

2004 No. 2993 (L. 20)

MAGISTRATES' COURTS, ENGLAND AND WALES

The Magistrates' Courts (Amendment) Rules 2004

Made - - - - - 15th November 2004

Laid before Parliament 18th November 2004

Coming into force in accordance with article 1

The Lord Chancellor, in exercise of the powers conferred upon him by section 144 of the Magistrates' Courts Act 1980^(a) and section 111 of the Criminal Justice Act 2003^(b) ("the 2003 Act") hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Amendment) Rules 2004 and shall come into force on 15th December 2004 or on the day that sections 98 to 110 of the 2003 Act (Evidence of Bad Character) come into force, whichever is later.

Magistrates' Courts Rules 1981

2.—(1) The Magistrates' Courts Rules 1981^(c) are amended as follows.

(2) After rule 72 there is inserted—

"Procedure for the admission of evidence of bad character

72A.—(1) A party who wants to introduce evidence of a non-defendant's bad character or who wants to cross-examine a witness with a view to eliciting that evidence, under section 100 of the Criminal Justice Act 2003 ("the 2003 Act"), must apply in the prescribed form and the application must be received by the justices' chief executive and all other parties to the proceedings—

- (a) not more than 14 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigation Act 1996^(d) (disclosure by the prosecutor); or
- (b) as soon as reasonably practicable, where the application concerns a non-defendant who is to be invited to give (or has given) evidence for a defendant.

(2) A party who receives a copy of an application under paragraph (1) may oppose that application by giving notice in writing to the justices' chief executive and all other parties to the proceedings not more than 14 days after receiving that application.

(a) 1980 c. 43.

(b) 2003 c. 44.

(c) S.I. 1981/552, to which there are amendments not relevant to these Rules.

(d) 1996 c. 25; section 3 was amended by section 82(1) of and paragraph 7(1) of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c. 23); and prospectively amended by section 32 of the Criminal Justice Act 2003 (c. 44).

(3) A prosecutor who wants to introduce evidence of a defendant's bad character or who wants to cross-examine a witness with a view to eliciting such evidence, under section 101 of the 2003 Act (defendant's bad character), must give notice in the prescribed form to the justices' chief executive and all other parties to the proceedings at the same time as he complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

(4) A co-defendant who wants to introduce evidence of a defendant's bad character or who wants to cross-examine a witness with a view to eliciting that evidence, under section 101 of the 2003 Act, must give notice in the prescribed form to the justices' chief executive and all other parties to the proceedings not more than 14 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

(5) A defendant's application to exclude bad character evidence must be in the prescribed form and received by the justices' chief executive and all other parties to the proceedings not more than 7 days after receiving a notice under paragraph (3) or (4).

(6) A defendant entitled to receive a notice under this rule may waive his entitlement by so informing the magistrates' court and the party who would have given the notice.

(7) The magistrates' court may—

(a) allow a notice or application required under this rule to be given in a different form, or orally; or

(b) shorten a time-limit under this rule or extend it even after it has expired, if it is in the interests of justice to do so.

(8) Where this rule requires a notice or application to be given or sent it may, with the consent of the addressee, be sent by fax or other means of electronic communication.”.

Magistrates' Courts (Forms) Rules 1981

3.—(1) The Magistrates' Courts (Forms) Rules 1981(a) are amended as follows.

(2) In Schedule 2, after the form numbered 30, there is inserted the forms set out in the Schedule to these Rules.

Dated 15th November 2004

Falconer of Thoroton, C.

(a) S.I. 1981/553, to which there are amendments not relevant to these Rules.

SCHEDULE
FORMS

Rule 72A

FORM

Application for leave to adduce non-defendant's bad character

(Section 100 of the Criminal Justice Act 2003)

<i>Details required</i>	<i>Notes</i>
<p>1. Details of applicant</p> <p>Name:</p> <p>Address:</p> <p>Name of prosecuting agency (if relevant):</p>	
<p>2. Case details</p> <p>Case reference numbers:</p> <p>Date the trial or proceedings is due to start or started:</p> <p>Name of defendant(s):</p> <p>Charges:</p>	<p><i>Give brief details of those charges to which this application applies.</i></p>
<p>3. Details of this application</p> <p>Please provide the following details</p> <p>(a) the particulars of the bad character evidence including how it is to be adduced or elicited in the proceedings (including the name of the relevant non-defendant and all other relevant witnesses); and</p> <p>(b) the grounds for the admission of evidence of a non-defendant's bad character under section 100 of the 2003 Act.</p>	<p><i>Please attach any relevant documentation.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time for service? (yes/no).</p> <p>If so please provide details.</p>	
<p>Signed:</p> <p>Dated:</p>	

FORM

Notice of intention to adduce bad character evidence

(Section 102 of the Criminal Justice Act 2003)

<i>Details required</i>	<i>Notes</i>
<p>1. Details of party giving notice</p> <p>Name:</p> <p>Address:</p> <p>Name of prosecuting agency (if relevant):</p>	
<p>2. Case details</p> <p>Case reference numbers:</p> <p>Date the trial or proceedings is due to start or started:</p> <p>Name of defendant(s):</p> <p>Charges:</p>	<p><i>Give brief details of those charges to which this application applies.</i></p>
<p>3. Details of this Notice</p> <p>To the named defendant;</p> <p>You are hereby given notice that bad character evidence, particulars of which are detailed below, is to be adduced or elicited in these proceedings.</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 in the proceedings (including the names of any relevant witnesses); and</i></p> <p><i>(b) the grounds for the admission of evidence of the defendant's bad character under section 101 of the 2003 Act.</i></p> <p><i>Please attach any relevant documentation.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time for service? (yes/no).</p> <p>If yes, state your reasons.</p>	
<p>Signed:</p> <p>Dated:</p>	

FORM

Application to exclude evidence of the defendant's bad character

(Sections 101 and 108(2) of the Criminal Justice Act 2003)

<i>Details required</i>	<i>Notes</i>
<p>1. Details of the defendant</p> <p>Name:</p> <p>Address:</p> <p>Date of Birth:</p> <p>If you are in custody, please give your Prison Index No. and address where detained:</p>	
<p>2. Case details</p> <p>Case reference numbers:</p> <p>Date the trial or proceedings is due to start or started:</p> <p>Charges:</p> <p>Date that you were served with the notice of the intention to adduce bad character evidence in these proceedings:</p>	
<p>3. Details of the application</p> <p>This section must include the following information:</p> <p>(a) why the admission of the 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>(c) if you are applying for the exclusion of this evidence on grounds other than section 101(3) of the 2003 Act, please set out such objections.</p>	<p><i>Note that an application to exclude this evidence under section 101(3) of the 2003 Act can only be made if you have been notified of a party's intention to adduce this evidence under subsection 101(1)(d) (it is relevant to an important matter in issue between the defendant and the prosecution) or subsection 101(1)(g) (that the defendant has made an attack on another person's character).</i></p> <p><i>Section 101(4) of the 2003 Act.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time for service? (yes/no).</p> <p>If so, state your reasons.</p>	
<p>Signed:</p> <p>Dated:</p>	

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules insert a new rule into the Magistrates' Courts Rules 1981 and insert new forms into the Magistrates' Courts (Forms) Rules 1981. The new rule and forms provide for the practice and procedure to be followed in Magistrates' Courts in England and Wales in connection with the admission of bad character evidence under Part II Chapter 1 of the Criminal Justice Act 2003.

STATUTORY INSTRUMENTS

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