

STATUTORY INSTRUMENTS

**1988 No. 1846**

**The Criminal Justice (Serious Fraud)  
(Northern Ireland) Order 1988**

Preparatory hearings

**Power to order preparatory hearing**

6.—(1) Where it appears to a judge of the Crown Court that the evidence on an indictment reveals a case of fraud of such<sup>[F1]</sup> seriousness or complexity] that substantial benefits are likely to accrue from a hearing (in this Order referred to as a preparatory hearing ) before<sup>[F2]</sup> the time when the jury are sworn], for the purpose of—

- <sup>[F3]</sup>(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial;
- (b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them;
- (c) determining an application to which section 45 of the Criminal Justice Act 2003 applies; or]
- (d) assisting the judge's management of the trial,

he may order that such a hearing shall be held.

(2) A judge may make an order under paragraph (1) on the application either of the prosecution or of the person indicted or, if the indictment charges a number of persons, any of them, or of his own motion.

<sup>[F4]</sup>(2A) The reference in paragraph (1) to the time when the jury are sworn includes the time when the jury would be sworn but for—

- (a) the making of an order under Part 7 of the Criminal Justice Act 2003, or
  - (b) the application of section 75 of the Terrorism Act 2000.]
- (3) <sup>F5</sup> .....
- (4) <sup>F5</sup> .....
- (5) <sup>F5</sup> .....

**F1** Words in art. 6(1) substituted (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by [Criminal Procedure and Investigations Act 1996 \(c. 25\)](#), s. 72, **Sch. 3 para. 3(2)** (as modified in its application to Northern Ireland by Sch. 4 para. 35)

**F2** Words in art. 6(1) substituted (8.1.2007) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 331, 336(3), Sch. 36 para. 57(2); S.I. 2006/3422, **art. 2(b)(c)**

**F3** Art. 6(1)(a)-(c) substituted (8.1.2007 for certain purposes, otherwise prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 45(4), 50(3), 336(3); S.I. 2006/3422, **art. 2(a)**

**F4** Art. 6(2A) inserted (8.1.2007) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 331, 336(3), Sch. 36 para. 57(3); S.I. 2006/3422, **art. 2(b)(c)**

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**F5** Art. 6(3)-(5) repealed (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), ss. 72, 80, Sch. 3 para. 3(3), Sch. 5 (as modified in its application to Northern Ireland by Sch. 4 paras. 35, 36)

### Commencement of trial and arraignment

- 7.—(1) If a judge orders a preparatory hearing, the trial shall begin with that hearing.  
 (2) Arraignment shall accordingly take place at the start of the preparatory hearing.

### The preparatory hearing

8.—(1) At the preparatory hearing the judge may exercise any of the powers specified in this Article.

- (2) The judge may adjourn a preparatory hearing from time to time.  
 (3) He may determine—  
 (a) any question as to the admissibility of evidence; and  
 [F6(aa) a question arising under Article 43 of the Criminal Justice (Northern Ireland) Order 1996 (relevance of external law to certain charges of conspiracy, attempt and incitement); and]  
 (b) any other question of law relating to the case.  
 (4) He may order the prosecution—  
 (a) to supply the court and the defendant or, if there is more than one, each of them with a statement (a case statement ) of the following—  
 (i) the principal facts of the prosecution case;  
 (ii) the witnesses who will speak to those facts;  
 (iii) any exhibits relevant to those facts;  
 (iv) any proposition of law on which the prosecution proposes to rely; and  
 (v) the consequences in relation to any of the counts in the indictment that appear to the prosecution to flow from the matters stated in pursuance of heads (i) to (iv);  
 (b) to prepare their evidence and other explanatory material in such a form as appears to him to be likely to aid comprehension by[F7 a jury] and to supply it in that form to the court and to the defendant or, if there is more than one, to each of them;  
 (c) to give the court and the defendant or, if there is more than one, each of them notice of documents the truth of the contents of which ought in the prosecution's view to be admitted and of any other matters which in their view ought to be agreed;  
 (d) to make any amendments of any case statement supplied in pursuance of an order under sub#paragraph ( a ) that appear to the court to be appropriate, having regard to objections made by the defendant or, if there is more than one, by any of them.  
 (5) Where—  
 (a) a judge has ordered the prosecution to supply a case statement; and  
 (b) the prosecution have complied with the order,

he may order the defendant or, if there is more than one, each of them—

*Sub-para. (i) rep. by 2003 c. 44*

- (ii) to give the court and the prosecution notice of any objections that he has to the case statement;

