

2005 No. 157

SUPREME COURT, NORTHERN IRELAND

**The Criminal Appeal (Amendment)
(Northern Ireland) Rules 2005**

Made - - - - - *21st March 2005*

Coming into operation *18th April 2005*

To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby with the concurrence of the Lord Chancellor, exercise those powers, the powers under Articles 16 and 35 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004(b), and all other powers enabling us in that behalf as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Appeal (Amendment) (Northern Ireland) Rules 2005 and shall come into operation on 18th April 2005.

(2) In these Rules, “the principal Rules” shall mean the Criminal Appeal (Northern Ireland) Rules 1968(c), 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 “proper officer”, the following definition –

“ “the 2004 Order” means the Criminal Justice (Evidence) (Northern Ireland) Order 2004;”.

(2) Rule 7 shall be amended as follows –

(a) by inserting after paragraph (2), the following new paragraph –

“(2A) Form 7 need not be submitted in respect of any particular witness or evidence where the appellant has made an application under rule 7A or 7B in respect of that witness or evidence.”; and

(b) in paragraph (4), by deleting the words “or is under the sentence of death”.

(3) After rule 7, there shall be inserted the following new rules –

(a) 1978 c. 23
(b) S.I. 2004/1501 (N.I. 10)
(c) S.R. & O. (N.I.) 1968 No. 218; to which the most recent relevant amendment was made by S.R. 2000 No. 387 and S.R. 2001 No. 250

“Procedure for the admission of evidence of bad character

7A.—(1) A party who wants to adduce evidence of a non-appellant’s bad character or to cross examine a witness with a view to eliciting such evidence, under Article 5 of the 2004 Order, shall give notice which shall be in Form 7A.

(2) Notice under paragraph (1) shall be served on the proper officer and every other party to the appeal within 28 days from the date on which –

- (a) leave to appeal is given, where leave is required; or
- (b) notice of appeal is given, in any other case.

(3) Any party who wishes to oppose the application under paragraph (1) shall, within 14 days of the date that notice of the application was served on him, notify the proper officer and every other party to the appeal, in writing, of his opposition, giving reasons for it.

(4) A party who wants to adduce evidence of an appellant’s bad character or to cross examine a witness with a view to eliciting such evidence, under Article 6 of the 2004 Order, shall give notice which shall be in Form 7B.

(5) Notice under paragraph (4) shall be served on the proper officer and every other party to the appeal within 28 days from the date on which –

- (a) leave to appeal is given, where leave is required; or
- (b) notice of appeal is given, in any other case.

(6) An application by an appellant to exclude bad character evidence shall be in Form 7C and shall be served on the proper officer and on every other party to the appeal within 7 days from the date on which notice under paragraph (4) was served on him.

(7) An appellant who is entitled to have notice served on him under this rule may waive his entitlement by so informing the Court and the party who would have served the notice.

- (8) The Court may, if it considers that it is in the interests of justice to do so, –
 - (a) allow a notice or application required under this rule to be given in a different form or orally; or
 - (b) abridge or extend the time for service of a notice or application required under this rule, either before or after that period expires.

Procedure for the admission of hearsay evidence

7B.—(1) This rule shall apply where a party wishes to adduce evidence on one or more of the grounds set out in Article 18(1)(a) to (d) of the 2004 Order and in this rule, such evidence is referred to as “hearsay evidence”.

(2) An appellant who wishes to adduce hearsay evidence to support a ground of appeal contained in his notice of appeal under rule 5(2)(a) shall give notice in Form 7D.

(3) Notice under paragraph (2) shall be served on the proper officer at the same time as the appellant serves the notice of appeal or notice of application for leave to appeal under rule 5(1).

(4) The proper officer shall send a copy of any notice served on him under paragraph (3) to the Director of Public Prosecutions at the same time as he sends to him a copy of the notice received under rule 5.

(5) A party who wishes to adduce hearsay evidence in any other circumstances shall serve notice in Form 7D on the proper officer and every other party to the appeal within 28 days from the date on which –

- (a) leave to appeal is given, where leave is required; or
- (b) notice of appeal is given, in any other case.

