



Northern Ireland (Emergency Provisions) Act 1991

1991 CHAPTER 24

PART I

SCHEDULED OFFENCES

The scheduled offences

1 The scheduled offences

- (1) In this Act “scheduled offence” means an offence specified in Part I, III or IV of Schedule 1 to this Act but subject to any relevant note in Part I of that Schedule.
- (2) Part II of that Schedule shall have effect with respect to offences related to those specified in Part I of that Schedule.
- (3) The Secretary of State may by order amend Parts I and II of that Schedule whether by adding an offence to, or removing an offence from, either of those Parts or otherwise.

Preliminary inquiries, bail and young persons in custody

2 Preliminary inquiry into scheduled offences

- (1) Where in any proceedings before a magistrates' court for a scheduled offence (not being an extra-territorial offence as defined in section 1(3) of the Criminal Jurisdiction Act 1975) the prosecutor requests the court to conduct a preliminary inquiry into the offence under the Magistrates' Courts (Northern Ireland) Order 1981, the court shall, notwithstanding anything in Article 31 of that Order, conduct a preliminary inquiry into the offence unless the court is of opinion that in the interests of justice a preliminary investigation should be conducted into the offence under that Order.

- (2) Where in any proceedings a person charged with a scheduled offence is also charged with another offence which is not a scheduled offence, that other offence shall be treated as a scheduled offence for the purposes of this section.

3 Limitation of power to grant bail in case of scheduled offences

- (1) This section applies to any person who has attained the age of fourteen and is charged with a scheduled offence which is neither being tried summarily nor certified by the Director of Public Prosecutions for Northern Ireland as in his opinion suitable to be so tried.
- (2) Subject to subsection (7) below, a person to whom this section applies shall not be admitted to bail except—
- (a) by a judge of the High Court or the Court of Appeal; or
 - (b) by the judge of the court of trial on adjourning the trial of a person charged with a scheduled offence.
- (3) A judge may, in his discretion, admit to bail in pursuance of subsection (2) above a person to whom this section applies except where he is satisfied that there are substantial grounds for believing that that person, if released on bail (whether subject to conditions or not), would—
- (a) fail to surrender to custody, or
 - (b) commit an offence while on bail, or
 - (c) interfere with any witness, or
 - (d) otherwise obstruct or attempt to obstruct the course of justice, whether in relation to himself or in relation to any other person,
- or, if released subject to conditions, would fail to comply with all or any of those conditions.
- (4) In exercising his discretion in accordance with subsection (3) above in relation to a person, a judge shall have regard to such of the following considerations as appear to him to be relevant, namely—
- (a) the nature and seriousness of the offence with which the person is charged,
 - (b) the character, antecedents, associations and community ties of the person,
 - (c) the time which the person has already spent in custody and the time which he is likely to spend in custody if he is not admitted to bail, and
 - (d) the strength of the evidence of his having committed the offence,
- as well as to any others which appear to be relevant.
- (5) Without prejudice to any other power to impose conditions on admission to bail, a judge may impose such conditions on admitting a person to bail under this section as appear to him to be likely to result in that person's appearance at the time and place required, or to be necessary in the interests of justice or for the prevention of crime.
- (6) Where a person to whom this section applies is a serving member of—
- (a) any of Her Majesty's forces; or
 - (b) the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve,
- he may be admitted to bail on condition that he is held in military or (as the case may be) police custody if the judge is satisfied that suitable arrangements have been made for holding him in such custody; and where a person is admitted to bail on such a

condition it shall be lawful for him to be held in such custody in accordance with the conditions of his bail.

- (7) The power to admit a person to bail in accordance with subsection (6) above shall, notwithstanding subsection (2) above, be exercisable by a resident magistrate as well as by a judge.

