

2009 No. 19

COUNTY COURTS

The County Court (Amendment) Rules (Northern Ireland) 2009

Made - - - - *16th January 2009*

Coming into operation - *9th February 2009*

The County Court Rules Committee makes the following Rules in exercise of the powers conferred by Article 47 of the County Courts (Northern Ireland) Order 1980(a), and Article 14 of the Criminal Justice (Northern Ireland) Order 2004(b).

Citation and commencement

1. These Rules may be cited as the County Court (Amendment) Rules (Northern Ireland) 2009 and shall come into operation on 9th February 2009.

Amendments

2. In Order 30 of the County Court Rules (Northern Ireland) 1981(c) (“the principal Rules”)—

- (a) in rule 3(3), for “section 129(1)(b)”, substitute “section 129(1)(b) or (ba)”;
- (b) in rule 12(1), for “section 129(1)(b)”, substitute “section 129(1)(b) or (ba)”;
- (c) add after rule 12(2)—

“(3)An applicant who is a debtor or hirer making an application for an order under section 129(1)(ba) must attach to the notice of application, a copy of the notice served on the creditor or owner under section 129A(1)(a).”.

3. In Order 32, rule 1 of the principal Rules—

- (a) in paragraph (4), for “(4A) and (4B)”, substitute “(4A) to (4D)”;
- (b) add after paragraph (4B)—

“(4C) If the appeal is brought under section 11 of the UK Borders Act 2007(d) (in this rule referred to as “the 2007 Act”) against a decision of the Secretary of State to impose a penalty under section 9(1) of the 2007 Act, the appeal notice must, subject to paragraph (4D), be served within twenty-one days from the date on which the penalty notice was received.

(4D) If notice of objection has been given to the Secretary of State under section 10 of the 2007 Act within the time prescribed for doing so, the appeal notice must be served within twenty-one days from the date on which the notice of the Secretary of State’s decision in response to the notice of objection was received.”.

(a) S.I. 1980/397 (N.I.3) to which the most recent relevant amendment was made by the Constitutional Reform Act 2005 (c.4).
(b) S.I. 2004/1500 (N.I. 9).
(c) S.R. 1981 No. 225 to which the most relevant amendments were made by S.R. 2008 No. 199.
(d) 2007 (c.30).

4. In Order 32 of the principal Rules, after rule 6I, insert the following new Rules—

“Evidence by live link by witness (other than the defendant)

6IA.—(1) An application for a direction under Article 10 of the Criminal Justice (Northern Ireland) Order 2004 for a witness (other than the defendant) to give evidence through a live link shall be made by giving notice in writing which shall be in Form 137T.

(2) The application under paragraph (1) shall be made within 14 days from the date of the service of notice of appeal from a decision of a magistrates’ court.

(3) The notice under paragraph (1) shall be served on the chief clerk of the appropriate county court division, and at the same time a copy thereof shall be served by the applicant on every other party to the appeal.

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

(5) Except where notice is received in accordance with paragraph (4), the court may—

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

(6) Where a party to the appeal notifies the chief clerk in accordance with paragraph (4) of his opposition to the application, the court shall direct a hearing of the application.

(7) Where a hearing is to take place in accordance with paragraphs (5) or (6), the chief clerk shall notify each party to the appeal of the time and place of the hearing.

(8) A party notified in accordance with paragraph (7) may be present at the hearing and be heard.

(9) The chief clerk shall, as soon as reasonably practicable, notify all the parties of the decision in Form 137U, and, where a direction is given, the notification shall state—

- (a) if known, the place where the witness will give evidence;
- (b) where the witness is to give evidence on behalf of the prosecutor or where disclosure is required by section 6A(2) of the Criminal Procedure and Investigations Act 1996, the name of witness;
- (c) the location of the court at which the appeal will be held; and
- (d) any conditions specified by the court in accordance with paragraph (10).

(10) In determining an application under paragraph (1), the court may specify that as a condition of the direction, the witness should give evidence in the presence of a specified person who is able and willing to answer under oath or affirmation any questions the court may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

Application for rescission of a direction

6IB.—(1) An application to rescind a direction for a witness to give evidence through a live link under Article 11(5)(a) of Criminal Justice (Northern Ireland) Order 2004 shall be made in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the direction was made.

(2) An application under paragraph (1) shall be served on the chief clerk and on every other party to the appeal as soon as is reasonably practicable after the change in circumstances occurs.

(3) Any party on whom a copy of the notice under paragraph (2) is served may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (4) to (9) of Rule 6IA shall apply to an application to rescind a live link direction as they apply to an application for a live link direction.”.

5. In Appendix 1 to the principal Rules—

- (a) after Form 137S, insert Forms 137T and 137U set out in the Schedule to these Rules; and
- (b) in Form 284, for “section 129(1)(b)” substitute “section 129(1)(b) or (ba)” in both instances.

