

2013 No. 89

MAGISTRATES' COURTS

PROCEDURE

**The Magistrates' Courts (Amendment) Rules (Northern Ireland)
2013**

Made - - - - - *25th March 2013*

Coming into operation in accordance with Rule 1

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 Articles 17(5), 21BA(9) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(b) after consultation with the Department of Justice and the agreement of the Lord Chief Justice.

Citation and Commencement

1. These Rules shall be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 2013 and shall come into operation on the day after Articles 17, 21BA and 21BB of the Criminal Evidence (Northern Ireland) Order 1999 come into operation.

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

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

(1) In Rule 149AA, after paragraph (2)(b), insert —

- “(c) enabling an examination of a witness to be conducted through an intermediary —
- (i) the information sought in Part 4 of Form 15B; and
 - (ii) any relevant report, including an intermediary's assessment, shall be provided.”;

(2) In Rule 149AG, after paragraph (4)(c)(iii) insert —

- “(iv) whether or not the person present was there to act as an intermediary for a witness, and, if so, whether an application under Article 17 of the 1999 Order for the use of an intermediary has been made or will be made, and whether the intermediary made the declaration as set out in Form 88N before acting.”;

(3) After Rule 149N, insert —

(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 (2010 No 976); and paragraph 65 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).

(b) 1999 No.2789 (N.I.8) to which the most recent relevant amendments were made by S.I. 2008 No. 1216 (N.I.1).

(c) S.R. 1984 No. 225 to which the most recent relevant amendments were made by S.R.2003 No.296, S.R.2003 No.477 and S.R.2008 No.361.

“Application by the accused for a direction allowing the examination of the accused through an intermediary

1490.—(1) An application by the accused for direction allowing the accused to be examined through an intermediary under Article 21BA of the 1999 Order shall be made in Form 88K and shall include –

- (a) the information sought in Part C of Form 88K; and
- (b) any relevant report, including an intermediary’s assessment.

(2) (a) Subject to sub-paragraph (b), an application under paragraph (1) shall be made not less than 14 days before the date 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 accused.

(3) 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.

(4) Any party on whom a copy of the notice of the application under paragraph (1) is served may oppose the application for a direction allowing the use of an intermediary, whether or not the question of the conditions set out in Article 21BA (5) or (6) of the 1999 Order for the use of an intermediary is in issue.

(5) Any party who wishes to oppose the application shall, within 7 days of the date the notice under paragraph (1) was served on him, notify the applicant and the clerk of petty sessions in writing of his opposition and give reasons for it.

(6) In order to comply with paragraph (5), a party shall state in the written notification whether he disputes that –

- (a) the accused is eligible for a direction allowing the use of an intermediary by virtue of Article 21BA (5) or (6) of the 1999 Order as appropriate; and
- (b) allowing the accused to be examined through an intermediary is necessary in order to ensure that the accused receives a fair trial.

(7) Except where notice is received in accordance with paragraph (5), the court may —

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

(8) Where a party to the proceedings notifies the clerk of petty sessions in accordance with paragraph (5) of his opposition to the application, the clerk of petty sessions shall fix a date for the hearing of the application.

(9) Where a hearing of the application is to take place in accordance with paragraph (7) or (8), the clerk of petty sessions shall notify each party to the proceedings of the time and place of the hearing.

(10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.

(11) 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 88M.

(12) The court may, if it considers that it is in the interests of justice to do so —

- (a) allow a notice or application required under this rule to be given in a different form, or orally; or
- (b) abridge or extend the time for service of a notice or application required under this rule, either before or after that period expires.

Discharge or variation of a direction allowing the examination of accused by an intermediary

146P.—(1) Subject to paragraph (3), an application to discharge or vary a direction allowing the examination of the accused by an intermediary shall be made in writing.

(2) Any application under paragraph (1) shall be served on the clerk of petty sessions and on each party to the proceedings as soon as reasonably practicable.

(3) Paragraphs (4) to (12) of Rule 149O shall apply to an application to discharge or vary a direction allowing the examination of the accused by an intermediary as they apply to an application for such a direction.

Declaration by an intermediary acting for either a witness or an accused

149Q.—(1) The declaration required to be taken by an intermediary under Article 17(5) or 21BA (9) of the 1999 Order shall be as set out in Form 88N.

