

2006 No. 413

MAGISTRATES' COURTS

**The Magistrates' Courts (Amendment) Rules (Northern Ireland)
2006**

Made - - - - - *17th October 2006*

Coming into operation in accordance with Rule 1

The Magistrates' Court Rules Committee makes the following Rules in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(a) and Article 80A(7) of the Police and Criminal Evidence (Northern Ireland) Order 1989(b) after consultation with the Lord Chancellor and with the agreement of the Lord Chief Justice:—

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 2006 and shall come into operation on the same day as Article 80A of the Police and Criminal Evidence (Northern Ireland) Order 1989 comes into operation.

Amendment to the Magistrates' Courts Rules (Northern Ireland) 1984(c)

2.—(1) After Rule 149B, there shall be inserted the following new Rules:—

“Evidence by live link where witness is outside the United Kingdom

149C.—(1) An application for leave under Article 80A(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 for a witness (other than the accused) who is outside the United Kingdom to give evidence through a live link shall be made by giving notice in Form 88G.

(2) The notice under paragraph (1) shall be served on the clerk of petty sessions and every other party to the proceedings not less than 14 days before the day fixed for commencement of the preliminary investigation or preliminary inquiry.

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

(a) S.I. 1981/1675 (N.I. 26) to which the most recent relevant amendments were made by paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(b) S.I. 1989/1341 (N.I. 12). Article 80A was inserted by Article 31 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) as amended by Article 24 of the Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I.15)).

(c) S.R. 1984 No. 225 to which the most recent amendments were made by S.R. 2005 No. 162.

(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 clerk of petty sessions shall fix a date for the hearing of the application.

(6) Where a hearing 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 determination of an application under paragraph (1), notify all the parties of the decision of the court in Form 88H and, where leave is granted, the notification shall state—

- (a) the country in which the witness will give evidence;
- (b) if known, the place where the witness will give evidence;
- (c) where the witness is to give evidence on behalf of the prosecutor or where disclosure is required by section 5(7) of the Criminal Procedure and Investigations Act 1996 (alibi), the name of the witness;
- (d) the location of the court at which the preliminary investigation or preliminary inquiry will be held; and
- (e) any conditions specified by the Court in accordance with paragraph (9).

(9) In determining an application under paragraph (1), the court may specify that as a condition of the grant of leave the witness should give evidence in the presence of a specified person who is able and willing to answer under oath or affirmation any questions the court may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

(10) The court may, if it considers that it is in the interests of justice to do so, extend the time for service of a notice required under this Rule, either before or after that period expires.

Application for an abridgement of time

149D.—(1) The period specified in Rule 149C(2) 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 149C(2), he shall also specify the period within which any other party to the proceedings may give notice of opposition in writing under Rule 149C(3).

(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 149C(3).

Form of notice

149E. The court may, if it considers that it is in the interests of justice to do so, allow a notice required under Rules 149C or 149D to be given in a different form, or orally.”

(2) Schedule 1 shall be amended by inserting after Form 88F, the new Forms 88G and 88H in the Schedule to these Rules.

*George Conner
Nigel Broderick
John Rea
Sean McCann
John P. B. Maxwell
Mandy Kilpatrick*

Dated 17th October 2006

SCHEDULE

Rule 2(2)

**FORMS TO BE INSERTED INTO THE MAGISTRATES' COURT
RULES (NORTHERN IRELAND) 1984**

Form 88G

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Rule 149C)

POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989
(Article 80A)

**APPLICATION FOR LEAVE FOR WITNESS (OTHER THAN
THE ACCUSED) WHO IS OUTSIDE THE UNITED KINGDOM
TO GIVE EVIDENCE THROUGH A LIVE LINK**

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

<i>Details required</i>	<i>Notes</i>
<p>Case details</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>PPSNI 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>

Details of witness Name of witness: Date of birth of witness:	An application by the defence for evidence to be given by live link 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).
Details of application State the reasons given by the applicant in support of this application: Country in which the witness will give evidence: Place from which the witness will give evidence (if known):	
Extension or abridgement of time for service Please indicate whether you are applying for an extension/abridgement of time for service. If the answer is yes, please state your reasons:	
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:

This form should be served on the clerk of petty sessions and every other party to the proceedings not less than 14 days before the day fixed for commencement of the preliminary investigation or preliminary inquiry.

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.

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

Form 88H

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Rule 149C)

POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989
(Article 80A)

**NOTICE OF DECISION ON APPLCIATION FOR LEAVE FOR
WITNESS (OTHER THAN THE ACCUSED) WHO IS OUTSIDE
THE UNITED KINGDOM TO GIVE EVIDENCE THROUGH A
LIVE LINK**

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

Upon the hearing of an application by _____ (name of applicant), on
(date application heard) under Article 80A of the Police and Criminal Evidence
(Northern Ireland) Order 1989 for leave for a witness outside the United Kingdom to give
evidence through a live link, the court made an order to the following effect, viz:—
Leave granted*/refused on the following grounds*—

To be completed where leave is granted

Country in which the witness will give evidence:

Place where the witness will give evidence (if known):

Where the witness is to give evidence on behalf of the prosecutor, or where disclosure is required
by section 5(7) of the Criminal Procedure and Investigations Act 1996 (alibi), the name of
witness:

The location of the court at which the court at preliminary investigation or preliminary inquiry will
be held:

Name of person specified by the court under Rule 149C(10), in whose presence the witness shall
give evidence (if applicable):

This _____ day of _____ 20 ____ .
Clerk of Petty Sessions

* Delete as applicable

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules amend the Magistrates' Court Rules (Northern Ireland) 1984 ("the principal Rules") to prescribe the procedure relating to applications for leave for a witness (other than the accused) who is outside the United Kingdom to give evidence by live link.

Rule 2(1) inserts new Rule 149C to 149E into the principal Rules. New Rules 149C(1) and (2) provide that such an application should be made not less than 14 days before the day fixed for commencement of the preliminary investigations or preliminary inquiry by giving notice in the prescribed form. New Rule 149C(3) sets out the procedure to be followed by any party who wishes to oppose the application.

New Rules 149C(4) to (7) provide that the court may direct a hearing of an application where notice of opposition is given or where the court considers that it is appropriate to do so and provide that where no notice of opposition is received, the court may determine the application in favour of the applicant without a hearing.

New Rule 149C(8) provides that the clerk of petty sessions shall notify the parties of the decision of the court and, where leave is granted, prescribes certain information which shall be set out in that notification.

New Rules 149(9) provides that when dealing with an application for a witness outside the United Kingdom to give evidence by live link, the court may specify, as a condition of granting leave, that the witness should give evidence in the presence of a particular person who is able to answer under oath or affirmation any questions the court may put as to the circumstances in which the evidence is given.

New Rule 149C(10) provides that the court may extend any time limit for the service of a notice required under the Rule.

New Rule 149D provides that the court may abridge the time for service of an application under New Rule 149C. New Rules 149D(1) and (2) prescribe the form of an application for abridgement.

New Rule 149D(3) provides that an application for abridgement may be determined by a resident magistrate without hearing. New Rule 149D(4) provides that, where an application for abridgement of time is granted, direction also be given by the resident magistrate as to the period within which notice of opposition to an application under New Rule 149C(4) should be given.

New Rule 149D(5) provides that the clerk of petty sessions shall notify the parties of the decision of the court.

New Rule 149E provides that the court may allow notices required to be given under New Rules 149C and 149D to be given in a different form or orally.

Rule 2(2) amends Schedule 1 to the principal Rules to insert new Forms 88G and 88H for use in connection with applications prescribed by these Rules.