

2011 No. 418

MAGISTRATES' COURTS

**The Magistrates' Courts (Amendment No. 2) Rules (Northern
Ireland) 2011**

Made - - - - - *9th December 2011*

Coming into operation - *1st January 2012*

The Magistrates' Courts Rules Committee makes the following Rules in exercise of the powers conferred by Articles 13, 118A (5), (6) and (7), 118B (3) and (4), 118C (5), (6) and (7) and 118D (4) and (5) of the Magistrates' Courts (Northern Ireland) Order 1981(a), after consultation with the Department of Justice and with the agreement of the Lord Chief Justice.

Citation and Commencement

1. These Rules may be cited as the Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2011 and shall come into operation on 1st January 2012.

Amendment of the Magistrates' Courts Rules (Northern Ireland) 1984

2. The Magistrates' Courts Rules (Northern Ireland) 1984(b) are amended as follows—

(1) after rule 52G, insert—

“Notice of application for a domestic freezing order

52GA.—(1) An application under section 10(1) of the Act (domestic freezing orders) shall be made by giving notice in writing to the clerk of petty sessions and shall be accompanied by –

- (a) the certificate, referred to in section 11 of the Act, prepared by the applicant; and
- (b) either the request made under section 7 of the Act, or an indication of when such a request will be made.

(2) Where the court makes a domestic freezing order under section 10(1) the clerk of petty sessions shall, within 14 days of the date the order was made, send to the Secretary of State –

- (a) the domestic freezing order;
- (b) the certificate prepared by the applicant and signed by the district judge (magistrates' courts); and

(a) S.I.1981/1675 (N.I.26); Article 13 was amended by paragraph 133 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010 No.976); and paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4)

(b) S.R. 1984 No.225; to which the most recent relevant amendments were made by S.R. 2003 No.96 and No.477, S.R. 2010 No.12 and S.R. 2011 No.59

- (c) either the request under section 7 of the Act, or an indication of when such a request will be made.

Variation or revocation of a domestic freezing order

52GB.—(1) An application to vary or revoke a domestic freezing order under section 12 of the Act shall be made in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the order 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 in circumstances occurs.

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

(4) Except where notice is received in accordance with paragraph (3), the court may -

- (a) determine the application in favour of the applicant without a hearing; or
- (b) direct a hearing.

(5) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (3) of his opposition to the application, the court may direct a hearing of the application.

(6) Where a hearing of the application is to take place in accordance with paragraphs (4) or (5) the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(7) A party notified in accordance with paragraph (6) may be present at the hearing and be heard.

(8) 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

(9) Where the court makes an order to vary or revoke a freezing order under section 12 of the Act, the clerk of petty sessions shall, as soon as reasonably practicable, send a copy of that order to the Secretary of State.”;

(2) after rule 52I, insert –

“Consideration of an overseas freezing order

52IA.—(1) In proceedings before a court nominated under section 21 of the Act, the court shall consider whether to give effect to the freezing order—

- (a) save in exceptional circumstances, on the next business day after receipt of a copy of the order from the Secretary of State; and
- (b) in any event within 5 business days of receipt of the order.

(2) The court shall not consider an overseas freezing order unless it is satisfied that the Chief Constable has -

- (a) been given notice of the order; and
- (b) had an opportunity to be heard.

(3) The court may consider an overseas freezing order-

- (a) without a hearing; or
- (b) at a hearing in private or public.

(4) The clerk of petty sessions shall, as soon as reasonably practicable, give notice of any decision of the court in respect of an overseas freezing order to the Secretary of State.

(5) In this rule “business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday.

(6) In paragraph (5) “bank holiday” means a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971.

Release of evidence subject to an overseas freezing order

52IB.—(1) An application under section 25 of the Act for the release of evidence which is subject to an overseas freezing order shall be made by giving notice in writing and shall state the reasons why the evidence should be released.

(2) An application under paragraph (1) shall be served on the clerk of petty sessions, and on each of the parties to the proceedings, as soon as reasonably practicable, after the reasons for making the application occur.

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

(4) Except where notice is received in accordance with paragraph (3), the court may -

- (a) determine the application in favour of the applicant without a hearing; or
- (b) direct a hearing.

(5) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (3) of his opposition to the application, the court may direct a hearing of the application.

(6) Where a hearing of the application is to take place in accordance with paragraphs (4) or (5) the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(7) A party notified in accordance with paragraph (6) may be present at the hearing and be heard.

(8) 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.

(9) Where the court makes an order under section 25 of the Act the clerk of petty sessions shall, as soon as reasonably practicable, give notice of that order to the Secretary of State.”;

(3) after rule 149AD, insert—

“Application to disapply or disapply in part the primary rule

149ADA.—(1) An application to disapply or disapply in part the primary rule under Article 9(4)(ba) of the 1999 Order shall be made in writing and shall include such information as the court requires to make a determination.

