STATUTORY RULES OF NORTHERN IRELAND

1996 No. 126

MAGISTRATES' COURTS

The Magistrates' Courts (Amendment) Rules (Northern Ireland) 1996

Made - - - -	*27th March 1996*
Coming into operation	*8th April 1996*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**) and Articles 81(5) and 81A(11) of the Police and Criminal Evidence (Northern Ireland) Order 1989(**2**) and of 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 and commencement

1. These Rules may be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 1996 and shall come into operation on 8th April 1996.

Interpretation

2. In these Rules—

"the principal Rules" means the Magistrates' Courts Rules (Northern Ireland) 1984(**3**);

"the 1969 Rules" means the Magistrates' Courts (Children and Young Persons) Rules (Northern Ireland) 1969(**4**);

"the 1995 Order" means the Children's Evidence (Northern Ireland) Order 1995(**5**).

Saving and revocation

3.—(1) Subject to paragraph (2), Rules 25A and 31(2)(*a*) of the principal Rules are hereby revoked.

(**1**) S.I.1981/1675 (N.I. 26)
(**2**) S.I. 1989/1341 (N.I. 12); to which the most recent relevant amendment was made by S.I. 1995/757 (N.I. 3)
(**3**) S.R. 1984 No. 225; to which the most recent relevant amendment was made by S.R. 1989 No. 422
(**4**) S.R. 1969 No. 221; to which there are amendments not relevant to these Rules
(**5**) S.I. 1995/757 (N.I. 3)

(2) Rule 25A, and as appropriate Rule 31(2)(*a*), of the principal Rules, shall continue to apply to any application under Article 81(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 which was commenced before 8th April 1996.

Amendment to the principal Rules

4. After Rule 149 of the principal Rules, there shall be inserted the following new Rule—

"**Evidence through television link where witness will not give evidence otherwise through fear or is a child or is to be cross-examined after admission of video recording**

149A.—(1) In any proceedings to which paragraph (2) applies, any party may apply for leave under Article 81(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (in this Rule referred to as "the 1989 Order") for evidence to be given by a witness through a live television link if—

(a) the witness will not give evidence otherwise through fear; or

(b) the offence charged is one to which Article 81(3) of the 1989 Order applies and the witness is either—

(i) in the case of an offence falling within Article 81(3)(*a*) or (*b*) of the 1989 Order, under the age of 14; or

(ii) in the case of an offence falling within Article 81(3)(*c*) of the 1989 Order, under the age of 17; or

(iii) a person who is to be cross-examined following the admission under Article 81A of the 1989 Order of a video recording of testimony from him.

(2) This paragraph applies—

(a) to preliminary investigations or preliminary inquiries into indictable offences;

(b) except in a case to which paragraph (1)(*a*) applies, to proceedings in juvenile courts; and

(c) in a case to which paragraph (1)(*a*) applies, to proceedings in juvenile courts being preliminary investigations or preliminary inquiries into indictable offences.

(3) An application under paragraph (1) shall be made by giving notice in writing which shall be in Form 15A in Schedule 1. Such notice shall state the grounds of the application 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.

(4) 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.

(5) The notice under paragraph (3) 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.

(6) Subject to paragraph (12), a party who receives a copy of a notice under paragraph (3) and who wishes to oppose the application shall within 7 days of receipt of such notice,

notify the applicant and the clerk of petty sessions, in writing of his opposition, giving the reasons therefor.

(7) An application under paragraph (1) shall be determined by the court which may direct a hearing and, if a hearing is directed, the clerk of petty sessions shall notify the parties of the time and place of such hearing.

(8) The clerk of petty sessions shall notify all the parties of the decision of the court in relation to an application under paragraph (1) and where leave is granted, the notification shall state—

(a) where the witness is to give evidence on behalf of the prosecutor, the name of the witness, or (as the case may be) the letter under which he is designated in the proceedings, 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; and

(b) the place at which the proceedings to which the application relates should take place.

(9) Without prejudice to anything in the Magistrates' Courts (Northern Ireland) Order 1981, where any proceedings to which paragraph (2) applies are adjourned to a designated place in exercise of the power conferred by Article 81(7)(*a*) of the 1989 Order—

(a) the clerk of the court which grants leave shall transfer all documentation and papers in relation to the case to the court at the designated place; and

(b) the complaint and any depositions and recognizances already taken in, or notices and documents furnished in respect of the matter, shall be deemed for all purposes to have been made or taken by or before, or furnished to the clerk of the court to which the investigation is adjourned.

(10) The period specified in paragraph (4)(*a*) may be abridged at any time by the court on an application made in writing, specifying the grounds of the application and sent to the clerk of petty sessions, and a copy of the application shall be sent by the applicant to every other party to the proceedings.

