

2010 No. 12

MAGISTRATES' COURTS

**The Magistrates' Courts (Amendment) Rules (Northern Ireland)
2010**

Made - - - - - *26th January 2010*

Coming into operation - *1st March 2010*

The Magistrates' Courts 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 section 49 of the Crime (International Co-operation) Act 2003(b) and 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) 2010 and shall come into operation on 1st March 2010.

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

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

(1) in rule 11(5), for “Subject to paragraph 3A and paragraph 3B”, substitute “Subject to paragraph 3A, paragraph 3B and Rule 12A”;

(2) after rule 14(6) insert—

“(7) Where no other form of warrant of arrest is prescribed, either by these Rules or by any other statutory provision, the warrant in Form 8C shall be used.”;

(3) for rule 52D, substitute —

“Applications and procedures under the Crime (International Co-operation) Act 2003

52D. In this rule and rules 52E to 52M—

(a) “the Act” means the Crime (International Co-operation) Act 2003;

(b) “process” has the same meaning as in section 51(3) of the Act;

(c) “relevant proceedings” means proceedings under Part 1 or Part 2 of Schedule 2 to the Act; and

(a) S.I. 1981/1675 (N.I.26); Article 13 was amended by paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).
(b) 2003 C.32; section 49 is implemented by paragraph 4 of Schedule 1 and paragraphs 8,10 and 17 of Schedule 2 to the 2003 Act.
(c) S.R. 1984 No.225 to which the most recent relevant amendments were made by S.R. 2009 No. 310, S.R. 2008 No. 251, S.R. 2006 No.413, S.R. 2006 No.414 and S.R. 2004 No. 204.

- (d) “external court” or “external authority” means the court or authority from which a request under section 30 or 31 of the Act is received.”;

(4) after rule 52F, insert—

“Notice of application for request for assistance

52G.—(1) An application under section 7(1) of the Act (requests for assistance in obtaining evidence abroad) shall, subject to paragraph (2), be made by giving notice in writing to the clerk of petty sessions and shall—

- (a) state the particulars of the offence which it is alleged has been committed or the grounds upon which it is suspected that an offence has been committed;
- (b) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and
- (c) include particulars of the assistance requested in the form of a draft request for assistance.

(2) The court may direct that paragraph (1) need not be complied with if it is satisfied that the applicant has good reason to make the application as soon as possible and it is not practicable to comply with that paragraph.

Proceedings before a nominated court

52H. In proceedings before a nominated court pursuant to a notice under section 15(1) of the Act, the court may—

- (a) determine who may appear or take part in the proceedings under Schedule 1 of the Act and whether a party to the proceedings is entitled to be legally represented; and
- (b) if it thinks it necessary to do so in the interests of justice, direct that all or any persons not being members or officers of the court or parties to the proceedings, their solicitors or counsel, or other persons directly connected with proceedings, be excluded from the court during the proceedings.

Record of proceedings before a nominated court

52I.—(1) In proceedings before a court nominated pursuant to a notice under section 15(1) of the Act, the court shall make a record of the evidence received by the court and the information prescribed in paragraph (2).

(2) The information referred to in paragraph (1) is—

- (a) details of the request in respect of which the notice under section 15(1) was given;
- (b) the date on which, and place at which, the proceedings under Schedule 1 in respect of that request took place;
- (c) the name of any witness who gave evidence at the proceedings in question;
- (d) the name of any person who took part in the proceedings as a legal representative or as an interpreter;
- (e) whether a witness was required to give evidence on oath or after making a solemn affirmation; and
- (f) whether the opportunity to cross-examine any witness was refused.

(3) When, under paragraph 6(1) of Schedule 1 to the Act, the court sends the evidence received by it to the court or authority that made the request, or to the territorial authority for forwarding to the court or authority that made the request, the clerk of petty sessions shall send to the court, authority or, as the case may be, territorial authority a copy of an extract of so much of the record as relates to the proceedings in respect of the request.

(4) Proceedings before a court nominated pursuant to a notice under section 15(1) shall be heard at an appropriately equipped venue to allow for the recording of evidence.

Interpreter for the purposes of proceedings involving a television or telephone link

52J.—(1) This rule applies where the court nominated under section 30(3) (hearing witnesses in the UK through television links) or section 31(4) (hearing witnesses in the UK by telephone) is a magistrates' court.

(2) Where it appears to the clerk of petty sessions that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into English.

(3) Where it appears to the clerk of petty sessions that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the external court will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is given in a language other than English and is not translated into English by an interpreter, the court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

Record of proceedings by television link before a nominated court

52K.—(1) In proceedings before a court nominated pursuant to a notice under section 30(3), the court shall make a record of the evidence given in the presence of the court and the information prescribed in paragraph (2).

