

2003 No. 296

MAGISTRATES' COURTS

**The Magistrates' Courts (Amendment) Rules
(Northern Ireland) 2003**

Made - - - - - *8th June 2003*

Coming into operation *30th June 2003*

The Lord Chancellor in exercise of the powers conferred upon him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(a) and Articles 8(6) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(b), on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 2003 and shall come into operation on 30th June 2003.

(2) In these Rules, a reference to a Rule, a Schedule or a Form by number means the Rule, Schedule or Form so numbered in the Magistrates' Courts Rules (Northern Ireland) 1984(c).

Amendment to the principal Rules

2.—(1) After Rule 2(3)(b) there shall be added:

“(c) “the 1999 Order” means the Criminal Evidence (Northern Ireland) Order 1999.”.

(2) Rule 149A shall be amended as follows –

(a) in paragraph (1), sub-paragraph (b) shall be revoked;

(b) in paragraph (2), sub-paragraph (b) shall be revoked;

(c) in paragraph (3), the words “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” shall be deleted;

(d) in paragraph (8)(a), the words “, 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” shall be deleted; and

(e) in paragraph (15), sub-paragraph (a) shall be revoked.

(3) For Rule 149AA, there shall be substituted the following new Rule: –

(a) S.I. 1981 / 1675 (N.I. 26)

(b) S.I. 1999 / 2789 (N.I. 8)

(c) S.R. 1984 No. 225; to which the most recent relevant amendments were made by S.R. 1996 No. 126 and S.R. 1999 No.6

“Application for special measures directions

149AA.—(1) An application by a party in any criminal proceedings for a special measures direction under Article 7 of the 1999 Order shall be made by giving notice in Form 15B.

(2) If the application is for a special measures direction –

(a) enabling a witness to give evidence by means of a live link, the information sought in Part 2 of Form 15B shall be provided;

(b) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part 3 of Form 15B shall be provided.

(3)(a) 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 defendant.

(4) The notice under paragraph (1) 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) Any party on whom a copy of a notice of the application under paragraph (1) is served may oppose the application for a special measures direction in respect of any measure available in relation to the witness, whether or not the question of whether the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order is in issue.

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

(7) In order to comply with paragraph (6) –

(a) a party shall state in the written notification whether he –

(i) disputes that the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order; and

(ii) opposes the granting of a special measures direction; and

(b) where the application relates to the admission of a video recording, a party who receives a recording shall provide the information required by Rule 149AG(5).

(8) Except where notice is received in accordance with paragraph (6), a resident magistrate may –

(a) determine the application in favour of the applicant without a hearing; or

(b) direct a hearing.

(9) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (6) of his opposition to the application, the clerk of petty sessions shall fix a date for the hearing of the application.

(10) Where a hearing of the application is to take place in accordance with paragraphs (8) or (9), the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(11) A party notified in accordance with paragraph (10) may be present at the hearing and be heard.

(12) 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 in Form 15C, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.”

(4) After Rule 149AA, there shall be inserted the following new Rules: –

“Application for an abridgement of time

149AB.—(1) The period specified in Rule 149AA(3) may be abridged at any time by the court on an application made in writing, specifying why the applicant is or was unable to make the application within that period.

(2) The application shall be served, by the applicant, on the clerk of petty sessions and on every other party to the proceedings.

(3) An application for an abridgement of time under this Rule shall be determined by a resident magistrate without a hearing unless the resident magistrate otherwise directs.

(4) Where the resident magistrate abridges the period of 14 days under Rule 149AA(3), he shall also specify the period within which any other party to the proceedings may give notice of opposition in writing under Rule 149AA(6).

(5) The clerk of petty sessions shall notify all the parties of the resident magistrate’s decision, and (as the case may be) the period specified by the resident magistrate for the giving of notice of opposition in writing under Rule 149AA(6).

Late applications

149AC.—(1) Notwithstanding the requirements of Rule 149AA –

- (a) an application may be made for a special measures direction orally at the trial; or
- (b) the court may of its own motion raise the issue whether a special measures direction should be given.

