

**2004 No. 233**

**SUPREME COURT, NORTHERN IRELAND**

**The Crown Court (Amendment) Rules  
(Northern Ireland) 2004**

*Made - - - - - 17th May 2004*

*Coming into operation in accordance with rule 1*

*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), section 10 of the Criminal Justice (International Co-operation) Act 1990(b) and section 49 of the Crime (International Co-operation) Act 2003(c) 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) Rules (Northern Ireland) 2004 and subject to paragraph (2) shall come into operation on 11th June 2004.

(2) Paragraphs (1), (2) and (4) of rule 2 below shall come into operation on the same day as section 46 of the Youth Justice and Criminal Evidence Act 1999(d) comes into force.

(3) In these Rules, “the principal Rules” shall mean the Crown Court Rules (Northern Ireland) 1979(e), and a reference to a rule, a Part or a Form by number means the rule, Part 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 Act” means the Youth Justice and Criminal Evidence Act 1999.”.

(2) After rule 44H, there shall be inserted the following new rules:

**“Application for reporting direction**

**44I.**—(1) An application by a party to any criminal proceedings for a reporting direction under section 46 of the 1999 Act in relation to a witness in those proceedings may

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(a) 1978 c. 23  
(b) 1990 c. 5  
(c) 2003 c. 32; section 49 is supplemented by section 3(4)(b) of, and paragraph 4 of Schedule 1, and paragraphs 8, 10 and 17 of Schedule 2 to, the 2003 Act  
(d) 1999 c. 23  
(e) S.R. 1979 No. 90; to which the most recent relevant amendments were made by S.R. 1991 No. 327, S.R. 2003 No. 279 and S.R. 2003 No. 471

be made at any time after the commencement of the proceedings by giving notice in writing which shall be in Form 7A in the Schedule.

(2) For the purpose of this rule, rule 44J and rule 44K, proceedings commence on 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(a) or under Article 4 of the Children’s Evidence (Northern Ireland) Order 1995(b) 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(c) was given, or
- (d) on which an order for retrial is made.

(3) 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.

(4) Any party who wishes to oppose the application shall, within 7 days of the date that notice of the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition giving reasons for it.

(5) In order to comply with paragraph (4) a party shall state in the written notification whether he –

- (a) disputes that the witness is eligible for protection under section 46 of the 1999 Act; and
- (b) disputes that the granting of protection would be likely to improve the quality of evidence given by the witness or the level of co-operation given by the witness to any party to the proceedings in connection with the party’s preparation of its case.

#### **Application for excepting direction**

**44J.**—(1) An application for a direction under section 46(9) of the 1999 Act (“an excepting direction”) may be made at any time after the commencement of the proceedings if a reporting direction has been given by the Court in respect of a witness in those proceedings.

(2) The application under paragraph (1) may be made by –

- (a) any party to those proceedings; or
- (b) any person who, although not a party to the proceedings, is directly affected by a reporting direction given in relation to a witness in those proceedings or could be so affected if the Court in determining an application gave a reporting direction.

(3) An application for an excepting direction may be made –

- (a) orally at the time the reporting direction is given; or
- (b) by giving notice in writing which shall be in Form 7B in the Schedule.

(4) An applicant for an excepting direction shall state why, in his opinion –

- (a) the effect of the restrictions imposed (or which the applicant for the reporting direction seeks to have imposed) places a substantial and unreasonable restriction on the reporting of the proceedings; and
- (b) it is in the public interest to remove or relax those restrictions.

(5) Where the application for an excepting direction is made in writing, the notice under paragraph (3)(b) 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 or, as the case may be, every party to those proceedings.

(6) Any party who wishes to oppose the application shall, within 7 days of the date that notice of the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition giving reasons for it.

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(a) S.I. 1988/1846 (N.I. 16)  
(b) S.I. 1995/757 (N.I. 3)  
(c) 1969 c. 15 (N.I.)

### **Variation or revocation**

- 44K.**—(1) An application to –
- (a) revoke a reporting direction; or
  - (b) vary or revoke an excepting direction,

may be made at any time after the commencement of the proceedings.

- (2) The application under paragraph (1) may be made by –
- (a) any party to the proceedings in which the direction was given; or
  - (b) any person who, although not a party to those proceedings is, in the opinion of the Court, directly affected by the direction.

(3) The application under paragraph (1) shall be made by giving notice in writing which shall be in Form 7C in the Schedule which –

- (a) shall specify the grounds upon which the applicant seeks to have the direction varied or, as the case may be, revoked; and
- (b) shall be served, by the applicant, on the chief clerk and on every other party or, as the case may be, every party to the proceedings.

