**1973. No. 219** **[C]**

# MAGISTRATES' COURTS

## Magistrates' Courts (Postal Service of Summons) (Amendment) Rules (Northern Ireland) 1973

RULES, DATED 29TH JUNE 1973, MADE BY THE SECRETARY OF STATE UNDER SECTION 23 OF THE MAGISTRATES' COURTS ACT (NORTHERN IRELAND) 1964.

I, THE RIGHT HONOURABLE WILLIAM WHITELAW, M.C., M.P., in exercise of the powers conferred on me by section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(**a**), section 1(1) of the Northern Ireland (Temporary Provisions) Act 1972(**b**) and of all other powers enabling me in that behalf, on the recommendation of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, do hereby make the following Rules:—

*Citation*

**1.** These Rules may be cited as the Magistrates' Courts (Postal Service of Summons) (Amendment) Rules (Northern Ireland) 1973.

*Service of certain summonses by ordinary post*

**2.**—(1) Where a summons server informs the clerk of petty sessions that the envelope containing a copy of a summons, postal service of which has been permitted under Rule 3 of the Magistrates' Courts (Postal Service of Summons) Rules (Northern Ireland) 1972(**c**), has been returned by the Post Office on the ground that delivery of the envelope was not accepted by anyone at the address of the person to be served, the clerk shall forthwith give notice thereof in writing to the complainant named in the summons or to his solicitor and transmit to the complainant or, as the case may be, his solicitor the documents listed in paragraph (3)(*a*), (*b*), (*c*) and (*d*).

(2) The complainant or his solicitor may thereupon either verbally or in writing request a resident magistrate to grant permission for the summons to be served by ordinary post.

(3) A resident magistrate may grant such permission upon production of—

(*a*) the original summons endorsed under Rule 3 of the said Rules of 1972;

(*b*) the Post Office receipt of postage referred to in that Rule;

(*c*) the copy of the summons enclosed in the envelope containing it returned by the Post Office as undelivered;

(*d*) the form of advice of the Post Office that the envelope containing such copy could not be delivered according to the practice of the Post Office as to delivery by registered post or, as the case may be, by the recorded delivery service because delivery of the envelope was not accepted by anyone at the address of the person to be served;

(**a**) 1964. c. 21 (N.I.).
(**b**) 1972. c. 22.
(**c**) S.R. & O. (N.I.). 1972, No. 91.

(*e*) a certificate in Form 1 in the Schedule signed by the complainant or his solicitor or other person authorised to do so on his behalf that, having regard to the reason given by the Post Office for non-delivery of the envelope containing the copy summons addressed to the person to be served stated in the form of advice referred to in sub-paragraph (*d*), to the best of his knowledge or belief a copy of the summons if sent by ordinary post to the person to be served at the address stated in the summons will, for the reason stated by the complainant in the certificate, come to the notice of that person a reasonable time before the date on which he is summoned to appear before the court;

and shall endorse such permission on the original summons.

(4) Where such permission is granted the summons server shall—

(*a*) send the 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; and

(*b*) endorse on the original summons the place and date of posting of such copy to the person to be served.

(5) Subject to paragraph (6) the summons server shall attend at the hearing of the complaint stated in the summons to depose as to compliance with this Rule.

(6) Where proof of such compliance is given on affidavit in accordance with section 127 of the Magistrates' Courts Act (Northern Ireland) 1964 the documents referred to in paragraph (3)(*a*) to (*e*) shall be attached to the affidavit.

(7) The affidavit shall be in Form 2 in the Schedule.

(8) The copy of the summons posted in accordance with this Rule shall, unless the contrary is proved, 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.

(9) In this Rule a reference to a summons server includes any person who has under Rule 11(2)(*c*) of the Magistrates' Courts Rules (Northern Ireland) 1965(**d**) received the permission of a resident magistrate, justice of the peace or clerk of petty sessions to serve a summons.

(10) The fee payable for the service of the summons under Schedule 3 to the said Rules of 1965 shall be deemed to cover the charge of postage under paragraph (4)(*a*).

Dated this 29th day of June 1973.

*W. S. I. Whitelaw,*
One of Her Majesty's Principal Secretaries of State.

(**d**) S.R. & O. (N.I.) 1965, No. 206.