(2) The information referred to in paragraph (1) is—

- (a) details of the request in respect of which the notice under section 30(3) was given;
- (b) the date on which, and the place at which the proceedings under Part 1 of Schedule 2 in respect of the request took place;
- (c) the technical conditions, such as the type of equipment used, under which the proceedings took place;
- (d) the name of the witness who gave evidence;
- (e) the name of any person who took part in the proceedings as a legal representative or as an interpreter; and
- (f) the language in which the evidence was given.

(3) As soon as is reasonably practicable after the proceedings under Part 1 of Schedule 2, the clerk of petty sessions shall send to the external authority that made the request a copy of an extract of so much of the record as relates to the proceedings in respect of that request.

(4) Proceedings before a court nominated pursuant to a notice under section 30(3) shall be heard at an appropriately equipped venue to allow for the recording of evidence.

Record of proceedings by telephone link before a nominated court

52L.—(1) In proceedings before a court nominated pursuant to a notice under section 31(4), the court shall make a record of the evidence given in the presence of the court and the information prescribed in paragraph (2).

(2) The information referred to in paragraph (1) is—

- (a) details of the request in respect of which the notice under section 31(4) was given;

- (b) the date on which, and place at which, the proceedings under Part 2 of Schedule 2 took place;
- (c) the names of the witnesses who gave evidence;
- (d) the name of any person who took part in the proceedings as a legal representative or as an interpreter; and
- (e) the language in which the evidence was given.

(3) As soon as is reasonably practicable after the proceedings under Part 2 of Schedule 2, the clerk of petty sessions shall send to the external authority that made the request a copy of an extract of so much of the record as relates to the proceedings in respect of that request.

(4) Proceedings before a court nominated pursuant to a notice under section 31(4) shall be heard at an appropriately equipped venue to allow for the recording of evidence.

Restriction on access to records kept under Rules 52I, 52K and 52L

52M.—(1) The records kept under Rules 52I, 52K and 52L shall not be open to inspection by any person except —

- (a) as authorised by the Secretary of State; or
- (b) with the leave of the court.”;

(5) after rule 97, insert —

“Appeal against recognition of foreign driving disqualification in UK

97A.—(1) Where notice under Part VII of the Order is given of intention to appeal a decision under section 57 of the Crime (International Co-operation) Act 2003, the appellant shall—

- (a) serve with that notice a copy of the notice of intention to appeal given to the appropriate Minister in accordance with section 59(1) of that Act;
- (b) specify in that notice whether or not he or she intends to apply to the court to suspend the recognition of the disqualification under section 62(2) of that Act; and
- (c) state the grounds on which the appeal is made.

(2) An application under paragraph (1) shall be made in accordance with the time limit set under section 59(3) of the Crime (International Co-operation) Act 2003.”;

(6) after rule 109, insert—

“CA. CRIMINAL JUSTICE AND IMMIGRATION ACT 2008(a)

Enforcement of financial penalties under section 88 of the Criminal Justice and Immigration Act 2008

109A.—(1) Where, under section 88(3) of the Criminal Justice and Immigration Act 2008, a magistrates’ court decides that it is satisfied that one or more of the grounds for refusal apply, the clerk of petty sessions shall give notice of the decision to the Lord Chancellor in Form 72A.

(2) Where, under section 88(3) of the Criminal Justice and Immigration Act 2008, a magistrates’ court decides that it is satisfied that none of the grounds for refusal applies, the clerk of petty sessions shall—

- (a) register the financial penalty as an order by means of an entry made and signed by him in the Order Book;
- (b) give notice of the decision to the Lord Chancellor in Form 72A; and

- (c) serve notice in Form 72B on the person required to pay the financial penalty.”;
- (7) after rule 159, insert —

“Notification of decision in an application for case stated in relation to proceedings under section 59 of the Crime (International Co-operation) Act 2003

159A. Where an application has been made to a district judge (magistrates’ courts) to state a case in relation to proceedings under section 59 of the Crime (International Co-operation) Act 2003, and the Court of Appeal has suspended the recognition of the disqualification under section 62(3) of that Act, the applicant shall notify the proper officer, as soon as practicable, if —

- (a) the applicant abandons the application to state a case; or
- (b) the district judge (magistrates’ courts) refuses to state a case and the applicant does not intend to apply to the Court of Appeal to compel him or her to do so.”;

- (8) in Schedule 1—

- (a) in Form 8, for “Note: This form may be endorsed for bail as on Form 9.” substitute—

“Note: This Form must only be used where Article 92 of the Criminal Justice (Northern Ireland) Order 2008 applies. Article 92 applies to warrants issued under:

- (i) Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981 (*warrants of arrest in the first instance*);
- (ii) Article 25 of the Magistrates’ Courts (Northern Ireland) Order 1981 (*warrants following the non appearance of the accused*);
- (iii) Article 6 of the Criminal Justice (Northern Ireland) Order 2003 (*warrants for failure to surrender to custody*); and
- (iv) any other statutory provision prescribed for the purposes of Article 92 by order of the Secretary of State.