(4) Any party who wishes to oppose the application shall, within 7 days of the date the application was served on him, notify the applicant and the chief clerk, in writing, of his opposition and give reasons for it.

### **Hearings**

- 44L.**—(1) Subject to paragraph (2), the Court may –
- (a) determine any application made under rule 44I, 44J or 44K without a hearing; or
  - (b) direct a hearing of any such application.

(2) Where a party to the proceedings notifies the chief clerk of his opposition to an application under rule 44I, 44J or, as the case may be, 44K, the Court shall direct a hearing of that application.

(3) Where a hearing of an application is to take place in accordance with this rule, the chief clerk shall notify each party to the proceedings of the time and place of the hearing.

(4) A party notified in accordance with paragraph (3) may be present at the hearing and be heard.

(5) Before determining an application, the Court may hear and take into account representations made to it by any person who in the Court's opinion has a legitimate interest in the application before it.

(6) The chief clerk shall, as soon as reasonably practicable after the determination of an application under rule 44I, 44J or 44K, notify all the parties to the proceedings of the decision of the Court in Form 7D in the Schedule.

### **Hearings in camera**

**44M.** If in any proceedings a prosecutor or defendant has served notice under rule 44A(1) of his intention to apply for an order that all or part of a trial be held in camera, any application under rule 44I, 44J or 44K relating to a witness in those proceedings need not identify the witness by name or date of birth.”

(3) For Part VIII, there shall be substituted the new Part VIII in Schedule 1 to these Rules.

(4) The Schedule to the principal Rules shall be amended by inserting after Form 7, the new Forms 7A to 7D in Schedule 2 to these Rules.

Dated 13th May 2004

*Brian Kerr*  
*J. M. Nicholson*  
*A. R. Hart*  
*Paul G. Copeland*  
*Barra McGrory*  
*J. Wilson*

Signed by authority of the Lord Chancellor

I concur

*Lord Filkin*  
Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Dated 17th May 2004

## “PART VIII

## APPLICATIONS UNDER THE CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

**Interpretation**

55. In this Part of these Rules:

“the Act” means the Crime (International Co-operation) Act 2003(a); a reference to a section or a Schedule by a number is a reference to the section or Schedule so numbered in the Act; and expressions which are defined in the Act have the same meaning as in the Act.

**Notice required to accompany process served outside the United Kingdom**

56.—(1) The notice which by virtue of section 3(4)(b) shall accompany any process served outside the United Kingdom shall, so far as is reasonably practicable, give the information specified in paragraphs (2) and (4).

(2) The notice shall –

(a) state that the person required by the process to appear as a party or attend as a witness may obtain information about his rights in connection with such requirement from the relevant authority; and

(b) give the particulars specified in paragraph (4) about that authority.

(3) The “relevant authority” where the process is served –

(a) at the request of the prosecuting authority, is that prosecuting authority;

(b) at the request of the defendant, or of the prosecutor in the case of a private prosecution, is the Court by which the process is served.

(4) The particulars referred to in paragraph (2) are –

(a) the name and address of the prosecuting authority or, as the case may be, the Court, together with its telephone and fax numbers and e-mail address;

(b) the name of a person at the prosecuting authority or, as the case may be, the Court who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.

(5) Where section 3(3) applies, the chief clerk shall require any process served outside the United Kingdom to be accompanied by –

(a) any translation which is provided under section 3(3)(b); and

(b) any translation of the information required to be given by this rule which is provided to him.

**Proof of service outside the United Kingdom**

57.—(1) The service on any person under section 4(1) of any process issued or made may be proved in any proceedings by a certificate given by or on behalf of the Secretary of State.

(2) A statement in any such certificate as is mentioned in paragraph (1) –

(a) that a process has been served;

(b) of the manner in which service was effected;

(c) of the date on which a process was served,

shall be admissible as evidence of any facts so stated.

**Notice of application for request for assistance**

58.—(1) An application under section 7(1) (requests for assistance in obtaining evidence abroad) shall, subject to paragraph (2), be made by giving notice in writing to the chief clerk and shall –

(a) state the particulars of the offence which it is alleged has been committed or the grounds upon which it is suspected that an offence has been committed;

(b) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and

(c) include particulars of the assistance requested in the form of a draft request for assistance.

(2) The judge may direct that paragraph (1) need not be complied with if he is satisfied that the applicant has good reason to make the application as soon as possible and it is not practicable to comply with that paragraph.

