# 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(a), Articles 16 and 35 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004(b), 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(c).

#### 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.
- (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(**d**) (disclosure by the prosecutor); or

<sup>(</sup>a) S.I. 1981/1675 (N.I. 26)

<sup>(</sup>b) S.I. 2004/1501 (N.I. 10)

<sup>(</sup>c) 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

<sup>(</sup>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 is prospectively amended by section 32 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44)

- (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) 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

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

### FORM 88A

MAGISTRATES' 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

or	
Complainant	Petty Sessions District of
of	County Court Division of
Defendant	
Details required	Notes
Details of applicant	
Name:	
Address:	
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 application	
Please provide the following details:	
• the particulars of the bad character evidence including	Article 5 of the 2004 Order.

how it is to be adduced or elicited in the proceedings (including the names of the relevant non-defendant

and other relevant witnesses); and

Details required	Notes
the grounds for the admission of evidence of a non-defendant's bad character under Article 5 of the 2004 Order.	Please attach any relevant documentation.
Extension of time for service	
Please indicate whether you are applying for an extension of time for service.	
If the answer is yes, please state your reasons:	

Dated this day 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 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 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 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 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 petty sessions and every other party to the proceedings, in Form 88B, of your opposition.

# FORM 88B

# MAGISTRATES' 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

of	)	
	Complainant	Petty Sessions District of
of		County Court Division of
	Defendant	

Details 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 addres 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	
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. Specify 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:	

Dated this  $\qquad$  day of  $\qquad$  20 . (Signed)

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

And to

(Insert 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 bad character was served.

#### FORM 88C

#### MAGISTRATES' 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	
Complainant	Petty Sessions District of
of	County Court Division of
Defendant	
Details required	Notes
Details of party giving notice	
Name:	
Address:	
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 defendant:	

In this section include: (a) a description of the bad character evidence and how it is to

You are hereby given notice that bad character evidence, particulars of which are detailed below, is to be adduced or

The particulars of that bad character evidence are as follows:

elicited in these proceedings.

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 2004 Order;
	(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).
	Please attach any relevant documentation.
Extension of time for service	
Please indicate whether you are applying for an extension of time 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 petty sessions and every other party to the proceedings.

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).

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 purported 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 petty sessions and on every other party to the proceedings within 7 days of the date the notice of intention to adduce the evidence of bad character was served on him.

# FORM 88D

# MAGISTRATES' 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

of	)	
	Complainant	Petty Sessions District of
of		County Court Division of
	Defendant	

Details required	Notes
Details of the defendant	
Name:	
Address:	
Date of birth:	
If you are in custody, please give your prison number and the address 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 adduce bad character evidence in these proceedings:	

Details required	Notes
<b>Details of the application</b>	
Include the following information:	
(a) why the admission of bad character evidence such an adverse effect on the fairness of the that the Court should not admit it.	
(b) details as to the length of time between the r the bad character evidence relates and the m form the subject of the offence charged.	
(c) if you are applying for the exclusion of this of grounds other than Article 6(3) of the 2004 of please set out such objections.	
Extension of time for service	
Please indicate whether you are applying for an time for service.	extension of
If the answer is yes, please state your reasons:	
Dated this day of	20 .
D	efendant

#### NOTE:

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

[Solicitor for 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 88E

# MAGISTRATES' 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
of		County Court Division of
	Defendant	J

Details required	Notes
Details of party giving notice	State the name and address of the party giving notice of hearsay
Name:	evidence.  (If in custody give address where
Address:	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:	
I hereby 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 following grounds do you intend to adduce hearsay evidence?		
(a) Any statutory provision makes it admissible;		
(b) Any rule of law preserved by Article 22, Criminal Justice (Evidence) (Northern Ireland) Order 2004;		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.  Where box (d) is ticked, you must specify which of the factors set out in Article 18(2) of the 2004 Order you rely upon and explain how they are relevant.
(c) All parties to the proceedings agree to it being admissible; or		
(d) It is in the interests of justice for it to be admissible.		
Further details of grounds:		
Details of hearsay 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 applying for an extension of time within which to give this notice?	)	
If the answer is yes, please state your reasons:		
Dated this day 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 parties to the proceedings)

#### NOTE:

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).

Where the notice is given by a defendant, it shall be served 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.

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 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 88F on the clerk of petty sessions and every other party to the proceedings of your opposition, giving reasons for it.

# FORM 88F

# MAGISTRATES' 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

of	)	
	Complainant	Petty Sessions District of
of		County Court Division of
	Defendant	

Defendant	
Details required	Notes
Details of party giving notice	State the name and address of the
Name:	party giving notice of their opposition to the admission of hearsay evidence.
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	
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 excluding 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?	
If the answer is yes, please state your reasons:	

Dated this  $\mbox{day of} \qquad \qquad 20 \quad .$  (Signed)

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

And to

(Insert 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 every other party to the proceedings within 14 days of the date on which the notice of intention to adduce hearsay evidence was served.

#### 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.

© Crown Copyright 2005

£3.00

Published and printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print the Acts of the Northern Ireland Assembly Dd. N2038. C2. 4/05. Gp. 130. 14567.

ISBN 0-337-95967-6