

MAGISTRATES COURT

PRACTICE DIRECTION

NO 4 OF 2001

Ex officio Callover

The purpose of this Practice Direction is to clarify the procedure in relation to the manner of appearance of detainees (defendants in custody) at the court on *ex officio* callover days.

The *Justices Act 1886* provides for the use of video link facilities for certain proceedings before a Magistrates Court. In particular Section 178C provides as follows:-

Use of video link facilities in proceedings

178C.(1) This section applies to a proceeding if –

- (a) a detainee is entitled or required to be present before a Magistrates Court for the proceeding ; and
 - (b) the proceeding is about an offence with which the detainee is charged, including a proceeding for the detainee’s bail or remand;
and
 - (c) video link facilities are available linking the correctional institution where the detainee is in custody and the court.
- (2) A proceeding for the detainee’s bail or remand must be conducted using the video link facilities, unless the court, in the interests of justice, otherwise orders.
 - (3) In a proceeding, other than a proceeding for the detainee’s bail or remand, the court may order the proceeding be conducted using video link facilities only if all parties consent.
 - (4) The video link facilities may only be used to link the proceeding before the court at the place the court is sitting with the detainee, or the detainee and the detainee’s representative, at the correctional institution.

Accordingly, the following procedures will apply –

- (1) On the mention day when the matter is originally set down for *ex officio* callover, the practitioner must apply to the magistrate to have the detainee personally appear on the *ex officio* callover day. The practitioner will be required to satisfy the requirements of subsection 178C(2) supra.
- (2) On the *ex officio* callover day, the detainee will appear on video link unless previously excused.
- (3) If it is proposed to sentence the detainee for summary offences not dealt with by a higher court under Section 651 of the Criminal Code and the detainee is required to be present in court (i.e. all parties do not consent to the detainee being sentenced at the *ex officio* callover on video link S.178C(3)), the practitioner must, at the *ex officio* callover, inform the magistrate. The magistrate will set the matter down for sentence at the first available opportunity in Court 1 or Court 5 (if a lengthy plea).

This direction will apply as from the *ex officio* callover on 30 August 2001.

DM Fingleton
Chief Magistrate

29 August 2001