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STATUTORY RULES OF NORTHERN IRELAND

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**1984 No. 225**

**Magistrates' Courts Rules (Northern Ireland) 1984**

**PART II**

**Documents**

**Wording, etc., of documents**

6.—(1) Every complaint, summons, warrant or other document made or issued for the purpose of, or in connection with, any proceedings before a magistrates' court for an offence shall be sufficient if it describes the specific offence with which the accused is charged, or of which he is convicted, in ordinary language avoiding as far as possible the use of technical terms, and gives such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) Every complaint, summons, warrant or other document in proceedings upon complaint in a civil matter shall be sufficient if it describes the cause of complaint in ordinary language without necessarily stating all the facts upon which the complaint is founded and gives such particulars as may be necessary for giving reasonable information as to the nature of the complaint.

(3) If the offence charged or cause of complaint is one created by or under any statutory provision, the description of the offence or cause of complaint shall contain a reference to the section of the Act, or, as the case may be, the rule, order, regulation, bye-law or other instrument giving rise to the offence or the cause of complaint unless such reference appears elsewhere on the face of any summons or warrant issued in respect thereof.

(4) Subject to the foregoing paragraphs, the forms set out in Schedule 1 or forms to the like effect shall, where appropriate, be used in connection with proceedings to which the Rules relate.

**Form of complaint**

7.—(1) A complaint may be made by the complainant in person or by his solicitor or by any other person authorised in that behalf.

(2) Subject to any enactment, where it is intended that a summons only shall issue to require the attendance of any person, the complaint may be made either upon or without oath, and either in writing or not, as the justice of the peace receiving the complaint thinks fit.

(3) Where a complaint is in writing it shall be signed by the person making it and by the justice receiving it.

(4) Where it is intended that a warrant shall issue for the arrest of any person, the complaint shall be in writing and on oath of the complainant or of his solicitor or of any other person authorised in that behalf.

(5) Any person against whom a complaint has been made in writing or his counsel or solicitor shall be entitled on request to receive from the clerk of petty sessions a copy of such complaint.

(6) The original complaint shall be deposited with and, except as provided by Rule 28(2), Rule 42(1) or Rule 155(1), retained by the clerk of petty sessions.

- (7) In describing the property mentioned in any complaint—
- (a) where the property belongs to or is in the possession of partners, trustees, joint tenants, coparceners, or tenants in common, it is sufficient to refer to such property as that of any such persons who are named and of another or others, as the case may be, without naming them; or
  - (b) where the property is that of a local or public authority, commissioners, directors, trustees, a body corporate or persons known by any other general designation it shall be sufficient to refer to it as the property of such persons without naming them individually.
- (8) It shall not be necessary in a complaint to specify or negative an exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or cause of complaint contained in the statutory provision giving rise to the offence or on which the complaint is founded.

### **Form of summons**

- 8.—(1) Every summons shall be signed by the person who issues it.
- (2) No summons shall be signed in blank.
- (3) Where there is more than one defendant a separate summons shall be issued in respect of each defendant.
- (4) Every summons shall state shortly the offence or cause of complaint and shall state the time and place at which the person summoned is required to appear.
- (5) A single summons may be issued against a person in respect of several complaints but the summons shall state each offence or cause of complaint separately and shall have effect (except for the purposes of an order made under section 116 of the Judicature (Northern Ireland) Act 1978)<sup>(1)</sup> as several summonses, each issued in respect of one complaint.
- (6) The name and address of the complainant and the name and, where possible, the usual or last-known address of the person summoned shall be stated in the summons

### **Preparation of summons**

- 9.—(1) Subject to paragraph (2), the complainant or, where the summons is a witness summons, the person applying for the issue of the summons shall be responsible for the preparation of any necessary summons.
- (2) Where the complainant or the person applying for the issue of a witness summons is not a solicitor or a member of the Royal Ulster Constabulary the justice of the peace receiving the complaint or granting the application may direct the clerk of petty sessions to assist in the preparation of a summons.
- (3) References in this Rule to a summons include any copy thereof for service.