Article 92 of the Criminal Justice (Northern Ireland) Order 2008 allows for the execution of all of the above arrest warrants to be proved before a magistrates’ court:

- (i) for the county court division in which the warrant was issued;
- (ii) for the county court division in which the person was arrested; or
- (iii) for any county court division which adjoins the division in which the person was arrested.

This form may be endorsed for bail as on Form 9.”;

- (b) in Form 8B, for “the said defendant” substitute “(*insert name of witness*)”;
- (c) after Form 8B, insert new Form 8C as set out in the Schedule to these Rules;
- (d) after Form 55, insert new Form 55A set out in the Schedule to these Rules; and
- (e) after Form 72, insert Forms 72A and 72B as set out in the Schedule to these Rules.

*George Conner
John Rea
Peter Luney
John P B Maxwell
Nigel Broderick*

Dated 26th January 2010

SCHEDULE

Rule 2(8)(c)

“Form 8C

MAGISTRATES’ COURTS (NORTHERN IRELAND) ORDER 1981

(Rules 14 and 143)

Warrant of Arrest

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

WHEREAS a complaint has been made [on oath and in writing] [and substantiated on oath] that

THIS IS TO COMMAND YOU, to whom this warrant is addressed, to arrest and bring the said defendant before a magistrates’ court for the said county court division.

This day of

[District Judge (Magistrates’ Courts)]
[Lay Magistrate]

To the District Commander of the Police Service of Northern Ireland at

Note: This form may be endorsed for bail as on Form 9.

This form may not be used where any other form of warrant of arrest applies.”

“Form 55A

Magistrates’ Courts (Northern Ireland) Order 1981
(Article 76; Rules 97 and 97A)

Crime (International Co-operation) Act 2003
(Sections 59 and 62)

Notice of Appeal to Magistrates’ Court

of]	
]	
]	
]	
]	
]	Appellant
]	Petty Sessions
]	District of
]	
]	
of]	
]	
]	
]	County Court
]	Division of
]	
]	Respondent

TAKE NOTICE that I, the undersigned appellant, intend to appeal to a magistrates’ court for the above-named petty sessions district sitting at (place) on (date) at (time) against the decision of the Department of the Environment under section 57 of the Crime (International Co-operation) Act 2003, to recognise in the United Kingdom a driving disqualification imposed by (state the country by which the disqualification was imposed), on the ground(s) that (state the grounds on which the appeal is made)

I intend/do not intend to apply to the court to suspend the recognition of the disqualification under section 62(2) of the Crime (International Co-operation) Act 2003.

Dated this day of

Appellant

[Solicitor for Appellant]

To the Respondent

of

and to the Clerk of Petty Sessions for the above-named petty sessions district.

NOTES:

Rule 97A(1) The notice served on the clerk of petty sessions shall be accompanied by a copy of the notice of intention to appeal given to the appropriate Minister and, shall specify whether or not the appellant wishes to apply to the court to suspend the driving disqualification pending the final outcome of the appeal proceedings and state the grounds on which the appeal is made.

An appeal may be made under section 59 of the Crime (International Co-operation) Act 2003, against the decision of the Department of the Environment under section 57 of that Act, to recognise in the United Kingdom a foreign driving disqualification. Such an appeal may be made on the basis that section 57 does not apply to the appellant's case. (Section 56 of the Crime (International Co-operation) Act 2003 sets out the criteria for applying section 57 to a foreign driving disqualification.)

Rule 98(2) The notice served on the clerk of petty sessions shall be endorsed with the date upon which and the manner in which the notice was served on the other party to the proceedings.

Rule 99: A copy of the decision or determination from which an appeal is brought shall be lodged with the clerk of petty sessions by the appellant at least seven days before the hearing of the appeal.”

“Form 72A

MAGISTRATES’ COURTS (NORTHERN IRELAND) ORDER 1981
(Rule 109A)

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008
(Section 88)

Notice of a decision whether grounds for refusal apply

UPON THE RECEIPT on the [] day of [] 20[] of a request for enforcement under section 88 of the Criminal Justice and Immigration Act 2008 of a penalty for the sum [or the balance] of [*enter sum in currency of issuing state*], representing £[] against [] of [], the court decided that it was satisfied that [none of the grounds for refusal applies. Accordingly, I have served notice of enforcement on the person required to pay the financial penalty.] [the following grounds for refusal apply— .]

Dated this [] day of [] 20 [].

Clerk of Petty Sessions

To the Lord Chancellor.

Form 72B

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Rule 109A)

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008
(Section 88)

Notice of enforcement

[Title as in Form 1]

On the [] day of [] 20[], you were adjudged by [] to pay the sum of [*enter sum in currency of issuing state*], representing £ [] and the said sum [or the balance of £ []] remains unpaid.

