

Neutral Citation No. [2012] NIMag 2

Ref:

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **30/05/2012**

IN DUNGANNON MAGISTRATES' COURT

PUBLIC PROSECUTION SERVICE

Complainant

v

BRIAN GALLAGHER

Defendant

DISTRICT JUDGE (MAGISTRATES' COURT) MEEHAN

The Background.

1. On 11th April 2012 there was put before me a Summons dated 13th March 2012 and addressed to one Brian Gallagher of an address in (the Republic of) Ireland, whereby he was summonsed to appear on that day to answer a Complaint that he

on 15 February 2012 in the County Court Division of Fermanagh and Tyrone contravened a speed limit fixed at 30 miles per hour, contrary to Article 43 of the Road Traffic Regulation (Northern Ireland) Order 1997(5008013SB).

2. The Summons went on to declare;

THIS IS TO COMMAND YOU to appear as a defendant on the hearing of the said complaint at Dungannon Courthouse, THE COURTHOUSE, 46 KILLYMAN ROAD, DUNGANNON, CO TYRONE, BT71 6DE on the 11th day of April 2012 at 10:30, before a Magistrates' Court of the said County Court Division.

3. Papers put before the Court on 11th April were;
 - The Summons (without endorsement as to service);
 - A document entitled "Certificate by Complainant of Service of documents on Defendant", signed and dated 8th March 2012;

- A single page document entitled “Notification of Plea of Guilty and Statement of Mitigating Circumstances”, signed on behalf of the Complainant and that signature dated 8th March 2012;
 - A single page document also entitled “Notification of Plea of Guilty and Statement of Mitigating Circumstances”;
 - A document entitled “Endorsement on Summons of requirement to produce licence and its counterpart and/or test certificate”;
 - A cover letter from the Public Prosecution Service (“the PPS”), addressed to the Defendant and dated 8th March 2012;
 - A Statement of Constable Gary James Roulston.
 - The (substantive) Notification of Plea of Guilty and Statement of Mitigating Circumstances now duly completed and signed by the Defendant; he had made no entries in the section allowing him to set out mitigating circumstances;
 - A document entitled “Acknowledgement by Defendant of Receiving Summons and Related Papers by Post”, completed and signed by the Defendant and dated 19th March 2012;
 - A completed Means Enquiry Form; and
 - A colour photocopy of the Defendant’s driving licence.
4. The prosecution case is that on 15th February 2012 Constable Roulston was operating a speed-measuring device at the Monaghan Road, Aughnacloy, where the speed limit is 30 miles per hour. Along came the Defendant; his car was computed to be travelling at 44 miles per hour. Constable Roulston stopped the Defendant and established that he had an address in County Donegal. Constable Roulston showed Mr. Gallagher the speed reading, cautioned him and completed the usual formalities, as to recitation of a suspect’s rights, before asking whether the Defendant had anything to say in response. Mr. Gallagher answered “Oh – not at all”. He then produced his driving licence, which was noted to be one issued in Ireland. Rather than establishing whether Mr. Gallagher could offer an address for service in Northern Ireland or instead arresting the Defendant and having him charged at the Station with the offence of speeding, to be bailed to appear in Court at a later date, Constable Roulston simply informed him that he would be reported with a view to prosecution, that he might be required to surrender his licence at court and sent him on his way.
5. There is a standard cover letter which the Public Prosecution Service (“the PPS”) send to those Defendants who have an address in Northern Ireland and which accompanies a copy of the Summons and other documents in those cases where service is being effected by post by the PPS and where the Defendant is being offered the facility of having the matter disposed of upon his written plea of guilt. These procedural requirements were considered in detail by the Court of Appeal in DPP v (Marie) Brown [2009] NICA 32; [2010] NIJB 95. Not long after that, it seems, the PPS also started posting Summonses to Defendants living in Ireland. It is common practice by now,

on the evidence of my court lists, which seem to include one or two new instances most weeks. Up to earlier this year, the PPS simply attached the same cover letter for these Defendants as in domestic cases and sent the same accompanying documents where the facility to plead guilty by post was being offered. It has been my practice to strike out all these Summonses where, as here, the Defendant did not appear and on the basis that there was no valid proof of service; that has not been challenged by the PPS up to now.

6. The PPS have now deleted a number of passages in their cover letter when addressed to Defendants living outside the UK. I believe this to be the first case put before me which involves the new, customised edition of the PPS cover letter. It had been trialed for a few months as work in hand to rectify any irregularities concerning postal service to Ireland. I therefore thought it opportune that I, for my own part, gave a considered ruling on the PPS practice in cases of Defendants based outside the UK and as to whether the court has jurisdiction to proceed in the absence of the accused.
7. Mr. Preston, a Senior Public Prosecutor in the Policy Section of the PSS kindly stepped up to assist in this endeavor by providing a skeleton argument and in presenting the case and I thank him for that.

The Main Issues.

8. Mr. Preston's contention is that Rule 12A of the Magistrates' Courts Rules (Northern Ireland) 1984 ("the 1984 Rules"), as amended, states that in cases prosecuted by the Director of Public Prosecutions ("the DPP"), service of the Summons may be effected by post. The Crime (International Co-operation) Act 2003 ("the 2003 Act") provides that a process may be served outside the UK; *ergo*, the PPS may lawfully serve Summonses outside the UK by post.
9. I have come to the view that, in the case of the issuing of a Summons for service outside the UK, it must be by request to the clerk of petty sessions, who has an assigned function in vetting papers. The PPS contention is that service of a criminal process is, as it were, reserved to the PPS alone, that the Summons is issued when signed by the Lay Magistrate, that postal service is assigned to the PPS and that it would take a change in the law to authorise the court (allow the clerk of petty sessions) to effect postal service of any such Summons.
10. The PPS contend that where the Defendant returns an acknowledgment of service, whether separately or under the procedure for pleading guilty by post, the court thereby has the necessary proof of service. This embraces a contention that the procedure for pleading guilty by post extends to people served outside Northern Ireland. I consider that in cases of service outside the UK, proof of service can only be by way of a Certificate given by or on behalf of the Secretary of State.

Reasoning

A: Service in Northern Ireland

11. Article 157 of The Magistrates' Courts (Northern Ireland) Order, as amended, ("the 1981 Order") provides;

Summons or process lawfully issued may be served anywhere in Northern Ireland

157. Any summons, notice or other process lawfully issued in connection with any proceedings before a magistrates' court may be served in any part of Northern Ireland upon the person to whom it is addressed.