### **Plea of guilty by post**

- 10.—(1) Where it is intended to make the procedure of pleading guilty by post under Article 24(1) (i) of the Order available to a defendant the summons shall be accompanied by Forms 3, 4 and 6.
- (2) Notice in writing of the service of such a summons shall be given by or on behalf of the complainant to the clerk of petty sessions pursuant to Article 24(1) of the Order and shall be in Form 5.

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(1) 1978 c. 23

(3) Where the defendant elects to enter a plea of guilty in writing pursuant to Article 24(2) of the Order he shall do so in Form 6.

(4) Where a person has been convicted upon his written plea of guilty and the Court decides to adjourn the hearing before passing sentence, the clerk of petty sessions shall give to the defendant notice in writing of the time and place of the adjourned hearing and shall specify the reason for the adjournment.

### **Service of summons**

**11.**—(1) In cases of offences prosecuted by a member of the Royal Ulster Constabulary, the summons shall, subject to Rule 12, be served by another member thereof.

(2) In other cases, the summons shall, subject to Rule 12, be served by—

- (a) the summons server of the petty sessions district in which the proceedings are brought or in which the defendant or witness resides; or
- (b) any person who has received permission from a resident magistrate or other justice of the peace' or from the clerk of petty sessions to serve the summons;

and any such permission shall be endorsed on the original summons and signed by the person giving it.

(3) In no case shall a summons be served by the complainant, or a director, partner or employee of the complainant.

(4) Subject to Rule 13 every summons shall be served upon the person to whom it is directed by delivering to him a copy of such summons, or, where he is a child or young person within the meaning of Part IV of the Children and Young Persons' Act (Northern Ireland) 1968 on a parent of such child or young person summoned in connection with proceedings against such child or young person or where the summons alleges a summary offence or is issued upon complaint in a civil matter or is a witness summons, by leaving it for him with some person apparently over the age of sixteen years at his usual or last known place of abode? or at his place of business.

(5) In the case of a corporate body, a summons shall be served by delivering a copy to the secretary or clerk of the body or by leaving a copy for him with some person apparently over the age of sixteen years at its registered or principal office or at any place of business maintained by such body in Northern Ireland, or by sending a copy by registered post or by the recorded delivery service (using the advice of delivery form) in an envelope addressed to such corporate body at such office or place of business.

Notwithstanding anything in paragraph (2), in a case where service is effected by registered post or by the recorded delivery service, the envelope containing the copy summons may be posted by any person other than the complainant.

(6) Every summons shall be served a reasonable time before the hearing of the complaint.

(7) In every case the person who serves a summons shall endorse on the original the date, place and manner of service and, unless service shall be proved by affidavit, shall attend at the hearing of the complaint to depose, if necessary, to such service and, in the case of service upon a corporate body by registered post or by the recorded delivery service under paragraph (5), shall attach to the affidavit or produce to the court the certificate of posting and, subject to Rule 13(2)(a), the relevant advice of delivery issued by the Post Office.

(8) Nothing in this Rule shall affect the provisions of any statutory provision dealing with the time and manner of service and the person who may serve summonses in particular cases.

## **Service of a summons in England and Wales or Scotland**

**12.**—(1) A summons requiring a person in England and Wales or Scotland charged with an offence to appear before a magistrates' court in Northern Ireland may, subject to paragraph (4), be served by any member of a home police force within the meaning of the Police Act 1969<sup>(2)</sup> or by a person employed by the chief officer of police or the police authority for the area in which the summons is to be served who is authorised by the chief officer of police to serve summonses.

(2) Service of the summons may be proved by an affidavit in Form 109 sworn in England and Wales before a justice of the peace or clerk to the justices or in Scotland before a sheriff, justice of the peace or sheriff clerk.

(3) The summons shall be served by delivering a copy to the person charged at least 14 days before the date of the hearing.

(4) Where the summons is to be served on a corporate body in England and Wales or Scotland, paragraph (5) of Rule 11 shall have effect as if the words “in Northern Ireland” were omitted.

(5) Paragraphs (4) and (6) of Rule 11 shall not apply to the service of a summons under this Rule.

## **Postal service of summonses other than for offences prosecuted by the Royal Ulster Constabulary**

**13.**—(1) Where a resident magistrate or the clerk of petty sessions is satisfied that it is not reasonably practicable to serve a summons to which paragraph (2) of Rule 11 applies in accordance with that Rule, the resident magistrate or clerk of petty sessions may permit the summons server to serve the summons by post in accordance with paragraph (2)(a).