You are hereby given notice that in consequence of the registration of this notice of enforcement on the [] day of [] 20[], the enforcement of payment of the said sum [or balance] is enforceable by a magistrates' court acting for the above mentioned petty sessions district.

Payment of the said sum [or balance] should be made before the [] day of [] 20[] either by post in an envelope addressed to Customer Service Centre, P.O. Box 256, Londonderry or made personally at the court office at (address) between the hours of 9.30am and 1.00pm and 2.00pm to 4.30pm (Monday to Friday) (public holidays excepted). If you cannot pay, you should, within 28 days of service hereof, make application for further time [or payment by instalments] to be granted and the application must be made to the clerk of petty sessions at [] (address).

[If you fail to pay or make such application within that time, [a warrant may be issued committing you to prison in default of payment] [a warrant of distress may be issued].]

Dated this [] day of [] 20 [].

Clerk of Petty Sessions

NOTE: Any communications sent by post must be properly stamped. Cash should not be sent.”.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates' Courts (Northern Ireland) Rules 1984 (S.R. 1984 No. 225) ("the principal Rules") as follows:—

Rule 2(1) amends rule 11(5) to insert reference to rule 12A;

Rule 2(2) inserts new rule 14(7) to require Form 8C to be used where no other form of warrant of arrest is prescribed;

Rule 2(3) amends rule 52D of the principal Rules to include the interpretation of various terms used in new rules 52F to 52M, in respect of certain applications made under the Crime (International Co-operation) Act 2003 ('the 2003 Act');

Rule 2(4) inserts new rules 52F to 52G into the principal Rules—

- new rule 52G prescribes the manner in which an application under section 7(1) of the 2003 Act shall be made;
- new rule 52H provides that a court nominated to receive evidence from abroad under section 15(1) of the 2003 Act may determine who may appear or take part in proceedings in that regard and may exclude the public from the court during proceedings;
- new rule 52I provides that in proceedings pursuant to a notice under section 15(1) of the 2003 Act, the clerk of petty sessions shall make a record of evidence received together with other information as is prescribed by paragraph (2) of the Act. The clerk of petty sessions shall also send to the court or authority that made the request a copy of so much of the court record as is relevant to that request;
- new rule 52J provides for an interpreter to be present in court in connection with proceedings that involve witnesses in the UK giving evidence by television link and telephone to countries outside the UK;
- new rule 52K requires the chief clerk to make a record of evidence given at any proceedings at which a witness in the UK gave evidence under section 30(3) of the 2003 Act and prescribes other information that shall be included in this record;
- new rule 52L makes similar provision in relation to proceedings at which a witness in the UK gives evidence by telephone link under section 31(4) of the 2003 Act; and
- new rule 52M restricts access to the records kept under rules 52I, 52K and 52M.

Rule 2(5) inserts new rule 97A into the principal Rules to provide that where an appeal is made to a court of summary jurisdiction against the recognition of a foreign driving disqualification, the appellant must also lodge with the court a copy of the notice of intention to appeal served on the appropriate Minister under section 59 of the 2003 Act. The appellant should also indicate on the appeal notice whether or not they intend to apply to the court to suspend the disqualification pending the final outcome of proceedings and the grounds on which the appeal is brought.

Rule 2(6) provides that the Lord Chancellor is to be informed of a decision of the magistrates' court as to whether any of the grounds for refusal to enforce a financial penalty under section 88 of the Criminal Justice and Immigration Act 2008 apply. It also provides that Form 72B is to be used as a notice of enforcement of a penalty under section 88 of the Criminal Justice and Immigration Act 2008.

Rule 2(7) inserts new rule 159A into the principal Rules to provide that where an application to state a case in respect of proceedings under section 59 of the 2003 Act has been made, and the Court of Appeal has suspended the disqualification pending the final outcome of those proceedings, the applicant must inform the proper office if they abandon the application to state the case or the district judge (magistrates' court) refuses to state the case and the applicant does not intend to apply to the Court of Appeal to compel them to do so.

Rule 2(8) amends a number of Forms and inserts a number of new Forms into the Schedule to the principal Rules as follows—

- rule 2(8)(a) amends the Note contained in Form 8 to provide guidance as to when Article 92 of the Criminal Justice (Northern Ireland) Order will apply;
- rule 2(8)(b) makes minor amendments to Form 8B;
- rule 2(8)(c) inserts new Form 8C(warrant of arrest) into the Schedule;
- rule 2(8)(d) inserts new Form 55A into the Schedule. New Form 55A is the notice of appeal which should be used when bringing an appeal under section 59 of the 2003 Act; and
- rule 2(8)(e) inserts new Forms 72A and 72B into the Schedule.

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