1994 No. 387

MAGISTRATES' COURTS

Magistrates' Courts (Amendment) Rules (Northern Ireland) 1994

Made . . . . . *8th October 1994*

Coming into operation . . *1st November 1994*

The Lord Chancellor, in exercise of the powers conferred on him by Articles 13 and 126(1) and (3) of the Magistrates' Courts (Northern Ireland) Order 1981(**a**), and all other powers enabling him in that behalf, on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following rules:—

Citation and commencement

1. These rules may be cited as the Magistrates' Courts (Amendment) Rules (Northern Ireland) 1994 and shall come into operation on 1st November 1994.

Interpretation

2. In these rules, unless the context otherwise requires, a Rule or Schedule referred to by number means the Rule or Schedule so numbered in the Magistrates' Courts Rules (Northern Ireland) 1984(**b**).

The Order Book

3. Rule 19 shall be amended as follows:

(*a*) by inserting, in paragraph (2), after the word "proceeding", the words " or, where he is unavailable, by the clerk of petty sessions,";

(*b*) by substituting, in paragraph (3), for the word "he", the words "the appropriate resident magistrate or justice of the peace or, where he is unavailable, the clerk of petty sessions,";

(*c*) by substituting, in paragraph (5), for the words "submit the entry" to the end the words "shall submit the entry to the resident magistrate or justice of the peace who signed the certificate for his signature" or, where he is unavailable, the clerk of petty sessions shall sign the entry himself."; and

(*d*) by substituting, in paragraph (13), for the words "or justice of the peace" the words ", justice of the peace or clerk of petty sessions".

(**a**) S.I. 1981/1675 (N.I. 26); Article 126 was amended by S.I. 1989/1341 (N.I. 12), Article 86 and Schedule 4 paragraph 3

(**b**) S.R. 1984 No. 225

Service on accused of copy of notice and of documents referred to in Article 32(1) of the Order

4. Rule 33 shall be amended by substituting for the words "this Rule", the words "Rule 32".

Proof of service of process

5.—(1) Rule 62 shall be amended, at paragraph (4), by inserting, after the word "affidavit", the words "or certificate in Form 111A".

(2) Rule 63 shall be amended by inserting, after the word "affidavit", the words "or certificate in Form 111A".

(3) After Rule 63 there shall be inserted the following new Rule:

"*Receipt of certificate of service of process in evidence*

63A. Any document purporting to be given as a certificate in Form 111A shall be received in evidence and shall be deemed to be duly made until the contrary is shown.".

Process Register

6. Rule 65 shall be amended by substituting, for paragraph (3), the following paragraph:

"(3) The Process Register shall be signed at the foot of each page by the resident magistrate who had adjudicated upon the proceedings entered thereon or, where he is unavailable, by the clerk of petty sessions, provided that:

(*a*) where a page contains records of proceedings heard on more than one date it shall be signed either by the appropriate resident magistrate or, where he is unavailable, by the clerk of petty sessions at the last entry on each date; or

(*b*) where a page contains records of proceedings heard by more than one resident magistrate it shall be signed either by the appropriate resident magistrate at the last entry of any proceedings heard by him or, where he is unavailable, by the clerk of petty sessions.".

Amendments to Schedule 1

7. Schedule 1 shall be amended as follows:

(*a*) by inserting, after the words "Resident Magistrate" at the bottom of Form 39, the words "or Clerk of Petty Sessions";

(*b*) by inserting, after the words "Resident Magistrate" at the bottom of Form 53, the words "or Clerk of Petty Sessions";

(*c*) by substituting for Form 85 the new Form 85 set out in Schedule 1 to these rules; and

(*d*) by inserting, in the place appropriate to its number, each new Form set out in Schedule 2 to these rules.

Dated 8th October 1994. *Mackay of Clashfern,* C.

"FORM 85

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Article 118(1); Rule 8)

Summons to Witness

To:—

of
witness in the case of

of Petty Sessions District of

Complainant
[Plaintiff]
[Appellant]
[Applicant]

of

Defendant
[Respondent] County Court Division of

WHEREAS a [complaint has been made] [process has been issued by the plaintiff claiming] that the defendant [*or* a Notice of [Appeal] [Application] to a magistrates' court has been duly served].

