STATUTORY RULES OF NORTHERN IRELAND

2005 No. 162

MAGISTRATES' COURTS

The Magistrates' Courts (Amendment) Rules (Northern Ireland) 2005

Made - - - - 22nd March 2005 Coming into operation 18th April 2005

The Lord Chancellor in exercise of the powers conferred upon him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(1), Articles 16 and 35 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004(2), and all other powers enabling him in that behalf, on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following Rules:

Citation, commencement and interpretation

- **1.**—(1) These Rules may be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 2005 and shall come into operation on 18th April 2005.
- (2) In these Rules, a reference to a Rule, Schedule or a Form by a number means the Rule, Schedule or Form so numbered in the Magistrates' Courts Rules (Northern Ireland) 1984(3).

Amendment to the principal Rules

- **2.**—(1) Rule 2(3) shall be amended by inserting after the definition of "the 1999 Act", the following definition:
 - "(e) "the 2004 Order" means the Criminal Justice (Evidence) (Northern Ireland) Order 2004;".
 - (2) After Rule 149AQ there shall be inserted the following new Rules –

"Procedure for the admission of evidence of bad character

149AR.—(1) A party who wants to adduce evidence of a non-defendant'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 in Form 88A.

⁽¹⁾ S.I. 1981/1675 (N.I. 26)

⁽²⁾ S.I. 2004/1501 (N.I. 10)

⁽³⁾ S.R. 1984 No. 225; to which the most recent relevant amendments were made by S.R. 2004 No. 299 and S.R. 2004 No. 433

- (2) Notice under paragraph (1) shall be served on the clerk of petty sessions and on every other party to the proceedings
 - (a) within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996(4) (disclosure by the prosecutor); or
 - (b) as soon as is reasonably practicable, where the application concerns a non-defendant who is to be invited to give, or has given, evidence for a defendant.
- (3) Any party who wishes to oppose the application under paragraph (1) shall, within 14 days of the date on which the notice of the application was served on him, notify the clerk of petty sessions and every other party to the proceedings, in Form 88B, of his opposition.
- (4) A prosecutor who wants to adduce evidence of a defendant'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 in Form 88C.
- (5) Notice under paragraph (4) shall be served on the clerk of petty sessions and on every other party to the proceedings at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996.
- (6) A co-defendant who wants to adduce evidence of a defendant'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 in Form 88C.
- (7) Notice under paragraph (6) shall be served on the clerk of petty sessions and on every other party to the proceedings within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.
- (8) An application by a defendant to exclude bad character evidence shall be in Form 88D and shall be served on the clerk of petty sessions and on every other party to the proceedings within 7 days from the date on which the notice under paragraph (4) or paragraph (6) was served on him.
- (9) A defendant 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.
 - (10) 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

- **149AS.**—(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) A prosecutor who wants to adduce hearsay evidence shall give notice in Form 88E.
- (3) Notice under paragraph (2) shall be served on the clerk of petty sessions and on every other party to the proceedings at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by prosecutor).

^{(4) 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 is prospectively amended by section 32 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44)

- (4) A defendant who wants to adduce hearsay evidence shall give notice in Form 88E.
- (5) Notice under paragraph (4) shall be served on the clerk of petty sessions and on every other party to the proceedings within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.
- (6) Any party who wishes to oppose the application under paragraph (2) or (4) shall, within 14 days of the date on which notice of the application was served on him, notify the clerk of petty sessions and every other party to the proceedings, in Form 88F, of his opposition.
- (7) A party who is entitled to have notice served on him by 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."
- (3) Schedule 1 shall be amended by inserting after Form 88, the new Forms 88A to 88F in the Schedule to these Rules.

