

2005 No. 158

SUPREME COURT, NORTHERN IRELAND

**The Criminal Appeal (Retrial for Serious Offences) Rules
(Northern Ireland) 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 section 93 of the Criminal Justice Act 2003(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 (Retrial for Serious Offences) Rules (Northern Ireland) 2005 and shall come into operation on 18th April 2005.

(2) In these Rules –

“Court” means the Court of Appeal of Northern Ireland;

“the 2003 Act” means the Criminal Justice Act 2003;

“the chief clerk” means the chief clerk of the Crown Court before which the acquitted person is to be retried;

“the proper officer” means the Master (Queen’s Bench and Appeals) and includes any other officer of the Supreme Court directed by the Lord Chief Justice to exercise the powers and duties of the Master (Queen’s Bench and Appeals); and

“section 76 application” means an application made by a prosecutor under section 76(1) or (2) of the 2003 Act.

Forms

2. Any reference in these Rules to a Form means a reference to a form set out in the Schedule or a form to the same effect.

Notice of a section 76 application

3.—(1) Notice of a section 76 application shall be in Form 1 and shall be served by the prosecutor, pursuant to section 80(1) of the 2003 Act, on the proper officer and a copy thereof

(a) 1978 c. 23
(b) 2003 c. 44

shall be served by the prosecutor, pursuant to section 80(2) of the 2003 Act, on the acquitted person.

- (2) The notice under paragraph (1) shall, where practicable, be accompanied by –
 - (a) relevant witness statements which are relied upon as forming new and compelling evidence of guilt of the acquitted person as well as any relevant witness statements from the original trial;
 - (b) any unused statements which might reasonably be considered capable of undermining the section 76 application or of assisting an acquitted person's application to oppose that application under rule 4;
 - (c) a copy of the indictment and paper exhibits from the original trial; and
 - (d) copies of the transcript of the summing up and any other relevant transcripts from the original trial; and
 - (e) any other documents relied upon to support the section 76 application.

(3) As soon as practicable after service of the notice under paragraph (1) on the acquitted person, the prosecutor shall file with the proper officer an affidavit of service which exhibits a copy of that notice.

Response of the acquitted person

4.—(1) An acquitted person may oppose the section 76 application by serving a response in Form 2 on the prosecutor and the proper officer which –

- (a) indicates if he is also seeking an order under section 80(6) of the 2003 Act for –
 - (i) the production of any document, exhibit or other thing; or
 - (ii) a witness to attend for examination and to be examined before the Court; and
- (b) exhibits any relevant documents.

(2) The acquitted person shall serve that response within 28 days of the date on which notice under rule 3(1) was served on him.

(3) The Court may extend the period for service of the response under paragraph (2), either before or after that period expires.

Examination of witnesses or evidence by the Court

5.—(1) Prior to the hearing of a section 76 application, a party to that application may apply to the Court for an order under section 80(6) of the 2003 Act for –

- (a) the production of any document, exhibit or other thing; or
- (b) a witness to attend for examination and to be examined before the Court.

(2) An application under paragraph (1) shall –

- (a) be in Form 3 and shall be served on the proper officer, and at the same time a copy thereof shall be served, by the applicant, on every other party to the section 76 application; and
- (b) set out the reasons why the order was not sought from the Court when –
 - (i) the notice was served on the proper officer under rule 3, if the application is made by the prosecutor; or
 - (ii) the response was served on the proper officer under rule 4, if the application is made by the acquitted person; and
- (c) be made not less than 14 days before the date set for the hearing of the section 76 application.

(3) Where the Court makes an order under section 80(6) of the 2003 Act of its own motion or on the application of the prosecutor, the proper officer shall notify every party to the section 76 application of the order and the reasons for it.

Bail or custody orders in the Court of Appeal

6. Rules 5 to 13 of Order 79 of the Rules of the Supreme Court (Northern Ireland) 1980(a) shall apply to bail or custody orders made in the Court of Appeal under section 90 of the 2003 Act.