12. This reflects the constitutional position that a Northern Ireland enactment applies only to the territory of the Province itself. The express purpose of the provision, of course, is to make clear that a person does not have to be served in the same petty sessions district or County Court division as the Magistrates' Court which issues the Summons, but it also marks the geographical limit in respect of service in any manner or circumstance for which provision is made by the 1981 Order. All provisions contained in the 1981 Order about service of a court process concern service in Northern Ireland only. To put it another way, the statutory authority for serving any process outside Northern Ireland cannot be grounded upon a Northern Ireland enactment. Rules made on the authority of a Northern Ireland enactment are subject to the same limitation.
13. Rule 11 of the Magistrates' Courts Rules (Northern Ireland) 1984, as amended ("the 1984 Rules") states;

Service of summons .

11.- (1) Subject to Rule 12 and Rule 12A, in the case of an offence prosecuted by the Director of Public Prosecutions a summons shall be served by a member of the Police Service of Northern Ireland who is not in charge of the investigation of the offence.

14. Personal service of a Summons is to be in accordance with the ensuing terms of Rule 11. It also covers the methods of proving such service; by affidavit or certificate of service in Form 110A, or by an electronic report. Rule 11 relates only to service in Northern Ireland¹. Until relatively recently, Rule 11 alone provided for service of a Summons in a criminal prosecution.
15. The provision for postal service in Northern Ireland is set out in Rule 12A. Rule 12A(4)(b) does now govern proof of service in cases where the process for pleading guilty by post is also involved, but primarily Rule 12A provides for proof of postal service generally of any DPP Summons. Like Rule 11, it is to be construed as providing for postal service anywhere in Northern Ireland unless personal service is required under any particular statutory enactment.

¹ *Criminal Procedure in Northern Ireland*, Valentine with Hart (SLS, Belfast, 1989), p. 39, 4.27

Postal Service of Summons for offences prosecuted by the Director of Public Prosecutions

- 12A.- (1) Subject to paragraph (6), in cases of offences prosecuted by the Director of Public Prosecutions, service of the summons may be effected by post in accordance with paragraph (2).
- (2) Service of a summons under this Rule shall be effected by sending a 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.
- (3) Where a summons is to be served in accordance with paragraph (2) the person posting the envelope containing the copy of the summons shall endorse on the original summons his name or description and the date and place of posting of the envelope and shall complete and sign a certificate of service in Form 110A.
- (4) If the person summoned fails to appear in answer to a summons served in the manner authorised by paragraph (2), such service shall not be deemed valid unless an acknowledgment of service in –
- (a) Form 110B; or
- (b) in cases where the procedure of pleading guilty by post under Article 24(1A) of the Order is available to the defendant, in Form 6 or Form 6A as appropriate appearing to be signed by the defendant or his solicitor is produced to the court.
- (5) Unless the contrary is proved-
- (a) the signed acknowledgement shall be taken as proof of service; and
- (b) the document shall 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.
- (6) This Rule shall not apply to summonses which, under any statutory provision, require personal service upon the person to be served.
- (7) Nothing in this Rule shall prevent the service of a summons by any other method allowed for under these Rules.

16. Rule 10 prescribes the procedures to be followed, whether service of the Summons itself is by post (Rule 12A) or by personal service (Rule 11) and where the Defendant is offered the opportunity to request² that the case be

² It is, strictly speaking, only a request. This is why I do not accept Mr Preston's contention, in his skeleton argument, that to speak of a "command" on the face of a summons where the procedure for postal plea is offered is "an over-statement of the correct position" in law.

dealt with on foot of his written plea of guilt and (usually) in his absence, pursuant to the provisions of Article 24 of the 1981 Order;

Plea of guilty by post

10. - (1) Where it is intended to make the procedure of pleading guilty by post under Article 24(1A) of the Order available to the defendant, the summons shall be accompanied by Form 3 together with –

(a) Form 4 or copies of the witness statement(s); and

(b) Form 6 or Form 6A,

as appropriate.

(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.

(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 or Form 6A as appropriate.

(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.

17. The text of Form 5 (Notice of Service) reads as follows;

Certificate by Complainant of Service on Defendant of Forms 3 and 4/Witness statement(s)*

I, the complainant, hereby certify that copies of Form 3 and Form 4/copies of the witness statement(s)* were served on the defendant together with the summons(es).

Dated thisday of 20...

Complainant

[On behalf of the Complainant]

*delete as appropriate

18. Whilst Rule 10(2) describes Form 5 as notice of service of the Summons, it is in fact notice that the Complainant has also served Form 3 and, normally, copies of the witness statements along with the Summons.

19. Form 6A is the version appropriate in most road traffic cases, as in the instant case. I set out certain parts of it here;

ROAD TRAFFIC OFFENDERS (NORTHERN IRELAND)
ORDER 1996
(Articles 12, 27)
MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER
1981
(Article 24(2); Rule 10 and 12A)³

Acknowledgement of service; Notification of Plea of Guilty for
Offences involving obligatory or discretionary
disqualifications from driving; indication of intended plea
[Title as in Form 1]

Note: This Form is in three sections. Please read the notes to
each section carefully before completing section A and either
section B or C.

If you intend to consult a solicitor you should do so before
completing this Form.

SECTION A: ACKNOWLEDGEMENT OF SERVICE

This section should be completed by all defendants.

By completing this section you are only acknowledging
service of the summons(es), Notice to Defendant, Statement
of Facts/witness statement(s) and Notice of previous
convictions (if any) on you.

In connection with the summons(es), for hearing on (date)
..... , Notice to defendant [and] [statement
of facts] [witness statement(s)] and Notice of previous
convictions]* now served upon you, will you please
acknowledge receipt by signing and returning this form as
soon as possible to the clerk of petty sessions at

.....
I hereby acknowledge receipt of summons(es),
Notice to defendant [and] [statement of facts] [witness
statement(s)] and Notice of previous convictions]*.

Signed: _____ Date _____

MALE/FEMALE*

Date of Birth _____

Present Address: _____

(if different from the address given above)

*delete as appropriate

SECTION B: PLEA OF GUILTY BY POST (NON-
ATTENDANCE AT COURT)

Note: if you wish a plea of guilty to be accepted without your
attendance at court, please complete this section

Plea of Guilty

I have read [statement of facts/ witness statement(s)] * relating
to the charge(s) against me.

³ It will be noted that the citations contained in the heading of the Form are of Northern Ireland legislation only.

I plead guilty to the charge(s) and I desire the court to deal with the case in my absence.

...

