STATUTORY RULES OF NORTHERN IRELAND

2004 No. 433

MAGISTRATES' COURTS

The Magistrates' Courts (Amendment No. 3) Rules (Northern Ireland) 2004

Made - - - - 7th October 2004

Coming into operation in accordance with Rule 1

The Lord Chancellor in exercise of the powers conferred upon him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**), 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 No. 3) Rules (Northern Ireland) 2004 and shall come into operation on the same day as section 10 of the Justice (Northern Ireland) Act 2004(**2**) comes into force.

(2) In these Rules, a reference to a Rule, Schedule or 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) After Rule 161, there shall be inserted the following new Rule:

"D. PROSECUTION APPEAL TO THE HIGH COURT AGAINST GRANT OF BAIL BY A MAGISTRATES' COURT.

Procedure where prosecution appeals against grant of bail by magistrates' court

161A.—(1) Where the prosecution wishes to exercise the right of appeal, under section 10 of the Justice (Northern Ireland) Act 2004 (hereafter in this Rule referred to as "the 2004 Act"), to the High Court against a decision to grant bail, the oral notice of appeal shall be given, by

(**1**) S.I. 1981/1675 (N.I. 26)
(**2**) 2004 c. 4
(**3**) S.R. 1984 No. 225; to which the most recent relevant amendment was made by S.R. 2004 No. 299

the prosecution, to the clerk of the court and to the person concerned, at the conclusion of the proceedings in which such bail was granted and before the release of the person concerned.

(2) On receipt of the oral notice of appeal, the clerk of the court shall announce in open court the time at which the notice was given.

(3) A record of the prosecution's decision to appeal and the time the oral notice of appeal was given shall be made in the Order Book.

(4) Where oral notice of appeal has been given the court shall remand in custody the person concerned until the appeal is determined or otherwise disposed of by a warrant of commitment in Form 10C.

(5) The written notice of appeal required by section 10(5) of the 2004 Act shall be in Form 91F and shall be served, by the prosecution, on the clerk of petty sessions and the person concerned within the two hour period referred to in section 10(5) of the 2004 Act.

(6) The written notice of appeal served on the clerk of petty sessions shall be endorsed with the manner in which and the time at which it was served on the person concerned.

(7) A record of the time at which the written notice of appeal was received by the clerk of petty sessions shall be made in the Order Book.

(8) As soon as practicable after written notice of appeal is served on him, the clerk of petty sessions shall serve a copy of that notice, endorsed with the time at which it was served, on the person having custody of the person concerned.

(9) If, having given oral notice of appeal, the prosecution fails to serve a written notice of appeal within the two hour period referred to in section 10(5) of the 2004 Act the clerk of petty sessions shall, as soon as practicable, by way of written notice in Form 91G to the person in whose custody the person concerned is, direct the release of the person concerned on bail as granted by the court and subject to any conditions which it imposed.

(10) Notice of abandonment of appeal shall be in Form 91H and shall be served, by the prosecution, on the clerk of petty sessions and on the person concerned.

(11) As soon as practicable after notice of abandonment of appeal is served on him, the clerk of petty sessions shall, by way of written notice in Form 91I to the Governor of the prison where the person concerned is being held, or the person responsible for any other establishment where such a person is being held, direct his release on bail as granted by the magistrates' court and subject to any conditions which it imposed.

(12) A record of the prosecution's failure to serve a written notice of appeal, or its service of a notice of abandonment, shall be made in the Order Book.

(13) As soon as practicable after written notice of appeal has been served on the clerk of petty sessions, he shall send to the appropriate officer of the High Court –

(a) a copy of that written notice; and

(b) a note of the date, or dates, when the person concerned is next due to appear in the court, whether he is released on bail or remanded in custody by the High Court.

(14) Expressions used in this Rule and in section 10 the 2004 Act have the same meaning as in section 10 of the 2004 Act."

(2) Schedule 1 shall be amended as follows:

(a) after Form 10B, there shall be inserted the new Form 10C in the Schedule to these Rules; and

(b) after Form 91E, there shall be inserted the new Forms 91F to 91I 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 7th October 2004

SCHEDULE

RULE 2(2)

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

FORM 10CMagistrates' Courts (Northern Ireland) Order 1981 (Rule 161A)Justice (Northern Ireland) Act 2004

(Section 10)

WARRANT OF COMMITMENT FOLLOWING PROSECUTION GIVING ORAL NOTICE OF APPEAL AGAINST GRANT OF BAIL

of

Complainant

Petty Sessions District of

of

Defendant

County Court Division of

WHEREAS the defendant appeared this day before the magistrates' court sitting at upon a complaint that (state shortly particulars of offence(s))

which (is an offence)(are offences) punishable by imprisonment.

Following the prosecution having given oral notice of appeal to the High Court against the court's decision to grant bail to the defendant, the court ordered that the defendant be remanded in custody until the said appeal is determined or otherwise disposed of.

This is to command you to whom this warrant is addressed to detain the defendant in your custody until you are notified in writing by the clerk of petty sessions whether or not the prosecution has served written notice of appeal in accordance with section 10(5) of the Justice (Northern Ireland) Act 2004.

PART A (Service of written notice of appeal)

If you are notified that written notice has been served in accordance with section 10(5) of the said Act, this is to command you to whom this warrant is addressed to convey the defendant to HM Prison at and there to deliver him to the Governor thereof, together with this warrant; and you, the said Governor, to receive him into your custody and, unless you are otherwise ordered in the meantime, to keep the defendant until the defendant is delivered in due course of law.

PART B (Failure to serve written notice of appeal)

Section 10(7) of the Act provides that if the prosecution fails to serve written notice of appeal on either the magistrates' court or the defendant in accordance with section 10(5) the appeal shall be deemed to have been disposed of. Where notice has not been served, the clerk of petty sessions shall give you notice in Form 91G directing the release of the defendant on bail, unless he is in your custody for some other cause.

And for this the present warrant shall be a sufficient authority to all whom it may concern.

This day of 20 .

Clerk of Petty Sessions

To: [the District Commander of the Police Service of Northern Ireland at .]

[AB, being such other person as the court may direct.]

FORM 91FMagistrates' Courts (Northern Ireland) Order 1981 (Rule 161A)Justice (Northern Ireland) Act 2004