(2) Where an application is made in accordance with paragraph (1)(a) –

- (a) the applicant shall state the reasons for the late application; and
- (b) the court must be satisfied that the applicant was unable to make the application in accordance with Rule 149AA.

(3) The court shall determine before making a special measures direction –

- (a) whether to allow other parties to the proceedings to make representations on the application;
- (b) the time allowed for making such representations (if any); and
- (c) whether the application should be determined following a hearing at which the parties to the proceedings may be heard.

Discharge or variation of a special measures direction

149AD.—(1) An application to discharge or vary a special measures direction under Article 8(2) of the 1999 Order shall be made in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the direction 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 of circumstances occurs.

(3) Any party on whom the application is served in accordance with paragraph (2) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 149AA shall apply to an application to discharge or vary a special measures direction as they apply to an application for a direction.

Renewal application following a material change of circumstances

149AE.—(1) Where an application for a special measures direction has been refused by the court, the application may only be renewed (“renewal application”) where there has been a material change of circumstances since the court refused the application.

(2) The applicant shall –

- (a) specify in the renewal application each material change of circumstances which is alleged to have occurred; and
- (b) serve the renewal application on the clerk of petty sessions, and on each party to the proceedings, as soon as reasonably practicable after the change occurs.

(3) Any party on whom the application is served in accordance with paragraph (2)(b) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 149AA, Rules 149AF and 149AG shall apply to a renewal application as they apply to the application which was refused.

Application for special measures direction for witness to give evidence by means of a live link

149AF.—(1) Where the application for a special measures direction is made in accordance with Rule 149AA(2)(a), for a witness to give evidence by means of a live link, the following provisions of this Rule shall also apply.

(2) Subject to paragraph (3), a party who seeks to oppose an application for a witness to give evidence by means of a live link shall, in order to comply with Rule 149AA(6), state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness's evidence.

(3) Paragraph (2) does not apply in relation to a witness in need of special protection within the meaning of Article 9(1)(b) of the 1999 Order.

(4) Where a special measures direction is made enabling a witness to give evidence by means of a live link, that witness shall be accompanied at the live link only by persons acceptable to a resident magistrate.

Video recording of testimony from witnesses

149AG.—(1) Where an application is made for a special measures direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the following provisions of this Rule shall also apply.

(2) Notice of the application made in accordance with Rule 149AA(1) shall be accompanied by the video recording (or a copy of the video recording) which it is proposed to tender in evidence and shall include –

- (a) the name of the defendant and the offence 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 as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness;
- (e) a statement that, in the opinion of the applicant, either –
 - (i) the witness is available for cross-examination; or
 - (ii) the witness is not available for cross-examination and the parties have agreed that there is no need for the witness to be so available;
- (f) a statement of the circumstances in which the video recording was made which complies with paragraph (4); and
- (g) 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, the application shall specify that part and be accompanied by a video recording of the entire interview, including those parts 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)(f) and (3) shall include the following information, except in so far as it is contained in the recording itself, –

- (a) the times at which the recording commenced and finished, including details of interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) in relation to each person present at any point during, or immediately before, the recording –
 - (i) their name, age and occupation;
 - (ii) the time for which each person was present; and
 - (iii) the relationship, if any, of each person to the witness and to the defendant;
- (d) in relation to the equipment used for the recording –
 - (i) a description of the equipment;
 - (ii) the number of cameras used;
 - (iii) whether the cameras were fixed or mobile;
 - (iv) the number and location of the microphones;
 - (v) the video format used; and
 - (vi) whether it offered single or multiple recording facilities and, if so, which were used; 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) A party who receives a copy of a recording under paragraph (2) shall within 7 days of the date on which it was served on him, notify the applicant and the clerk of petty sessions, in writing –

- (a) whether he objects to the admission under Article 15 of the 1999 Order of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted;
- (b) whether he would agree to the admission of part of the video recording or recordings and if so, which part or parts; and
- (c) whether he wishes to be represented at any hearing of the application.

(6) Notwithstanding the provisions of Rule 149AA and this Rule, a copy of any video recording which the defendant proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the trial.

