1992 No. 541

MAGISTRATES' COURTS

Magistrates' Courts (Amendment) Rules (Northern Ireland) 1992

Made . . . . . 12th December 1992

Coming into operation . . 1st February 1993

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 and Article 126(1) and (3) of the Magistrates' Courts (Northern Ireland) Order 1981(**a**) and section 1A of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968(**b**), 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 and commencement

1. These rules may be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 1992 and shall come into operation on 1st February 1993.

Interpretation

2. In these rules "the principal rules" means the Magistrates' Courts Rules (Northern Ireland) 1984(**c**) and a Rule or Schedule referred to by number means the Rule or Schedule so numbered in the principal rules.

Amendment to the principal rules

3.—(1) Rule 11 shall be amended as follows:

(*a*) in paragraph (1) after the words "Rule 12" there shall be inserted the words "and Rule 12A";

(*b*) in paragraph (4) after the words "Subject to" there shall be inserted the words "Rule 12A and";

(*c*) for paragraph (7) there shall be substituted the following paragraph:

"(7) In every case the person who serves a summons shall endorse on the original the date, place and manner of service and, unless service may be proved by an affidavit or a certificate of service

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(**a**) S.I. 1981/1675 (N.I. 26); Article 126 was amended by S.I. 1989/1341 (N.I. 12), Article 86 and Schedule 4 paragraph 3

(**b**) 1968 c. 28 (N.I.); section 1A was inserted by S.I. 1989/1341 (N.I. 12) Article 86 and Schedule 4 paragraph 1

(**c**) S.R. 1984 No. 225

in Form 110A shall attend at the hearing of the complaint to depose, if necessary, to such service and in the case of service by registered post or the recorded delivery service there shall be attached to the affidavit or certificate of service or be produced in court the certificate of posting and, subject to Rule 13(2)(*a*), the advice of delivery issued by the Post Office'';

(2) Rule 12 shall be amended by inserting in paragraph (2) after the words ''or sheriff clerk'' the words ''or by a certificate of service in Form 110A''.

(3) After Rule 12 there shall be inserted the following new Rules:

''*Postal service of summonses for offences prosecuted by the Royal Ulster Constabulary*

12A.—(1) Subject to paragraph (6), in cases of summary offences prosecuted by a member of the Royal Ulster Constabulary service of the summons may be effected by post in accordance with paragraph (2).

(2) Service of a summons under this Rule shall be effected by sending a copy of the summons by ordinary post in an envelope addressed to the person to be served at his usual or last known place of abode or at his place of business.

(3) Where a summons is to be served in accordance with paragraph (2) the person posting the envelope containing the copy of the summons shall endorse on the original summons his name, rank or description and the date and place of posting of the envelope and shall complete and sign a certificate of service in Form 110A.

(4) If the person summoned fails to appear in answer to a summons served in the manner authorised by paragraph (2), such service shall not be valid unless an acknowledgement of service in Form 110B appearing to be signed by the defendant or his solicitor is produced to the court.

(5) Unless the contrary is proved—

(*a*) the signed acknowledgement shall be taken as proof of service; and

(*b*) the document shall be deemed to have been served at the time at which the envelope containing it would have been delivered in the ordinary course of post.

(6) This Rule shall not apply to—

(*a*) summonses in respect of offences to which Article 29 or Article 45 of the Order apply;

(*b*) service of a summons on a corporate body;

(*c*) summonses in respect of offences where the person against whom the complaint is made is a child or young person within the meaning of Part IV of the Children and Young Persons Act (Northern Ireland) 1968(**a**); or

(**a**) 1968 c. 34 (N.I.)

(*d*) summonses which, under any statutory provision, require personal service upon the person to be served.

(7) Nothing in this Rule shall prevent the service of a summons by any other method allowed for under these Rules.

Receipt of certificate in evidence

12B. Any document purporting to be given as a certificate in Form 110A shall be received in evidence and shall be deemed to be duly made until the contrary is shown.''.

(4) Rule 13 shall be amended as follows:

(*a*) in paragraph (3) for the words ''Evidence (either oral or by affidavit) of such service shall be given at the hearing of the complaint by the summons server who shall produce to the court, or, as the case may be, attach to the affidavit'' there shall be substituted the words ''Unless service shall be proved by affidavit or a certificate of service in Form 110A the person who serves the summons shall attend at the hearing of the complaint to depose, if necessary, to such service and shall produce to the court, or, as the case may be attach to the affidavit or certificate of service'';

(*b*) in paragraph (11) after the words ''on affidavit'' there shall be inserted the words ''or by a certificate of service in Form 110A'' and after the words ''the affidavit'' there shall be inserted the words ''or to the certificate of service''.

(5) After Rule 13 there shall be inserted the following new Rule:

''*Declaration under Article 25A of the Order*

13A.—(1) A statutory declaration in accordance with Article 25A of the Order shall be made in Form 110C.

(2) Where the clerk of petty sessions receives a statutory declaration which complies with Article 25A of the Order he shall:

(*a*) record the receipt of the declaration in the Order Book against the relevant entry; and

(*b*) notify in writing the prosecutor and, if the prosecutor is not a member of the Royal Ulster Constabulary, the Chief Constable of the Royal Ulster Constabulary.''.

(6) Paragraph (6) of Rule 23 shall be amended by the addition at the end of the words ''and such service may be effected by ordinary post''.

4. The principal rules shall be further amended by inserting, after Form 110 in Schedule 1, the forms set out in the Schedule to these Rules.

Dated 12th December 1992 *Mackay of Clashfern,* C.