STATUTORY RULES OF NORTHERN IRELAND

2003 No. 296

MAGISTRATES' COURTS

The Magistrates' Courts (Amendment) Rules (Northern Ireland) 2003

Made - - - -	*8th June 2003*
Coming into operation	*30th June 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) 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) Rules (Northern Ireland) 2003 and shall come into operation on 30th June 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) After Rule 2(3)(b) there shall be added:

"(c) "the 1999 Order" means the Criminal Evidence (Northern Ireland) Order 1999.".

(2) Rule 149A shall be amended as follows –

(a) in paragraph (1), sub-paragraph (b) shall be revoked;

(b) in paragraph (2), sub-paragraph (b) shall be revoked;

(c) in paragraph (3), the words "and, where the application relates to the taking of evidence on behalf of the prosecution from a witness coming within paragraph (1)(b), the name and relationship of the person who it is proposed will accompany that witness" shall be deleted;

(d) in paragraph (8)(a), the words ", and in the case of a witness coming within paragraph (1)(b), the name and relationship (if any) to the witness of the person who is to accompany the witness" shall be deleted; and

(**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. 1996 No. 126 and S.R. 1999 No.6

(e) in paragraph (15), sub-paragraph (a) shall be revoked.

(3) For Rule 149AA, there shall be substituted the following new Rule: –

"**Application for special measures directions**

149AA.—(1) An application by a party in any criminal proceedings for a special measures direction under Article 7 of the 1999 Order shall be made by giving notice in Form 15B.

(2) If the application is for a special measures direction –

(a) enabling a witness to give evidence by means of a live link, the information sought in Part 2 of Form 15B shall be provided;

(b) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part 3 of Form 15B shall be provided.

(3) 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 defendant.

(4) 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.

(5) Any party on whom a copy of a notice of the application under paragraph (1) is served may oppose the application for a special measures direction in respect of any measure available in relation to the witness, whether or not the question of whether the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order is in issue.

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

(7) In order to comply with paragraph (6) –

(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(1)(a) of the 1999 Order; and

(ii) opposes the granting of a special measures direction; and

(b) where the application relates to the admission of a video recording, a party who receives a recording shall provide the information required by Rule 149AG(5).

(8) Except where notice is received in accordance with paragraph (6), a resident magistrate may –

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

(b) direct a hearing.

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

(10) Where a hearing of the application is to take place in accordance with paragraphs (8) or (9), the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(11) A party notified in accordance with paragraph (10) may be present at the hearing and be heard.

(12) 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 15C, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence."

(4) After Rule 149AA, there shall be inserted the following new Rules: –

"**Application for an abridgement of time**

149AB.—(1) The period specified in Rule 149AA(3) may be abridged at any time by the court on an application made in writing, specifying why the applicant is or was unable to make the application within that period.

(2) The application shall be served, by the applicant, on the clerk of petty sessions and on every other party to the proceedings.

(3) An application for an abridgement of time under this Rule shall be determined by a resident magistrate without a hearing unless the resident magistrate otherwise directs.

(4) Where the resident magistrate abridges the period of 14 days under Rule 149AA(3), he shall also specify the period within which any other party to the proceedings may give notice of opposition in writing under Rule 149AA(6).

(5) The clerk of petty sessions shall notify all the parties of the resident magistrate's decision, and (as the case may be) the period specified by the resident magistrate for the giving of notice of opposition in writing under Rule 149AA(6).

Late applications

149AC.—(1) Notwithstanding the requirements of Rule 149AA –

(a) an application may be made for a special measures direction orally at the trial; or

(b) the court may of its own motion raise the issue whether a special measures direction should be given.

(2) Where an application is made in accordance with paragraph (1)(a) –

(a) the applicant shall state the reasons for the late application; and

(b) the court must be satisfied that the applicant was unable to make the application in accordance with Rule 149AA.

(3) The court shall determine before making a special measures direction –

(a) whether to allow other parties to the proceedings to make representations on the application;

(b) the time allowed for making such representations (if any); and

(c) whether the application should be determined following a hearing at which the parties to the proceedings may be heard.

Discharge or variation of a special measures direction

149AD.—(1) An application to discharge or vary a special measures direction under Article 8(2) of the 1999 Order 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, by the applicant, on the clerk of petty sessions and on each party to the proceedings as soon as reasonably practicable after the change of circumstances occurs.

(3) Any party on whom the application is served in accordance with paragraph (2) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 149AA shall apply to an application to discharge or vary a special measures direction as they apply to an application for a direction.

Renewal application following a material change of circumstances

149AE.—(1) Where an application for a special measures direction has been refused by the court, the application may only be renewed ("renewal application") where there has been a material change of circumstances since the court refused the application.

(2) The applicant shall –

(a) specify in the renewal application each material change of circumstances which is alleged to have occurred; and

(b) serve the renewal application on the clerk of petty sessions, and on each party to the proceedings, as soon as reasonably practicable after the change occurs.

(3) Any party on whom the application is served in accordance with paragraph (2)(b) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 149AA, Rules 149AF and 149AG shall apply to a renewal application as they apply to the application which was refused.

Application for special measures direction for witness to give evidence by means of a live link

149AF.—(1) Where the application for a special measures direction is made in accordance with Rule 149AA(2)(a), for a witness to give evidence by means of a live link, the following provisions of this Rule shall also apply.

(2) Subject to paragraph (3), a party who seeks to oppose an application for a witness to give evidence by means of a live link shall, in order to comply with Rule 149AA(6), state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness's evidence.

(3) Paragraph (2) does not apply in relation to a witness in need of special protection within the meaning of Article 9(1)(b) of the 1999 Order.

(4) Where a special measures direction is made enabling a witness to give evidence by means of a live link, that witness shall be accompanied at the live link only by persons acceptable to a resident magistrate.

Video recording of testimony from witnesses

149AG.—(1) Where an application is made for a special measures direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the following provisions of this Rule shall also apply.

(2) Notice of the application made in accordance with Rule 149AA(1) shall be accompanied by the video recording (or a copy of the video recording) which it is proposed to tender in evidence and shall include –

(a) the name of the defendant and the offence charged;

(b) the name and date of birth of the witness in respect of whom the application is made;

(c) the date on which the video recording was made;

(d) a statement as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness;

(e) a statement that, in the opinion of the applicant, either –

(i) the witness is available for cross-examination; or

(ii) the witness is not available for cross-examination and the parties have agreed that there is no need for the witness to be so available;

(f) a statement of the circumstances in which the video recording was made which complies with paragraph (4); and

(g) the date on which the video recording was disclosed to the other party or parties.

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, the application shall specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4).

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) shall include the following information, except in so far as it is contained in the recording itself, –

(a) the times at which the recording commenced and finished, including details of interruptions;

(b) the location at which the recording was made and the usual function of the premises;

(c) in relation to each person present at any point during, or immediately before, the recording –

(i) their name, age and occupation;

(ii) the time for which each person was present; and

(iii) the relationship, if any, of each person to the witness and to the defendant;

(d) in relation to the equipment used for the recording –

(i) a description of the equipment;

(ii) the number of cameras used;

(iii) whether the cameras were fixed or mobile;

(iv) the number and location of the microphones;

(v) the video format used; and

(vi) whether it offered single or multiple recording facilities and, if so, which were used; and

(e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) A party who receives a copy of a recording under paragraph (2) shall within 7 days of the date on which it was served on him, notify the applicant and the clerk of petty sessions, in writing –

(a) whether he objects to the admission under Article 15 of the 1999 Order of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted;

(b) whether he would agree to the admission of part of the video recording or recordings and if so, which part or parts; and