SECTION C: ...

WARNING

ROAD TRAFFIC OFFENDERS (NI) ORDER 1996

Articles 11, 12 and 27

You have been charged with an offence which involves an obligatory or discretionary disqualification from driving. You must deliver your driving licence to the clerk of the court no later than the day before the date of the hearing, or bring it with you to the hearing.

If you are convicted of an offence involving obligatory or discretionary disqualification from driving and you do not deliver your licence to the court, you are guilty of an offence and your licence will be suspended from the time when its production was required until it is produced to the court.

If you have returned your licence to the court with this form, please tick this box []

....

20. To find the authority - and much of the procedural requirements - in respect of the option of pleading guilty by post one has to refer to Article 24 of the 1981 Order itself, as amended.

24. - (1) Subject to paragraph (7), this Article shall apply where a summons has been issued requiring a person to appear before a court of summary jurisdiction, other than a youth court, to answer to a complaint charging a summary offence, not being-

- (a) an offence which is also triable on indictment; or
 - (b) an offence for which the accused is liable to be sentenced to be imprisoned for a term exceeding six months,
- and the clerk of petty sessions is notified by or on behalf of the complainant that documents mentioned in paragraph (1A) have been served upon the accused with the summons.

...

(2) Subject to paragraphs (3) to (5), where the clerk of petty sessions receives a notification in writing purporting to be given by the accused or by a solicitor acting on his behalf that the accused desires to plead guilty without appearing before the court, the clerk shall inform the complainant of the receipt of the notification and if at the time and place appointed for the hearing or adjourned hearing of the

complaint the accused does not appear it is proved to the satisfaction of the court, on oath or by affidavit or in the prescribed manner, that the documents mentioned in paragraph (1A) have been served upon the accused with the summons, then-

- (a). subject to this Article and Article 23 (3) the court may proceed to hear and dispose of the case in the absence of the accused, whether or not the complainant is also absent, in like manner as if both parties had appeared and the accused had pleaded guilty; or
- (b) if the court decides not to proceed as mentioned in subparagraph (a), the court shall adjourn or further adjourn the trial for the purpose of dealing with the complaint as if that notification had not been given.

21. The only documents which the PPS must certify in Form 5 as having been served upon the Defendant along with the Summons in these cases are those referred to in Article 24(1A) – the prescribed explanatory statement and details of the case by way of either a statement of facts or the witness statements. Those, in turn, are the only documents which the Defendant acknowledges having received, plus the notice of previous convictions, if any. In particular, there is no provision for acknowledging receipt of a notice containing PPS contact details. Equally, the terms of Article 24(1), as with Form 5, show that service is by the Complainant. This is unremarkable and reflects the fact that these provisions for postal service flow on from Rule 11 and allow for what is now an important relaxation of the previous law that service of a criminal process was always to be personal service by the Police. It was, I think, never the intention to add extra-territorial reach to these provisions; they were designed to address the method, not the place, of service.

B: Service in Great Britain.

22. There is statutory authority for serving a Northern Ireland Summons upon Defendants residing elsewhere in the United Kingdom, but this is found in Section 39 of the Criminal Law Act 1977 (“the 1977 Act”), an enactment of the sovereign United Kingdom Parliament;

39 Service of summonses and citation throughout United Kingdom

- (1) A summons requiring a person charged with an offence to appear before a court in England or Wales may, in such manner as may be prescribed by rules of court, be served on him in Scotland or Northern Ireland.
- (2) A summons requiring a person charged with an offence to appear before a court in Northern Ireland may, in such manner as may be prescribed by rules of court, be served on him in England, Wales or Scotland.
- (3) Citation of a person charged with a crime or offence to appear before a court in Scotland may be effected in any other part of the United Kingdom in like manner as it may be done in Scotland, and for this purpose the persons authorised to effect such citation shall include
 - (a) in England and Wales and Northern Ireland, constables and prison officers serving in those parts of the United Kingdom
 - (b) persons authorised by a chief officer of police in England or Wales to serve summonses there.

23. Service of a Northern Ireland Magistrates' Court Summons in England, Wales or Scotland is then provided for in Rule 12. Service of a Northern Ireland process in Great Britain is to be through the appropriate home police force, albeit with special provisions in respect of a corporate body. Rule 12(2) provides that service is to be proven by an Affidavit in Form 109, or by Certificate of Service in Form 110A. The authority for making Rule 12 in the first place derives from Section 39(2) of the 1977 Act.
24. Thus far, then, the law and procedures for service of a Summons concern only Northern Ireland and Great Britain. In cases of service of a Northern Ireland Summons upon someone in Great Britain, it is served personally by the Police. In Northern Ireland it may also be served by post and there is provision here whereby the accused may plead guilty without attending court. Subject to proof of prior service of the Summons on the Defendant, the court is empowered to proceed with the case, even if he does not appear. Article 23(2) of the 1981 Order provides that;
 - 23(2) Where the accused has failed to appear in answer to a summons, the court shall not proceed in his absence unless it is proved that the summons was duly served upon him or that he is evading service.
25. Proof of lawful service or evasion of service of a Summons is a pre-requisite to proceeding if the Defendant does not appear: Maguire v Murray [1979] NI at 107G. Thus, service cannot take place on a Sunday (Farrell [2005] NIQB 6). A Defendant who is served on Sunday knows full well the time and place of the

intended hearing of the case against him; but the court still does not have jurisdiction to proceed, because of that defect in service. A person in County Donegal, likewise, may know of a process against him being before a Court in Northern Ireland, but that alone is not sufficient.

26. For cases of postal service in Northern Ireland, Article 24(2) of the 1981 Order provides that service is to be proved "on oath or by affidavit or in the prescribed manner". Rule 12A, paragraphs (3),(4) and (5) prescribe the manner of proving service. Rule 12A(4)(b), which provides for acknowledgement of service by post from the Defendant, makes plain, by explicit reference, that this is in respect of postal service upon a Defendant under the provisions of Article 24(1A) of the 1981 Order.
27. For these reasons, I conclude that the court cannot find service outside Northern Ireland to be proven by reference to either an Acknowledgement of Service or a completed Form 6 or 6A. Without more, it therefore cannot proceed in the absence of the Defendant.

C: Service outside the UK.