(2) The summons server of the petty sessions district in which the proceedings are brought shall—

- (a) send by registered post or by the first-class postal recorded delivery service (using the advice of delivery form, save where the resident magistrate in exceptional circumstances dispenses with this requirement) a copy of the summons in an envelope addressed to the person to be served at his usual or last-known place of abode or at his place of business; and
- (b) endorse on the original summons the name of the summons server, the date on which it was posted and the serial number on the envelope and on the Post Office receipt of postage.

(3) Evidence (either oral or by affidavit) of such service shall be given at the hearing of the complaint by the summons server who shall produce to the court or, as the case may be, attach to the affidavit the following documents:—

- (a) the original summons endorsed by him with the particulars referred to in paragraph (2)(b);
- (b) the Post Office receipt of postage;
- (c) subject to paragraph (2)(a), the relevant Post Office advice of delivery.

(4) Subject to paragraph (2)(a), a summons proved to have been posted and delivered as aforesaid shall, unless the contrary is shown, be deemed to have been served on the person to whom the envelope containing it was addressed at the time stated in the Post Office advice of delivery.

(5) Nothing in this Rule shall derogate from the provisions of any enactment within the meaning of section 1 of the Interpretation Act (Northern Ireland) 1954<sup>(3)</sup> (other than Rule 11) under which proof of personal service of a summons upon the person to be served is required.

(6) Where the summons server informs the clerk of petty sessions that the envelope containing a copy of a summons, postal service of which has been permitted under paragraph (1), has been returned by the Post Office on the ground that delivery of the envelope was not accepted by anyone at the address of the person to be served, the clerk shall forthwith give notice thereof in writing to

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(2) 1969 c. 63

(3) 1954 c. 33 (N.I.)

the complainant named in the summons or to his solicitor and transmit to the complainant or, as the case may be, his solicitor the documents listed in paragraph (8)(a), (b), (c) and (d).

(7) The complainant or his solicitor may thereupon either verbally or in writing request a resident magistrate to grant permission for the summons to be served by ordinary post.

(8) A resident magistrate may grant such permission upon production of—

- (a) the original summons endorsed under paragraph (2)(b);
- (b) the Post Office receipt of postage;
- (c) the copy of the summons enclosed in the envelope containing it returned by the Post Office as undelivered;
- (d) the form of advice of the Post Office that the envelope containing such copy could not be delivered according to the practice of the Post Office as to delivery by registered post or, as the case may be, by the recorded delivery service because delivery of the envelope was not accepted by anyone at the address of the person to be served;
- (e) a certificate in Form 117 signed by the complainant or his solicitor or other person authorised to do so on his behalf that, having regard to the reason given by the Post Office for non-delivery of the envelope containing the copy summons addressed to the person to be served stated in the form of advice referred to in sub-paragraph (d), to the best of his knowledge or belief a copy of the summons if sent by ordinary post to the person to be served at the address stated in the summons will, for the reason stated by the complainant in the certificate, come to the notice of that person a reasonable time before the date on which he is summoned to appear before the court;

and shall endorse such permission on the original summons.

(9) Where such permission is granted the summons server shall—

- (a) send the copy of the summons by ordinary post in an envelope addressed to the person to be served at his usual or last known place of abode or at his place of business; and
- (b) endorse on the original summons the place and date of posting of such copy to the person to be served.

(10) Subject to paragraph (11) the summons server shall attend at the hearing of the complaint stated in the summons to depose as to compliance with this Rule.

(11) Where proof of such compliance is given on affidavit in accordance with Article 126 of the Order the documents referred to in paragraph (9)(a) to (e) shall be attached to the affidavit.

(12) The copy of the summons posted in accordance with this Rule shall, unless the contrary is proved, be deemed to have been served at the time at which the envelope containing it would have been delivered in the ordinary course of post.

(13) In this Rule a reference to the summons server includes any person who has under Rule 11(2) (b) received the permission of a resident magistrate, justice of the peace or clerk of petty sessions to serve a summons.