(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 witness has expressed that wish.

(3) Paragraphs (6) to (12) of Rule 149AA shall apply to an application to disapply or disapply in part the primary rule as they apply to an application for a direction.”;

(4) in rule 149AF,—

- (a) in paragraph (2), omit “Subject to paragraph (3), ”; and
- (b) omit paragraphs (3) and (4);

(5) after rule 149I , insert—

“WITNESS SUMMONSES

149J. In these Rules, unless the context otherwise requires—

“the applicant” means the applicant in relation to an application to which that rule applies; and

“the directed person” and “the stipulated evidence, document or thing” have the same meaning as in Article 118A(8) of the Order.

Application for a witness summons

149K.—(1) This rule applies to an application under Article 118A of the Order for the issue of a witness summons.

(2) Subject to paragraphs (9) to (10), the application shall be made in writing, and shall—

- (a) contain a brief description of the stipulated evidence, document or thing;
- (b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material evidence;
- (c) set out the reason why a witness summons should be issued to secure the attendance of the directed person to give evidence or to produce the document or thing;
- (d) be accompanied with a draft Form 85A; and
- (e) if the witness summons is proposed to require the directed person to produce a document or thing—
 - (i) inform the directed person of his right under paragraph (5) to make representations in writing and at a hearing; and
 - (ii) state whether the applicant seeks a requirement to be imposed under Article 118B of the Order (power to require advance production) and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.

(3) The application shall be supported by an affidavit—

- (a) setting out any complaint on which the proceedings concerned are based;
- (b) specifying the stipulated evidence, document or thing in such a way as to enable the directed person to identify it;
- (c) specifying grounds for believing that the directed person is likely to be able to give the stipulated evidence or, to produce the stipulated evidence, document or thing;
- (d) specifying grounds for believing that the stipulated evidence is likely to be material evidence or, as the case may be, that the stipulated document or thing is likely to be material evidence.

(4) The application and the supporting affidavit shall be served on the clerk of petty sessions and the directed person.

(5) The directed person may, within 7 days of receiving a copy of the application under paragraph (4), inform, in writing, the clerk of petty sessions whether or not he wishes to make representations, concerning the issue of the witness summons proposed to be directed to him, at a hearing and may also serve written representations on the clerk of petty sessions.

(6) The clerk of petty sessions shall—

- (a) if the directed person indicates that he wishes to have the application considered at a hearing, fix a time, date and place for the hearing;
- (b) if the directed person does not indicate in accordance with paragraph (5) that he wishes to make representations at a hearing, refer the application to the court for determination with or without a hearing;
- (c) notify the applicant and, where sub-paragraph (a) applies, the directed person of the time, date and place fixed for any hearing of the application.

(7) A hearing under this rule may, if the court so directs, take place in private and the reasons for granting or refusing the application shall be recorded in the Order Book.

(8) In the case of an application for a witness summons which it is proposed shall require the directed person to give evidence but not to produce any document or thing, that application may, with the consent of the court, be made orally to the court and, in such a case—

- (a) paragraphs (3) to (7) shall not have effect; and
- (b) the application shall, in addition to the matters set out in sub-paragraphs (a) to (d) of paragraph (2), specify—
 - (i) any complaint on which the proceedings concerned are based; and
 - (ii) the grounds for believing that the directed person is likely to be able to give the stipulated evidence.

(9) Subject to paragraph (10) and rule 149L, in the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made within 7 days of the date fixed for hearing the proceedings, the clerk of petty sessions shall refer the notice of application to the court to determine or, give such directions as it considers appropriate, and paragraphs (2)(e)(i) and (4) to (6) shall not have effect.

(10) In the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made during the course of proceedings, such application shall be made orally to the court to determine the application or to give such directions as it considers appropriate, and in such a case—

- (a) paragraphs (3) to (7) shall not have effect; and
- (b) the application shall, in addition to the matters set out in sub-paragraphs (a) to (d) of paragraph (2), specify the grounds for believing that the directed person is likely to be able to produce the document or thing.

Application that summons be of no further effect

149L.—(1) This rule applies to an application under Article 118B of the Order.

(2) The application shall be made in writing to the clerk of petty sessions as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under Article 118B of the Order.

(3) The application shall state that the applicant concludes that the requirement imposed by the witness summons under Article 118A(2) of the Order is no longer needed.

(4) If a direction is given under Article 118B of the Order following the application, the clerk of petty sessions shall notify the person to whom the witness summons is directed of the effect of the direction.

Application to make the summons issued on application ineffective

149M.—(1) This rule applies to an application under Article 118C of the Order.

(2) The application shall be made in writing, be served on the clerk of petty sessions, and shall—

- (a) state that the applicant was not served with notice of the application to issue the summons and that he was neither present nor represented at any hearing of that application; and
- (b) set out the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence.