Signed by authority of the Lord Chancellor

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

Dated 22nd March 2005

SCHEDULE Rule 2(3)

FORMS TO BE INSERTED IN THE MAGISTRATES' COURTS RULES (NORTHERN IRELAND) 1984

FORM 88AMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rules 149AR(1))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 5)Application for leave to adduce evidence of non-defendant's bad character

of of	Complainant.	Petty Sessions District of County Court Division of
	Defendant	
Deteils requ	ired	Notes
Details of a	pplicant	
Name:		
Address:		
Case details	\$	
Court venue	:	The venue of the court hearing the case.
Date of next	гошт арреагалое	
Charges:		Give brief details (including date and location of offence) of those charges to which this application applies.
Name of the	PSNI Central Process Office:	
Central Prod reference mi	ress Office or District Command Ur imber:	pit
DPP referen	ce number:	
Details of the	he application	

Details of the application

Please provide the following details:

· the particulars of the earlich aracter evidence including how it is to be adduced or eligited in the proceedings (including the names of the relevant non-defendant and other relevant witnesses); and

Article 5 of the 2004 Order.

Details required		Notes
	he admission of evidence of a bad character under Article 5 of	Pleare attach any relevent documentation.
Extension of time for	service	
Please indicate whether of time for service.	r you are applying for an extension	
If the answer is yes, pk	case state your reasons:	
Dated this — Jay of	20 .	
	Applicant	

To the Clerk of Petty Sessions for the petty sessions district of

And to

(Insert names and addresses of each of the other terries to the proceedings).

NOTE

This form should be served on the clerk of polty sessions and on every other party to the proceedings -

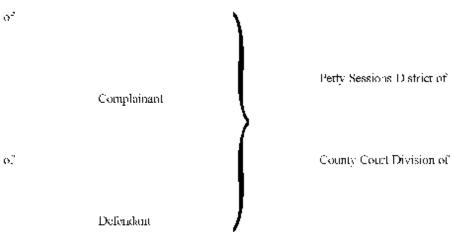
- within 14 days from the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by the prosecutor); or
- as soon as reasonably practicable, where the application concerns a non-defendant who is to be invited to give, or has given, evidence for a defendant.

The notice served on the elerk of perty sessions 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, and, where known, with the date on which the procedure has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

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 notice of the application was served on you, to notify the clerk of botty sessions and every other party to the proceedings, in Form 88B, of your opposition

FORM 88BMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rule 149AR(3))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 5)Notice of opposition to the admission of evidence of a non-defendant's bad character



_	
Exeluits required	Notes
Details of party giving notice	State the name and address of the party giving notice of their
Name	opposition to the admission of
Address:	evidence of a non-defendant's bad character (If in custody give address where detained)
Case details	
Court venue:	The venue of the court hearing the case.
Date of next court appearance:	
Charges:	Give brief details (including date and location of offence) of those charges to which this application applies.
Name of the PSNI Control Process Office	
Central Process Office or District Command Unit volknence muraban	
DPP reference number:	
Details of the notice	
The details of the evidence of the non-defendant's bad character are as follows:	Give brief details of the evidence that you want to oppose the admission of. Spec.fy whether you oppose the admission of all or part of that evidence.

Details required	Notes
Grounds for opposing the admission of the non- defendant's bad character	Set out the grounds for opposing the admission of the evidence of the non-defendant's bad character.
	Any relevant skeleton argument or case law that might bear on the issue may be attached to this notice.
Extension of time	
Are you applying for an extension of time within which to give this notice?	
If the answer is yes, please state your reasons:	
	<u> </u>
Dated this day of 20 .	

To the Clerk of Petty Sessions for the petty sessions district of

And to

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

NOTE:

This form should be served on the clerk of petty sessions and on every other party to the proceedings within 14 days of the date on which the notice of intention to adduce evidence of a non-defendant's bac character was served.

(Sigmod)

FORM 88CMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rules 149AR(4) and (6))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 6)Notice of intention to adduce evidence of defendant's bad character

of` F Complainant	Petty Sessions District of
of C	County Court Division of
Defendant	
Details required	Notes
Details of party giving notice	
Name:	
Address:	
Case defails	
Court venue	The venue of the court hearing the case.
Date of next court appearance:	cuse.
Charges:	Give brief details (including date and location of offence) of those charges to which this application applies.
Name of the PSNT Central Process Office	
Central Process Office or District Command Unit reference number:	
DPP reference number:	
Details of the notice	
To the named defendant:	
You are hereby given notice that bud character evidence, particulars of which are detailed below, is to be adduced or elicited in these proceedings.	
The particulars of that bad character evidence are as follows:	In this section include:
	(a) a description of the bad character evidence and how it is to

Details required	Notes
	be adduced or elicited in the proceedings (including the names of any relevant witnesses);
	(b) the grounds for the admission of evidence of the defendant's bad character under Article 6 of the 2001 Order:
	(a) why the achainsion of that evidence is in the interests of justice, where Article 13 of the Order applies (evidence of conviction when weder 14 used in proceedings for offence committed as on adult).
	Please ottach am relevant documentation.
Extension of time for service	
Please inducte whether you are applying for an extension of lime for service.	
If the answer is yes, please state your reasons:	
Dated this day of 20 .	
Applicant.	