4 Legal aid to applicants for bail in case of scheduled offences

- (1) Where it appears to a judge of the High Court or the Court of Appeal—
- (a) that a person charged with a scheduled offence intends to apply to be admitted to bail; and
 - (b) that it is desirable in the interests of justice that that person should have legal aid but that he has not sufficient means to enable him to obtain that aid,
- the judge may assign to him a solicitor and counsel, or counsel only, in the application for bail.
- (2) If, on a question of granting a person free legal aid under this section, there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.
- (3) Articles 32, 36 and 40 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (statements, payments, rules and stamp duty) shall apply in relation to legal aid under this section as they apply in relation to legal aid under Part III of that Order as if any legal aid under this section were given in pursuance of a criminal aid certificate under Article 29 of that Order.

5 Maximum period of remand in custody in case of scheduled offences

Notwithstanding Article 47(2) and (3) of the Magistrates' Courts (Northern Ireland) Order 1981, the period for which a person charged with a scheduled offence (or with a scheduled offence and another offence which is not a scheduled offence) may be remanded in custody by a magistrates' court shall be a period of not more than twenty-eight days beginning with the day following that on which he is so remanded.

6 Holding in custody of young persons charged with scheduled offences

- (1) Where a young person charged with a scheduled offence has been remanded or committed for trial as respects that offence and is not released on bail, he may—
- (a) notwithstanding the provisions of any enactment, and
 - (b) whether or not he was remanded or committed for trial at a time when this section was not in force,
- be held in custody in such prison or other place as may be specified in a direction given by the Secretary of State under this section.
- (2) The Secretary of State may give a direction in respect of a person to whom this section applies if he considers that it is necessary, in order to prevent his escape or to ensure his safety or the safety of others, to make special arrangements as to the place at which that person is to be held in custody while on remand or while committed for trial.

- (3) A direction may be given by the Secretary of State at any time after the young person to whom it relates has been charged with a scheduled offence, and may be varied or revoked by a further direction.
- (4) In this section “young person” means a person who has attained the age of fourteen and is under the age of seventeen.

7 Directions under s. 6

- (1) A direction under section 6 above shall, if it has not previously ceased to have effect, cease to have effect at the expiration of such period as may be specified in the direction (being a period not exceeding two months beginning with the date of the direction) unless continued in force by a further direction.
- (2) Where, by virtue of a direction, a young person is held in custody in a prison or other place and the direction ceases to have effect (whether or not by reason of the expiry or cesser of section 6 above) it shall be lawful for him to continue to be held in custody in that prison or place until arrangements can be made for him to be held in custody in accordance with the law then applicable to his case.
- (3) Nothing in subsection (2) above shall be taken to make lawful the holding in custody of any person who would, disregarding that subsection, be entitled to be released from custody.

Time limits on preliminary proceedings

8 Power of Secretary of State to set time limits in relation to preliminary proceedings for scheduled offences

- (1) The Secretary of State may by regulations make provision, with respect to any specified preliminary stage of proceedings for a scheduled offence, as to the maximum period—
 - (a) to be allowed to the prosecution to complete that stage;
 - (b) during which the accused may, while awaiting completion of that stage, be—
 - (i) in the custody of a magistrates' court; or
 - (ii) in the custody of the Crown Court,
 in relation to that offence.
- (2) The regulations may, in particular—
 - (a) provide for—
 - (i) the Magistrates' Courts (Northern Ireland) Order 1981,
 - (ii) section 3 above, or
 - (iii) any other enactment, or any rule of law, relating to bail,
 to apply in relation to cases to which custody or overall time limits apply subject to such modifications as may be specified (being modifications which the Secretary of State considers necessary in consequence of any provision made by the regulations);
 - (b) provide for time limits imposed by the regulations to cease to have effect in cases where, after the institution of proceedings for a scheduled offence, the Attorney General for Northern Ireland has certified that the offence in question is not to be treated as a scheduled offence;

