STATUTORY RULES OF NORTHERN IRELAND

# 2004 No. 299

# MAGISTRATES' COURTS

## The Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2004

*Made - - - - 6th July 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. 2) Rules (Northern Ireland) 2004 and subject to paragraphs (2) to (4) shall come into operation on 26th July 2004.

(2) Paragraphs (1), (2) and (5)(a) of Rule 2 below shall come into operation on the same day as section 46 of the Youth Justice and Criminal Evidence Act 1999(**2**) comes into force.

(3) Paragraphs (3) and (5)(b) of Rule 2 below shall come into operation on the same day as Article 9 of the Criminal Justice (Northern Ireland) Order 2003(**3**) comes into operation.

(4) Paragraphs (4) and (5)(c) of Rule 2 below shall come into operation on the same day as Article 10 of the Criminal Justice (Northern Ireland) Order 2003 comes into operation.

(5) In these Rules, a reference to a Rule, a Schedule or a Form by number means the Rule, Schedule or Form so numbered in the Magistrates' Courts Rules (Northern Ireland) 1984(**4**).

### Amendment to the principal Rules

**2.**—(1) After Rule 2(3)(c) there shall be added:

"(d) "the 1999 Act" means the Youth Justice and Criminal Evidence Act 1999.".

(2) After Rule 149AM, there shall be inserted the following new Rules:

(**1**) S.I. 1981/1675 (N.I. 26)
(**2**) 1999 c. 23
(**3**) S.I. 2003/1247 (N.I. 33)
(**4**) S.R. 1984 No. 225; to which the most recent relevant amendment was made by S.R. 2004 No. 204 and S.R. 2003 No. 477

"**Application for reporting direction**

**149AN.**—(1) An application by a party to any criminal proceedings for a reporting direction under section 46 of the 1999 Act in relation to a witness in those proceedings may be made at any time after the commencement of the proceedings by giving notice in Form 15M.

(2) For the purpose of this Rule, Rule 149AO and Rule 149AP, proceedings commence on the date that the matter is first listed before a magistrates' court.

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

(5) In order to comply with paragraph (4) a party shall state in the written notification whether he –

(a) disputes that the witness is eligible for protection under section 46 of the 1999 Act; and

(b) disputes that the granting of protection would be likely to improve the quality of evidence given by the witness or the level of co-operation given by the witness to any party to the proceedings in connection with the party's preparation of its case.

**Application for excepting direction**

**149AO.**—(1) An application for a direction under section 46(9) of the 1999 Act ("an excepting direction") may be made at any time after the commencement of the proceedings if a reporting direction has been given by the court in respect of the witness in those proceedings.

(2) The application under paragraph (1) may be made by–

(a) any party to those proceedings; or

(b) any person who, although not a party to the proceedings, is directly affected by a reporting direction given in relation to a witness in those proceedings or could be so affected if the court in determining an application gave a reporting direction.

(3) An application for an excepting direction may be made –

(a) orally at the time the reporting direction is given; or

(b) by giving notice in Form 15N.

(4) An applicant for an excepting direction shall state why, in his opinion –

(a) the effect of the restrictions imposed (or which the applicant for the reporting direction seeks to have imposed) places a substantial and unreasonable restriction on the reporting of the proceedings; and

(b) it is in the public interest to remove or relax those restrictions.

(5) Where the application for an excepting direction is made in writing, the notice under paragraph (3)(b) 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 or, as the case may be, every party to those proceedings.

(6) Where the application for an excepting direction is made orally, the clerk of petty sessions shall cause the details of the application to be recorded in the Order Book.

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

**Variation or revocation**

**149AP.**—(1) An application to –

(a) revoke a reporting direction; or

(b) vary or revoke an excepting direction,

may be made at any time after the commencement of proceedings.

(2) The application under paragraph (1) may be made by –

(a) any party to the proceedings in which the direction was given; or

(b) any person who, although not a party to those proceedings is, in the opinion of the court, directly affected by the direction.

(3) The application under paragraph (1) shall be made by giving notice in Form 15O which –

(a) shall specify the grounds upon which the applicant seeks to have to direction varied or, as the case may be, revoked; and

(b) shall be served, by the applicant, on the clerk of petty sessions and on every other party or, as the case may be, every party to the proceedings.

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

**Hearings**

**149AQ.**—(1) Subject to paragraph (2), the court may –

(a) determine any application made under Rule 149AN, 149AO or 149AP without a hearing; or

(b) direct a hearing of any such application.

(2) Where a party to the proceedings notifies the clerk of petty sessions of his opposition to an application under Rule 149AN, 149AO or, as the case may be, 149AP, the court shall direct a hearing of that application.

(3) Where a hearing of an application is to take place in accordance with this Rule, the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(4) A party notified in accordance with paragraph (3) may be present at the hearing and be heard.

(5) Before determining an application, the court may hear and take into account representations made to it by any person who in the court's opinion has a legitimate interest in the application before it.