NOTE:

This form should be served on the clerk of petry sessions and every other party to the proceedings.

Where the notice is given by the proseculor, it shall be served at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by the prosecutor).

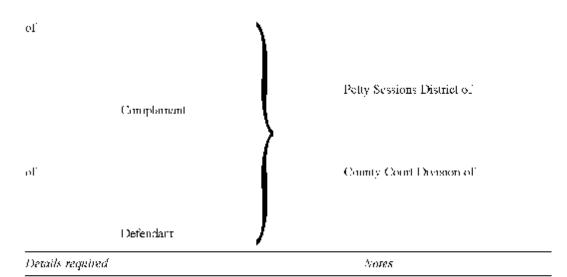
Where the notice is given by a co-defendant, it shall be served within 14 days from the date on which the prosecutor has complied or purconted to comply with section 3 of the Criminal Procedure and Investigations Act, 1996.

The notice served on the clerk of petty sessions 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, and, where known, with the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

Note to defendant:

An application by a defendant to exclude bad character evidence shall be in Form 88D and shall be served on the clerk of petry sessions and on every other party to the proceedings within 7 days of the date the notice of intention to adduce the evidence of laid character was served on him.

FORM 88DMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rule 149AR(8))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 6)Application to exclude evidence of defendant's bad character



Details of the defendant

Name:

Address:

Date of birth:

If you are in oustedy, please give your prison number and the askiness of the establishment in which you are detained:

Case details

Court venue: The venue of the court hearing the case.

Date of next court appearance:

Charges: Give brief details (including date and

location of offence) of those charges to which this application applies

Name of the PSNI Central Process Office:

Central Process Office or District Command Unit reference number:

DPP reference number:

Date that you were served with the notice of intention to acklace had character evidence in these proceedings:

Dotails required		Notes
Details of the applica	ition	
Include the following	information:	
	n of bad character evidence v fleet on the fairness of the pr uld not admit it.	
the bad character	ingth of time between the ma evidence relates and the mat of the offence of arged.	
	g for the exclusion of this ev a Article 6(3) of the 2004 Or a objections.	
Extension of time for	r service	
Please indicate wheth time for service.	er you are applying for an ex	ension of
If the answer is yes, p	lease state your reasons:	
Dated this day		ndant citor for Defendant]

NOTE:

This form should be served on the elerk of petty sessions and on every other party to the proceedings within 7 days of the date on which the notice of intention to address evidence of the defendant's had character was served on the defendant.

The notice served on the clerk of petty sessions 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.

FORM 88EMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rule 149AS(2) and (4))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 18)Notice of intention to adduce hearsay evidence

of	
Complainant	Petty Sessions District of
	County Court Division of
Defendant	+
Dotails required	Notes
Details of party giving notice Name:	State the name and address of the party giving notice of hearsay cyldence.
Address:	(If in custody give address where detained)
Case details	
Court venue:	The venue of the court hearing the case
Date of next court appearance:	
Charges:	Give brief details (including date and location of offence) of those charges to which this application applies.
Name of the PSNI Central Process Office:	
Central Process Office or District Command Unit reference number:	
DPP reference number:	
Details of the notice	
To the named recipient of this notice:	
Thereby give you notice of my intention to adduce hearsay evidence, details of which are set out below, in these proceedings.	