- (c) make such provision with respect to the procedure to be followed in criminal proceedings as the Secretary of State considers appropriate in consequence of any other provision of the regulations; and
 - (d) make such transitional provision in relation to proceedings instituted before the commencement of any provision of the regulations as the Secretary of State considers appropriate.
- (3) Where separate counts of an indictment allege a scheduled offence and an offence which is not a scheduled offence, then (subject to, and in accordance with, the provisions of the regulations) the regulations shall have effect in relation to the latter offence as if it were a scheduled offence.
- (4) The Crown Court may, at any time before the expiry of a time limit imposed by the regulations, extend, or further extend, that limit if it is satisfied—
 - (a) that there is good and sufficient cause for doing so; and
 - (b) that the prosecution has acted with all due expedition.
- (5) Where, in relation to any proceedings for a relevant offence, an overall time limit has expired before the completion of the stage of the proceedings to which the limit applies, the accused shall be treated, for all purposes, as having been acquitted of that offence.
- (6) Where—
 - (a) a person escapes from the custody of a magistrates' court or of the Crown Court before the expiry of a custody time limit which applies in his case; or
 - (b) a person who has been released on bail in consequence of the expiry of a custody time limit—
 - (i) fails to surrender himself into the custody of the court at the appointed time; or
 - (ii) is arrested by a constable in connection with any breach, or apprehended breach, of any condition of his bail,the regulations shall, so far as they provide for any custody time limit in relation to the preliminary stage in question, be disregarded.
- (7) Where—
 - (a) a person escapes from the custody of a magistrates' court or of the Crown Court; or
 - (b) a person who has been released on bail fails to surrender himself into the custody of the court at the appointed time,the overall time limit which applies in his case in relation to the stage which the proceedings have reached at the time of the escape or, as the case may be, at the appointed time shall, so far as the relevant offence in question is concerned, cease to have effect.
- (8) Where a person is convicted of a relevant offence in any proceedings, the exercise, in relation to any preliminary stage of those proceedings, of the power conferred by subsection (4) above shall not be called into question on any appeal against that conviction.
- (9) In this section—
 - “custody of the Crown Court” includes custody to which a person is committed in pursuance of—

Status: This is the original version (as it was originally enacted).

- (a) Article 37 or 40(4) of the Magistrates' Courts (Northern Ireland) Order 1981 (magistrates' court committing accused for trial); or
- (b) section 51(8) of the Judicature (Northern Ireland) Act 1978 (magistrates' court dealing with a person brought before it following his arrest in pursuance of a warrant issued by the Crown Court);

“custody of a magistrates' court” means custody to which a person is committed in pursuance of Article 47 or 49 of the Magistrates' Courts (Northern Ireland) Order 1981 (remand);

“custody time limit” means a time limit imposed by the regulations in pursuance of subsection (1)(b) above or, where any such limit has been extended by the Crown Court under subsection (4) above, the limit as so extended;

“preliminary stage”, in relation to any proceedings, does not include any stage of the proceedings after the accused has been arraigned in the Crown Court or, in the case of a summary trial, the magistrates' court has begun to hear evidence for the prosecution at the trial;

“overall time limit” means a time limit imposed by the regulations in pursuance of subsection (1)(a) above or, where any such limit has been extended by the Crown Court under subsection (4) above, the limit as so extended;

“relevant offence” means—

- (a) a scheduled offence, or
- (b) an offence in relation to which the regulations have effect in accordance with subsection (3) above; and

“specified” means specified in the regulations.

- (10) For the purposes of the application of any custody time limit in relation to a person who is in the custody of a magistrates' court or of the Crown Court—
 - (a) all periods during which he is in the custody of a magistrates' court in respect of the same offence shall be aggregated and treated as a single continuous period; and
 - (b) all periods during which he is in the custody of the Crown Court in respect of the same offence shall be aggregated and treated similarly.