Application for restrictions on publication

7.—(1) An application by the Director of Public Prosecutions under section 82 of the 2003 Act for restrictions on publication shall be in Form 4 and shall be served on the proper officer and, subject to paragraph (2), at the same time a copy thereof shall be served by the prosecutor on the acquitted person.

(2) Where –

(a) the application under paragraph (1) is made in accordance with section 82(6) of the 2003 Act before notice of a section 76 application has been served on the acquitted person; and

(b) the Director of Public Prosecutions has indicated that there are reasons why the acquitted person should not be notified of the application under paragraph (1),

the Court may direct that the application shall not be served on the acquitted person until notice of a section 76 application has been served on that person.

(3) Where the Court makes an order for restrictions on publication under section 82(1) of the 2003 Act of its own motion or on application of the Director of Public Prosecutions (other than one made in accordance with paragraph (2)), the proper officer shall notify every party to the proceedings of the order and the reasons for it.

Variation or revocation of restrictions on publication

8.—(1) An application by the acquitted person or the Director of Public Prosecutions under section 82(7) of the 2003 Act to vary or revoke an order for restrictions on publication may be made at any time after that order was made.

(2) The application under paragraph (1) shall be made by giving notice in writing which –

(a) shall specify the grounds upon which the applicant seeks to have the order for restrictions on publication varied or, as the case may be, revoked; and

(b) shall be served, by the applicant, on the proper officer and, subject to paragraph (3), on every other party to the section 76 application.

(3) Where the application under paragraph (1) is made by the Director of Public Prosecutions and –

(a) notice of a section 76 application has not been given in accordance with rule 3; and

(b) the Director of Public Prosecutions has indicated that there are reasons why the acquitted person should not be notified of an application for restrictions on publication,

the Court may direct that the application shall not be served on the acquitted person until notice of a section 76 application is served on that person.

(4) Where the Court makes an order varying or revoking restrictions on publication under section 82(7) of the 2003 Act of its own motion or on application (other than one made in accordance with paragraph (3)), the proper officer shall notify every party to the proceedings of the order and the reasons for it.

Assistance of Crown Court

9. The proper officer may require the Crown Court at the place of the original trial to provide the Court with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 10 of the 2003 Act or these Rules.

Notice of the determination of the application

10.—(1) The Court may –

(a) give its determination of the section 76 application at the conclusion of the hearing; or

(b) reserve its determination of the section 76 application.

(2) Where paragraph (1)(b) applies, the proper officer shall, as soon as reasonably practicable after the Court determines the section 76 application, notify every party to the proceedings of that determination.

(3) As soon as reasonably practicable after the Court makes an order under section 77 of the 2003 Act that the acquitted person be retried, the proper officer shall serve notice of the order on the chief clerk.

Notice of application to set aside order for retrial

11.—(1) If an acquitted person has not been arraigned before the end of two months after the date on which the order under section 77 of the 2003 Act was made, he may apply to the Court to set aside the order.

(2) An application under paragraph (1) shall be in Form 5 and shall be served on the proper officer and at the same time a copy thereof shall be served by the applicant, on the prosecutor.

Leave to arraign

12.—(1) If the acquitted person has not been arraigned before the end of two months after the date on which the order under section 77 of the 2003 Act was made, the prosecutor may apply to the Court for leave to arraign.

(2) An application under paragraph (1) shall be in Form 5 and shall be served on the proper officer and at the same time a copy thereof shall be served by the prosecutor on the acquitted person.

Abandonment of the application

13.—(1) A section 76 application may be abandoned by the prosecutor at any time before the hearing of that application.

(2) Notice of abandonment shall be in Form 6 and shall be served on the proper officer and, at the same time, a copy thereof shall be served by the prosecutor, on the acquitted person.

(3) As soon as reasonably practicable after receiving a notice under paragraph (2), the proper officer shall send a copy thereof endorsed with the date of receipt to the prosecutor and the acquitted person.

Service

14. Any notice or other document required to be served by these Rules shall be served in accordance with rule 30 of the Criminal Appeal (Northern Ireland) Rules 1968(a).

