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STATUTORY INSTRUMENTS

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**2011 No. 1709**

**The Criminal Procedure Rules 2011**

**PART 36**

**EVIDENCE OF A COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR**

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*[Note: Section 41 of the Youth Justice and Criminal Evidence Act 1999(1) prohibits evidence or cross-examination about the sexual behaviour of a complainant of a sexual offence, subject to exceptions.*

*See also—*

- (a) *section 42 of the 1999 Act(2), which among other things defines 'sexual behaviour' and 'sexual offence';*
- (b) *section 43(3), which among other things, requires—*
  - (i) *an application under section 41 to be heard in private and in the absence of the complainant,*
  - (ii) *the reasons for the court's decision on an application to be given in open court, and*
  - (iii) *the court to state in open court the extent to which evidence may be introduced or questions asked; and*
- (c) *section 34, which prohibits cross-examination by a defendant in person of the complainant of a sexual offence.]*

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(1) 1999 c. 23.

(2) 1999 c. 23; section 42(3)(c) was amended by section 41 of, and paragraph 73(1) and (3)(b) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). Section 42(3)(a) and (b) is repealed by section 41 of, and paragraph 73(1) and (3)(a) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(3) 1999 c. 23; section 43(3) was amended by section 109(1) of, and paragraph 384(g) of Schedule 8 to, the Courts Act 2003 (c. 39).

**When this Part applies**

**36.1.** This Part applies in magistrates' courts and in the Crown Court where a defendant wants to—

- (a) introduce evidence; or
- (b) cross-examine a witness

about a complainant's sexual behaviour despite the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999.

**Application for permission to introduce evidence or cross-examine**

**36.2.** The defendant must apply for permission to do so—

- (a) in writing; and
- (b) not more than 28 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996<sup>(4)</sup> (disclosure by prosecutor).

*[Note. See Part 3 for the court's general powers to consider an application with or without a hearing and to give directions.*

*At a pre-trial hearing a court may make binding rulings about the admissibility of evidence and about questions of law under section 7 of the Criminal Justice Act 1987<sup>(5)</sup>; sections 31 and 40 of the Criminal Procedure and Investigations Act 1996<sup>(6)</sup>; and section 45 of the Courts Act 2003<sup>(7)</sup>.]*

**Content of application**

**36.3.** The application must—

- (a) identify the issue to which the defendant says the complainant's sexual behaviour is relevant;
- (b) give particulars of—
  - (i) any evidence that the defendant wants to introduce, and
  - (ii) any questions that the defendant wants to ask;
- (c) identify the exception to the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999 on which the defendant relies; and
- (d) give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

**Service of application**

**36.4.** The defendant must serve the application on the court officer and all other parties.

(4) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(5) 1987 c. 38; section 7 was amended by section 168(1) of, and paragraph 30 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25). It has been further amended by sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), for certain purposes, with effect from 24 July 2006, and for remaining purposes from a date to be appointed.

(6) 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).

(7) 2003 c. 39.

### **Reply to application**

- 36.5.** A party who wants to make representations about an application under rule 36.2 must—
- (a) do so in writing not more than 14 days after receiving it; and
  - (b) serve those representations on the court officer and all other parties.

### **Application for special measures**

- 36.6.** If the court allows an application under rule 36.2 then—
- (a) a party may apply not more than 14 days later for a special measures direction or for the variation of an existing special measures direction; and
  - (b) the court may shorten the time for opposing that application.

*[Note. Special measures to improve the quality of evidence given by certain witnesses may be directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999 and varied under section 20(8). An application for a special measures direction may be made by a party under Part 29 or the court may make a direction on its own initiative. Rule 29.13(2) sets the usual time limit (14 days) for opposing a special measures application.]*

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

- 36.7.** The court may shorten or extend (even after it has expired) a time limit under this Part.