Court and mode of trial

9 Court for trial of scheduled offences

- (1) A trial on indictment of a scheduled offence shall be held only at the Crown Court sitting in Belfast, unless the Lord Chancellor after consultation with the Lord Chief Justice of Northern Ireland directs in any particular case that such a trial shall be held at the Crown Court sitting elsewhere.
- (2) A person committed for trial for a scheduled offence, or for two or more offences at least one of which is a scheduled offence, shall be committed—
 - (a) to the Crown Court sitting in Belfast, or
 - (b) where the Lord Chancellor has given a direction under subsection (1) above with respect to the trial, to the Crown Court sitting at the place specified in the direction;

and section 48 of the Judicature (Northern Ireland) Act 1978 (committal for trial on indictment) shall have effect accordingly.

(3) Where—

- (a) in accordance with subsection (2) above any person is committed for trial to the Crown Court sitting in Belfast, and
- (b) a direction is subsequently given by the Lord Chancellor under subsection (1) above altering the place of trial,

that person shall be treated as having been committed for trial to the Crown Court sitting at the place specified in the direction.

10 Mode of trial on indictment of scheduled offences

- (1) A trial on indictment of a scheduled offence shall be conducted by the court without a jury.
- (2) The court trying a scheduled offence on indictment under this section shall have all the powers, authorities and jurisdiction which the court would have had if it had been sitting with a jury, including power to determine any question and to make any finding which would, apart from this section, be required to be determined or made by a jury, and references in any enactment to a jury or the verdict or finding of a jury shall be construed accordingly in relation to a trial under this section.
- (3) Where separate counts of an indictment allege a scheduled offence and an offence which is not a scheduled offence, the trial on indictment shall, without prejudice to section 5 of the Indictments Act (Northern Ireland) 1945 (orders for amendment of indictment, separate trial and postponement of trial), be conducted as if all the offences alleged in the indictment were scheduled offences.
- (4) Without prejudice to subsection (2) above, where the court trying a scheduled offence on indictment—
 - (a) is not satisfied that the accused is guilty of that offence, but
 - (b) is satisfied that he is guilty of some other offence which is not a scheduled offence, but of which a jury could have found him guilty on a trial for the scheduled offence,the court may convict him of that other offence.
- (5) Where the court trying a scheduled offence convicts the accused of that or some other offence, then, without prejudice to its power apart from this subsection to give a judgment, it shall, at the time of conviction or as soon as practicable thereafter, give a judgment stating the reasons for the conviction.
- (6) A person convicted of any offence on a trial under this section without a jury may, notwithstanding anything in sections 1 and 10(1) of the Criminal Appeal (Northern Ireland) Act 1980, appeal to the Court of Appeal under Part I of that Act—
 - (a) against his conviction, on any ground, without the leave of the Court of Appeal or a certificate of the judge of the court of trial; and
 - (b) against sentence passed on conviction, without that leave, unless the sentence is one fixed by law.
- (7) Where a person is so convicted, the time for giving notice of appeal under subsection (1) of section 16 of that Act of 1980 shall run from the date of judgment if later than the date from which it would run under that subsection.

*Evidence and onus of proof***11 Admissions by persons charged with scheduled offences**

(1) In any criminal proceedings for a scheduled offence, or for two or more offences at least one of which is a scheduled offence, a statement made by the accused may be given in evidence by the prosecution in so far as—

- (a) it is relevant to any matter in issue in the proceedings, and
- (b) it is not excluded by the court in pursuance of subsection (2) below or in the exercise of its discretion referred to in subsection (3) below (and has not been rendered inadmissible by virtue of such a direction as is mentioned in subsection (2)(iii) below).

(2) Where in any such proceedings—

- (a) the prosecution proposes to give, or (as the case may be) has given, in evidence a statement made by the accused, and
- (b) prima facie evidence is adduced that the accused was subjected to torture, to inhuman or degrading treatment, or to any violence or threat of violence (whether or not amounting to torture), in order to induce him to make the statement,

then, unless the prosecution satisfies the court that the statement was not obtained by so subjecting the accused in the manner indicated by that evidence, the court shall do one of the following things, namely—

- (i) in the case of a statement proposed to be given in evidence, exclude the statement;
- (ii) in the case of a statement already received in evidence, continue the trial disregarding the statement; or
- (iii) in either case, direct that the trial shall be restarted before a differently constituted court (before which the statement in question shall be inadmissible).