### **Form of warrant or order**

**14.**—(1) Subject to paragraph (2), a warrant or form of order issued to give effect to the order of a magistrates' court shall be signed by the resident magistrate or justice of the peace who made the order or by the clerk of petty sessions.

(2) A warrant to arrest or warrant to search must be signed by a resident magistrate or justice of the peace.

(3) No warrant shall be signed in blank.

(4) Every warrant shall state shortly the offence charged in the complaint or the grounds on which the warrant is issued.

(5) A warrant shall name in full or otherwise describe the person against whom it is issued.

### **Separate warrants to be issued for each sentence imposed**

**15.**—(1) Subject to paragraphs (2) and (3), where a magistrates' court imposes more than one sentence upon a person convicted of more than one offence a separate warrant of distress or commitment shall be issued for the purpose of giving effect to each sentence.

(2) Where the court in imposing more than one sentence of imprisonment upon any person orders that the sentences are to run concurrently—

- (a) a warrant of commitment need not, unless under special circumstances the governor of the prison to which such person is committed otherwise requests, be issued in respect of a sentence which will expire before or on the expiration of any such sentence in respect of which a warrant of commitment has been issued; and
- (b) where only one warrant of commitment is issued under this paragraph the clerk of petty sessions shall send to the said governor, together with the warrant, particulars of the sentences which are not specified in the warrant.

(3) Where the court orders a person convicted of more than one offence at the same time to be sent for a period of detention in a young offenders centre or to a training school or commits a child or young person to a remand home in accordance with section 74 of the Children and Young Persons Act (Northern Ireland) 1968 only one warrant need be issued for the purpose of giving effect to such order and the clerk of petty sessions shall send particulars of any conviction and order not specified in the warrant to the person in charge of the young offenders centre, training school or remand home, as the case may be.

(4) Where a sentence of imprisonment is imposed to run concurrently with or consecutively to another sentence of imprisonment, the fact shall be stated on the warrant of commitment.

(5) Where a sentence of imprisonment is imposed to run concurrently with or consecutively to a period for which a person is ordered to be returned to prison under Article 3 of the Treatment of Offenders (Northern Ireland) Order 1976(4) the fact shall be stated on the warrant of commitment.

(6) Where the court makes an order for the return of a person to prison under that Article a warrant of commitment shall in every case be issued in pursuance of the order.

### **Endorsement of warrants of commitment as to release on bail**

**16.**—(1) Where a magistrates' court commits an accused for trial in custody in accordance with Article 37 of the Order or remands an accused in custody in accordance with Article 47 of the Order it may certify its consent to bail either on a separate form or by endorsement on the warrant of commitment and the certificate of such consent may be signed on behalf of the court by the clerk of petty sessions.

(2) The certificate, in addition to specifying the amount of the recognizance to be entered into by the accused, shall also specify the amount of the recognizance to be entered into by any surety required by the court under Article 136 of the Order or the amount of any sum of money or valuable security to be deposited under Article 137 of the Order in lieu of sureties.

(3) Where an accused is remanded in custody or is committed for trial in custody and is subsequently granted bail before the expiration of the period for which he was originally remanded or before the sitting of the court to which he is committed for trial, upon an application by or on

behalf of the accused to the court, the court shall issue a warrant for his discharge from prison to take effect from the completion of the necessary recognizance.

### **Binding over complainant to prosecute or give evidence upon issue of warrant**

17.—(1) When a resident magistrate or justice of the peace issues a warrant for the arrest of any person he may bind the person making the complaint by recognizance to appear at the court where such person is to be tried to prosecute or to give evidence, as the case may be.

(2) The recognizance may either be in a separate form or at the foot of the complaint.

### **Withdrawal of warrants**

18. A resident magistrate or justice of the peace who orders the withdrawal of a warrant under Article 158 of the Order shall endorse his reasons for such withdrawal upon the warrant.

### **The Order Book**

19.—(1) In every proceeding (other than one to which Part VI of the Order applies) the clerk of petty sessions shall enter the particulars of the proceeding and the substance of the decision upon it in a book to be known as the “Order Book” and such particulars may, subject to any directions given by the Lord Chancellor or a resident magistrate, be entered by reference to any other proceedings, particulars of which have previously been fully so entered.

