STATUTORY RULES OF NORTHERN IRELAND

2011 No. 418

MAGISTRATES' COURTS

The Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2011

Made - - - -	*9th December 2011*
Coming into operation	*1st January 2012*

The Magistrates' Courts Rules Committee makes the following Rules in exercise of the powers conferred by Articles 13, 118A (5), (6) and (7), 118B (3) and (4), 118C (5), (6) and (7) and 118D (4) and (5) of the Magistrates' Courts (Northern Ireland) Order 1981(**1**), after consultation with the Department of Justice and with the agreement of the Lord Chief Justice.

Citation and Commencement

1. These Rules may be cited as the Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2011 and shall come into operation on 1st January 2012.

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

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

(1) after rule 52G, insert—

"**Notice of application for a domestic freezing order**

52GA.—(1) An application under section 10(1) of the Act (domestic freezing orders) shall be made by giving notice in writing to the clerk of petty sessions and shall be accompanied by –

(a) the certificate, referred to in section 11 of the Act, prepared by the applicant; and

(b) either the request made under section 7 of the Act, or an indication of when such a request will be made.

(2) Where the court makes a domestic freezing order under section 10(1) the clerk of petty sessions shall, within 14 days of the date the order was made, send to the Secretary of State –

(**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 (S.I. 2010 No.976); and paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4)

(**2**) S.R. 1984 No.225; to which the most recent relevant amendments were made by S.R. 2003 No.96 and No.477, S.R. 2010 No.12 and S.R. 2011 No.59

(a) the domestic freezing order;

(b) the certificate prepared by the applicant and signed by the district judge (magistrates' courts); and

(c) either the request under section 7 of the Act, or an indication of when such a request will be made.

Variation or revocation of a domestic freezing order

52GB.—(1) An application to vary or revoke a domestic freezing order under section 12 of the Act shall be made in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the order was made.

(2) An application under paragraph (1) shall be served, by the applicant, on the clerk of petty sessions and on each party to the proceedings as soon as reasonably practicable after the change in circumstances occurs.

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

(4) Except where notice is received in accordance with paragraph (3), the court may -

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

(b) direct a hearing.

(5) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (3) of his opposition to the application, the court may direct a hearing of the application.

(6) Where a hearing of the application is to take place in accordance with paragraphs (4) or (5) the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(7) A party notified in accordance with paragraph (6) may be present at the hearing and be heard.

(8) 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

(9) Where the court makes an order to vary or revoke a freezing order under section 12 of the Act, the clerk of petty sessions shall, as soon as reasonably practicable, send a copy of that order to the Secretary of State.";

(2) after rule 52I, insert –

"**Consideration of an overseas freezing order**

52IA.—(1) In proceedings before a court nominated under section 21 of the Act, the court shall consider whether to give effect to the freezing order—

(a) save in exceptional circumstances, on the next business day after receipt of a copy of the order from the Secretary of State; and

(b) in any event within 5 business days of receipt of the order.

(2) The court shall not consider an overseas freezing order unless it is satisfied that the Chief Constable has -

(a) been given notice of the order; and

(b) had an opportunity to be heard.

(3) The court may consider an overseas freezing order-

(a) without a hearing; or

(b) at a hearing in private or public.

(4) The clerk of petty sessions shall, as soon as reasonably practicable, give notice of any decision of the court in respect of an overseas freezing order to the Secretary of State.

(5) In this rule "business day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday.

(6) In paragraph (5) "bank holiday" means a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971.

Release of evidence subject to an overseas freezing order

52IB.—(1) An application under section 25 of the Act for the release of evidence which is subject to an overseas freezing order shall be made by giving notice in writing and shall state the reasons why the evidence should be released.

(2) An application under paragraph (1) shall be served on the clerk of petty sessions, and on each of the parties to the proceedings, as soon as reasonably practicable, after the reasons for making the application occur.

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

(4) Except where notice is received in accordance with paragraph (3), the court may -

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

(b) direct a hearing.

(5) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (3) of his opposition to the application, the court may direct a hearing of the application.

(6) Where a hearing of the application is to take place in accordance with paragraphs (4) or (5) the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(7) A party notified in accordance with paragraph (6) may be present at the hearing and be heard.

(8) 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.

(9) Where the court makes an order under section 25 of the Act the clerk of petty sessions shall, as soon as reasonably practicable, give notice of that order to the Secretary of State.";

(3) after rule 149AD, insert—

"**Application to disapply or disapply in part the primary rule**

149ADA.—(1) An application to disapply or disapply in part the primary rule under Article 9(4)(ba) of the 1999 Order shall be made in writing and shall include such information as the court requires to make a determination.

(2) An application under paragraph (1) shall be served, by the applicant, on the clerk of petty sessions and on each party to the proceedings as soon as reasonably practicable after the witness has expressed that wish.

(3) Paragraphs (6) to (12) of Rule 149AA shall apply to an application to disapply or disapply in part the primary rule as they apply to an application for a direction.";

(4) in rule 149AF,—

(a) in paragraph (2), omit "Subject to paragraph (3), "; and

(b) omit paragraphs (3) and (4);

(5) after rule 149I , insert—

"**WITNESS SUMMONSES**

149J. In these Rules, unless the context otherwise requires—

"the applicant" means the applicant in relation to an application to which that rule applies; and

"the directed person" and "the stipulated evidence, document or thing" have the same meaning as in Article 118A(8) of the Order.

Application for a witness summons

149K.—(1) This rule applies to an application under Article 118A of the Order for the issue of a witness summons.

(2) Subject to paragraphs (9) to (10), the application shall be made in writing, and shall—

(a) contain a brief description of the stipulated evidence, document or thing;

(b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material evidence;

(c) set out the reason why a witness summons should be issued to secure the attendance of the directed person to give evidence or to produce the document or thing;

(d) be accompanied with a draft Form 85A; and

(e) if the witness summons is proposed to require the directed person to produce a document or thing—

(i) inform the directed person of his right under paragraph (5) to make representations in writing and at a hearing; and

(ii) state whether the applicant seeks a requirement to be imposed under Article 118B of the Order (power to require advance production) and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.

(3) The application shall be supported by an affidavit—

(a) setting out any complaint on which the proceedings concerned are based;

(b) specifying the stipulated evidence, document or thing in such a way as to enable the directed person to identify it;

(c) specifying grounds for believing that the directed person is likely to be able to give the stipulated evidence or, to produce the stipulated evidence, document or thing;

(d) specifying grounds for believing that the stipulated evidence is likely to be material evidence or, as the case may be, that the stipulated document or thing is likely to be material evidence.

(4) The application and the supporting affidavit shall be served on the clerk of petty sessions and the directed person.

(5) The directed person may, within 7 days of receiving a copy of the application under paragraph (4), inform, in writing, the clerk of petty sessions whether or not he wishes to make representations, concerning the issue of the witness summons proposed to be directed to him, at a hearing and may also serve written representations on the clerk of petty sessions.