28. The Crime (International Co-operation) Act 2003 ("the 2003 Act") now provides for service of various kinds of process, including a Magistrates' Court Summons, outside the United Kingdom. The relevant provisions are contained in Sections 3 and 4, which cover service of a UK process abroad. However, I would first make mention of Sections 1 and 2 of the Act, dealing with the service of a process requiring a person to appear in another State's court to answer criminal charges. Section 1 lays down a method for service of such a process in the UK through the Secretary of State, when his assistance is so requested by that State or by an authority in that State. The Secretary of State may then cause the process to be served by post within the UK, or may ask the Police to serve it on the accused personally. Under Section 2, the process must be accompanied by a notice advising the person to be served that he is under no obligation under UK law to comply, that he may wish to get advice about the consequences of his non-appearance under the law of the requesting State and that he may not have the same rights and privileges there as before the UK courts. Those, then, are, on the face of it, the terms upon which the UK is prepared to co-operate when asked by the government of, or other authority in, another State to serve a process upon a person in the UK.
29. Sections 3 and 4 cover the position when traffic is in the other direction and a UK process is to be served elsewhere.

3. General requirements for service of process

- (1) This section applies to any process issued or made for the purposes of criminal proceedings by a court in England and Wales or Northern Ireland.
- (2) The process may be issued or made in spite of the fact that the person on whom it is to be served is outside the United Kingdom.
- (3) Where the process is to be served outside the United Kingdom and the person at whose request it is issued or made believes that the person on whom it is to be served does not understand English, he must-
 - (a) inform the court of that fact, and
 - (b) provide the court with a copy of the process, or of so much of it as is material, translated into an appropriate language.
- (4) Process served outside the United Kingdom requiring a person to appear as a party or attend as a witness-
 - (a) must not include notice of a penalty,
 - (b) must be accompanied by a notice giving any information required to be given by rules of court.
- (5) If process requiring a person to appear as a party or attend as a witness is served outside the United Kingdom, no obligation to comply with the process under the law of the part of the United Kingdom in which the process is issued or made is imposed by virtue of the service.
- (6) Accordingly, failure to comply with the process does not constitute contempt of court and is not a ground for issuing a warrant to secure the attendance of the person in question.
- (7) But the process may subsequently be served on the person in question in the United Kingdom (with the usual consequences for non-compliance).

30. It is to be noted that Section 3 does not actually provide that service may be effected by post. It is concerned with certain issues which arise at the point of issuing the process and it is apparent that the court is to be directly involved at that stage. Section 3(3) is so drafted as to indicate clearly that the procedure for having such a process issued involves presenting the court with the paperwork needed for service. In other words, though not thereafter expressly stated, it is in my view implicit that the papers will be posted out by the court.

4. Service of process otherwise than by post

- (1) Process to which section 3 applies may, instead of being served by post, be served on a person outside the United Kingdom in accordance with arrangements made by the Secretary of State.

- (2) But where the person is in a participating country, the process may be served in accordance with those arrangements only if one of the following conditions is met.
- (3) The conditions are-
- (a) that the correct address of the person is unknown,
 - (b) that it has not been possible to serve the process by post,
 - (c) that there are good reasons for thinking that service by post will not be effective or is inappropriate.

[4A General requirements for service of written charge or requisition

- (1) This section applies to the following documents issued for the purposes of criminal proceedings in England and Wales by a prosecutor-
- (a) a written charge (within the meaning of section 29 of the Criminal Justice Act 2003),
 - (b) a requisition (within the meaning of that section).
- (2) The written charge or requisition may be issued in spite of the fact that the person on whom it is to be served is outside the United Kingdom.
- (3) Where the written charge or requisition is to be served outside the United Kingdom and the prosecutor believes that the person on whom it is to be served does not understand English, the written charge or requisition must be accompanied by a translation of it in an appropriate language.
- (4) A written charge or requisition served outside the United Kingdom must be accompanied by a notice giving any information required to be given by rules of court.
- (5) If a requisition is served outside the United Kingdom, no obligation under the law of England and Wales to comply with the requisition is imposed by virtue of the service.
- (6) Accordingly, failure to comply with the requisition is not a ground for issuing a warrant to secure the attendance of the person in question.
- (7) But the requisition may subsequently be served on the person in question in the United Kingdom (with the usual consequences for non-compliance).

4B Service of written charge or requisition otherwise than by post

- (1) A written charge or requisition to which section 4A applies may, instead of being served by post, be served on a person outside the United Kingdom in accordance with arrangements made by the Secretary of State.
- (2) But where the person is in a participating country, the written charge or requisition may be served in accordance with those arrangements only if one of the following conditions is met.
- (3) The conditions are—
 - (a) that the correct address of the person is unknown,
 - (b) that it has not been possible to serve the written charge or requisition by post,
 - (c) that there are good reasons for thinking that service by post will not be effective or is inappropriate.]⁴

31. Section 4 deals with the method for serving a process outside the UK, but provides that this may be effected in accordance with arrangements made by the Secretary of State only “instead of being served by post.” Ultimately, I have concluded that Sections 3 and 4 are to be interpreted as authority for postal service outside the UK (and for the making of Rules in that respect), notwithstanding the oblique phrasing on the point. In part, this liberal interpretation invokes international treaty, as considered later.
32. When one turns to the Rules for Northern Ireland (contained in the 1984 Rules) made pursuant to the primary legislation (the Act of 2003), one finds;

J CRIME (INTERNATIONAL CO-OPERATION) ACT 2003
Notice required to be accompany process served outside the United Kingdom

52E. – (1) The notice which by virtue of section 3(4)(b) of the Act shall accompany any process served outside the United Kingdom shall give the information specified in paragraphs (2) and (4).

- (2) The notice shall –
 - (a) state that the person required by the process to appear as a party or attend as a witness may obtain information about his rights in connection with such requirement from the relevant authority; and
 - (b) give the particulars specified in paragraph (4) about that authority.
- (3) The “relevant authority” where the process is served –
 - (a) at the request of the prosecuting authority, is that prosecuting authority;

⁴ sections 4A and 4B were inserted by section 331 of, and paragraph 16 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44)

(b) at the request of the defendant, or of the prosecutor in the case of a private prosecution, is the court by which the process is served.

(4) The particulars referred to in paragraph (2) are -

(a) the name and address of the prosecuting authority or, as the case may be, the court together with its telephone and fax numbers and e-mail address;

(b) the name of a person at the prosecuting authority or, as the case may be, the court who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.

(5) Where section 3(3) of the Act applies, *the clerk of petty sessions shall require* any process served outside the United Kingdom to be accompanied by-

(a) any translation which is provided under section 3(3)(b) of the Act; and

(b) any translation of the information required to be given by this Rule which is provided to him.