(3) Where the judge makes a request for assistance under section 8(1), the chief clerk shall send a copy of the letter of request to the Secretary of State as soon as is reasonably practicable after the request has been made.

#### **Proceedings before a nominated court**

59. In proceedings before a nominated court pursuant to a notice under section 15(1), the Court may –

- (a) determine who may appear or take part in the proceedings under Schedule 1 and whether a party to the proceedings is entitled to be legally represented; and
- (b) if it thinks it necessary to do so in the interests of justice, direct that all or any persons not being members or officers of the Court or parties to the proceedings, their solicitors or counsel, or other persons directly concerned in the proceedings, be excluded from the Court during the proceedings.

#### **Record of proceedings before a nominated court**

60.—(1) In proceedings before a court nominated pursuant to a notice under section 15(1), the chief clerk shall make a record of the evidence received by the Court and the information prescribed in paragraph (2).

(2) The information referred to in paragraph (1) is –

- (a) details of the request in respect of which the notice under section 15(1) was given;
- (b) the date on which, and place at which, the proceedings under Schedule 1 in respect of that request took place;
- (c) the name of any witness who gave evidence at the proceedings in question;
- (d) the name of any person who took part in the proceedings as a legal representative or as an interpreter;
- (e) whether a witness was required to give evidence on oath or after making a solemn affirmation; and
- (f) whether the opportunity to cross-examine any witness was refused.

(3) When the Court sends the evidence received by it under paragraph 6(1) of Schedule 1 to the court or authority that made the request or to the territorial authority for forwarding to the court or authority that made the request, the chief clerk shall send to the court, authority or, as the case may be, territorial authority a copy of an extract of so much of the record as relates to the proceedings in respect of that request.

#### **Interpreter for the purposes of proceedings involving a television or telephone link**

61.—(1) This rule applies where the court nominated under section 30(3) (hearing witnesses in the UK through television links) or section 31(4) (hearing witnesses in the UK by telephone) is a Crown Court.

(2) Where it appears to the chief clerk that the witness to be heard in the proceedings under Part 1 or 2 of Schedule 2 (“the relevant proceedings”) is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into English.

(3) Where it appears to the chief clerk that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the proceedings of the court referred to in section 30(1) or, as the case may be, section 31(1) (“the external court”) will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is given in a language other than English and is not translated into English by an interpreter, the Court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

#### **Record of television link before a nominated court**

62.—(1) In proceedings before a court nominated pursuant to a notice under section 30(3), the chief clerk shall make a record of the evidence given in the presence of the Court and the information prescribed in paragraph (2).

- (2) The information referred to in paragraph (1) is –
- (a) details of the request in respect of which the notice under section 30(3) was given;
  - (b) the date on which, and place at which, the proceedings under Part 1 of Schedule 2 in respect of that request took place;
  - (c) the technical conditions, such as the type of equipment used, under which the proceedings took place;
  - (d) the name of the witness who gave evidence;
  - (e) the name of any person who took part in the proceedings as a legal representative or as an interpreter; and
  - (f) the language in which the evidence was given.

(3) As soon as is reasonably practicable after the proceedings under Part 1 of Schedule 2, the chief clerk shall send to the external authority that made the request a copy of an extract of so much of the record as relates to the proceedings in respect of that request.

**Record of telephone link before a nominated court**

62A.—(1) In proceedings before a court nominated pursuant to a notice under section 31(4), the chief clerk shall make a record of the evidence given in the presence of the Court and the information prescribed in paragraph (2).

- (2) The information referred to in paragraph (1) is –
- (a) details of the request in respect of which the notice under section 31(4) was given;
  - (b) the date on which, and place at which, the proceedings under Part 2 of Schedule 2 took place;
  - (c) the name of the witness who gave evidence;
  - (d) the name of any person who took part in the proceedings as a legal representative or as an interpreter; and
  - (e) the language in which the evidence was given.

(4) As soon as is reasonably practicable after the proceedings under Part 2 of Schedule 2, the chief clerk shall send to the external authority that made the request a copy of an extract of so much of the record as relates to the proceedings in respect of that request.

**Restriction on access to records kept under rules 60, 62 and 62A**

62B. The records kept under rules 60, 62 and 62A shall not be open to inspection by any person except –

- (a) as authorised by the Secretary of State; or
- (b) with leave of the Court.”





<i>Details required</i>	<i>Notes</i>
Give a description of evidence submitted in support of this application:	the preparation of that party's case, is likely to be diminished by fear or distress if the witness is identified by members of the public.  This requirement is optional. Examples might be – Police report Medical report
Set out the views of the witness for whom the direction is sought on this application:	
<b>Public interest</b>	
State why a reporting direction –	
(a) is in the interests of justice; and	
(b) is in the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings	

Dated this        day of                    20        .