Brian Kerr

Patrick Coghlin

J. M. Nicholson

Anthony Campbell

Paul Girvan

Mark Horner

Bernard McCloskey

Tony Caher

Caroline A. McGonagle

Dated 14th March 2005

Signed by the authority of the Lord Chancellor

(a) S.R. 1968 No. 218

I concur

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

Dated 21st March 2005

SCHEDULE

FORM 1

Rule 3(1)

NOTICE OF A SECTION 76 APPLICATION (Section 80(1) of the Criminal Justice Act 2003)

**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>1. Case details</p> <p>Name of the acquitted person(s):</p> <p>Date of the acquittal:</p> <p>Charges on the original indictment:</p> <p>Qualifying offence:</p> <p>Verdict, finding or other order of the court in relation to each charge on the original indictment:</p>	<p><i>Qualifying offence is defined in section 75(8) of the 2003 Act and means an offence listed in Part 2 of Schedule 5 to that Act.</i></p>
<p>2. Details of the application</p> <p>Are you applying for: <i>(tick as appropriate)</i></p> <p><input type="checkbox"/> an order of the Court quashing a person’s acquittal and an order for a retrial for a qualifying offence; or</p> <p><input type="checkbox"/> a determination of the Court, in the case of a person acquitted elsewhere than in the United Kingdom, whether the acquittal is a bar to the person being tried in Northern Ireland for the qualifying offence and if it is, an order that the acquittal is not to be a bar.</p>	<p><i>Section 76(1) of the 2003 Act.</i></p> <p><i>Section 76(2) of the 2003 Act.</i></p>
<p>3. Production of evidence and examination of witnesses</p> <p>Please indicate whether you are also seeking an order for the production of any document exhibit or thing or a witness to attend for examination before the Court.</p> <p>If the answer is yes, please:</p> <p>(a) provide details of the document, exhibit or other thing to be produced or the witness to attend for examination; and</p> <p>(b) state why it would be necessary or expedient in the interests of justice for the court to make such an order.</p>	<p><i>Section 80(6) of the 2003 Act.</i></p>
<p>4. Grounds of the application</p> <p>Summarise the arguments you intend to put to the Court, specifying any authorities to be cited.</p> <p>Please tick as appropriate the documents which accompany this application:</p> <p><input type="checkbox"/> relevant witness statements which are relied upon as forming new and compelling evidence of guilt of the acquitted person;</p> <p><input type="checkbox"/> relevant witness statements from the original trial;</p>	<p><i>Address the requirements in section 78 (new and compelling evidence) and section 79 (interests of justice) of the 2003 Act.</i></p>

<i>Details required</i>	<i>Notes</i>
<input type="checkbox"/> any unused statement which might reasonably be considered capable of undermining the section 76 application or of assisting an acquitted person's application to oppose under rule 4; <input type="checkbox"/> copy of the indictment and paper exhibits from the original trial; <input type="checkbox"/> copies of the transcript of the summing up and any other relevant transcripts from the original trial; <input type="checkbox"/> any other documents relied upon to support the section 76 application.	
<p>5. Written consent of the Director of Public Prosecutions</p> <p>Please provide the written personal consent of the Director of Public Prosecutions.</p>	<p><i>The Director of Public Prosecutions may give his consent only if satisfied that –</i></p> <p><i>(a) there is evidence as respects which the requirements of section 78 appear to be met;</i></p> <p><i>(b) it is in the public interest for the application to proceed; and</i></p> <p><i>(c) any trial pursuant to an order on the application would not be inconsistent with obligations of the United Kingdom under Article 31 or 34 of the Treaty on European Union relating to the principle of ne bis in idem.</i></p>
<p>6. Extension of time for service</p> <p>If you are also applying to the Court to make an order extending the time for service of notice on the acquitted person(s), please provide the following information:</p> <p>(a) details of the location of the acquitted person; and</p> <p>(b) indication of the period of time that it will take to serve the acquitted person.</p>	<p><i>Section 80(3) of the 2003 Act.</i></p> <p><i>If you are not applying for an extension, notice of the application must be served on the acquitted person(s) within two days beginning with the day on which this notice is given to the proper officer.</i></p> <p><i>An extension will only be granted if the Court considers it necessary to do so because of the acquitted person's absence from the United Kingdom (section 80(3) of the 2003 Act).</i></p>
<p>Name of prosecutor:</p> <p>Name of prosecuting agency:</p> <p>Address:</p> <p>Signature of prosecutor:</p> <p>Date:</p>	

