



## 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”.

## CHAPTER 2

## DIRECT COMMITTAL FOR TRIAL IN CERTAIN CASES

*Application of this Chapter***Application of this Chapter**

9.—(1) Subject to subsection (3), this Chapter applies where a person (“the accused”) appears or is brought before a magistrates’ court charged with an offence and either of the conditions mentioned in subsection (2) is satisfied.

(2) Those conditions are—

- (a) that the offence is an offence triable only on indictment; or
- (b) that the offence is a summary offence and—
  - (i) the accused claims, in accordance with Article 29 of the Magistrates’ Courts (Northern Ireland) Order 1981 or any other statutory provision, to be tried on indictment;
  - (ii) the prosecutor exercises any right conferred by any statutory provision to claim that the accused is to be tried on indictment; or
  - (iii) it is otherwise determined that the accused is to be tried on indictment.

(3) But this Chapter does not apply where—

- (a) notice has been given in relation to the offence under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 or Article 4 of the Children’s Evidence (Northern Ireland) Order 1995;
- (b) in the case of an adult, the court is to deal summarily with the offence under Article 45 of the Magistrates’ Courts (Northern Ireland) Order 1981;
- (c) in the case of a child, the court is to deal summarily with the offence under Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998.

(4) In this section “summary offence” has the meaning given by Article 2(2) of the Magistrates’ Courts (Northern Ireland) Order 1981.

*Direct committal for trial: guilty pleas***Direct committal: indication of intention to plead guilty**

10.—(1) Where—

- (a) this Chapter applies in relation to an accused charged with an offence,
- (b) the court has not begun to conduct committal proceedings in relation to the offence, and
- (c) the accused indicates to the court an intention to plead guilty to the offence,

the court shall forthwith commit the accused to the Crown Court for trial for the offence (and accordingly shall not conduct committal proceedings in relation to that offence).

(2) Where the court commits an accused for trial for an offence under this section, the functions of the court then cease in relation to that offence, except as provided by—

- (a) the following provisions of this section;
- (b) section 13; or
- (c) Article 29(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

(3) A court committing an accused for trial for an offence under this section may order—

- (a) the making of such inquiries, and
- (b) the preparation, and sending to the Crown Court sitting at the specified place of trial, of such reports,

as appear to the court to be appropriate in connection with the sentencing of the accused for that offence (should the accused plead guilty to that offence on arraignment in the Crown Court).

(4) Where—

- (a) an accused is committed for trial for an offence under this section, and
- (b) on arraignment the accused does not plead guilty to the offence,

the Crown Court shall make an order annulling the committal for trial of the accused for that offence.

(5) Where the Crown Court makes an order under subsection (4)—

- (a) any count in the indictment relating to the charge for that offence against the accused is quashed;
- (b) subject to subsection (6), the magistrates' court shall again have the functions in relation to the accused and the offence which it would have had if the accused had not been committed for trial under this section (and the proceedings against the accused shall, as far as practicable, resume from the point immediately before the accused was committed for trial);
- (c) the Crown Court shall remand the accused, in custody or on bail, to appear before the magistrates' court as soon as is practicable;
- (d) the annulment of the committal for trial does not affect the lawfulness of anything done on foot of that committal (such as the remanding of the accused in custody or on bail).

(6) Subsection (1) does not apply where a magistrates' court resumes proceedings against an accused under subsection (5).

*Direct committal for trial: specified offences*

**Direct committal: specified offences**

**11.—(1) Where—**

- (a) this Chapter applies in relation to an accused charged with an offence, and
- (b) the offence is a specified offence,

the court shall forthwith commit the accused to the Crown Court for trial for the offence (and accordingly shall not conduct committal proceedings in relation to that offence).

(2) Where the court commits an accused for trial for an offence under this section, the functions of the court then cease in relation to that offence, except as provided by—

- (a) section 13; or
- (b) Article 29(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

(3) For the purposes of this Chapter a specified offence is—

- (a) murder;
- (b) manslaughter;
- (c) an offence—
  - (i) of aiding, abetting, counselling, procuring or inciting the commission of an offence specified above;
  - (ii) of conspiring to commit an offence so specified;
  - (iii) of attempting to commit an offence so specified;
  - (iv) under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence specified above.