(7) The court may determine an application by the defendant to tender in evidence a video recording even though a copy of the recording has not, in accordance with paragraph (6), been served upon the prosecution.

(8) Where a copy of the video recording which is the subject of a special measures direction is sent to the prosecution after the direction has been made, the prosecutor may apply to the court for the direction to be varied or discharged.

(9) An application under paragraph (8) may be made orally to the court.

(10) A prosecutor who makes an application under paragraph (8) shall state –

- (a) why he objects to the admission under Article 15 of the 1999 Order of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted; and
- (b) whether he would agree to the admission of part of the video recording or recordings and if so, which part or parts.

(11) The court shall, before determining the application:-

- (a) direct a hearing of the application; and
- (b) allow all the parties to the proceedings to be present and be heard on the application.

(12) The clerk of petty sessions shall notify all parties to the proceedings of the decision of the court as soon as reasonably practicable after the decision is given.

(13) Any decision varying a special measures direction shall state whether the whole or specified parts of the video recording or recordings subject to the application are to be admitted in evidence.

Expert Evidence

149AH. Any party to the proceedings who proposes to adduce expert evidence (whether of fact or opinion) in connection with an application or renewal application for, or an application to vary or discharge, a special measures direction shall, not less than 14 days before the date set for the commencement of the proceedings at which the evidence is to be adduced –

- (a) serve the other party or parties to those proceedings with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) where a request is made to him in that behalf by any other party to those proceedings, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.”

(5) Schedule 1 shall be amended by substituting for Forms 15A to 15C, the new Forms 15A to 15C set out in the Schedule to these Rules.

Dated 8th June 2003

Irvine of Lairg, C.

SCHEDULE

Rule 2(5)

**FORMS TO BE SUBSTITUTED OR INSERTED IN THE MAGISTRATES COURTS RULES
(NORTHERN IRELAND) 1984**

FORM 15A

Magistrates' Courts (Northern Ireland) Order 1981

(Rule 149A)

Police and Criminal Evidence (Northern Ireland) Order 1989 (Article 81(2))

**APPLICATION UNDER ARTICLE 81(2) OF THE POLICE AND CRIMINAL EVIDENCE
(NORTHERN IRELAND) ORDER 1989 FOR LEAVE TO USE TELEVISION LINK WHERE
WITNESS WILL NOT GIVE EVIDENCE OTHERWISE THROUGH FEAR AT A PRELIMINARY
INVESTIGATION OR PRELIMINARY INQUIRY INTO AN INDICTABLE OFFENCE**

An application shall be made not less than 14 days before the date fixed for the commencement of a preliminary investigation or preliminary inquiry (other than the taking of a deposition relating to the arrest or, where directed by the court, the remand of the defendant).

This form may also be used where an abridgement of time has been granted for the making of this application.

A copy of this form shall be served at the same time on every other party to the proceedings.

<i>Details required</i>	<i>Notes</i>
<p>Case details</p> <p>Complainant:</p> <p style="padding-left: 40px;">Petty Sessions District of:</p> <p>Defendant:</p> <p style="padding-left: 40px;">County Court Division of:</p> <p>The name of the defendant to whom this application relates:</p> <p>Date fixed for commencement of preliminary investigation:</p>	
<p>Application</p> <p>Name of applicant:</p> <p>Name of applicant's solicitor:</p> <p>Address of solicitor:</p> <p>Reference:</p>	
<p>Charges</p>	<p>Give brief details of those charges to which this application relates.</p>
<p>Details of witness</p> <p>Name of Witness:</p> <p>Date of birth of witness:</p> <p>If the applicant is the prosecutor, give the name of the witness</p>	<p>An application by the defence for evidence to be given through a live link or by means of a video recording need not disclose who that witness is, except to the extent that the disclosure is required by section 5(7) of the</p>

<i>Details required</i>	<i>Notes</i>
or (as the case may be) the letter under which he is designated: If the applicant is the defendant, enter name of witness (but only if disclosure is already required by section 5(7) of the Criminal Procedure and Investigations Act 1996):	Criminal Procedure and Investigations Act 1996.
Grounds for applying for evidence to be given by television link	

Dated this day of 20 .

