STATUTORY RULES OF NORTHERN IRELAND

2013 No. 89

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Amendment) Rules (Northern Ireland) 2013

Made - - - - 25th March 2013

Coming into operation in accordance with Rule 1

The Magistrates' Courts Rules Committee makes the following rules in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**), and Articles 17(5), 21BA(9) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(**2**) after consultation with the Department of Justice and the agreement of the Lord Chief Justice.

Citation and Commencement

1. These Rules shall be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 2013 and shall come into operation on the day after Articles 17, 21BA and 21BB of the Criminal Evidence (Northern Ireland) Order 1999 come into operation.

Amendment to the Magistrates' Courts Rules (Northern Ireland) 1984

2. The Magistrates' Courts Rules (Northern Ireland) 1984(**3**) are amended as follows —

(1) In Rule 149AA, after paragraph (2)(b), insert —

"(c) enabling an examination of a witness to be conducted through an intermediary —

(i) the information sought in Part 4 of Form 15B; and

(ii) any relevant report, including an intermediary's assessment,

shall be provided.";

(2) In Rule 149AG, after paragraph (4)(c)(iii) insert —

(**1**) S.I. 1981/1675 (N.I.26); Article 13 was amended by paragraph 133 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (2010 No 976); and paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(**2**) 1999 No.2789 (N.I.8) to which the most recent relevant amendments were made by S.I. 2008 No. 1216 (N.I.1).

(**3**) S.R. 1984 No. 225 to which the most recent relevant amendments were made by S.R.2003 No.296, S.R.2003 No.477 and S.R2008 No.361.

"(iv) whether or not the person present was there to act as an intermediary for a witness, and, if so, whether an application under Article 17 of the 1999 Order for the use of an intermediary has been made or will be made, and whether the intermediary made the declaration as set out in Form 88N before acting.";

(3) After Rule 149N, insert —

"**Application by the accused for a direction allowing the examination of the accused through an intermediary**

149O.—(1) An application by the accused for direction allowing the accused to be examined through an intermediary under Article 21BA of the 1999 Order shall be made in Form 88K and shall include –

(a) the information sought in Part C of Form 88K; and

(b) any relevant report, including an intermediary's assessment.

(2) Subject to sub-paragraph (b), an application under paragraph (1) shall be made not less than 14 days before the date fixed for the commencement of the proceedings to which the application relates.

(b) In the application of sub-paragraph (a) to preliminary investigations, "the proceedings" does not include the taking of a deposition relating to the arrest, or where directed by the court, the remand of the accused.

(3) The notice under paragraph (1) shall be served on the clerk of petty sessions and at the same time a copy thereof shall be served by the applicant on every other party to the proceedings.

(4) Any party on whom a copy of the notice of the application under paragraph (1) is served may oppose the application for a direction allowing the use of an intermediary, whether or not the question of the conditions set out in Article 21BA (5) or (6) of the 1999 Order for the use of an intermediary is in issue.

(5) Any party who wishes to oppose the application shall, within 7 days of the date the notice under paragraph (1) was served on him, notify the applicant and the clerk of petty sessions in writing of his opposition and give reasons for it.

(6) In order to comply with paragraph (5), a party shall state in the written notification whether he disputes that –

(a) the accused is eligible for a direction allowing the use of an intermediary by virtue of Article 21BA (5) or (6) of the 1999 Order as appropriate; and

(b) allowing the accused to be examined through an intermediary is necessary in order to ensure that the accused receives a fair trial.

(7) Except where notice is received in accordance with paragraph (5), the court may —

(a) determine the application in favour of the applicant without a hearing; or

(b) direct a hearing.

(8) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (5) of his opposition to the application, the clerk of petty sessions shall fix a date for the hearing of the application.

(9) Where a hearing of the application is to take place in accordance with paragraph (7) or (8), the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.

(11) The clerk of petty sessions shall, as soon as reasonably practicable, after the determination of an application under paragraph (1), notify all the parties of the decision in Form 88M.

(12) 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.

Discharge or variation of a direction allowing the examination of accused by an intermediary

149P.—(1) Subject to paragraph (3), an application to discharge or vary a direction allowing the examination of the accused by an intermediary shall be made in writing.

(2) Any application under paragraph (1) shall be served on the clerk of petty sessions and on each party to the proceedings as soon as reasonably practicable.

(3) Paragraphs (4) to (12) of Rule 149O shall apply to an application to discharge or vary a direction allowing the examination of the accused by an intermediary as they apply to an application for such a direction.

Declaration by an intermediary acting for either a witness or an accused

149Q.—(1) The declaration required to be taken by an intermediary under Article 17(5) or 21BA (9) of the 1999 Order shall be as set out in Form 88N.

(2) A copy of the declaration made by the intermediary shall be served on the clerk of petty sessions and on each party to the proceedings at the time an application for the use of an intermediary under rule 149AA or rule 149O is being made, or as soon as reasonably practicable thereafter.”; and

(4) In the Schedule —

(a) in Form 15B —

(i) in Part 3, in the section entitled “Details of those present while recording made”, insert at the end of that section —

“Was an intermediary used during the video-recording? If yes, please complete Part 4 of this form, providing details of the intermediary. Please indicate whether the intermediary made the necessary declaration as set out in Form 88N before acting.

Has the Court already approved the use of an intermediary under Article 17 of the 1999 Order? If not, will an application be made?”; and

(ii) after Part 3, insert Part 4 as set out in Schedule 1 to these Rules;

(b) in Form 15C, after “Special Measures direction under Article [11] [12] [13] [14] [15]”, insert “[17]”;

(c) for Form 88K substitute the new Form 88K as set out in Schedule 2 to these Rules; and

(d) after Form 88L, insert Forms 88M and 88N as set out in Schedule 3 to these Rules.

William A McNally
Peter Luney
Nigel Broderick
Mervyn Bates

Dated 25th March 2013

SCHEDULE 1 Rule2 (4)(a)(ii)

"PART 4

To be completed if the application is to allow the examination of a witness through an intermediary

Details required	*Notes*
Details of the application (a) what is the name of the proposed intermediary: (b) what is the occupation of this person: (c) list any relevant skills or professional qualifications: (d) what is the relationship (if any) of this person to the witness: (e) is the proposed intermediary registered with the Department of Justice: (f) describe the witness' communication needs, and the proposed arrangements for questioning the witness. Attach any relevant report, including an intermediary's assessment. Ground rules for questioning may be discussed between the court, the legal representatives and the intermediary before the witness gives evidence to establish (a) how questions should be put to help the witness understand them and (b) how the proposed intermediary will alert the court if the witness has not understood or needs a break. (g) has the intermediary made a declaration? If yes, please attach a copy. If a declaration has not yet been made, a copy of it must be submitted to the Court as soon as reasonably practicable after having been made.	An application by the defence need not disclose the name of the intermediary if disclosure could lead to the identification of the witness.