(my emphasis)

33. I have highlighted the phrasing used in Rule 52E(5); the clerk of petty sessions requires that the process be accompanied by specified documents in certain circumstances. That phrasing is such as to also leave it unclear whether the actual dispatch is in the hands of the court or to be effected by the PPS.

34. Neither do the Rules appear to bridge the gap between what the UK demands of other States and what it requires of its own courts in dispatching processes for service elsewhere. There is no intimation that persons abroad are to be told, for example, that they may not enjoy the same rights and privileges here than in their own State.

35. For cases which involve posting papers to Ireland, Section 82 of the Criminal Justice (Mutual Assistance) Act 2008, an Act of the Oireachtas ("the 2008 Act"), seems broadly comparable to Sections 1 and 2 of the UK Act of 2003. The Minister of Justice, Equality and Law Reform is the appropriate authority to whom to send requests for service in Ireland. Certain matters are expected to be contained in the documents, being much the same cautions as the UK expects, including the caution that the Defendant may not enjoy the same rights and privileges in the courts of the requesting State as in the Irish courts. However, the Irish legislation differs in requiring certain assurances concerning immunity from prosecution (as I will term it here) otherwise than for the matters cited in the relevant process. Thus,

82— ...

(8) A document requiring a person to appear as a defendant in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so appears,

he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any conduct taking place before his or her departure from the State, other than conduct constituting the offence or offences specified in the document.

(9) A document requiring a person to attend as a witness in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so attends, he or she will not, subject to *subsection (10)*, be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any offence committed before his or her departure from the State.

(10) The immunity provided for in *subsections (8) and (9)* ceases when –

(a) a period of at least 15 days has elapsed from the date when the person's presence in the designated state is no longer required by the judicial authorities concerned and the person, having had an opportunity to leave the designated state during that period, has not done so, or

(b) the person, having left the state during that period, returns to it.

(11) The notice to accompany a document served under this section shall –

(a) state the content of *subsection (7), (8) or (9)*, as appropriate, and *subsection (10)*,

(b) indicate that the person on whom the document is served may wish to seek advice as to the possible consequences of failure to comply with it under the law of the state where it was issued, and

(c) indicate that under that law the person may not, as a defendant or witness, have the same rights and privileges as he or she would have in that capacity in criminal proceedings in the State.

(12) If there is reason to believe that the person understands only a language or languages other than Irish or English, the notice shall be translated into that other language or one of those other languages.

36. The Irish legislative provision for service of an Irish process abroad, as set out below, contrasts with the UK Act of 2003 in two principal respects. First, it enunciates unequivocally, in Section 81(1), that service in a designated State may be by post. Second, it incorporates into Irish domestic law, by virtue of Section 80(7) *et sequi* a provision for immunity from prosecution.

80. — (1) A document may be issued by a court in the State for the purposes of or in connection with criminal proceedings notwithstanding that the person on whom it is to be served is in another state.
- (2) Where the document is not in the official language or one of the official languages of that state, the person at whose request it was issued shall provide the court with a translation of the document, or the material parts of it, into that language or one of those languages, unless *subsection (3)* applies.
- (3) Where such a person believes that the person on whom it is to be served does not understand Irish, English or another language which is the official language or one of the official languages of that state, he or she shall —
- (a) inform the court of that belief, and
- (b) provide it with a translation of the document, or of the material parts of it, into a language that he or she believes that the person understands.
- (4) The document —
- (a) if it requires the recipient to appear in proceedings, shall not refer to a penalty for non-appearance, and
- (b) shall be accompanied by —
- (i) a notice stating that —
- (I) no measure of restraint or punishment may be enforced directly by the court in the territory of the other state, and
- (II) the person to be served may obtain information regarding his or her rights or obligations concerning the document from the court or a specified person or authority,
- (ii) a notice giving any other information required to be given by rules of court, and
- (iii) where necessary, a translation of the document, or of the material parts of it, into an appropriate language.
- (5) Subject to *subsection (6)*, non-compliance by a person with a requirement specified in the document is not contempt of court or a ground for issuing a warrant to compel the person to attend the proceedings concerned.
- (6) *Subsection (5)* does not apply if the document is subsequently served on the person in the State.
- (7) Subject to *subsection (9)*, a person who is in the State in compliance with a requirement in the document to appear as a defendant in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State other than an offence or offences specified in the document.

- (8) Subject to *subsection (9)*, a person who is in the State in compliance with a requirement in the document to appear as a witness in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State.
- (9) The immunity provided for in *subsections (7) and (8)* ceases when—
 - (a) a period of 15 days has elapsed from the date when the person's presence in the State is no longer required by the court concerned and the person, having had an opportunity to leave the State during that period, has not done so, or
 - (b) the person, having left the State during that period, returns to it.

81. — (1) A document referred to in *section 80* may be served in a designated state by post.
- (2) Subject to *subsection (3)*, it may be transmitted to a designated state with a request for service otherwise than by post in accordance with the relevant international instrument.
 - (3) Where the person to be served is in a member state, service otherwise than by post may be requested only if—
 - (a) the address of the person is unknown or uncertain,
 - (b) it has not been possible to serve the document by post, or
 - (c) the person at whose request the document was issued has good reason for believing that service by post would not be effective or is inappropriate.
 - (4) Such a document may be served in a state other than a designated state in accordance with arrangements made by the Minister.

- 37. In order to resolve this apparent disparity between the UK and Irish legislative provisions, whereby, (a), the UK legislation makes no reference to another State simply posting a process to someone in the UK, and, (b), the UK legislation makes no allusion to immunity from prosecution for matters not contained in the process being served abroad, resort must be had to the terms of "... the relevant international instrument."
- 38. For the European Union, as it now is, an agreed protocol for service of a criminal process in respect of relatively minor offences committed in one Member State by a person residing in another dates back to the European Convention on Mutual Assistance in Criminal Matters, signed at Strasbourg on 20th April 1959. This provided for a scheme whereby, upon receiving papers from another Member State, the appropriate authority in the receiving

State would proceed to arrange for service internally upon the defendant. The core provisions read as follows;

Chapter III – Service of writs and records of judicial verdicts -
Appearance of witnesses, experts and prosecuted persons

Article 7

1. The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party. Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

Article 12

1...