(6) Any party who wishes to oppose the admission of hearsay evidence under paragraph (2) or (5) shall, within 14 days of the date notice was served on him, notify the proper officer and every other party to the appeal, in Form 7E, of his opposition.

(7) A party who is entitled to have notice served on him under this rule may waive his entitlement by so informing the Court and the party who would have served the notice.

- (8) The Court may, if it considers that it is in the interests of justice to do so, –
- (a) dispense with the requirement to give notice of intention to adduce hearsay evidence;
 - (b) allow a notice required under this rule to be given in a different form, or orally; or
 - (c) abridge or extend the time for service of a notice required under this rule, either before or after that period expires.”
- (4) Rule 24(2) shall be amended by deleting the words “or capital murder”.
- (5) Rule 32(1) shall be amended by substituting for the words “shall either be made orally” to the end, the following –
- “shall either be made –
- (i) orally immediately after the decision of the Court from which an appeal lies to the House of Lords or, immediately after the giving of reasons by such Court if later; or
 - (ii) by serving Form 19 on the proper officer within 28 days of the decision of the Court or, of the giving of reasons by such Court if later.”.
- (6) Rule 33 shall be revoked.
- (7) The Schedule to the principal Rules shall be amended as follows –
- (a) in Form 2, in Note 1, by deleting the words “except in the case of a conviction involving a sentence of death”;
 - (b) in Form 6,
 - (i) in Note 1(d), by deleting the words “including a sentence of death on the appellant”; and
 - (ii) in Note 4, by deleting the words “involving sentence of death or”;
 - (c) in Form 19, in Note 1,
 - (i) by substituting for the word “fourteen” the words “twenty eight”;
 - (ii) by inserting after the words “Court of Criminal Appeal” the words “or, if later, of the date of the giving of reasons by the Court.”.
 - (d) by inserting after Form 7, the new Forms 7A to 7E in the Schedule to these Rules.

*Brian Kerr
J. M. Nicholson
Anthony Campbell
Paul Girvan
Patrick Coghlin
Mark Horner
Bernard McCloskey
Tony Caher
Caroline A. McGonagle*

Dated 14th March 2005

Signed by authority of the Lord Chancellor

I concur,

Baroness Ashton of Upholland
Parliamentary Under-Secretary of State, Department for Constitutional Affairs

Dated 21st March 2005

SCHEDULE

Rule 2(7)

FORMS TO BE INSERTED IN THE CRIMINAL APPEAL (NORTHERN IRELAND) RULES 1968

FORM 7A

Rule 7A(1)

APPLICATION FOR LEAVE TO ADDUCE EVIDENCE OF NON-APPELLANT'S
BAD CHARACTER

(Article 5 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
Appeals and Lists Office,
Royal Courts of Justice,
Belfast
BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>Details of applicant</p> <p>Name:</p> <p>Address:</p>	
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Name of appellant(s):</p> <p>Details of indictment:</p> <p>Date leave to appeal was given, where leave is required, or notice of appeal is given in any other case:</p>	<p>Details of indictment should include the Bill number and the offences on the indictment which are the subject of the appeal.</p>
<p>Details of the application</p> <p>Please provide the following details:</p> <ul style="list-style-type: none"> • the particulars of the bad character evidence including how it is to be adduced or elicited at the appeal (including the names of the relevant non-appellant and other relevant witnesses); and • the grounds for the admission of evidence of a non-appellant's bad character under Article 5 of the 2004 Order. 	<p><i>Article 5 of the 2004 Order.</i></p> <p><i>Please attach any relevant documentation.</i></p>

<i>Details required</i>	<i>Notes</i>
<p>Extension of time for service</p> <p>Please indicate whether you are applying for an extension of time for service.</p> <p>If the answer is yes, please provide details:</p>	

Dated this day of 20 .

Applicant

NOTES

This form should be served on the proper officer, and at the same time a copy thereof shall be served on every other party to the appeal, within 28 days from the date –

- (a) on which leave to appeal is given, where leave is required; or
- (b) on which notice of appeal is given in any other case.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the appeal.

