STATUTORY RULES OF NORTHERN IRELAND

# 2008 No. 361

# MAGISTRATES' COURTS

## The Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2008

*Made - - - - 3rd September 2008*

*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**), Article 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(**2**), Article 14 of the Criminal Justice (Northern Ireland) Order 2004(**3**) and Articles 16 and 35 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004(**4**), after consultation with the Lord Chancellor 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) 2008 and, subject to rule 2, shall come into operation on 1st October 2008.

**2.**—(1) Rules 3(3) and 3(5)(f) shall come into operation on the same date as Part 3 of the Criminal Justice (Northern Ireland) Order 2004 comes into operation.

(2) Rules 3(4) and 3(5)(g) shall come into operation on the same date as Article 82 of the Criminal Justice (Northern Ireland) Order 2008(**5**) comes into operation.

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

**3.** The Magistrates' Courts Rules (Northern Ireland) 1984(**6**) shall be amended as follows:—

(1) in rule 149AR (Procedure for the admission of evidence of bad character),

(a) at the beginning of paragraph (2), insert "Subject to paragraph (2A),";

(b) after paragraph (2), insert—

(**1**) S.I. 1981/1675 (N.I. 26); Article 13 was amended by paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).
(**2**) S.I. 1999/2789 (N.I. 8).
(**3**) S.I. 2004/1500 (N.I. 9).
(**4**) S.I. 2004/1501 (N.I. 10)
(**5**) S.I.2008/1216 (N.I. 1)
(**6**) S.R. 1984 No. 225 to which the most recent relevant amendments were made by S.R. 2006 No. 413.

"(2A) In respect of a preliminary investigation or preliminary inquiry, notice under paragraph (1) shall be served on the clerk of petty sessions and on every other party to the proceedings not less than 14 days before the date fixed for the hearing.";

(c) at the beginning of paragraph (3), insert "Subject to paragraph (3A),";

(d) after paragraph (3), insert—

"(3A) In respect of a preliminary investigation or preliminary inquiry, any party who wishes to oppose the application under paragraph (1) shall, within 7 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.";

(e) at the beginning of paragraph (5), insert "Subject to paragraph (5A),";

(f) after paragraph (5), insert—

"(5A) In respect of a preliminary investigation or preliminary inquiry, notice under paragraph (4) shall be served on the clerk of petty sessions and on every other party to the proceedings not less than 14 days before the date fixed for the hearing.";

(g) at the beginning of paragraph (7), insert "Subject to paragraph (7A),";

(h) after paragraph (7), insert—

"(7A) In respect of a preliminary investigation or preliminary inquiry, notice under paragraph (6) shall be served on the clerk of petty sessions and on every other party to the proceedings not less than 14 days before the date fixed for the hearing.";

(2) in rule 149AS (Procedure for the admission of hearsay evidence),

(a) in paragraph (1), after "adduce", insert "oral";

(b) at the beginning of paragraph (3), insert "Subject to paragraph (3A),";

(c) after paragraph (3), insert—

"(3A) In respect of a preliminary investigation or preliminary inquiry, notice under paragraph (2) shall be served on the clerk of petty sessions and on every other party to the proceedings not less than 14 days before the date fixed for the hearing.";

(d) at the beginning of paragraph (5), insert "Subject to paragraph (5A),";

(e) after paragraph (5), insert—

"(5A) In respect of a preliminary investigation or preliminary inquiry, notice under paragraph (4) shall be served on the clerk of petty sessions and on every other party to the proceedings not less than 14 days before the date fixed for the hearing.";

(f) at the beginning of paragraph (6), insert "Subject to paragraph (6A),";

(g) after paragraph (6), insert—

"(6A) In respect of a preliminary investigation or preliminary inquiry, any party who wishes to oppose the application under paragraphs (2) or (4) shall, within 7 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.";

(3) after rule 149E, insert—

"**Evidence by live link by witness (other than the defendant)**

**149F.**—(1) An application for a direction under Article 10 of the Criminal Justice (Northern Ireland) Order 2004 for a witness (other than the defendant) to give evidence through a live link shall be made by giving notice in Form 88I.

(2) Subject to sub-paragraph (b), an application under paragraph (1) shall be made not less than 14 days before the day 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 on every other party to the proceedings.

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

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

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

(b) direct a hearing.

(6) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (4) of his opposition to the application, the clerk of petty sessions shall fix a date for the hearing of the application.

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

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

(9) 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 of the court in Form 88J, and, where a direction is given, the notification shall state—

(a) the place where the witness will give evidence;

(b) where the witness is to give evidence on behalf of the prosecutor or where disclosure is required by section 6A(2) of the Criminal Procedure and Investigations Act 1996, the name of witness;

(c) the location of the court at which the proceedings to which the application relates will be held; and

(d) any conditions specified by the court in accordance with paragraph (10).

(10) In determining an application under paragraph (1), the court may specify that as a condition of the direction, the witness should give evidence in the presence of a specified person who is able and willing to answer under oath or affirmation any questions the court may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

(11) 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.

**Application for rescission of a direction**

**149G.**—(1) An application to rescind a direction for a witness to give evidence through a live link under Article 11(5)(a) of Criminal Justice (Northern Ireland) Order 2004 shall be

made in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the direction was made.

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

(3) Any party on whom a copy of the notice under paragraph (2) is served may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (3)–(9) and (11) of rule 149F shall apply to an application to rescind a live link direction as they apply to an application for a live link direction.";

(4) after new rule 149G, insert—

"**Application by the accused for live link direction**

**149H.**—(1) An application by the accused for a live link direction under Article 21A of the 1999 Order shall be made by giving notice in Form 88K.

(2) Subject to sub-paragraph (b), an application under paragraph (1) shall be made not less than 14 days before the day 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 live link direction whether or not the question of whether the conditions set out in Article 21A(4) or (5) of the 1999 Order 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 live link direction by virtue of Article 21A(4) or (5) of the 1999 Order; and

(b) it is in the interests of justice for the accused to give evidence through a live link.

(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 paragraphs (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 88L.

(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.

(13) Where a live link direction is made enabling the accused to give evidence by means of a live link, he shall be accompanied at the live link only by persons acceptable to a district judge (magistrates' courts).

**Discharge of live link direction**

**149I.**—(1) Subject to paragraph (3), an application to discharge a live link direction under Article 21A(7) of the 1999 Order shall be made in writing.

(2) An 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 149H shall apply to an application to discharge a live link direction as they apply to an application for a live link direction.";

(5) in Schedule 1,

(a) for the note to Form 88A, substitute—

"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; or

— in respect of a preliminary investigation or a preliminary inquiry, not less than 14 days before the date fixed for the hearing.

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 relevant and where known, with either the date on which the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996, or the date fixed for the hearing.

**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 (7 days in respect of a preliminary investigation or preliminary inquiry), to notify the clerk of petty sessions and every other party to the proceedings in Form 88B of your opposition.".

(b) for the note to Form 88B, substitute—

"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 (7 days in respect of a preliminary investigation or preliminary inquiry).";