2 A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

3 The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

39. The assurance as to immunity from prosecution is therefore enshrined in the 1959 Strasbourg Convention. Nonetheless, it would appear that the UK, unlike Ireland, has not incorporated that provision into domestic law.
40. The Convention on Mutual Assistance in Criminal Matters, made at Brussels on 29th May 2000, opened the way for the each participating State to simply post notice of proceedings directly to defendants in another State. Previously, transmission had to be made through a competent authority in the receiving State - the Secretary of State in the UK, the Minister for Justice, Equality and Law Reform in Ireland. I infer that this vetting arrangement assured that the papers would be Convention-compliant before being posted to the Defendant or served upon him personally. I have little doubt that if that arrangement were still in place then none of the processes dispatched to Ireland by the PPS over recent years under cover letter would have been allowed through by the Irish authorities, all of them being in disregard, among other things, of the requirements contained in Section 3(4) of the Act of 2003, none of them giving

contact details, correspondence threatening the Defendant, for example, with the prospect of a warrant being issued for his arrest and silent as to an immunity from prosecution. As to why it was thought timely by the signatory States to drop that vetting arrangement and to allow each participating State to simply post a process to someone in another participating State, it is worth noting the following from the Preamble to the Convention of 2000;

EXPRESSING their confidence in the structure and functioning of their legal systems and in the ability of all Member States to guarantee a fair trial...

41. The new dispensation was enshrined in Article 5 of the Brussels Convention, rendering transmission through the requested State's authorities the exception rather than the norm;

Article 5

Sending and service of procedural documents

- (a) Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.
 - (b) Procedural documents may be sent via the competent authorities of the requested Member State only if:
 - (a) the address of the person for whom the document is intended is unknown or uncertain; or
 - (b) the relevant procedural law of the requesting Member State requires proof of service of the document on the addressee, other than proof that can be obtained by post; or
 - (c) it has not been possible to serve the document by post; or
 - (d) the requesting Member State has justified reasons for considering that dispatch by post will be ineffective or is inappropriate.
 - (c) ...
 - (d) All procedural documents shall be accompanied by a report stating that the addressee may obtain information from the authority by which the document was issued or from other authorities in that Member State regarding his or her rights and obligations concerning the document. ..
 - (e) This Article shall not affect the application of Articles 8, 9 and 12 of the European Mutual Assistance Convention and Articles 32, 34 and 35 of the Benelux Treaty.
42. The liberty afforded to the appropriate authority to post a process directly to someone in another participating State is contained in the 2000 Convention and so it is clear that either the prosecuting authority or a court may issue a Summons and post it directly to someone in another participating State in

accordance with that Convention and subject to the enabling legislation of the State concerned. In the immediate context, for the UK, that means in accordance with the 2003 Act, which opts for service by the court, rather than by the prosecuting authority, on my reading. Article 5 of the Brussels Convention makes clear that Member States are expected to serve by post as the norm and that a process should only be sent via the competent authorities of the requested State (in this case, Ireland) in certain specified circumstances. From all of this, it is at least clear that the Convention of 2000 certainly should have led the UK to make provision allowing for direct postal service from any one of the 3 jurisdictions within it and where domestic law did not previously cover this. One now returns to further consideration of the terms of the 2003 Act.

43. Certain key points may be made;
 - Section 3 authorises the making of Rules specifying only what information must be given to the recipient of postal service.
 - There is no function allocated to the Complainant in this respect and there is no procedure established for proving to the court that there has been compliance with the strict requirement as to additional information to be provided to the recipient, in contrast to the terms of Article 24 of the 1981 Order, with respect to pleas of guilt by post.
 - Sub-section (5) might be read as ruling out, in effect, any procedure for proof of such service, whereby the court would be authorised to proceed in the absence of the Defendant.

44. Apart from that, it is notable that the Statute provides for service through the court, at the request of the prosecuting authority; hence the wording of Section 3(3). It refers to the process issued or made at the request of, effectively, the PPS and it is in that context that the PPS must also notify the court if there is a language issue. It is difficult to see how all this, in the particular matter of service abroad, is to be reconciled to the present arrangements applying to the issue of any DPP Summons, irrespective as to where the Defendant resides. Lay Magistrates attend upon the PPS in Belfast⁵, or at a regional courthouse, to issue the process; the clerk of petty sessions learns of any individual Summons only when it is lodged, after it has been served.

45. I have already quoted Rule 52E in our Northern Ireland Rules. My conclusions in respect of the designated functions of the court in posting a process outside the UK is to some extent based upon deductions because the wording is not explicit. This contrast with the wording of the equivalent rules in England and Wales, which are found in the Criminal Procedure Rules 2010 (SI 2010 No. 60);

⁵ Mr. Preston tells me that this is a temporary arrangement in Belfast.

Notice required to accompany process served outside the United Kingdom and translations

32.1.-(1) The notice which by virtue of section 3(4)(b) of the Crime (International Co-operation) Act 2003 (general requirements for service of process) must accompany any process served outside the United Kingdom must give the information specified in paragraphs (2) and (4) below.

(2) The notice must-

(a) state that the person required by the process to appear as a party or attend as a witness can obtain information about his rights in connection therewith from the relevant authority; and

(b) give the particulars specified in paragraph (4) about that authority.

(3) The relevant authority where the process is served-

(a) at the request of the prosecuting authority, is that authority; or

(b) at the request of the defendant or the prosecutor in the case of a private prosecution, is the court by which the process is served.

(4) The particulars referred to in paragraph (2) are-

(a) the name and address of the relevant authority, together with its telephone and fax numbers and e-mail address; and

(b) the name of a person at the relevant authority who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.

(5) *The justices' clerk or Crown Court officer must send*, together with any process served outside the United Kingdom -

(a) any translation which is provided under section 3(3)(b) of the 2003 Act; and

(b) any translation of the information required to be given by this rule which is provided to him.

(6) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

(my emphasis)

Proof of service outside the United Kingdom

32.2.-(1) A statement in a certificate given by or on behalf of the Secretary of State-

(a) that process has been served on any person under section 4(1) of the Crime (International Co-operation) Act 2003 (service of process otherwise than by post);

(b) of the manner in which service was effected; and

(c) of the date on which process was served;

shall be admissible as evidence of any facts so stated.

(2) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

46. The English Rule 32.1(5) is so worded as to make it a good deal clearer that, there, the justices' clerk (the equivalent of our clerk of petty sessions) handles the actual dispatch in cases of service outside the UK under the provisions of the 2003 Act.

47. It is also instructive to consider the Rules in England and Wales governing service within that jurisdiction, under the Criminal Procedure Rules (2010);

Service by leaving or posting a document

4.4.-(1) A document may be served by leaving it at the appropriate address for service under this rule or by sending it to that address by first class post or by the equivalent of first class post.