Applicant  
[Solicitor for Applicant]

To the Chief Clerk of the Crown Court sitting at

And to

(insert names and addresses of each of the other parties to the proceedings)

**NOTE:**

The notice served on the chief clerk shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

**NOTE to party who receives a copy of this notice:**

If you wish to oppose this application you are required within 7 days to notify the applicant and the chief clerk in writing of your opposition stating the reasons for such.

## IN THE CROWN COURT IN NORTHERN IRELAND

**Application for an excepting direction under section 46(9) of the Youth Justice and Criminal Evidence Act 1999**

A copy of this form shall be served on every other party to the proceedings at the same time as it is served on the chief clerk.

<i>Details required</i>	<i>Notes</i>
<b>Details of applicant</b>	
Name of applicant:	
Name of applicant's solicitor:	
Address of solicitor:	
Reference:	
<b>Details of witness</b>	
Name of witness:	These details need not be given where a notice has been served applying for an order that all or part of the trial be held in camera.
Date of birth of witness:	
<b>Case details</b>	
Defendant(s): Surname:	
Forenames:	
The Crown Court at:	
Crown Court Bill Number:	
Date of – committal for trial* giving of notice of transfer* leave given to present indictment* order for retrial* next court appearance*	* Delete as appropriate
<b>Charges</b>	Give brief details of those charges to which this application relates
Reference number of reporting direction:	
Court which gave the reporting direction:	
Date on which reporting direction is given:	
Is a copy of the reporting direction attached:	The applicant should attach a copy of the reporting direction if available
<b>Details of application</b>	
State the grounds on which the applicant relies and in particular state why a reporting direction is or would be a substantial and unreasonable restriction on the reporting of the proceedings:	
State why it would be in the public interest to remove or relax reporting restrictions:	

Dated this        day of                    20        .

Applicant  
[Solicitor for Applicant]

To the Chief Clerk of the Crown Court sitting at

And to

(insert names and addresses of each of the other parties to the proceedings)

**NOTE:**

The notice served on the chief clerk shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

**NOTE to party who receives a copy of this notice:**

If you wish to oppose this application you are required within 7 days to notify the applicant and the chief clerk in writing of your opposition stating the reasons for such.

## IN THE CROWN COURT IN NORTHERN IRELAND

**Application for [revocation of a reporting direction] [variation of an excepting direction]  
[revocation of an excepting direction] under section 46 of the Youth Justice and  
Criminal Evidence Act 1999**

A copy of this form shall be served on every other party to the proceedings at the same time as it is served on the chief clerk.

<i>Details required</i>	<i>Notes</i>
<b>Details of applicant</b>	
Name of applicant:	
Name of applicant's solicitor:	
Address of solicitor:	
Reference:	
<b>Details of witness</b>	
Name of witness:	These details need not be given where a notice has been served applying for an order that all or part of the trial be held in camera.
Date of birth of witness:	
<b>Case details</b>	
Defendant(s): Surname:	
Forenames:	
The Crown Court at:	
Crown Court Bill Number:	
Date of – committal for trial* giving of notice of transfer* leave given to present indictment* order for retrial* next court appearance* which application is to be heard*	*Delete as appropriate
<b>Charges:</b>	Give brief details of those charges to which this application relates
Reference number of [reporting][excepting] direction:	
Court which gave the [reporting][excepting] direction:	
Date on which [reporting][excepting] direction given:	
Is a copy of the [reporting][excepting] direction attached:	The applicant should attach a copy of the [reporting][excepting] direction if available

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*Details required*

*Notes*

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**Details of application**

The application is for:

\*Delete as appropriate

[the revocation of a reporting direction]\*

[the variation of an excepting direction]\*

[the revocation of an excepting direction]\*

The grounds on which the applicant relies are as follows –

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Dated this            day of            20            .

Applicant  
[Solicitor for Applicant]

To the Chief Clerk of the Crown Court sitting at

And to

(insert names and addresses of each of the other parties to the proceedings)

**NOTE:**

The notice served on the chief clerk shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

**NOTE to party who receives a copy of this notice:**

If you wish to oppose this application you are required within 7 days to notify the applicant and the chief clerk in writing of your opposition stating the reasons for such.

