1989 No. 422

MAGISTRATES' COURTS

Magistrates' Courts (Amendment) Rules (Northern Ireland) 1989

Made . . . . . *1st November 1989*

Coming into operation . . *20th November 1989*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**a**) and Article 81(5) of the Police and Criminal Evidence (Northern Ireland) Order 1989(**b**) 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) 1989 and shall come into operation on 20th November 1989.

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 a Rule or Schedule so numbered in the Principal Rules.

3. The Principal Rules shall be amended by inserting after rule 25 the following rule:—

"*Evidence through a live television link where witness is under 14 or will not give evidence otherwise through fear*

25A.—(1) 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 at a preliminary investigation into an indictable offence through a live television link by a witness who:—

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

(*b*) is under the age of 14 and the offence charged is specified in Article 81(3) of the 1989 Order.

(2) 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

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(a) S.I. 1981/1675 (N.I. 26)
(b) S.I. 1989/1341 (N.I. 12)
(c) S.R. 1984 No. 225 to which there are amendments not relevant to these Rules

the taking of evidence from a person under 14 years of age on behalf of the prosecution, the name, occupation and relationship of the person who it is proposed will accompany that witness.

(3) An application under paragraph (1) shall be made not less than 14 days before the day fixed for the commencement of a preliminary investigation (other than the taking of a deposition relating to the arrest or, where directed by the court, the remand of the accused).

(4) The notice under paragraph (2) 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) Subject to paragraph (11), a party who receives a copy of a notice under paragraph (2) 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.

(6) 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.

(7) 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 under the age of 14, the name, occupation and relationship, (if any) to the witness of the person, who is to accompany the witness and,

(*b*) the place at which the preliminary investigation should take place.

(8) Without prejudice to anything in the Magistrates' Courts (Northern Ireland) Order 1981, where a preliminary investigation into an indictable offence is 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.

(9) The period of 14 days under paragraph (3) 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.

(10) An application for abridgement of time under paragraph (9) 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.

(11) Where the court abridges the period of 14 days under paragraph (3), it shall also specify the period within which any other party to the proceedings may give notice of opposition in writing under paragraph (5) to the application under paragraph (1).

(12) 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 (5) by any other party to the proceedings.

(13) 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.

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

(*a*) a witness who is under the age of 14 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.''.

4. Rule 31 of the Principal Rules shall be amended by substituting for paragraph (2) the following paragraph:—

''(2) The following provisions shall apply to a preliminary inquiry:—

(*a*) Rule 25A;

(*b*) Rule 27; and

(*c*) Rules 29 and 30 in any case where depositions are taken.''.

5. The Principal Rules shall be further amended by inserting, after Form 15 in Schedule 1, the form set out in the Schedule to these Rules.

Dated 1st November 1989 *Mackay of Clashfern,* C.