Note to party who receives a copy of this application:

If you wish to oppose this application you are required within 14 days of the date the application was served on you, to notify the proper officer and every other party to the appeal, in writing, of your opposition, giving reasons for it.

NOTICE OF INTENTION TO ADDUCE APPELLANT'S BAD CHARACTER EVIDENCE

(Article 6 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
 Appeals and Lists Office,
 Royal Courts of Justice,
 Belfast
 BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>Details of party giving notice</p> <p>Name:</p> <p>Address:</p>	
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Name of appellant(s):</p> <p>Details of indictment:</p> <p>Date leave to appeal was given, where leave is required, or notice of appeal is given in any other case:</p>	<p><i>Details of indictment should include the Bill number and the offences on the indictment which are the subject of the appeal.</i></p>
<p>Details of the notice</p> <p>To the named appellant:</p> <p>You are hereby given notice that bad character evidence, particulars of which are detailed below, is to be adduced or elicited at the appeal.</p> <p>The particulars of that bad character evidence are as follows:</p>	<p><i>In this section include:</i></p> <p><i>(a) a description of the bad character evidence and how it is to be adduced or elicited at the appeal (including the names of any relevant witnesses);</i></p> <p><i>(b) the grounds for the admission of evidence of the appellant's bad character under Article 6 of the 2004 Order;</i></p> <p><i>(c) why the admission of that evidence is in the interests of justice, where Article 13 of the Order applies (evidence of conviction when under 14 used in proceedings for offence committed as an adult).</i></p> <p><i>Please attach any relevant documentation.</i></p>

<i>Details required</i>	<i>Notes</i>
<p>Extension of time for service</p> <p>Please indicate whether you are applying for an extension of time for service.</p> <p>If the answer is yes, please provide details:</p>	

Dated this day of 20 .

Applicant

NOTES

This form should be served on the proper officer, and at the same time a copy thereof shall be served on every other party to the appeal, within 28 days from the date –

- (a) on which leave to appeal is given, where leave is required; or
- (b) on which notice of appeal is given in any other case.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the appeal.

Note to appellant:

An application by an appellant to exclude bad character evidence shall be in Form 7C and shall be served on the proper officer and on every other party to the appeal within 7 days of the date the notice of intention to adduce the evidence of bad character was served on him.

APPLICATION TO EXCLUDE EVIDENCE OF THE APPELLANT'S BAD CHARACTER
(Articles 6 and 13 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
Appeals and Lists Office,
Royal Courts of Justice,
Belfast
BT1 3JF
Details required**

<i>Details required</i>	<i>Notes</i>
<p>Details of the appellant(s)</p> <p>Name:</p> <p>Address:</p> <p>Date of birth:</p> <p>If you are in custody, please give your prison number and the address of the establishment in which you are detained:</p>	
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Details of indictment:</p> <p>Date leave to appeal was given, where leave is required, or notice of appeal is given in any other case:</p> <p>Date that you were served with notice of intention to adduce bad character evidence at this appeal:</p>	<p><i>Details of indictment should include the Bill number and the offences on the indictment which are the subject of the appeal.</i></p>
<p>Details of the application</p> <p>Include the following information:</p> <p>(a) why the admission of bad character evidence would have such an adverse effect on the fairness of the proceedings that the Court should not admit it.</p> <p>(b) details as to the length of time between the matters to which the bad character evidence relates and the matters which form the subject of the offence charged.</p>	<p><i>Note that an application to exclude this evidence under Article 6(3) of the 2004 Order can only be made if you have been notified of a party's intention to adduce this evidence under Article 6(1)(d) (it is relevant to an important matter in issue between the appellant and the prosecution) or Article 6(1)(g) (that the appellant has made an attack on another person's character).</i></p> <p><i>Article 6(4) of the 2004 Order.</i></p>

<i>Details required</i>	<i>Notes</i>
(c) if you are applying for the exclusion of this evidence on grounds other than Article 6(3) of the 2004 Order, please set out such objections.	
<p>Offences committed by the appellant when a child</p> <p>If you are applying to exclude evidence of a previous conviction for an offence when under the age of 14, state:</p> <p>(a) whether the offence for which you received a conviction when under the age of 14 was an offence triable only on indictment; and</p> <p>(b) why it would not be in the interests of justice for that evidence to be admitted.</p>	<i>Article 13(1) of the 2004 Order.</i>
<p>Extension of time for service</p> <p>Please indicate whether you are applying for an extension of time for service.</p> <p>If the answer is yes, state your reasons:</p>	

Dated this day of 20 .