(11) An application for abridgement of time under paragraph (10) shall be determined by the court which may direct a hearing and, if a hearing is directed, the clerk of petty sessions shall notify the parties of the time and place of such hearing.

(12) Where the court abridges the period of 14 days under paragraph (4)(*a*), it shall also specify the period within which any other party to the proceedings may give notice of opposition in writing under paragraph (6) to the application under paragraph (1).

(13) The clerk of petty sessions shall notify all parties of the decision of the court on the application for abridgement of time, and (as the case may be) the period specified by the court for the giving of notice of opposition in writing under paragraph (6) by any other party to the proceedings.

(14) Unless the court otherwise directs, a witness shall, when giving evidence through a live television link, be present in the building in which the court is sitting.

(15) When giving evidence through a live television link—

(a) a witness coming within paragraph (1)(*b*) shall be accompanied by a person acceptable to the court and, unless the court otherwise directs, by no other person;

(b) any other witness shall not be accompanied by any other person unless the court otherwise directs.".

5. For Form 15A in Schedule 1 to the principal Rules, there shall be substituted the new Form 15A set out in Schedule 1 to these Rules.

Amendment to the 1969 Rules

6. After Rule 10 of the 1969 Rules, there shall be inserted the following new Rules—

"**Evidence through television link where witness will not give evidence otherwise through fear or is a child or is to be cross-examined after admission of video recording**

10A. Rule 149A of the Magistrates' Courts Rules (Northern Ireland) 1984 shall apply to any application made to the court under Article 81(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.

Video recordings of testimony from a child

10B.—(1) In proceedings for an offence to which Article 81(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (in this Rule known as "the 1989 Order") applies, any party may apply to the court for leave under Article 81A(2) of the 1989 Order to tender in evidence a video recording of testimony if—

(a) in the case of an offence falling within Article 81(3)(*a*) or (*b*) of the 1989 Order, the witness is under the age of 14 or, if he was under 14 when the video recording was made, is under the age of 15; or

(b) in the case of an offence falling within Article 81(3)(*c*) of the 1989 Order, the witness is under the age of 17 or, if he was under 17 when the video recording was made, is under the age of 18; and

the video recording is of an interview conducted between an adult and a person coming within sub-paragraph (*a*) or (*b*) (not being the accused or one of the accused) which relates to any matter or issue in the proceedings.

(2) An application under paragraph (1) shall be made by giving notice in writing, which shall be in the form prescribed in Form 75 in the Schedule. Such notice shall state the grounds of the application and shall be accompanied by the video recording which it is proposed to tender in evidence and shall include the following, namely—

(a) the name of the accused and the offence or offences 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 that in the opinion of the applicant the witness is willing and able to attend the trial for cross-examination;

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

(f) 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, an application under paragraph (1) must specify that part and be accompanied by a video recording of the entire interview including those parts of the interview 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)(*e*) and (3) shall include the following information, except insofar as it is contained in the recording itself, namely—

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

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

(c) the name, age and occupation of any person present at any point during the recording, the time for which he was present and his relationship (if any) to the witness and to the accused;

(d) a description of the equipment used, including the number of the cameras used and whether they were fixed or mobile, the number and location of microphones and the video format used and whether there were single or multiple recording facilities; 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) An application under paragraph (1) shall be made not less than 14 days before the commencement of the proceedings to which the application relates.

(6) The period of 14 days under paragraph (5) may be abridged at any time by the court on an application made in writing, specifying the grounds of the application. The clerk of petty sessions shall notify all the parties of the decision of the court on the application for extension of time.

(7) The notice under paragraph (2) or (6) shall be served on the clerk of petty sessions and, at the same time, copies thereof shall be served by the applicant on every other party to the proceedings. Copies of any video recording required by paragraph (2) or (3) to accompany the notice shall at the same time be sent to the court and to any other party who has not already been served with a copy, or in the case of an accused acting in person, shall be made available for viewing by him.

(8) A party who receives a copy of a notice under paragraph (2) shall, within 7 days of service of the notice, notify the applicant and the clerk of petty sessions in writing—

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

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

(c) whether he wishes to be represented at any hearing of the application.

(9) After the expiry of the period referred to in paragraph (8) the court shall determine whether an application under paragraph (1) is to be dealt with—

(a) without a hearing; or

(b) where any party notifies the clerk of petty sessions pursuant to paragraph (8) that he objects to the admission of any part of the video recording and that he wishes to be represented at any hearing, or in any other case where the court so directs, at a hearing at which the applicant and such other party or parties as the court may direct may be represented,

and the clerk of petty sessions shall notify the applicant and, where necessary, the other party or parties, of the time and place of any such hearing.

(10) The clerk of petty sessions shall within 3 working days of the decision of the court in relation to an application under paragraph (1) being made, notify all the parties of it in the form prescribed in Form 76 in the Schedule, and, where leave is granted, the notification