(2) The address for service under this rule on-

(a) an individual is an address where it is reasonably believed that he or she will receive it;

(b) a corporation is its principal office, and if there is no readily identifiable principal office then any place where it carries on its activities or business;

(c) an individual or corporation who is legally represented in the case is that representative's office;

(d) the prosecution is the prosecutor's office;

(e) the court officer is the relevant court office; and

(f) the Registrar of Criminal Appeals is the Criminal Appeal Office, Royal Courts of Justice, Strand, London, WC2A 2LL.

[Note. *In addition to service in England and Wales for which these rules provide, service outside England and Wales may be allowed under other legislation. See-*

(a) section 39 of the Criminal Law Act 1977(50) (service of summons, etc. in Scotland and Northern Ireland);

(b) section 1139(4) of the Companies Act 2006(51) (service of copy summons, etc. on company's registered office in Scotland and Northern Ireland);

(c) sections 3, 4, 4A and 4B of the Crime (International Co-operation) Act 2003(52) (service of summons, etc. outside the United Kingdom) and rules 32.1 and 32.2; and

(d) section 1139(2) of the Companies Act 2006 (service on overseas company).]

...

4.11. The person who serves a document may prove that by signing a certificate explaining how and when it was served⁶.

(my emphasis)

48. There is no allusion to the Convention requirement to offer immunity from prosecution in the simple procedure of posting the process direct. The absence of any provision for proof of postal service must be seen in that context. It may be that the British legislation is structured so that the court

⁶ My understanding is that there are proportionately many more statutory declarations filed in England and Wales than in Northern Ireland (where they are extremely rare), whereby Defendants have disposals quashed upon the assertion that they were not made aware of the Summons in the first place. The Criminal Procedure Rules do not provide for an Acknowledgment of Service.

cannot proceed following postal service alone where the Defendant does not appear in answer to the Charge(s). The only legitimate proof of service in such a case, for Northern Ireland, is under Rule 52F in the 1984 Rules;

Proof of service outside the United Kingdom

52F. - (1) The service on any person under section 4(1) of the Act of any process issued or made may be proved in any proceedings by a certificate given by or on behalf of the Secretary of State.

(2) A statement in any such certificate as is mentioned in paragraph (1)-

(a) that a process has been served;

(b) of the manner in which service was effected;

(c) of the date on which a process was served,

shall be admissible as evidence of any facts so stated.

49. This only arises at a stage when service is effected under Section 4 of the 2003 Act. That requires the Secretary of State to forward to the Minister in Ireland a request for service. That is when Section 82 of the Irish Act is engaged and Irish law does not permit the Minister to co-operate in arranging internal service, whether by post or by the Garda, unless the assurance of immunity (in accordance with the Convention commitment) is given and the papers are otherwise acceptable. The net effect is that the Convention requirement as to the immunity from prosecution over any other matters, for a Defendant who answers the Summons, will be met before a Northern Ireland court can proceed in the Defendant's absence. One advantage in this approach to the statutory material under consideration here, including an interpretation which denies resort to Rule 12A of the 1984 Rules in this context, is that it is consistent with the obligations placed upon the UK by an unincorporated treaty, in that it effectively requires the prosecuting authority to offer the immunity from prosecution, the ultimate effort to secure voluntary attendance by the Defendant, before arriving at the point at which any legitimate proof of service can be filed in court. On the other hand, the UK legislation, in contrast to the equivalent provisions in Ireland, does allow the court to proceed if the Defendant should appear in response to direct posting of the Summons to him, even though the offer of immunity has not been made to him. It is not a legitimate function of the court to thwart the clear intention of the legislation in that respect by reference to an international treaty which has not been incorporated into domestic law (R v Secretary of State for the Home Dept. ex p. Brind [1991] 1 A.C. 696)
50. I refer back to the terms of Rule 52E (3) and (5) [paragraph 31, above], which suggest to me that the PPS request the clerk of petty sessions to serve a Summons in any case where it is intended that it be served outside the UK, pursuant to Section 3 and 4 of the 2003 Act. In respect of Rule 52E (3)(a), in particular, it makes little sense in my view that the PPS should have to give

their title and address if they were doing so anyway in posting the process to the Defendant. I infer that another party, namely the court, serves all processes abroad and, in the case of prosecutions by the DPP, redirects enquiries to the PPS. I do not accept Mr Preston's contention that it would require a new law to allow a clerk of petty sessions to see to service of a particular kind. Nevertheless, the Rules are not clear on the point. The phrasing used in the Northern Ireland text, whereby the clerk of petty sessions must require certain matters to be included in the paperwork, contrasts with the clear provision in the English Rules that papers are sent out by the justice's clerk.

D: The PPS Correspondence

51. In other circumstances, I would have a number of comments to make about the terms of the new PPS cover letter for non-UK residents. My decision in the instant case does not turn upon these, however. Indeed, I consider that there is really no place for a detailed cover letter from the PPS in cases of service abroad in the first place.
52. What I would highlight, though, is that the re-edited cover letter which the PPS still seek to use in postal service abroad and under their control does not comply with the requirements set out in Rule 52E, paragraphs (2)(a) and (4)(b). These require a statement that the Defendant may obtain further information from the relevant authority, the PPS, and giving the name and prescribed contact details for a named person there.
53. That remained an omission which continued to disturb me from first sight of the new cover letter on 11th April and until I was handed up a faxed copy of Mr. Preston's skeleton argument in court on the afternoon of 9th May (Mr Preston was not in attendance that day). It made repeated references to an "Extra-territorial Notice." I had no idea what this "Extra-territorial Notice" might be; neither did the prosecutor, initially. Some moments later, though, she was able to hand up a copy letter from one of her files. Only then did it become apparent that the PPS have been sending an additional letter to cross-border Defendants since their recent review of practice. Another text, which I am given to understand is a copy of the letter actually used in the instant case, was handed up by Mr. Preston on 16th May. He explained that this supplementary letter had been created after the relevant requirements in the Rules came to light recently and that the additional text would be incorporated into the main cover letter once approved by the appropriate body within PPS decision-making structures.
54. The supplementary letter to the Defendant reads as follows;

If this summons was served on you outside the United Kingdom, then you are not obliged to attend court but you can still have your case dealt with by doing so. If the attached

Notice to Defendant has a section entitled “Plea of Guilty by post form”, then you may also plead guilty by post as described in that section.

You can obtain more information about your rights in connection with attending court by contacting Casework Manager at [telephone number] or [telephone number] or contacting the above fax number or email address.