## IN THE CROWN COURT IN NORTHERN IRELAND

**Notice of decision on application for [reporting direction][excepting direction] [revocation of reporting direction] [variation or revocation of excepting direction] made in accordance with section 46 of the Youth Justice and Criminal Evidence Act 1999**

<i>Details required</i>	<i>Notes</i>
<b>Details of applicant</b>	
Name of applicant:	
Name of applicant's solicitor:	
Address of solicitor:	
Reference:	
<b>Details of witness</b>	
Name of witness:	These details need not be given where a notice has been served applying for an order that all or part of the trial be held in camera.
Date of birth of witness:	

**Case details**

The Crown Court at:

Crown Court Bill Number:

Defendant(s):

Charges:

Upon the hearing of an application on (date) at (place) the Court made an order to the following effect, viz:

**Reporting Direction**

*If a reporting direction has been given by the Court, give the following details –*

Reference number of reporting direction:

Court which gave the reporting direction:

Date on which reporting direction given:

Give details of restrictions imposed by the direction:

**Excepting Direction**

*If an excepting direction has been given by the Court, give the following details –*

Reference number of the excepting direction:

Court which gave the direction:

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*Details required*

*Notes*

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Date on which direction given:

Give details of the exception granted by the Court:

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**Revocation of a reporting direction**

*If a reporting direction has been revoked, give the following details –*

Reference number of the reporting direction:

Court which gave the reporting direction:

Date on which the reporting direction was given:

Date on which the reporting direction was revoked:

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**Variation or revocation of an excepting direction**

*If an excepting direction has been varied or revoked, give the following details –*

Reference number of the excepting direction:

Court which gave the excepting direction:

Date on which the excepting direction was given:

Give details of how the excepting direction was varied or revoked:

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Dated this      day of                      20      .

Chief Clerk

## EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules amend the Crown Court Rules (Northern Ireland) 1979 (“the principal Rules”) to make provision relating to applications –

- under section 46 of the Youth Justice and Criminal Evidence Act 1999 for reporting directions and excepting directions in respect of adult witnesses in criminal proceedings; and
- under Part 1 of the Crime (International Co-operation) Act 2003.

*Rule 2(1)* inserts a reference to the Youth Justice and Criminal Evidence Act 1999 into the interpretation provisions in the principal Rules.

*Rule 2(2)* inserts new rules 44I to 44M into the principal Rules.

*New rule 44I* prescribes the manner in which an application for a reporting direction shall be made. *New rule 44J* prescribes the manner in which an application for an excepting direction shall be made.

*New rule 44K* provides for an application to be made to revoke a reporting direction or to vary or revoke an excepting direction which has already been given.

*New rule 44L* provides that the Court may direct a hearing of an application where notice of opposition is given or where the Court considers it appropriate to do so. It also provides that the chief clerk shall notify all the parties to the proceedings of the Court’s decision.

Where an application has been made to hold a trial in camera, *new rule 44M* provides that an application for a direction need not identify the witness.

*Rule 2(3)* substitutes a new Part VIII into the principal Rules.

*New rule 55* provides an interpretation of certain terms used in the new Rules.

*New Rule 56* prescribes the information that shall be contained within the notice required by section 3(4) of the Act to accompany process served outside the United Kingdom.

*New Rule 57* provides that service of a process under section 4 of the Act may be proved by a certificate given by or on behalf of the Secretary of State, which shall be admissible as evidence of any facts stated therein.

*New Rule 58* prescribes the manner in which an application under section 7(1) of the Act (requests for assistance in obtaining evidence abroad) shall be made.

*New Rule 59* provides that a court nominated to receive evidence requested from abroad may determine who may appear or take part in proceedings in that regard and may exclude the public from the Court during the proceedings.

*New Rule 60(1)* provides that in proceedings pursuant to a notice under section 15(1), the chief clerk shall make a record of evidence received together with other information as is prescribed by paragraph (2). *New Rule 60(3)* provides that the chief clerk shall send to the court or authority that made the request a copy of so much of the court record as is relevant to that request.

*New Rule 61* provides for an interpreter to be present in court in connection with proceedings that involve witnesses in the UK giving evidence by television link and telephone to countries outside the UK.



*New Rule 62* requires for the chief clerk to make a record of evidence given at any proceedings at which a witness in the UK gives evidence under section 30(3) of the Act and prescribes other information that shall be included in this record. *New Rule 62A* makes similar provision in relation to proceedings at which a witness in the UK gives evidence by telephone link under section 31(4) of the Act.

*New Rule 62B* restricts access to records kept under rules 60, 62 and 62A.

*Rule 2(4)* amends the Schedule to the principal Rules by inserting new Forms 7A to 7D for use in connection with applications prescribed in these Rules.





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