RESPONSE OF THE ACQUITTED PERSON
(Section 80 of the Criminal Justice Act 2003)

**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>1. Details of the acquitted person</p> <p>Name:</p> <p>Address:</p> <p>Date of birth:</p> <p>If you are in custody, please give your prison no. and address where detained.</p>	
<p>2. Case details</p> <p>Date of the acquittal:</p> <p>Charges on the original indictment:</p> <p>Verdict, finding or other order of the court in relation to each charge on the original indictment:</p>	
<p>4. Grounds</p> <p>Summarise the arguments you intend to put to the Court, specifying any authorities to be cited.</p>	<p><i>Address the requirements in section 78 (new and compelling evidence) and section 79 (interests of justice) of the 2003 Act.</i></p>
<p>5. Ancillary applications</p> <p>State whether you are applying for (<i>tick where appropriate</i>):</p> <p><input type="checkbox"/> an extension of time in which to serve notice under rule 4(2);</p> <p><input type="checkbox"/> an order for the production of the production of any document, exhibit or thing or a witness to attend for examination and to be examined by the Court. If so, please state why it would be necessary or expedient in the interests of justice for the court to make such an order.</p> <p>Signature of acquitted person:</p> <p>Date:</p> <p>Details of any person signing on behalf of the acquitted person:</p> <p>Name:</p> <p>Address:</p> <p>Solicitors reference:</p>	<p><i>Rule 4(2).</i></p> <p><i>Section 80(6) of the 2003 Act.</i></p>

APPLICATION FOR AN ORDER FOR THE EXAMINATION OF WITNESSES OR EVIDENCE BY
THE COURT

(Section 80(6) of the Criminal Justice Act 2003)

**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>1. Details of the applicant</p> <p>Name:</p> <p>Address:</p>	
<p>2. Reason for delay</p> <p>Please provide details why this Order was not sought from the Court when:</p> <p><input type="checkbox"/> if you are the prosecutor, the notice under rule 3 was served on the proper officer.</p> <p><input type="checkbox"/> if you are an acquitted person, the notice under rule 4 was served on the proper officer.</p>	<i>Rule 5(2)(b).</i>
<p>3. Details of application</p> <p>Please indicate whether you are applying for an order for:</p> <p>(a) the production of any document, exhibit or other thing, the production of which you consider necessary for the determination of the application and/or</p> <p>(b) any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the court.</p> <p>Please give reasons why such an order would be in the necessary or expedient in the interests of justice.</p> <p>Please provide names and addresses of witnesses (where relevant).</p> <p>Signed:</p> <p>Date:</p> <p>Address and status of person signing on the applicant's behalf:</p>	<i>Section 80(6) of the 2003 Act.</i>

APPLICATION FOR RESTRICTIONS ON PUBLICATION

(Section 82 of the Criminal Justice Act 2003)