On behalf of complainant

The Director of Public Prosecutions for Northern Ireland

55. The extra letter serves to promote, once again, the contentious option of pleading guilty by post in non-UK cases at least as much as to provide the PPS contact details required under Rule 52E. In any event, it was apparently copied only to the prosecution files. Its existence has been unknown to the courts until now. Mr. Preston’s answer is that the PPS have met the requirement as to contact details, as a matter of fact; that because a document is not filed in court does not mean that it has not been served on the Defendant. The courts may take it that there has been compliance. I simply reject that argument. Regard instead might be had to Articles 121 and 126 of the 1981 Order and to Rule 148. In a court, material facts asserted by either party are to be proven by evidence. Conversely, a court does not need proof of what it itself has done. In other words, there was no need to provide in the Rules for proof of service to the court of the notice as required under Section 3(4) (and there is no such provision) because it is to be given to the Defendant by (the clerk of petty sessions on behalf of) the court.
56. I expect Mr Preston would contend that, although it does not include “the name of a person” to contact, as required by Rule 52E (4), it is sufficient compliance with an obligation imposed by rules of court to cite only the job title of the person(s) in question (“Casework Manager”) and without the fax number or e-mail address of any individual (the e-mail address given has the prefix omaghcaseworksupport@). These issues would not arise if the task were carried out by the clerk of petty sessions, as I believe it ought to be.
57. It is essentially an incidental point that the terms of Form 6A are such that to serve it would constitute a breach of the prohibition contained in Section 3(4)(a) of the Act of 2003, because it includes a clear notice of a penalty, should the Defendant not forward his driving licence to the court. To delete that notice, on the other hand, would mean that one was not compliant with the requirements of Article 24(1)(i) of the 1981 Order and Rule 10(1)(b)

Conclusions

58. The prosecuting authority cannot serve proceedings in accordance with both Article 24 and Rule 10 of the 1981 Order, on the one hand, and Section 3 of the 2003 Act on the other. Likewise, one cannot comply with both Rule 12A and Rule 52F; and one cannot mix and match. Article 24, Rule 10 and Rule 12A apply only to service in Northern Ireland.
59. The Defendant waives all legal requirements as to proof of service by attending Court in person and entering an unequivocal plea, either way, to the charge(s) and without reservation as to jurisdiction, or by having a solicitor or counsel appear on his behalf, duly authorised to admit or deny the truth of the complaint (Minister of Agriculture v McGeogh [1955] NI 139). Failing this, the court cannot proceed to hear the case where proof of service is not available.
60. This is not a situation in which Art. 24 of the 1981 Order applies and where, pursuant to Art. 24(6), I am to adjourn the hearing. Where there is no proof of service in this situation and the Defendant has not appeared, the position is as stated by Girvan, J in In re Farrell [2005] NIQB 6; "It follows that the Resident Magistrate cannot proceed with the hearing of the complaint unless or until a fresh summons is properly issued and served on the defendant."
61. The Northern Ireland legislation sets up a procedure aimed at allowing the court to proceed in the absence of the accused upon proof of postal service on a local Defendant and it also incorporates a procedure for pleading guilty by post in such a case.
62. The 2003 Act, on the other hand, reflects an international agreement and must be interpreted accordingly unless clearly inconsistent. The primary aim is to have the Defendant appear at court and, in any event, to assure that the UK will meet its international obligations before a court proceeds to hear a Complaint in the absence of a Defendant served in another participating State. The procedures to be followed under the Act of 2003 and the Rules made thereunder are such as will ensure, in effect, that the other participating State is made aware of the case and is satisfied that there has been compliance with the international agreement before any UK court is able to proceed in the Defendant's absence.
63. The PPS have been proceeding on the basis that the Northern Ireland Rules about the acknowledgement of postal service and pleas of guilt by post can now be treated as applying internationally. They cannot. Having recently become aware, they say, some years into their practice, of Rule 52E (if not also, I might add, of relevant requirements which are set out clearly in Section 3 of the primary legislation), they have made a qualified effort to comply with the Rules and do not in fact provide the name of a contact person to Defendants. They maintain that it is for them alone to be satisfied that the requisite contact details have been provided to the Defendant, not the court,

passing over the circumstance that, in consequence, no contact details were being supplied in all the relevant years up to now. They have taken up their position without, I fear, considering what the Irish State might make of all this. That is most unfortunate, for example, in the context of protracted and continuing negotiations aimed at the mutual recognition of penalty points for motorists by Northern Ireland and Ireland.

64. Having said all that, there is nothing unlawful about the mere fact that the PPS should post a Summons direct to a Defendant in Ireland, or Brazil for that matter; the diplomatic implications are not for the domestic court. The Summons is merely the notice of a scheduled court date. Should the Defendant turn up to answer the Complaint(s), the court will hear the case without more, provided of course that the PPS have not positively misrepresented the position to a reluctant Defendant.
65. This court will also be able to proceed in the Defendant's absence and without him being served within the UK, but only after particular and additional efforts have been made to persuade him to appear. Since direct service by post has proved ineffective in the instant case, then both the international instruments, UK law and arrangements made by the Secretary of State provide for the Defendant and the Irish State to be given clear and precise assurances that he will not be prosecuted or detained or subjected to any other restriction for acts or convictions preceding his departure from the Irish State and provided he leaves the UK again within 15 days of his court appearance and does not return. Then, and only then, does the prospect of the case proceeding in his absence emerge. The appropriate authority in the receiving State will satisfy itself that the requisite guarantees have been provided and that all else is in order before arranging either internal postal or personal service. Particulars of service upon the Defendant in Ireland will be reported back and a Certificate by way of proof of service is given by or on behalf of the Secretary of State. Should the Defendant not appear at court thereafter, then that Certificate endows the court with jurisdiction to proceed in the Defendant's absence.
66. Even if I am wrong in all this, I still cannot find jurisdiction to proceed. If Article 24 of the 1981 Order does apply, the PPS have failed to comply with Article 24(2) thereof in respect of the requirement to notify the clerk of petty sessions that the requisite documents have been served by post along with the Summons. This Summons is dated 13th March. What purports to be the Certificate of Service is dated 8th March. Further enquiries have revealed that the PPS (who also decline to endorse particulars of service on any Summons, in disregard of Rule 12A(3)) have been routinely signing off the Certificate of Service at the stage of printing out papers for presentation to Lay Magistrates and the issue of the Summons in the first place. In effect, the PPS continue to file no proper Form 5, notwithstanding DPP v (Marie) Brown [2009] NICA 32; [2010] NIJB 95.