(3) It is hereby declared that, in the case of any statement made by the accused and not obtained by so subjecting him as mentioned in subsection (2)(b) above, the court in any such proceedings as are mentioned in subsection (1) above has a discretion to do one of the things mentioned in subsection (2)(i) to (iii) above if it appears to the court that it is appropriate to do so in order to avoid unfairness to the accused or otherwise in the interests of justice.

(4) This section does not apply to a summary trial.

12 Onus of proof in relation to offences of possession

(1) Where a person is charged with possessing a proscribed article in such circumstances as to constitute an offence to which this section applies and it is proved that at the time of the alleged offence—

- (a) he and that article were both present in any premises; or
- (b) the article was in premises of which he was the occupier or which he habitually used otherwise than as a member of the public,

the court may accept the fact proved as sufficient evidence of his possessing (and, if relevant, knowingly possessing) that article at that time unless it is further proved that

he did not at that time know of its presence in the premises in question, or, if he did know, that he had no control over it.

- (2) This section applies to vessels, aircraft and vehicles as it applies to premises.
- (3) In this section “proscribed article” means an explosive, firearm, ammunition, substance or other thing (being a thing possession of which is an offence under one of the enactments mentioned in subsection (4) below).
- (4) This section applies to scheduled offences under the following enactments, that is to say—

The Explosive Substances Act 1883

Section 3, so far as relating to subsection (1)(b) thereof (possessing explosive with intent to endanger life or cause serious damage to property).

Section 4 (possessing explosive in suspicious circumstances).

The Protection of the Person and Property Act(Northern Ireland) 1969

Section 2 (possessing petrol bomb, etc., in suspicious circumstances).

The Firearms (Northern Ireland) Order 1981

Article 3 (possessing firearm or ammunition without, or otherwise than as authorised by, a firearm certificate).

Article 6 (possessing machine gun, or weapon discharging, or ammunition containing, noxious substance).

Article 17 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property).

Article 18(2) (possessing firearm or imitation firearm at time of committing, or being arrested for, a specified offence).

Article 22(1), (2) or (4) (possession of a firearm or ammunition by a person who has been sentenced to imprisonment, etc.).

Article 23 (possessing firearm or ammunition in suspicious circumstances).

- (5) This section does not apply to a summary trial.

Treatment of offenders

13 Treatment of young persons convicted of scheduled offences

- (1) Section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968 (under which a court may sentence a child or young person convicted on indictment of an offence punishable in the case of an adult with imprisonment for fourteen years or more to detention for a period specified in the sentence) shall have effect in relation to a young person convicted of a scheduled offence committed while this subsection is in force with the substitution of the word “five” for the word “fourteen”.
- (2) Subsection (3) of section 74 of that Act (under which the maximum length of the term or the aggregate of the terms for which a person may be committed in custody to a remand home under section 74(1)(e) is one month) shall have effect in relation to a young person found guilty of a scheduled offence committed while this subsection is in force with the substitution of the words “six months” for the words “one month”.

14 Restricted remission for persons sentenced for scheduled offences

- (1) The remission granted under prison rules in respect of a sentence of imprisonment passed in Northern Ireland for a scheduled offence shall not, where it is for a term of five years or more, exceed one-third of that term.
- (2) Where a person is sentenced on the same occasion for two or more such offences to terms which are consecutive subsection (1) above shall apply as if those terms were a single term.
- (3) Where a person is serving two or more terms which are consecutive but not all subject to subsection (1) above, the maximum remission granted under prison rules in respect of those terms taken together shall be arrived at by calculating the maximum remission for each term separately and aggregating the result.
- (4) In this section “prison rules” means rules made under section 13 of the Prison Act (Northern Ireland) 1953.
- (5) The Secretary of State may by order substitute a different length of sentence and a different maximum period of remission for those mentioned in subsection (1) above.
- (6) This section applies where the scheduled offence is committed while this section is in force or where that offence (being a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1978) was committed while section 22 of the Prevention of Terrorism (Temporary Provisions) Act 1989 was in force.

