

SCHEDULE

Rule 4(2).

“Part X

Witness Summonses

Interpretation

69. In this Part of these Rules, unless the context otherwise requires:—

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

“the directed person” and “the stipulated evidence, document or thing” have the same meaning as in section 51A (10) of the Act; and

“a scheduled offence” means an offence which is scheduled within the meaning of section 1 of the Northern Ireland (Emergency Provisions) Act 1996⁽¹⁾.

Application for witness summons

70.—(1) This rule applies to an application under section 51A of the Act for the issue of a witness summons.

(2) Subject to paragraphs (8) to (10), the application shall be made in writing to the chief clerk 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 the applicant considers that the directed person will not voluntarily attend as a witness or produce the document or thing; and
- (d) 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 to make representations in writing and at a hearing, under paragraph (5); and
 - (ii) state whether the applicant seeks a requirement also to be imposed under section 51B of the Act (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 charge 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 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) A copy of the application and the supporting affidavit shall be served on the directed person at the same time as it is served on the chief clerk.

(1) 1996 c. 24

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(5) The directed person may, within 7 days of receiving a copy of the application under paragraph (4), inform, in writing, the chief clerk 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 make written representations to the chief clerk.

(6) The chief clerk 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 a judge of the Crown Court for determination with or without a hearing; and
- (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) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(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 be made orally to a judge or in writing 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 (c) of paragraph (2), specify—
 - (i) any charge 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), 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 trial, the chief clerk shall refer the notice of application—

- (a) where the offence charged is a scheduled offence, to such judge as has been designated by the Lord Chief Justice for the purposes of hearing the application;
- (b) in any other case, to the trial judge, or such other judge as may be available,

to determine the application or to give such directions as the judge to whom the notice is referred considers appropriate, and paragraphs (2)(d)(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 trial, such application shall be made orally to the trial judge, to determine the application or to give such directions as he 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 (c) 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

71.—(1) This rule applies to an application under section 51C of the Act

(2) The application shall be made in writing to the chief clerk 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 section 51B of the Act.

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(3) The application shall state that the applicant concludes that the requirement imposed by the witness summons under section 51A(2) of the Act is no longer needed.

(4) If a direction is given under section 51C of the Act following the application, the chief clerk shall notify the person to whom the witness summons is directed as to the effect of the direction.

Application to make summons issued on application ineffective

72.—(1) This rule applies to an application under section 51D of the Act.

(2) The application shall be made in writing to the chief clerk 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 chief clerk shall—

- (a) serve notice of the application on the person on whose application the witness summons was issued;
- (b) refer the application, where the offence charged is a scheduled offence, to such judge as has been designated by the Lord Chief Justice for the purposes of determining the application;
- (c) refer the application, in any other case—
 - (i) if the trial has started, to the trial judge; or
 - (ii) if the application is received before the start of the trial, either to the judge who has been designated to conduct the trial, or if no judge has been designated for that purpose, to the judge who issued the witness summons to which the application relates.

(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,

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

(6) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(7) The chief clerk 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.

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Application to make summons issued of court’s own motion ineffective

73.—(1) Rule 72 shall apply to an application under section 51F of the Act as it applies to an application under section 51D of that Act, 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 agree to do so)”, there shall be substituted the words “(where he agrees to do so)”.