and
  - (d) may discharge or vary a determination where it can do so under—
    - (i) section 8B of the Magistrates' Courts Act 1980 (ruling at pre-trial hearing in a magistrates' court), or
    - (ii) section 9 of the Criminal Justice Act 1987, or section 31 or 40 of the Criminal Procedure and Investigations Act 1996 (ruling at preparatory or other pre-trial hearing in the Crown Court).
- (7) A party entitled to receive a notice may waive that entitlement by so informing—
  - (a) the party who would have served it; and
  - (b) the court.

*[Note. The Practice Direction sets out a form of notice for use in connection with this rule.*

*See also rule 35.5 (reasons for decisions must be given in public).*

*If notice is not given as this rule requires, then under section 111(4) of the Criminal Justice Act 2003 the court may take the failure into account in exercising its powers to order costs.]*

### **Reasons for decisions**

**35.5.** The court must announce at a hearing in public (but in the absence of the jury, if there is one) the reasons for a decision—

- (a) to admit evidence as evidence of bad character, or to refuse to do so; or
- (b) to direct an acquittal or a retrial under section 107 of the Criminal Justice Act 2003.

*[Note. See section 110 of the Criminal Justice Act 2003.]*

### **Court's power to vary requirements under this Part**

**35.6.—**(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow an application or notice to be in a different form to one set out in the Practice Direction, or to be made or given orally;
- (c) dispense with a requirement for notice to introduce evidence of a defendant's bad character.

(2) A party who wants an extension of time must—

- (a) apply when serving the application or notice for which it is needed; and
- (b) explain the delay.