Appellant
[Solicitor for Appellant]

NOTES

This form should be served on the proper officer and on every other party to the appeal 7 days of the date on which the notice of intention to adduce evidence of the appellant's bad character was served on the appellant.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the appeal.

NOTICE OF INTENTION TO ADDUCE HEARSAY EVIDENCE
(Article 18 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
Appeals and Lists Office,
Royal Courts of Justice
Belfast
BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Name of appellant(s):</p> <p>Details of indictment:</p> <p>Date leave to appeal was given, where leave to appeal is required, or notice of appeal is given in another case:</p>	<p>Details of indictment should include the Bill number and the offences on the indictment which was the subject of the appeal.</p>
<p>Details of party giving notice</p> <p>Surname:</p> <p>Forename:</p> <p>Address:</p>	<p>State the name and address of the party giving notice of hearsay evidence. (If in custody give address where detained)</p>
<p>Details of the notice</p> <p>To the named recipient of this notice:</p> <p>I hereby give you notice of my intention to adduce hearsay evidence, details of which are set out below, in these proceedings.</p>	
<p>Grounds for admission of hearsay evidence</p> <p>On which of the following grounds do you intend to adduce hearsay evidence?</p> <p>(a) Any statutory provision makes it admissible; <input type="checkbox"/></p> <p>(b) Any rule of law preserved by Article 22, Criminal Justice (Evidence) (Northern Ireland) Order 2004: <input type="checkbox"/></p> <p>(c) All parties to the proceedings agree to it being admissible; or <input type="checkbox"/></p> <p>(d) It is in the interests of justice for it to be admissible. <input type="checkbox"/></p> <p>Further details of grounds:</p>	<p>Tick as appropriate.</p> <p>Specify which provision of the 2004 Order or other statute, or which rule of law preserved by Article 22 you rely on to adduce the evidence.</p> <p>Where box (d) is ticked, you must specify which of the factors set out in Article 18(2) of the 2004 Order and explain how they are relevant.</p>

<i>Details required</i>	<i>Notes</i>
<p>Details of hearsay evidence</p> <p>The details of the hearsay evidence are as follows:</p>	<p>Give brief details of the evidence that you want to adduce as hearsay evidence.</p> <p>A complete copy of that evidence must be attached to this notice, if it has not already been served on the other parties.</p>
<p>Extension of time</p> <p>Are you applying for an extension of time within which to give this notice?</p> <p>If yes, state your reasons:</p>	

Dated this day of 20 .

Applicant

NOTE:

Where the notice is given by an appellant who wishes to adduce hearsay evidence to support a ground of appeal contained in his notice of appeal, it should be served on the proper officer at the same time as the notice of application for leave to appeal is served under rule 5.

In any other circumstances, this notice should be served on the proper officer within 28 days from the date on which –

- (a) leave to appeal is given; or
- (b) notice of appeal is given, if leave is not required.

and at the same time a copy thereof should be served on every other party to the appeal.

The notice served on the proper officer shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the appeal.

Note to party who receives a copy of this application:

If you wish to oppose the admission of hearsay evidence, you must, within 14 days of the date the notice was served on you, to serve notice of your opposition in Form 7E on the proper officer and every other party to the appeal.