AND WHEREAS I am satisfied that you are able to give material evidence on behalf of the *and/or* produce a document or thing; namely:—

THIS IS TO COMMAND you to appear as witness before a magistrates' court at (place) on (date) at (time) [and there produce the said document or thing].

This day of 19 .

Justice of the Peace
[Clerk of Petty Sessions]

NOTE: Failure to appear at the time and place shown above is a criminal offence for which you are liable to prosecution."

"FORM 10A

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Article 47(4A); Rules 14 and 143)

Warrant of Commitment to Detention at a Police Station
[*Title as in Form 1*]

WHEREAS the defendant (being 21 years or over and not already detained under a custodial sentence) appeared this day before the magistrates' court sitting at upon (*a*) complaint(s) that—

AND WHEREAS upon application by a member of the Royal Ulster Constabulary not below the rank of Inspector, the court ordered that the defendant be committed to detention at a police station until the day of 19 , for the purpose of inquiries into other offences.*

THIS IS TO COMMAND you to whom this warrant is addressed to detain the defendant at a police station for the above-mentioned period (*or, if the inquiries are completed or are no longer required before the expiration of that period, to bring him on such earlier occasion before a magistrates' court having jurisdiction to conduct the proceedings*).

AND for this the present warrant shall be a sufficient authority to all whom it may concern.

This day of 19 .

Clerk of Petty Sessions

To: The Superintendent of the Royal Ulster Constabulary at Division.

IMPORTANT

* **The period for which an accused is remanded in these circumstances *must not* exceed three days commencing on (and including) the day following that on which he is remanded.**

FORM 10B

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Article 47(4B); Rules 14 and 143)

Warrant of Commitment to Custody of a Constable
[*Title as in Form 1*]

WHEREAS the defendant (being 21 years or over and not already detained under a custodial sentence) appeared this day before the magistrates' court sitting at upon (*a*) complaint(s) that—

AND WHEREAS upon application by a member of the Royal Ulster Constabulary not below the rank of Inspector, the court ordered that the defendant be committed to the custody of a constable until the day of 19 , for the purpose of inquiries into other offences.*

THIS IS TO COMMAND you to whom this warrant is addressed to commit the defendant to the custody (otherwise than at a police station) of a constable for the above-mentioned period (*or, if the inquiries are completed or are no longer required before the expiration of that period, to bring him on such earlier occasion before a magistrates' court having jurisdiction to conduct the proceedings*).

AND for this the present warrant shall be a sufficient authority to all whom it may concern.

This day of 19 .

Clerk of Petty Sessions

To: The Superintendent of the Royal Ulster Constabulary at Division.

IMPORTANT

* **The period for which an accused is remanded in these circumstances *must not* exceed three days commencing on (and including) the day following that on which he is remanded.**

FORM 111A

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Articles 73(2) and 126; Rules 62, 63 and 63A)

Certificate of Service of a Process by a Summons Server or a Person who has Received Permission to Serve the Process

[*Title as in Form 1*]

I of
a person entitled to serve the process in this matter, hereby certify that I did serve the process on the above-named defendant in the manner endorsed by me on the original process.

Dated this day of 19 .

Signed .....
[Person who served the process]''

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Magistrates' Courts Rules (Northern Ireland) 1984 so as to:

— provide that the orders entered in the Order Book under Rule 19 may be verified by the signature of the clerk of petty sessions where the appropriate resident magistrate or justice of the peace is unavailable;

— correct a minor error in Rule 33;

— provide for proof of service of process to be by way of certificate as an alternative to an affidavit;

— provide that entries of proceedings in the Process Registers under Rule 65 may be verified by the signature of the clerk of petty sessions where the appropriate resident magistrate is unavailable;

— amend the Summons to Witness (Form 85); and

— prescribe Forms of Warrant of Commitment pursuant to orders of a magistrates' court committing a defendant to detention at a police station, or to the custody of a police constable.