(2) Subject to paragraph (3) such entry shall be signed by the resident magistrate or justice of the peace who determined the proceeding and after Such signature shall be deemed a conviction or order, as the case may be.

(3) Where a page of the Order Book contains more than one consecutive complete entry relating to proceedings determined by the same resident magistrate or justice of the peace on the same date, it shall be sufficient compliance with paragraph (2) as regards each such entry if he signs at the end of the last such entry.

(4) Where a resident magistrate or justice of the peace has made a conviction or order out of petty sessions he shall, if an Order Book is not signed, Sign and forward a certificate of the proceedings to the clerk of petty sessions, which certificate when signed shall be deemed a conviction or order, as the case may be.

(5) Upon receipt of the certificate referred to in paragraph (4) the clerk of petty sessions shall enter the particulars on the certificate in the Order Book and submit the entry to the resident magistrate or justice of the peace who signed the certificate for his signature. If the resident magistrate or justice of the peace does not for any reason sign the entry in the Order Book the clerk shall make a special entry to that effect in the Order Book opposite to the entry relating to the proceedings and shall preserve the original certificate as a record of the proceedings.

(6) Where a justice of the peace hears and determines out of petty sessions any charge against an adult for an offence specified in Part II of Schedule 1 to the Order, the fact that the person charged has consented to be dealt with in accordance with Article 18(3) of the Order shall be entered in the Order Book as part of the order.

(7) Where at the hearing of a complaint charging a summary offence or where at the summary trial of an indictable offence the accused pleads guilty, the court shall cause the plea to be entered in the Order Book as part of the order.

(8) Where a court—

(a) tries summarily any offence for which the accused appearing in person is entitled in accordance with Article 29 of the Order to claim to be tried by a jury; or

(b) deals summarily under Article 45 of the Order with any person charged with an indictable offence specified in Schedule 2 to the Order upon his consent to be so dealt with; the court shall cause to be entered in the Order Book as part of the order his election to be tried summarily or as the case may be.

(9) Where a magistrates' court adjourns a case under Article 50 or Article 51 of the Order the court shall explain to the accused the reasons for the adjournment and shall cause a note of those reasons to be entered in the Order Book as part of the order.

(10) Where an application is made to a magistrates' court for the grant of a civil aid certificate or a criminal aid certificate, the court shall cause a note of the grant or refusal thereof to be entered in the Order Book.

(11) Where the sitting of a magistrates' court is adjourned by a clerk of petty sessions under Article 161(5) of the Order he shall make a note of such adjournment in the Order Book.

(12) No erasure shall be made of the particulars entered upon the Order Book.

(13) Every interlineation or other alteration in the Order Book shall be initialled by the resident magistrate or justice of the peace signing the entry of the conviction or order.

#### **Certificate of conviction or order**

**20.**—(1) At the request of any person with a bona fide interest in any proceedings a resident magistrate, justice of the peace or clerk of petty sessions shall grant a certificate of the conviction or order made in such proceedings.

(2) The certificate shall be signed by the resident magistrate or justice of the peace who made the conviction or order or by any justice of the peace for the same petty sessions district or by the clerk of petty Sessions.

(3) A certificate under this Rule shall be prima facie evidence of the conviction or order and, except where it is proved that such a certificate purporting to be signed by a resident magistrate or justice of the peace or clerk of petty sessions was not in fact so signed, the certificate shall operate as a valid form of conviction or order for any purpose whatsoever.

#### **Documents taken by or made before resident magistrates or justices of the peace sitting out of petty sessions**

**21.** Every complaint, deposition, recognizance or other document taken by or made before a resident magistrate or justice of the peace sitting out of petty sessions shall as soon as practicable be forwarded or delivered to the clerk of petty sessions for the district in which the resident magistrate or justice of the peace was sitting or acting.

#### **Signing of documents on behalf of clerk of petty sessions**

**22.** Where these Rules provide that a document shall or may be signed by the clerk of petty sessions or that an affidavit or statutory declaration may be sworn or made before or recognizance may be taken by the clerk of petty sessions, that document may be signed by, or, as the case may be, that affidavit or declaration may be sworn or made before or that recognizance may be taken by a person holding a rank not lower than executive officer, grade two duly authorised by the clerk of petty sessions or by a resident magistrate to do so.