Applicant
[Solicitor for Applicant]

To the Clerk of Petty Sessions for the petty sessions district of .

And to

(insert names and addresses of each of the other parties to the proceedings)

NOTE:

The notice served on the clerk of petty sessions shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

Note to party who receives a copy of this notice:

If you wish to oppose this application you are required within 7 days (or such other period as may be specified by the court under Rule 149A(12)) to notify the applicant and the clerk of petty sessions in writing of your opposition stating the reasons for such.

FORM 15B

Magistrates' Courts (Northern Ireland) Order 1981

(Rule 149AA)

Criminal Evidence (Northern Ireland) Order 1999

(Article 7)

FORM OF APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER ARTICLE 7 OF
THE CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

An application shall be made:

- (a) subject to paragraph (b), 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 defendant.

A copy of this form shall be given at the same time to the other party or parties to the case.

PART 1

To be completed by all applicants

<i>Details required</i>	<i>Notes</i>
<p>Case details</p> <p>Complainant:</p> <p style="padding-left: 40px;">Petty Sessions District of:</p> <p>Defendant:</p> <p style="padding-left: 40px;">County Court Division of:</p> <p>The name of the defendant to whom this application relates:</p> <p>Court venue:</p> <p>Date of next court appearance:</p> <p>Charges:</p> <p>Name of PSNI Central Process Office:</p> <p>Central Process Office or District Command Unit reference number:</p> <p>DPP reference number:</p>	<p>The venue of the court hearing the case.</p> <p>Give brief details (including date and location of offence) of those charges to which this application applies.</p>
<p>Details of witness</p> <p>Name of Witness:</p> <p>Date of birth of witness:</p> <p>If an application has been made to tender in evidence a video recording of testimony from the witness, give the date and (if known) the result of that application:</p> <p>If the applicant is the prosecutor, give the name of the witness (otherwise leave blank):</p>	<p>An application by the defence for evidence to be given through a live link or by means of a video recording need not disclose who that witness is, except to the extent that the disclosure is required by section 5(7) of the Criminal Procedure and Investigations Act 1996 (alibi).</p>

PART 2

To be completed if the application is for evidence to be given through a live link

<i>Details required</i>	<i>Notes</i>
<p>Details of application</p> <p>Give –</p> <p>(a) the address of any venue from which the witness will give evidence if the court's own live link is not used:</p> <p>(b) the name of the person who it is proposed will accompany the witness:</p> <p>(c) the occupation of this person:</p> <p>(d) the relationship (if any) of this person to the witness:</p>	<p>An application by the defence need not disclose the name of the person proposed to accompany the witness if disclosure could lead to the identification of the witness.</p>
<p>Grounds</p> <p>State why it is believed that this person should accompany the witness:</p>	

PART 3

To be completed if the application is to tender in evidence a video recording under Article 15 of the Criminal Evidence (Northern Ireland) Order 1999

<i>Details required</i>	<i>Notes</i>
<p>Video recording(s)</p> <p>Statement as to circumstances in which video recording made:</p> <p>Date(s) of video recording(s):</p> <p>Time(s) of video recording(s):</p> <p>Location and normal function of premises where video recording made:</p> <p>Statement as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness:</p>	<p>These details need to be completed only to the extent that the information is not contained in the video recording itself.</p> <p>Give the times at which recording began and finished, including details of any interruptions.</p> <p>Give address of premises where recording made and state the usual function of those premises.</p>
<p>Details of those present while recording made</p> <p>Give details of each person present at any point during the recording:</p>	<p>Include name, age and occupation of anyone present; time for which present; relationship (if any) to witness and to the defendant.</p>
<p>Equipment used</p> <p>Give a description of the equipment used for the recording:</p>	<p>The description must include the following information – number and type of cameras used (fixed or mobile); the number and location of microphones; the video format used; and whether it offered single or multiple recording facilities and if it did which were used.</p>