15 Conviction of scheduled offence during period of remission

- (1) This section applies where a person who has been sentenced to imprisonment or a term of detention in a young offenders centre for a period exceeding one year—
 - (a) is discharged from prison or the centre in pursuance of prison rules; and
 - (b) before that sentence or term of detention would (but for that discharge) have expired he commits, and is convicted on indictment of, a scheduled offence.
- (2) If the court before which he is convicted of the scheduled offence sentences him to imprisonment or a term of detention it shall in addition order him to be returned to prison or, where appropriate, to a young offenders centre for the period between the date of the order and the date on which the sentence of imprisonment or term of detention mentioned in subsection (1) above would have expired but for his discharge.
- (3) No order shall be made under subsection (2) above if the sentence imposed by the court is a suspended sentence or a sentence of life imprisonment or of detention during the Secretary of State’s pleasure under section 73(1) of the Children and Young Persons Act (Northern Ireland) 1968; and any order made by a court under that subsection shall cease to have effect if an appeal results in the acquittal of the person concerned or in the substitution of a sentence other than one in respect of which the duty imposed by that subsection applies.
- (4) The period for which a person is ordered under this section to be returned to prison or a young offenders centre—
 - (a) shall be taken to be a sentence of imprisonment or term of detention for the purposes of the Prison Act (Northern Ireland) 1953 and for the purposes of the Treatment of Offenders Act (Northern Ireland) 1968 other than section 26(2) (reduction for time spent in custody);

- (b) shall not be subject to any provision of prison rules for discharge before expiry; and
 - (c) shall be served before, and be followed by, the sentence or term imposed for the scheduled offence and be disregarded in determining the appropriate length of that sentence or term.
- (5) For the purposes of this section a certificate purporting to be signed by the governor or deputy governor of a prison or young offenders centre which specifies—
 - (a) the date on which a person was discharged from prison or a young offenders centre;
 - (b) the sentence or term which the person was serving at the time of his discharge, the offence in respect of which the sentence or term was imposed and the date on which he was convicted of that offence;
 - (c) the date on which the person would, but for his discharge in pursuance of prison rules, have been discharged from prison or a young offenders centre,shall be evidence of the matters so specified.
- (6) In this section—
 - “prison rules” means rules made under section 13 of the Prison Act (Northern Ireland) 1953;
 - “sentence of imprisonment” does not include a committal in default of payment of any sum of money or for want of sufficient distress to satisfy any sum of money or for failure to do or abstain from doing anything required to be done or left undone;
 - “young offenders centre” has the meaning assigned to it by section 2(a) of the Treatment of Offenders Act (Northern Ireland) 1968.
- (7) For the purposes of subsection (1) above consecutive terms of imprisonment or of detention in a young offenders centre shall be treated as a single term and a sentence of imprisonment or detention in a young offenders centre includes—
 - (a) a sentence or term passed by a court in the United Kingdom, the Channel Islands or the Isle of Man;
 - (b) in the case of imprisonment, a sentence passed by a court-martial on a person found guilty of a civil offence within the meaning of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957.
- (8) The Secretary of State may by order substitute a different period for the period of one year mentioned in subsection (1) above.
- (9) This section applies irrespective of when the discharge from prison or a young offenders centre took place but only if the scheduled offence is committed while this section is in force or if that offence (being a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1978) was committed while section 23 of the Prevention of Terrorism (Temporary Provisions) Act 1989 was in force.