Details required			Notes		
Grounds for admission of hearsay evidence			Tick as appropriate.		
On which of the to addrice hear	he following grounds do you intend rsay evidence?				
(a) Any statut	ory provision makes it admissible;				
	of law preserved by Article 22, Instage (Evidence) (Northern fre said) 4:		Specify which provision of the 200 Order or other statute, or which rule of law preserved by Article 22 you		
(c) All parties admissible	to the proceedings agree to it being or		rely on to addoce the evidence.		
(d) It is in the admissible	interests of justice for it to be		Where lost (d) is ticked, you must specify which of the factors set out		
Further details	of grounds.		in Article 18(2) of the 2004 Order you rely upon and explain how they are relevant.		
Details of hea	usay evidence				
The details of the hearsay evidence are as follows:			Give brief details of the evidence that you want to adduce as hearsay evidence.		
			A complete copy of that evidence must be attached to this notice. Any relevant skeleton argument or case law that might bear on the issue may be attached to this notice.		
Extension of (time				
Are you apply give this node	ing for an extension of time within whice?	h to			
If the answer i	is yes, please state your reasons:				
Dated this	day of 20 Applica	mi			
To the Clerk o	d Petty Sessions for the petty sessions di				
And to					

VOTE

Where the notice is given by the prosecutor, it shall be served at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by the prosecutor)

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

Where the notice is given by a defendant, it shall be served within 14 days from the date on which the prosecutor has compled or purported to comply with section 3 of the Crimmal Procedure and Investigations Act 1996.

The notice served on the clerk of petry sessions 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, and, where known, with the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

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 notice of the application was served on you, to serve notice in form 881 on the clerk of petty sessions and every other early to the proceedings of your opposition, giving reasons for it.

FORM 88FMAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rule 149AS(6))CRIMINAL JUSTICE (EVIDENCE) (NORTHERN IRELAND) ORDER 2004 (Article 18)Notice of opposition to the admission of hearsay evidence

Compla nam	Cetty Sessions District of County Count Div sion of
Details required	Notes
Details of party giving notice	State the name and address of the
Namo:	party giving notice of their opposition to the admission of
Address:	hearsay evidence. (If in custody give address where detained)
Case details	
Court venue:	The venue of the court hearing the case.
Date of next court appearance:	
Charges:	Of we brief details (including date and location of offence) of those charges to which this application applies.
Name of the PSNI Central Process Office:	
Central Process Office or District Command Unit reference number.	
DPP reference number:	
Details of the notice	
The details of the hearsay evidence are as follows:	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
Grounds for excluding hearsay evidence	Set out the grounds for evoluting the hearsay evidence that you object to.

Details required		Notes Any relevant skeleton argument or case law that might bear on the issue may be attached to this notice.	
Extension of time Are you applying for an extension of time within which to give this notice?			
Dated this	day of	20 .	
	•	(Signed)	
To the Clerk o	Petry Sessions for II	ie petty sessions district of	
And to			

NOTE:

This form a fould be served on the clerk of petty sessions and every other party to the proceedings within 14 days of the date on which the notice of intention to adduce hearsay evidence was served.

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

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Magistrates' Courts Rules (Northern Ireland) Rules 1984 ("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; and
- notice of intention to adduce hearsay evidence under Part III of that Order.

Rule 2(2) inserts a new Rule 149AR, which prescribes the procedure to be followed on an application to:

- adduce evidence of the bad character of persons other than the defendant or to cross examine a witness with a view to eliciting such evidence (new Rules 149AR(1) and (2));
- oppose the admission of evidence of the bad character of persons other than the defendant (new Rule 149AR(3));
- adduce evidence of a defendant's bad character or to cross examine a witness with a view to eliciting such evidence (*new Rules 149AR(4) to (7)*);
- exclude evidence of a defendant's bad character (new Rule 149AR(8)).

New Rule 149AR(9) provides that the defendant 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 149AR(10)).

Rule 2(2) also inserts a new Rule 149AS, which prescribes the procedure to be followed on an application to:

- adduce hearsay evidence (new Rules 149AS(1) to (5)); and
- oppose the admission of hearsay evidence (new Rule 149AS(6)).

New Rule 149AS(7) provides that a party may waive service of any application or notice.

New Rule 149AS(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 149AS.

Rule 2(3) amends Schedule 1 to the principal Rules by inserting new Forms 88A to 88F for use in connection with applications prescribed by these Rules.