<i>Details required</i>	<i>Notes</i>
<p>Recordings of part only of an interview</p> <p>State whether the video recording contains part only of the interview with the witness:</p>	<p>A copy of any video recordings of other parts of the interview with the witness which it is not proposed to tender in evidence must also be provided to the court and the other parties. The details of each such recording must be given as above. Use separate sheets where necessary.</p>
<p>Details of copy</p> <p>State in respect of each video recording whether it is a copy, and give the following details in respect of each copy –</p> <p>Name and address of person who has the mastertape:</p> <p>When, and by whom , the copy was made:</p>	
<p>Attendance and supply of copies</p> <p>Is the witness willing and able to attend the trial for cross-examination?</p> <p>Have copies of the video recording(s) to which this application relates been disclosed to the other parties?</p> <p>Has a copy of this notice and the video recording(s) to which it relates been served on each party to the proceedings?</p> <p>Has the agreement of the other parties to the video recording(s) being tendered as evidence been sought?</p>	<p>Where the application is by the defendant, the video recording(s) do not have to be served on the prosecution until the close of the prosecution case at the trial.</p>

Dated this day of 20 .

Applicant
[Solicitor for Applicant]

To the Clerk of Petty Sessions for the petty sessions district of .

And to

(insert names and addresses of each of the other parties to the proceedings)

NOTE:

The notice served on the clerk of petty sessions shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the proceedings.

Note to party who receives a copy of this notice:

If you wish to oppose this application you are required within 7 days (or such other period as may be specified by the court under Rule 149AB(4)) to notify the applicant and the clerk of petty sessions in writing of your opposition stating the reasons for such.

Magistrates' Courts (Northern Ireland) Order 1981 (Rule 149AA)

Criminal Evidence (Northern Ireland) Order 1999 (Article 7)

NOTICE OF DECISION ON APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER
ARTICLE 7 OF THE CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

of

Complainant

of

Defendant



Petty Sessions District of

County Court Division of

Upon the hearing of an application by (*name of applicant*), on
(*date application heard*) under Article 7 of the Criminal Evidence (Northern Ireland) Order 1999 for a
special measures direction, the court made an order to the following effect, viz: –

Special measures direction under Article [11] [12] [13] [14] [15] [18] granted*/granted subject to the
following conditions*/refused on the following grounds –

This day of 20 .

Clerk of Petty Sessions

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Magistrates' Courts Rules (Northern Ireland) 1984 ("the principal Rules") and contain provisions relating to applications for a special measures direction in the case of witnesses who require assistance on the grounds of age.

Rule 2(1) inserts a reference to the Criminal Evidence (Northern Ireland) Order 1999 into the interpretation provisions of the principal Rules.

Rule 2(2) amends *Rule 149A* of the principal Rules by revoking paragraph (1)(b), and making some further minor consequential amendments.

Rule 2(3) substitutes a new Rule 149AA, which provides for an application for a special measures direction to be made in the form specified in the Schedule to these Rules. An application for a direction to give evidence by means of a live link or by means of a video recording of the witness's testimony shall also contain the additional information specified in Part 2 or Part 3 of the form.

Rule 2(4) inserts new Rules 149AB-149AH into the principal Rules. *New Rule 149AB* provides that the court may abridge the time for making an application for a special measures direction.

New Rule 149AC provides for late applications. *New Rule 149AD* provides for an application to be made to vary or discharge a special measures direction which has already been made. *New Rule 149AE* provides for renewal applications where a material change of circumstances has occurred since an application was refused.

New Rule 149AF imposes additional requirements where the application relates to the giving of evidence by means of a live link.

New Rule 149AG imposes additional requirements where the application relates to the admission of a video recording of an interview of the witness as evidence in chief of the witness.

New Rule 149AH provides for the mutual disclosure between the parties of expert evidence to be adduced in connection with the application for the special measures direction.

Rule 2(5) amends Schedule 1 to the principal Rules by substituting new Form 15A (Application for leave to use television link under Article 81(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989); Form 15B (Form of application for a special measures direction) and Form 15C (Notice of decision on an application for a special measures direction).

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