**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>1. Case details</p> <p>Name of the acquitted person(s):</p> <p>Date of the acquittal:</p> <p>Charges on the original indictment:</p> <p>Verdict, finding or other order of the court in relation to each charge on the original indictment:</p>	
<p>2. Details of application</p> <p>Give details of the application. In particular provide details:</p> <p>(a) why the inclusion of any matter in a publication would give rise to a substantial risk of prejudice to the administration of justice in a retrial; and</p> <p>(b) why it is necessary in the interests of justice to make an order for restrictions on publication.</p>	<p><i>Section 82(1) of the 2003 Act.</i></p> <p><i>Section 82(3) of the 2003 Act.</i></p>
<p>3. Time for restrictions on publication</p> <p>Please indicate whether a section 76 application has been served on the proper officer under section 80(1) of the officer under section 80(1) of the Criminal Justice Act 2003.</p> <p><u>If that application has been served:</u></p> <p>please indicate whether there is a specified time when an order for restrictions on publication (if made) should cease to have effect.</p> <p><u>If that application has not been served:</u></p> <p><input type="checkbox"/> indicate the date on which the investigation of the commission by the acquitted person of the qualifying offence has been commenced by officers.</p> <p><input type="checkbox"/> indicate whether there is a specified time when such an order (if made) should cease to have effect (in accordance with section 82(8) of that Act).</p> <p><input type="checkbox"/> Are you applying for an order that service on the acquitted person is not to be effected until notice of a section 76 application is served on that person? If so, provide details of your reasons.</p> <p>Signature of the Director of Public Prosecutions:</p> <p>Date:</p>	<p><i>Section 82(8) of the 2003 Act.</i></p> <p><i>Section 82(6) of the 2003 Act.</i></p> <p><i>Section 82(8) of the 2003 Act.</i></p> <p><i>Rule 7(2).</i></p>

NOTICE OF APPLICATION TO ARRAIGN/SET ASIDE THE ORDER FOR RETRIAL

(Section 84 of the Criminal Justice Act 2003)

**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>1. Details of the applicant</p> <p>Name of the applicant:</p> <p>Address of the applicant:</p>	
<p>2. Case details</p> <p>Name of the person ordered to be retried:</p> <p>Date of the order made under section 77 of the 2003 Act:</p>	
<p>3. Grounds of application</p> <p>Are you seeking (<i>tick where appropriate</i>)</p> <p><input type="checkbox"/> An order from the Court for leave to arraign.</p> <p><input type="checkbox"/> An order from the Court to set aside the order for retrial.</p> <p>Signed:</p> <p>Date:</p> <p>Address and status of person signing on the applicant's behalf:</p>	<p><i>Section 84(2) of the 2003 Act.</i></p> <p><i>Where leave to arraign is sought, reasons must be given for the failure to arraign within two months of the date of the order for retrial. You must specify that the prosecutor has acted with due expedition and that there is a good and sufficient cause for trial despite the lapse of time since the order under section 77 of the 2003 Act. (Section 84(3) of the 2003 Act.)</i></p> <p><i>Section 84(4) of the 2003 Act.</i></p>

NOTICE OF ABANDONMENT OF PROCEEDINGS

(Criminal Justice Act 2003)

**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>1. Case details</p> <p>Name of the acquitted person(s):</p> <p>Date of the acquittal:</p> <p>Charges on the original indictment:</p> <p>Verdict, finding or other order of the court in relation to each charge on the original indictment:</p> <p>Qualifying offence:</p> <p>Date that section 76 application was served on the proper officer:</p>	
<p>2. Abandonment of proceedings</p>	
<p>I, _____ (insert name), a person conducting a prosecution, abandon these proceedings instituted under Part 10 of the Criminal Justice Act 2003 for the retrial of the acquitted person(s) for the qualifying offence(s) listed above.</p>	
<p>Name of prosecutor: _____</p>	
<p>Address of prosecutor: _____</p>	
<p>Signature of prosecutor _____</p>	
<p>Date: _____</p>	

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for the procedure to be followed where an application is made under section 76 of the Criminal Justice Act 2003 (whereby a prosecutor may apply to the Court for a retrial, after an acquittal, where there is new and compelling evidence and it is in the interests of justice to do so.)

Rule 3 makes provision for giving notice of an application to the Court for a retrial to the proper officer and the acquitted person. *Rule 4* provides that the acquitted person, if they seek to oppose that application, must do so by serving a response. *Rule 5* provides that the prosecutor or acquitted person may subsequently apply for an order for the production of any document, exhibit or other thing or for the attendance of any witness for examination.

Rule 6 makes provision in relation to bail and custody orders in the Court of Appeal.

Rule 7 contains provision regarding applications by the Director of Public Prosecutions for restrictions on publication.

Rule 8 makes provision for applications by an acquitted person or the Director of Public Prosecutions for an order to revoke or vary restrictions on publication.

Rules 9 to 14 make supplementary provision.

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