(3) On receiving the application the clerk of petty sessions shall—

- (a) serve notice of the application on the person on whose application the witness summons was issued; and

- (b) refer the application —
 - (i) to the district judge (magistrates' courts) who will hear and determine the complaint; or
 - (ii) to the district judge (magistrates' courts) or lay magistrate who issued the witness summons or, the district judge (magistrates' court) who will hear the complaint, if the hearing of the complaint has not yet begun.

(4) The court shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons was issued have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(5) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

- (a) the applicant can produce that document or thing; but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence or that it is not in the interests of justice for it to be produced,

the applicant must, unless the court directs otherwise, arrange for the document or thing to be available at the hearing of the application.

(6) A hearing under this rule may, if the court so directs, take place in private and the reasons for granting or refusing the application shall be recorded in the Order Book.

(7) The clerk of petty sessions shall notify the applicant and the person on whose application the witness summons was issued of the decision of the court in relation to the application.

Application to make summons issued of the court's own motion ineffective

149N.—(1) Rule 149M shall apply to an application under Article 118D of the Order as it applies to an application under Article 118C of that Order, subject to the following modifications.

(2) Paragraphs (2)(a) and (3)(a) shall be omitted.

(3) In paragraphs (4) and (7), the words “and the person on whose application the witness summons was issued” shall be omitted.

(4) In paragraph (4), for the words “(where they agreed to do so)”, there shall be substituted “(where he agrees to do so)”; and

(6) in Schedule 1, —

(a) in Form 15B, in PART 2, after “State why it is believed that this person should accompany the witness” insert “(include the witness' views)”; and

(b) in Form 85, —

(i) in the heading, after “Summons to Witness” insert “(Non-Criminal Proceedings)”; and

(ii) in the title, delete “Complainant”; and

(iii) delete “[complaint has been made]”; and

(c) insert Form 85A, set out in the Schedule to these Rules.

*W.A. McNally
Peter Luney
John Rea
Stewart Ballentine
Sharon Hughes*

Dated 9th December 2011

SCHEDULE

Rule 2(6)(c)

Form 85A

THE MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Article 118A(1); Rule 149K)

Summons to Witness (Criminal Proceedings)

of]
]]
] Petty Sessions District of
]]
Complainant]
]]
] County Court Division of
of]
]]
Defendant]

TO

of

WHEREAS a complaint has been made that the defendant

AND WHEREAS I am satisfied that you are able to give material evidence on behalf of the complainant/defendant* and/or produce a document or thing; namely:-

*[THIS IS TO COMMAND YOU to produce the said document or thing for inspection at (place) on (date) at (time) and deliver it to (name) .]

THIS IS TO COMMAND YOU to appear as witness before a magistrates' court at (place) on (date) at (time) [and there produce the said document or thing].

This day of 20 .

District Judge (Magistrates' Courts)

[Clerk of Petty Sessions]

* delete as appropriate

NOTE: Failure to appear at the time and place shown above is a criminal offence for which you are liable to prosecution.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make a number of amendments to the Magistrates' Courts Rules (Northern Ireland) 1984 (S.R. 1984 No.225) ("the principal Rules") to allow for:

- domestic and overseas freezing order applications under the Crime (International Co-operation) Act 2003 ("the 2003 Act") to be made to the magistrates' courts;
- the procedure to be followed when making an application to a magistrates' court for a third party witness summons, in criminal proceedings, under new Articles 118A-118E of the Magistrates' Courts (Northern Ireland) Order 1981 (as inserted by the Justice Act (Northern Ireland) 2011 ("the 2011 Act")); and
- the amendments made to Article 9 of the Criminal Evidence (Northern Ireland) Order 1999 ("the 1999 Order") (special provisions relating to child witnesses) by the 2011 Act.

Specifically,

- Rule 2(1) and (2) insert new rules into the principal Rules to prescribe the procedure for dealing with applications in respect of domestic freezing orders and overseas under the 2003 Act;
- Rule 2(3) inserts new rule 149ADA to the principal Rules to provide the procedure for an application to disapply or disapply in part the primary rule in Article 9 of the 1999 Order to take account of amendments made to Article 9 of the 1999 Order by the 2011 Act;
- Rule 2(4) amends rule 149AF of the principal Rules;
- Rule 2(5) inserts new Rules 149J-149N into the principal Rules, setting out the procedure for applications to a magistrates' court in relation to a third party witness summons in criminal proceedings; and
- Rule 2(6) amends forms in Schedule 1 to the principal Rules relating to special measures applications in consequence of rules 2(3) and 2(5) and inserts a new form for an application for a witness summons in criminal proceedings into Schedule 1 in consequence of rule 2(5).

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STATUTORY RULES OF NORTHERN IRELAND

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