(4) The Department may by order amend subsection (3).

*Direct committal for trial: offences related to specified offences*

**Direct committal: offences related to specified offences**

**12.—(1) Where—**

- (a) this Chapter applies in relation to an accused (“A”) who—
  - (i) is charged with an offence (“offence A”) which is not a specified offence, and
  - (ii) is not also charged with a specified offence,

- (b) A appears or is brought before the court on the same occasion as another person (“B”) charged with a specified offence,
- (c) the court commits B for trial for the specified offence under section 11, and
- (d) offence A appears to the court to be related to the specified offence for which the court commits B for trial,

the court shall forthwith commit A to the Crown Court for trial for offence A.

(2) Where—

- (a) this Chapter applies in relation to an accused (“A”) who—
  - (i) is charged with an offence (“offence A”) which is not a specified offence, and
  - (ii) is not also charged with a specified offence,
- (b) on a previous occasion another person (“B”) has appeared or been brought before the court charged with a specified offence,
- (c) the court has on that occasion committed B for trial for the specified offence under section 11, and
- (d) offence A appears to the court to be related to the specified offence for which the court committed B for trial,

the court may forthwith commit A to the Crown Court for trial for offence A if the court considers that it is necessary or appropriate in the interests of justice to do so.

(3) Where the court commits the accused for trial for an offence under this section—

- (a) it shall accordingly not conduct committal proceedings in relation to that offence; and
- (b) the functions of the court then cease in relation to that offence, except as provided by—
  - (i) section 13; or
  - (ii) Article 29(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

(4) For the purposes of this section an offence is related to a specified offence if a count charging the offence could be included in the same indictment as a count charging the specified offence.

*Direct committal for trial: procedures***Direct committal: procedures**

**13.—**(1) The court committing a person for trial to the Crown Court under this Chapter shall specify in a notice (“the notice of committal”)—

- (a) the charge or charges on which the person is committed for trial;
- (b) the place (determined under section 48(1) of the Judicature (Northern Ireland) Act 1978) at which that person is to be tried;
- (c) such other matters as magistrates’ court rules under subsection (2)(b) may require.

(2) Magistrates’ court rules—

- (a) shall provide that, where a person is committed for trial under this Chapter on any charge or charges—
  - (i) a copy of the notice of committal is given to that person and to the Crown Court sitting at the specified place of trial; and
  - (ii) copies of the documents containing the evidence on which the charge or charges are based are given to that person and to that court, either at the same time as the copy of the notice of committal or as soon as practicable thereafter; and
- (b) may make such further provision in relation to notices of committal, including provision as to the matters to be included in such notices and the duties of a court in relation to such notices.

(3) Paragraphs (3) and (4) of Article 37 of the Magistrates’ Court (Northern Ireland) Order 1981 and Articles 51(3) and 134 of that Order (which relate to committal for trial on bail or in custody) apply in relation to a person committed for trial under this Chapter as they apply in relation to a person committed for trial under paragraph (1) or (2) of Article 37 of that Order (committal for trial after committal proceedings).

**Specified offences: application to dismiss**

**14.—**(1) A person who is committed for trial on any charge or charges under section 11 or 12 may, at any time—

- (a) after that person is served with copies of the documents containing the evidence on which the charge or charges are based; and
- (b) before that person is arraigned (and whether or not an indictment has been presented against that person),

apply orally or in writing to the Crown Court sitting at the specified place of trial for the charge, or any of the charges, in the case to be dismissed.



(2) The judge shall dismiss a charge (and accordingly quash any count relating to it in any indictment presented against the applicant) if it appears to the judge that the evidence against the applicant would not be sufficient for the applicant to be properly convicted.

(3) No oral application may be made under subsection (1) unless the applicant has given the Crown Court sitting at the specified place of trial written notice of intention to make the application.

