STATUTORY RULES OF NORTHERN IRELAND

2003 No. 477

MAGISTRATES' COURTS

The Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2003

Made - - - -	*12th November 2003*
Coming into operation	*1st December 2003*

The Lord Chancellor, in exercise of the powers conferred upon him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**) and Articles 8(6), 25(5), 26(6), 30(3) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(**2**), 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) 2003 and shall come into operation on 1st December 2003.

(2) 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(**3**).

Amendment to the principal Rules

2.—(1) In Rule 11, for paragraph (1) there shall be substituted the following new paragraph –

> "(1) Subject to Rule 12 and Rule 12A, in the case of an offence prosecuted by a member of the Police Service of Northern Ireland or by the Director of Public Prosecutions a summons shall be served by a member of the Police Service of Northern Ireland who is not in charge of the investigation or prosecution of the offence."

(2) For the heading to Rule 12A, there shall be substituted the following new heading –

"Postal Service of Summons for offences prosecuted by the Police Service of Northern Ireland or the Director of Public Prosecutions".

(3) In Rule 12A, for paragraph (1) there shall be substituted the following new paragraph –

(**1**) S.I. 1981/1675 (N.I. 26)
(**2**) S.I. 1999/2789 (N.I. 8)
(**3**) S.R. 1984 No. 225; to which the most recent relevant amendments were made by S.R. 2003 No. 296

"(1) Subject to paragraph (6), in cases of summary offences prosecuted by a member of the Police Service of Northern Ireland or by the Director of Public Prosecutions, service of the summons may be effected by post in accordance with paragraph (2)."

(4) For the heading to Rule 13, there shall be substituted the following new heading –

"Postal Service of Summons other than for offences prosecuted by the Police Service of Northern Ireland or the Director of Public Prosecutions".

(5) Rule 149A shall be revoked.

(6) Rule 149AA shall be amended as follows –

(a) in paragraph (5), for the words "Article 4(1)(a)" there shall be substituted the words "Article 4 or 5"; and

(b) in paragraph (7), for sub-paragraph (a) there shall be substituted the following new sub-paragraph –

"(a) a party shall state in the written notification whether he –

(i) disputes that the witness is eligible for assistance by virtue of Article 4 or 5 of the 1999 Order;

(ii) disputes that any of the special measures available would be likely to improve the quality of evidence given by the witness or that such measures (or a combination of them) would be likely to maximise the quality of that evidence; and

(iii) opposes the granting of a special measures direction; and".

(7) Rule 149AC(3) shall be amended by substituting for the word "application", the word "question".

(8) Rule 149AF shall be amended as follows –

(a) in paragraph (2), for the words "a witness", there shall be substituted the words "a child witness"; and

(b) in paragraph (3), for the words "a witness", there shall be substituted the words "a child witness".

(9) After Rule 149AG(4)(c), there shall be inserted the following new sub-paragraph –

"(ca) in relation to each person present at any point during the recording, a statement confirming that the said person when present is visible in the recording;".

(10) After Rule 149AH, there shall be inserted the following new Rules:

"**Prohibition on cross-examination of particular witness**

149AI.—(1) An application by the prosecutor for a direction under Article 24 of the 1999 Order in relation to any witness shall be made by giving notice in Form 15D to the clerk of petty sessions and at the same time the applicant shall serve a copy thereof on every other party to the proceedings.

(2) In an application under paragraph (1), the prosecutor shall state why, in his opinion –

(a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the defendant in person;

(b) the evidence would be improved if a direction were given under Article 24(2) of the 1999 Order; and

(c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application, the clerk of petty sessions shall refer it –

(a) if the proceedings to which the application relates have commenced, to the resident magistrate hearing those proceedings;

(b) if the proceedings to which the application relates have not commenced when the application is received, to a resident magistrate sitting in the petty sessions district in which the proceedings are to be heard.

(4) Where a copy of a notice under paragraph (1) is served on a party to the proceedings more than 14 days before the date set for the commencement of the proceedings to which the application relates, that party may, within 14 days, make observations in writing in relation to the application to the clerk of petty sessions and shall serve a copy of such observations on every other party to the proceedings.

(5) A party on whom a copy of the notice is served in accordance with paragraph (1) may notify the clerk of petty sessions and every other party to the proceedings, in writing, of his opposition to the application and give reasons for it.

(6) Those reasons shall be notified –

(a) within 14 days of the date a copy of the notice was served on him, if that date is more than 14 days before the date set for commencement of the proceedings to which the application relates;

(b) if the proceedings to which the application relates have commenced, in accordance with any directions issued by the resident magistrate hearing those proceedings; or

(c) if neither sub-paragraph (a) nor sub-paragraph (b) apply, before the date set for the commencement of the proceedings to which the application relates.

(7) Where the application made in accordance with paragraph (1) is made before the date set for the commencement of the proceedings to which the application relates and the application –

(a) is not contested by any party to the proceedings, the court may determine the application without a hearing;

(b) is contested by a party to the proceedings, the court shall direct a hearing of the application.

(8) Where the application is made after the commencement of the proceedings to which the application relates –

(a) the application may be made orally; and

(b) the resident magistrate hearing those proceedings may give such directions as he considers appropriate in order to deal with the application.