(2) A copy of the declaration made by the intermediary shall be served on the clerk of petty sessions and on each party to the proceedings at the time an application for the use of an intermediary under rule 149AA or rule 149O is being made, or as soon as reasonably practicable thereafter.”; and

(4) In the Schedule —

(a) in Form 15B —

(i) in Part 3, in the section entitled “Details of those present while recording made”, insert at the end of that section —

“Was an intermediary used during the video-recording? If yes, please complete Part 4 of this form, providing details of the intermediary. Please indicate whether the intermediary made the necessary declaration as set out in Form 88N before acting.

Has the Court already approved the use of an intermediary under Article 17 of the 1999 Order? If not, will an application be made?”; and

(ii) after Part 3, insert Part 4 as set out in Schedule 1 to these Rules;

(b) in Form 15C, after “Special Measures direction under Article [11] [12] [13] [14] [15]”, insert “[17]”;

(c) for Form 88K substitute the new Form 88K as set out in Schedule 2 to these Rules; and

(d) after Form 88L, insert Forms 88M and 88N as set out in Schedule 3 to these Rules.

*William A McNally
Peter Luney
Nigel Broderick
Mervyn Bates*

Dated 25th March 2013

SCHEDULE 1

Rule2 (4)(a)(ii)

“PART 4

To be completed if the application is to allow the examination of a witness through an intermediary

<i>Details required</i>	<i>Notes</i>
<p>Details of the application</p> <p>(a) what is the name of the proposed intermediary:</p> <p>(b) what is the occupation of this person:</p> <p>(c) list any relevant skills or professional qualifications:</p> <p>(d) what is the relationship (if any) of this person to the witness:</p> <p>(e) is the proposed intermediary registered with the Department of Justice:</p> <p>(f) describe the witness’ communication needs, and the proposed arrangements for questioning the witness. Attach any relevant report, including an intermediary’s assessment. Ground rules for questioning may be discussed between the court, the legal representatives and the intermediary before the witness gives evidence to establish (a) how questions should be put to help the witness understand them and (b) how the proposed intermediary will alert the court if the witness has not understood or needs a break.</p> <p>(g) has the intermediary made a declaration? If yes, please attach a copy. If a declaration has not yet been made, a copy of it must be submitted to the Court as soon as reasonably practicable after having been made.</p> <p>(h) has an intermediary been used in any other part of the investigation or pre-trial preparation, including a video-recorded interview:</p> <p>(i) if an intermediary was used in a video-recorded interview, is it intended that an</p>	<p>An application by the defence need not disclose the name of the intermediary if disclosure could lead to the identification of the witness.</p>

application will be made to have the video-recording admitted as evidence in chief:

(ii) was that intermediary used in any other part of the investigation, pre-trial preparation or video-recorded interview, the person named above (if no, please give the details sought in this Part in respect of that intermediary);

(iii) did that intermediary make a declaration before acting? If yes, please attach a copy.”

SCHEDULE 2

Rule 2(4)(c)

<p>Form 88K</p> <p>MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981 (Rules 149H(1) and 149O(1))</p> <p>CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999 (Articles 21A and 21BA)</p> <p>Form of application for a live link direction under Article 21A of the Criminal Evidence (Northern Ireland) Order 1999</p> <p>Form of application for the examination of an accused through an intermediary under Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999</p>	
<p>PART A – TO BE COMPLETED FOR AN APPLICATION FOR A LIVE LINK DIRECTION OR AN APPLICATION FOR A DIRECTION FOR THE EXAMINATION OF ACCUSED THROUGH INTERMEDIARY</p>	
<p>Details required</p>	<p><i>Notes</i></p>
<p>Case details:</p> <p>Complainant:</p> <p>.....Petty Sessions</p> <p>.....District of:</p> <p>Defendant:</p> <p>.....County Court</p> <p>.....Division of:</p> <p>Court Venue</p> <p>Date of next court appearance:</p> <p>Charges:</p> <p>PPSNI reference number:</p> <p>ICOS number (if known):</p>	<p>The venue of the court hearing the case.</p> <p>Give brief details (including date and location of the offence) of those charges to which this application applies.</p>

<p>Details of accused:</p> <p>Name of accused:</p> <p>Date of birth of accused:</p>	
<p>PART B – TO BE COMPLETED WHERE AN APPLICATION FOR A LIVE LINK DIRECTION IS BEING MADE</p>	
<p>Details of application</p> <p>State the conditions under which Article 21A(4) or (5) upon which this application is based:</p> <p>Give a description of the evidence submitted in support of this application:</p> <p>Arrangements available</p> <p>Give a description of the live link facilities which are available in the area in which it is likely the hearing will take place:</p> <p>Reasons for application</p> <p>Give the grounds for believing the live link direction being sought in this application will enable the accused to participate more effectively in the proceedings as a whole:</p> <p>Give the views of the accused as to why the live link direction sought in this application is required:</p> <p>Details of live link</p> <p>Give –</p> <p>(a) the address of any venue from which the accused 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 accused:</p> <p>(c) the occupation of this person:</p> <p>(d) the relationship (if any) of this person to the accused:</p> <p>Grounds</p> <p>State why it is believed that this person should accompany the accused</p>	<p>This requirement is optional. Examples of evidence might be birth certificate; medical report.</p>