(4) Oral evidence may be given on such an application only with the leave of the judge or by order of the judge; and the judge shall give leave or make an order only if it appears to the judge, having regard to any matters stated in the application for leave, that the interests of justice require it.

(5) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but that person does not do so, the judge may disregard any document indicating the evidence that that person might have given.

(6) Dismissal of the charge, or all the charges, against the applicant has the same effect as a refusal by a magistrates' court to commit for trial; except that no further proceedings may be brought on a dismissed charge except by means of the presentment of an indictment such as is specified in paragraph (c), (d) or (e) of section 2(2) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.

(7) Crown Court rules may make provision for the purposes of this section and may in particular make provision—

- (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
- (b) as to the contents and form of notices or other documents;
- (c) as to the manner in which evidence is to be submitted; and
- (d) as to persons to be served with notices or other material.

### **Restrictions on reporting applications for dismissal**

**15.—**(1) Except as provided by this section—

- (a) no written report of an application under section 14(1) shall be published in Northern Ireland;
- (b) no report of such an application shall be included in a relevant programme for reception in Northern Ireland.

(2) The judge dealing with an application under section 14(1) may order that subsection (1) shall not apply, or shall not apply to a specified extent, to a report of the application.

(3) Where an accused objects to the making of an order under subsection (2), the judge shall make the order if (and only if) satisfied after hearing the representations of the accused that it is in the interests of justice to do so; and

if the order is made it shall not apply to the extent that a report deals with any such objection or representations.

(4) Subsection (1) does not apply where the application is successful.

(5) Where—

(a) two or more persons are jointly charged, and

(b) applications under section 14(1) are made by more than one of them,

subsection (4) shall have effect as if for the words “the application is” there were substituted “all the applications are”.

(6) Subsection (1) does not apply to—

(a) the publication of a report of an unsuccessful application made under section 14(1),

(b) the inclusion in a relevant programme of a report of an unsuccessful application made under section 14(1),

at the conclusion of the trial of the accused or of the last of the accused to be tried.

(7) Subsection (1) does not apply to a report which contains only one or more of the following matters—

(a) the identity of the court and the name of the judge;

(b) the names, ages, home addresses and occupations of the accused and witnesses;

(c) the offence or offences, or a summary of them, with which the accused is or are charged;

(d) the names of counsel and solicitors in the proceedings;

(e) where the proceedings are adjourned, the date and place to which they are adjourned;

(f) any arrangements as to bail;

(g) whether legal aid was granted to the accused or any of the accused.

(8) The addresses that may be published or included in a relevant programme under subsection (7) are addresses—

(a) at any relevant time, and

(b) at the time of their publication or inclusion in a relevant programme;

and “relevant time” here means a time when events giving rise to the charges to which the proceedings relate occurred.

(9) Nothing in this section affects any prohibition or restriction imposed by virtue of any other statutory provision on a publication or on matter included in a programme.

(10) If a report is published or included in a relevant programme in contravention of this section each of the following persons is guilty of an offence—

- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;
- (c) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(11) A person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(12) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(13) In this section—

- (a) “publish”, in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;
- (b) “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990.

### **Supplementary and consequential provisions**

**16.—**(1) Schedule 2 (which contains amendments consequential on the preceding provisions of this Chapter) has effect.

(2) Subject to subsection (3), any statutory provision which applies to a person who has been committed for trial under the Magistrates’ Courts (Northern Ireland) Order 1981 applies also to a person who has been committed for trial under this Chapter.

(3) Subsection (2) does not apply—

- (a) to a provision in the Magistrates’ Courts (Northern Ireland) Order 1981 (except as provided by section 13(3));
- (b) to a provision which is amended by Schedule 2 to make express provision for persons committed for trial under this Chapter.

(4) In this Chapter, in relation to a person committed for trial, references to the specified place of trial are references to the place specified in the notice of committal under section 13(1) or such other place as is substituted for it by a direction under section 48(2) or (3) of the Judicature (Northern Ireland) Act 1978.