(9) Where a hearing of the application is to take place, 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 made in accordance with paragraph (1), notify all the parties to the proceedings of the decision and the reasons for it.

(12) A person making an oral application under paragraph (8)(a) shall –

(a) give reasons why the application was not made before the commencement of the proceedings to which the application relates; and

(b) provide the court with the information set out in paragraph (2).

Restrictions on cross-examination of witness by the accused person

149AJ.—(1) This Rule and Rules 149AK and 149AL apply where a defendant is prevented from cross-examining a witness in person by virtue of Article 22, 23 or 24 of the 1999 Order.

(2) The court shall as early in the proceedings as is reasonably practicable –

(a) explain to the defendant that he is prevented from cross-examining a witness in person; and

(b) invite him to arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The defendant shall within 7 days of the court giving its explanation, or within such other period as the court may in any particular case allow, give notice to the clerk of petty sessions in Form 15E or otherwise in writing as to whether or not he has arranged for a legal representative to act on his behalf.

(4) Where the defendant has arranged for a legal representative to act for him, the notice under paragraph (3) shall include details of the name and address of the representative.

(5) The clerk of petty sessions shall notify all other parties to the proceedings of the name and address of any person appointed by the defendant to act on his behalf.

(6) Where the court gives its explanation under paragraph (2) to the defendant –

(a) within 7 days of the date set for the commencement of any hearing at which a witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies may be cross-examined, or

(b) after such a hearing has commenced,

the period of 7 days within which the defendant is required to give notice under paragraph (3) shall be reduced in accordance with any direction issued by the court.

(7) Where at the end of the period of 7 days or such other period as the court has allowed, the court has not received notice from the defendant under paragraph (3), it may grant the defendant an extension of time, whether of its own motion or on the application of the defendant.

(8) Before granting an extension of time, the court may direct a hearing at which all parties to the proceedings may attend and be heard.

(9) Any extension of time shall be for such period as the court considers appropriate in the circumstances of the case.

(10) The decision of the court as to whether or not to grant the defendant an extension of time shall be notified to all parties to the proceedings by the clerk of petty sessions in Form 15F.

Appointment by the court

149AK.—(1) Where the court decides, in accordance with Article 26(4) of the 1999 Order, to appoint a qualified legal representative, the clerk of petty sessions shall notify all parties to the proceedings of the name and address of that representative.

(2) An appointment made by the court under Article 26(4) of the 1999 Order shall, except to such extent as the court may in any particular case determine, terminate at the conclusion of the cross-examination of any witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies.

Appointment arranged by the defendant

149AL.—(1) The defendant may arrange for the qualified legal representative, appointed by the court under Article 26(4) of the 1999 Order, to be appointed to act for him for the

purpose of cross-examining any witness in respect of whom a prohibition under Article 22, 23 or 24 of the 1999 Order applies.

(2) Where such an appointment is made –

(a) the defendant shall notify the court of the appointment in Form 15E;

(b) the qualified legal representative shall notify the court of the appointment in Form 15G; and

(c) the qualified legal representative shall, from the time of his appointment, act for the defendant as though the arrangement had been made under Article 26(2)(a) of the 1999 Order and shall cease to be the representative of the court under Article 26(4) of the 1999 Order.

(3) Where the court receives notification of the appointment either from the qualified legal representative or from the defendant but not from both, the court shall investigate whether the appointment has been made, and if it concludes that the appointment has not been made, paragraph (2)(c) shall not apply.

(4) The defendant may, notwithstanding an appointment by the court under Article 26(4) of the 1999 Order, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under Article 22, 23 or 24 applies.

(5) Where the defendant arranges for, or informs the court of his intention to arrange for a legal representative to act for him, he shall notify the court within such period as the court may allow, of the name and address of any person appointed to act for him.

(6) Where the court is notified within the time allowed that such an appointment has been made, any qualified legal representative appointed by the court in accordance with Article 26(4) of the 1999 Order shall be discharged.

(7) The clerk of petty sessions shall as soon as reasonably practicable after notification is received by the court, or where paragraph (3) applies, after the court is satisfied that the appointment has been made, notify all the parties to the proceedings in Form 15H –

(a) that the appointment has been made;

(b) where paragraph (4) applies, of the name and address of the person appointed;

(c) that the person appointed by the court under Article 26(4) of the 1999 Order has been discharged or has ceased to act for the court.

Procedure for applications in proceedings for sexual offences

149AM.—(1) Application under Article 28(2) of the 1999 Order for leave to adduce evidence of, or ask questions about, any sexual behaviour of a complainant shall be made by giving notice in Form 15I to the clerk of petty sessions and shall, subject to paragraph (10) –

(a) be served on the clerk of petty sessions not less than 14 days before the day fixed for the commencement of the proceedings to which the application relates; or

(b) be accompanied by a full written explanation specifying the reasons why the application could not have been served in accordance with sub-paragraph (a).

(2) An application under paragraph (1) shall contain the following –

(a) a summary of the evidence it is proposed to adduce and of the questions it is proposed to put to any witness;

(b) a full explanation of the reasons why it is considered that the evidence and questions fall within paragraphs (3) or (5) of Article 28 of the 1999 Order;

(c) a summary of any document or other evidence to be submitted in support of such evidence and questions;