NOTICE OF OPPOSITION TO THE ADMISSION OF HEARSAY EVIDENCE

(Article 18 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004)

**To the Master (Queen's Bench and Appeals) (the proper officer),
 Appeals and Lists Office,
 Royal Courts of Justice
 Belfast
 BT1 3JF**

<i>Details required</i>	<i>Notes</i>
<p>Case details</p> <p>Name of Crown Court where tried:</p> <p>Name of appellant(s):</p> <p>Details of indictment:</p> <p>Date leave to appeal was given, where leave to appeal is required, or notice of appeal is given in another case:</p>	<p>Details of indictment should include the Bill number and the offences on the indictment which was the subject of the appeal.</p>
<p>Details of party giving notice</p> <p>Surname:</p> <p>Forename:</p> <p>Address:</p>	<p>State the name and address of the party giving notice of their opposition to the admission of hearsay evidence. (If in custody give address where detained)</p>
<p>Details of the notice</p> <p>The details of the hearsay evidence are as follows:</p>	<p>Give brief details of the evidence that you want to exclude from the proceedings. Specify whether you object to all or part of that evidence.</p>
<p>Grounds for excluding hearsay evidence</p>	<p>Set out the grounds for excluding the hearsay evidence that you object to.</p> <p>Any relevant skeleton argument or case law that might bear on the issue may be attached to this notice.</p>
<p>Extension of time</p> <p>Are you applying for an extension of time within which to give this notice?</p> <p>If yes, state your reasons:</p>	

Dated this day of 20 .

(Signed)

NOTE:

This form should be served on the proper officer and at the same time a copy thereof shall be served on every other party to the proceedings within 14 days of the date on which the notice of intention to adduce hearsay evidence was served.

The notice served on the proper officer 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.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Criminal Appeal (Northern Ireland) Rules 1968 (“the principal Rules”) to –

- prescribe the procedure relating to applications to adduce bad character evidence under Part II of the Criminal Justice (Evidence) (Northern Ireland) Order 2004;
- prescribe the procedure relating to the giving of notice of intention to adduce hearsay evidence under Part III of that Order; and
- take account of a number of amendments made to the Criminal Appeal (Northern Ireland) Act 1980 by the Courts Act 2003.

Rule 2(2)(a) amends rule 7 of the principal Rules to provide that an application for an order requiring a witness to attend for examination or for evidence to be received by the Court need not be submitted where the appellant has made an application under rule 7A or 7B in respect of that witness or evidence.

Rule 2(2)(b), (4) and (6) delete references in the principal Rules to “sentence of death” and “capital cases”.

Rule 2(3) inserts a *new rule 7A*, which prescribes the procedure to be followed on an application to –

- adduce evidence of the bad character of persons other than the appellant or to cross examine a witness with a view to eliciting such evidence (*new rules 7A(1) and (2)*);
- oppose the admission of evidence the bad character of persons other than the appellant (*new rule 7A(3)*);
- adduce evidence of an appellant’s bad character or to cross examine a witness with a view to eliciting such evidence (*new rules 7A(4) and (5)*);
- exclude evidence of an appellant’s bad character (*new rule 7A(6)*).

New rule 7A(7) provides that the appellant may waive service of any application or notice. The Court may also allow a notice or application to be given in a different form or orally, and may abridge or extend any of the time limits (*new rule 7A(8)*)

Rule 2(3) also inserts a *new rule 7B*, which prescribes the procedure to be followed on an application to –

- adduce hearsay evidence (*new rules 7B(1) to (5)*);
- oppose the admission of hearsay evidence (*new rule 7B(6)*).

New rule 7B(7) provides that a party may waive his entitlement to be served with any notice under *new rule 7B*.

New rule 7B(8) provides that the Court may dispense with the requirement to give notice, may allow a notice or application to be given in a different form or orally and may abridge or extend any of the time limits for service of a notice under *new rule 7B*.

Rule 2(5) amends rule 32 of the principal Rules in consequence of section 105 of the Court Act 2005 which –

- extends the time limit, from 14 days to 28 days, within which an application for leave to appeal from a decision of the Court of Appeal may be made to the House of Lords; and
- provides that the time limit runs either from the date of the decision of the Court or the date on which it gives reasons, whichever is the later.

Rule 2(7) amends the Schedule to the principal Rules by inserting new Forms 7A to 7E for use in connection with applications prescribed by these Rules. It also makes a number of minor amendments to existing Forms to take account of these Rules.

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