The undersigned members of the County Court Rules Committee certify these Rules and submit them to the Lord Chancellor.

*T.A. Burgess
C.E. Philpott
Hilary Keegan
Barry Valentine
Nigel McCombe
Brian F. Walker
Brian J. Stewart
Philip Babington
Nigel Elliott*

Dated 16th December 2008

In exercise of the powers conferred by Article 47(4) of the County Courts (Northern Ireland) Order 1980 and after consultation with the Lord Chief Justice, I allow these Rules which shall come into operation on 9th February 2009.

Signed by the authority of the Lord Chancellor

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 16th January 2009

SCHEDULE

Rule 5(a)

FORMS TO BE INSERTED INTO THE COUNTY COURT RULES (NORTHERN IRELAND) 1981

“Form 137T

FORM OF APPLICATION FOR DIRECTION FOR WITNESS TO GIVE EVIDENCE THROUGH A LIVE LINK UNDER ARTICLE 10 OF THE CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 2004

Order 32: Part IIA: Rule 6IA(1)

An application must be made within 14 days from the date of the service of notice of appeal.

This form may also be used where an extension of time has been granted for the making of this application.

A copy of this form must be served at the same time on every other party to the appeal.

<i>Details Required</i>	<i>Notes</i>
<p>Details of Witness</p> <p>Name of witness:</p> <p>Date of Birth of Witness:</p> <p>Case Details:</p> <p>PPSNI reference number:</p> <p>ICOS number (if known):</p> <p>Appellant(s): Surname:</p> <p style="padding-left: 40px;">Forenames:</p>	<p>An application by the appellant for evidence to be given by live link need not disclose who that witness is, except to the extent that the disclosure is required by section 6A(2) of the Criminal Procedure and Investigations Act 1996 (alibi)</p>
<p>Court venue:</p> <p>Date of next court appearance:</p>	<p>The venue of the court hearing the appeal.</p>
<p>Charges:</p>	<p>Give brief details (including date and location of offence) of those charges to which this application applies.</p>

<p>Details of Application</p> <p>State the reasons given by the applicant in support of this application:</p> <p>Place from which the witness will give evidence (if known):</p> <p>Extension/abridgement of time for service</p> <p>Please indicate whether you are applying for an extension or abridgement of time for service.</p> <p>If the answer is yes, please state your reasons:</p>	
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Dated this day of 20 .

Applicant
[Solicitor for Applicant]

To: the Chief Clerk for the county court division of

And to

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

NOTE:

The notice served on the chief clerk shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the appeal.

Any party who wishes to oppose the application shall, within 7 days of the date on which notice of the application was served on him, notify the chief clerk and every other party to the appeal, in writing, of his opposition, giving reasons for it.

Form 137U

**NOTICE OF DECISION ON APPLICATION FOR DIRECTION/RESCISSION
OF DIRECTION FOR WITNESS TO GIVE EVIDENCE THROUGH A LIVE
LINK UNDER ARTICLES 10 AND 11 CRIMINAL JUSTICE (NORTHERN
IRELAND) ORDER 2004**

Order 32: Part IIA: Rule 6IA(9) and 6IB(4)

of

Appellant

Petty Sessions District of

of

Respondent

County Court Division of

Upon hearing of an application by _____ (*name of applicant*), on
_____ (*date application heard*) under Article 10/Article 11* of the Criminal
Justice (Northern Ireland) Order 2004 for a direction/rescission of a direction* for a witness to
give evidence through a live link, the court made an order to the following effect, viz—

Direction given/refused/rescinded/rescission refused* .

* If direction is refused or rescinded or an application for rescission of a direction is refused, state
the grounds –

To be completed where direction is given:

Place where the witness will give evidence (if known):

Where the witness is to give evidence on behalf of the prosecutor, or where disclosure is required
by section 6A(2) of the Criminal Procedure and Investigations Act 1996, the name of the witness:

The location of the court at which the appeal will be heard:

Name of person specified by the court under Order 32 Rule 6IA(10), in whose presence the
witness shall give evidence (if applicable):

This _____ day of _____ 20 _____ .

Chief Clerk

*Delete as appropriate.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules (Northern Ireland) 1981 [S.R. 1981 No. 225] so as to:

- amend rules 3 and 12 of Order 30 and Form 284 to take account of amendments to the Consumer Credit Act 1974 made by the Consumer Credit Act 2006 in relation to applications for time orders in connection with credit agreements;
- insert new rules 1(4C) and (4D) in Order 32 relating to appeals brought under the UK Borders Act 2007 (c. 30); and
- prescribe the procedure relating to applications for directions for a witness (other than the defendant) to give evidence by live link under Part III of the Criminal Justice (Northern Ireland) Order 2004.