PART C – TO BE COMPLETED WHERE AN APPLICATION FOR THE EXAMINATION OF THE ACCUSED THROUGH AN INTERMEDIARY IS BEING MADE	
<p>Details of application</p> <p>(a) State the conditions under which Article 21A(5) or (6) upon which this application is based:</p> <p>(b) Give the grounds for believing that the use of an intermediary will enable the accused to participate more effectively in the proceedings as a witness giving oral evidence:</p> <p>(c) Give a description of the evidence on which the application is based:</p> <p>(d) what is the name of the proposed intermediary:</p> <p>(e) What is the occupation of this person:</p> <p>(f) List any relevant skills or professional qualification:</p> <p>(g) What is the relationship (if any) of this person to the accused:</p> <p>(h) Is the proposed intermediary registered with the Department of Justice:</p> <p>(i) Has the intermediary made a declaration? If yes, please attach a copy. If a declaration has not yet been made, a copy of it must be submitted to the Court as soon as reasonably practicable after having been made:</p> <p>(j) Describe the accused’s communication needs and the proposed arrangements for questioning the witness. Attach any relevant report including an intermediary’s assessment. Ground rules for questioning may be discussed between the Court, the legal representatives and the intermediary before the accused gives evidence to establish (a) how questions should be put to help the accused understand them and (b) how the proposed intermediary will alert the Court if the witness has not understood or needs a break:</p>	<p>This requirement is optional. Examples of evidence might be birth certificate; medical report.</p>

<p>(k) Has an intermediary been used in any other part of the investigation:</p> <p>(i) Was that intermediary the person named above (if no, please give the details sought in this Part in respect of that intermediary):</p> <p>(ii) Did that intermediary make a declaration before acting? If yes, please attach a copy of it:</p> <p>(l) Give a description of any other evidence submitted in support of this application:</p> <p>Extension/abridgment of time for service</p> <p>Please indicate whether you are applying for an extension or an abridgement of time for service. If the answer is yes, please state your reasons.</p>	<p>This requirement is optional Examples of other types of evidence might be birth certificate; medical report.</p>
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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 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) to notify the applicant and the clerk of petty sessions in writing of your opposition, stating the reasons for such.. ”

SCHEDULE 3

Rule 2(4)(d)

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Form 88M

MAGISTRATES’ COURTS (NORTHERN IRELAND) ORDER 1981

(Rules 149O(11) and 149P(11))

CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

(Articles 21BA and 21BB)

Notice of decision on application for examination of accused through an intermediary under Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999

Notice of decision to vary or discharge a direction allowing the examination of accused through an intermediary under Article 21BB of the Criminal Evidence (Northern Ireland) Order 1999

of

.....Petty Sessions District of

.....:Complainant

of

..... County Court Division of

.....:Defendant

Upon hearing an application on(*date application heard*) under Article 21BA for a direction to allow the examination of the accused through an intermediary/under Article 21BB for the variation/discharge* of a direction allowing the examination of the accused through an intermediary, the Court made an order to the following effect, viz:-

(please specify the name of the intermediary)

Direction allowing the examination of the accused through an intermediary given/refused/discharged/varied/discharged refused/variation refused*

Please state the reasons for that decision -

This day of 20 .

Clerk of Petty Sessions

* delete as appropriate

”

“

Form 88N

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

(Rule 149Q)

CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

(Articles 17 and 21BA)

**Declaration for an intermediary under Article 17(5) Or Article 21BA(9) of the
Criminal Evidence (Northern Ireland) Order 1999**

I (insert name) solemnly, sincerely and truly declare (or I swear by Almighty God) that I will well and faithfully communicate questions and answers and make a true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.

Signed:

(Intermediary)

Dated:

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

And to

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

”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates' Courts Rules (Northern Ireland) 1984 to prescribe the procedure for making an application for the examination of a witness through an intermediary under Article 17 of the Criminal Evidence (Northern Ireland) Order 1999 ("the 1999 Order") and the examination of the accused through an intermediary under Article 21BA of the 1999 Order.

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