(6) The clerk of petty sessions shall, as soon as reasonably practicable after the determination of an application under Rule 149AN, 149AO or 149AP, notify all the parties to the proceedings of the decision of the court in Form 15P."

(3) After Rule 153, there shall be inserted the following new Rule:

"**Procedure on application for bail following grant of conditional police bail**

**153A.**—(1) An application under Article 132A of the Order shall be made by giving notice in Form 91A which shall –

(a) contain a statement of the grounds upon which it is made;

(b) specify the offence in connection with which the applicant was released on bail;

(c) specify, or be accompanied by a copy of the note of, the reasons given by the custody officer for imposing or varying the conditions of bail; and

(d) specify the name and address of any surety provided by the applicant before his release on bail to secure his surrender to custody.

(2) The notice under paragraph (1) shall be served by the applicant –

(a) on the clerk of petty sessions for the magistrates' court (if any) appointed by the custody officer as the court to which the applicant is under a duty to surrender; or where no such court has been appointed,

(b) on the clerk of petty sessions for a magistrates' court acting for the petty sessions district in which the police station at which the applicant was granted bail or at which the conditions of his bail were varied is situated,

and in either case the applicant shall serve a copy of the notice on the custody officer for that police station.

(3) A notice under paragraph (1) may be served by the applicant or any person authorised by him to serve such notice in accordance with section 24(2) of the Interpretation Act (Northern Ireland) 1954(**5**).

(4) The clerk of petty sessions shall give notice of the date, time and place fixed for the hearing of the application to –

(a) the applicant;

(b) the prosecutor; and

(c) any surety provided by the applicant before his release on bail to secure his surrender to custody.

(5) The time fixed for the hearing of the application shall be not later than 72 hours after receipt of the application, excluding weekends, Christmas Day, Good Friday and any bank holiday.

(6) The clerk of petty sessions shall, as soon as reasonably practicable, notify the applicant and any surety specified in the application of the decision of the court in Form 91B.

(7) The notice specified in paragraph (6) shall be served by ordinary first class post (in which case the notice shall be deemed to have been received in the ordinary course of post unless the applicant or, as the case may be, the surety proves that he did not receive it)."

(4) After Rule 153A, there shall be inserted the following new Rule:

"**Procedure on reconsideration of a decision to grant bail**

**153B.**—(1) An application under Article 133A of the Order shall be made by giving notice in Form 91C which shall –

(a) contain a statement of the grounds upon which it is made;

(b) specify the offence in connection with which the person to whom this application relates was released on bail;

(**5**) 1954 c. 33 (N.I.)

(c) specify the decision to be reconsidered (including any conditions of bail which have been imposed and why they have been imposed); and

(d) specify the name and address of any surety provided by the person to whom the application relates before his release on bail.

(2) The notice under paragraph (1) shall be served by the applicant –

(a) on the clerk of petty sessions for the magistrates' court which granted the bail; or

(b) on the clerk of petty sessions for the magistrates' court (if any) appointed by the custody officer as the court to which the applicant is under a duty to surrender; or

(c) if no such court has been appointed, on the clerk of petty sessions for a magistrates' court acting for the petty sessions district in which the police station at which the applicant was granted bail is situated,

and, at the same time, the applicant shall serve a copy of the notice on the person to whom the application relates and any surety specified in the application.

(3) The clerk of petty sessions shall give notice of the date, time and place fixed for the hearing of the application to –

(a) the applicant;

(b) the person to whom the application relates; and

(c) any surety specified in the application.

(4) The time fixed for the hearing of the application shall be not later than 72 hours after receipt of the application, excluding weekends, Christmas Day, Good Friday and any bank holiday.

(5) At the hearing of an application under Article 133A of the Order, the court shall consider any representations made by the person to whom the application relates (whether in writing or orally) before taking any decision under that Article with respect to him.

(6) Where the person to whom the application relates does not appear before the court, the court shall not determine the application unless it is satisfied that the notice under paragraph (4) was served on that person before the hearing.

(7) The clerk of petty sessions shall, as soon as reasonably practicable, notify the person to whom the application relates and any surety specified in the application of the decision of the court in Form 91D.

(8) Where the court proceeds in accordance with paragraph (6) to hear the application in the absence of the person to whom it relates and directs that bail be withheld –

(a) the order under Article 133A(4)(b) that the person surrender himself forthwith to the custody of the court shall be in Form 91E and shall be signed by the resident magistrate; and

(b) the clerk of petty sessions shall serve a copy of that order on the person to whom the application relates.

(9) Any document required by this Rule to be served on the person to whom the application relates shall be served in accordance with section 24(2) of the Interpretation Act (Northern Ireland) 1954

(10) Any document required by this Rule to be served on a surety shall be served by ordinary first class post (in which case the document shall be deemed to have been received by him in the ordinary course of post unless the surety proves that he did not receive it)."

(5) Schedule 1 shall be amended as follows:

(a) after Form 15L, there shall be inserted the new Forms 15M to 15P in the Schedule to these Rules.