



2015 CHAPTER 9

PART 2

COMMITTAL FOR TRIAL

CHAPTER 1

RESTRICTION ON HOLDING OF PRELIMINARY  
INVESTIGATIONS AND MIXED COMMITTALS

**Preliminary investigations**

7.—(1) The Magistrates’ Courts (Northern Ireland) Order 1981 is amended as set out in subsections (2) to (5).

(2) After Article 29 insert—

**“Committal proceedings for indictable offences**

**29A.**—(1) Committal proceedings in a magistrates’ court in relation to an indictable offence are to be conducted—

- (a) in a case where the court directs under this Article that a preliminary investigation is to be held, by way of a preliminary investigation;
- (b) in all other cases, by way of a preliminary inquiry.

(2) An accused may apply to the court for a direction that a preliminary investigation is to be held.

(3) Magistrates’ court rules may make provision in relation to an application under paragraph (2), including provision—

- (a) for an application to set out the grounds on which the application is made and contain such other information as may be prescribed;

- (b) requiring an application to be made before a prescribed time;
  - (c) for the procedure to be followed in determining the application (including provision for representations to be made to the court by the prosecution or the accused).
- (4) The court, after considering the application and any representations made to the court, may direct the holding of a preliminary investigation if (and only if) the court is satisfied that a preliminary investigation is required in the interests of justice.
- (5) In determining an application under paragraph (2) the court shall in particular have regard to—
  - (a) the nature of the offence or offences charged;
  - (b) the interests of the persons likely to be witnesses at a preliminary investigation.”.
- (3) In Article 30 (preliminary investigation) for paragraph (1) substitute—

“(1) This Article applies where committal proceedings are conducted by way of a preliminary investigation following a direction under Article 29A.”.
- (4) Omit Article 31 (preliminary inquiry at request of prosecution).
- (5) In Article 32 (preliminary inquiry: service of documents)—
  - (a) in paragraph (1) for the words from the beginning to the end of sub-paragraph (a) substitute—

“(1) A reasonable time before the day fixed for the conduct of committal proceedings, the prosecution shall—

    - (a) provide the clerk of petty sessions with copies of the documents mentioned in sub-paragraph (b); and”;
  - (b) in paragraph (1)(b) omit—
    - (i) the words “a copy of that notice together with”; and
    - (ii) the words “a reasonable time before the day fixed for the conduct of the preliminary inquiry”;
  - (c) omit paragraph (3).
- (6) In section 4 of the Criminal Jurisdiction Act 1975 (trial of extra-territorial offences) for subsection (3) substitute—

“(3) Where a person is charged with an extra-territorial offence so much of Article 29A of the Magistrates’ Courts (Northern Ireland) Order 1981 as affords to the accused a right to apply for a direction that a preliminary investigation is to be held shall not apply, and the procedure shall be by way of preliminary inquiry under that Order, and not by way of preliminary investigation.”.

(7) Section 3 of the Justice and Security (Northern Ireland) Act 2007 (committal proceedings for trial without a jury) is repealed.

**Mixed committals: evidence on oath at preliminary inquiry**

8.—(1) Article 34 of the Magistrates' Courts (Northern Ireland) Order 1981 (giving of evidence on oath at preliminary inquiry) is amended as follows.

(2) After paragraph (1) insert—

“(1A) The prosecution or the accused may apply to the court for leave to require a person to attend and give evidence on oath in accordance with paragraph (2).

(1B) Magistrates' court rules may make provision in relation to an application under paragraph (1A), including provision—

- (a) for an application to set out the grounds on which the application is made and contain such other information as may be prescribed;
- (b) requiring an application to be made before a prescribed time;
- (c) for the procedure to be followed in determining the application (including provision for representations to be made to the court by the prosecution or the accused).

(1C) The court, after considering the application and any representations made to the court, may give leave to the applicant if (and only if) the court is satisfied that the interests of justice require it.

(1D) In determining an application under paragraph (1A) the court shall in particular have regard to—

- (a) the nature of the offence or offences charged;
- (b) the interests of the persons likely to be required to give evidence at the preliminary inquiry.

(1E) Where leave is granted to one party under paragraph (1C), the court may (without any application) grant leave to the other party to require a person to attend and give evidence on oath in accordance with paragraph (2).”.

(3) In paragraph (2) for the words from the beginning to “may each require” substitute “The court (of its own motion), the prosecution (if granted leave under paragraph (1C) or (1E)) and the accused (if granted such leave) may each require”.