*Sub-para. (iii) rep. by 2003 c. 44*

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- (iv) to give the court and the prosecution a notice stating the extent to which he agrees with the prosecution as to documents and other matters to which a notice under paragraph (4) ( c ) relates and the reason for any disagreement.
- (6) Crown Court rules may provide that except to the extent that disclosure is required [F8(a) by[F9 section 5(7) of the Criminal Procedure and Investigations Act 1996]; or (b) by Article 80 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (expert evidence)] a summary required by virtue of paragraph (5) need not disclose who will give evidence.
- (7) A judge making an order under paragraph (5) shall warn the defendant or, if there is more than one, all of them of the possible consequence under Article 9F10. . . of not complying with it.
- (8) If it appears to a judge that reasons given in pursuance of paragraph (5)(iv) are inadequate, he shall so inform the person giving them, and may require him to give further or better reasons.
- (9) An order under this Article may specify the time within which any specified requirement contained in it is to be complied with, but Crown Court rules may make provision as to the minimum or maximum time that may be specified for compliance.
- (10) An order or ruling made [F11 under this Article] shall have effect during the trial, unless it appears to the judge, on application made to him during the trial, that the interests of justice require him to vary or discharge it.
- (11) An appeal shall lie to the Court of Appeal from any order or ruling of a judge under paragraph (3),[F12 from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section 43 or 44 of that Act which is made on the determination of such an application,] but only with the leave of the judge or of the Court of Appeal.
- (12) The judge may continue a preparatory hearing notwithstanding that leave to appeal has been granted under paragraph (11), but[F13 the preparatory hearing shall not be concluded] until after the appeal has been determined or abandoned.
- (13) On the termination of the hearing of an appeal, the Court of Appeal may confirm, reverse or vary the decision appealed against.

**F6** 1996 NI 24

**F7** Words in art. 8(4)(b) substituted (8.1.2007) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 331, 336(3), Sch. 36 para. 58(2); S.I. 2006/3422, [art. 2\(b\)\(c\)](#)

**F8** 1989 NI 12

**F9** Words in art. 8(6)(a) substituted (4.7.1996 with application as mentioned in s. 74(5) of the amending Act) by [Criminal Procedure and Investigations Act 1996 \(c. 25\)](#), s. 74(4) (as modified in its application to Northern Ireland by Sch. 4 para. 31(3))

**F10** Word in art. 8(7) repealed (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by [Criminal Procedure and Investigations Act 1996 \(c. 25\)](#), ss. 72, 80, Sch. 3 para. 4(2), [Sch. 5](#) (as modified in its application to Northern Ireland by Sch. 4 paras. 35, 36)

**F11** Words in art. 8(10) substituted (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by [Criminal Procedure and Investigations Act 1996 \(c. 25\)](#), s. 72, [Sch. 3 para. 4\(3\)](#) (as modified in its application to Northern Ireland by Sch. 4 para. 35)

**F12** Words in art. 8(11) inserted (8.1.2007 for certain purposes, otherwise prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 45(5) (as modified in its application to Northern Ireland by s. 50(3)), 336(3); S.I. 2006/3422, [art. 2\(a\)](#)

**F13** Words in art. 8(12) substituted (8.1.2007) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 331, 336(3), Sch. 36 para. 58(3); S.I. 2006/3422, [art. 2\(b\)\(c\)](#)

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### **[<sup>F14</sup>Orders before preparatory hearing**

**8A.**—(1) Paragraph (2) applies where—

- (a) a judge orders a preparatory hearing, and
- (b) he decides that any order which could be made under Article 8(4) or (5) at the hearing should be made before the hearing.

(2) In such a case—

- (a) he may make any such order before the hearing (or at the hearing), and
- (b) paragraphs (4) to (10) of Article 8 shall apply accordingly.]

**F14** Art. 8A inserted (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 72, Sch. 3 para. 5 (as modified in its application to Northern Ireland by Sch. 4 para. 35)

### **[<sup>F15</sup>Later stages of trial**

**<sup>F16</sup>9.**—(1) Any party may depart from the case he disclosed in pursuance of a requirement imposed under Article 8.

(2) Where—

- (a) a party departs from the case he disclosed in pursuance of a requirement imposed under Article 8, or
- (b) a party fails to comply with such a requirement,

the judge or, with the leave of the judge, any other party may make such comment as appears to the judge or the other party (as the case may be) to be appropriate and the jury [<sup>F17</sup>or, in the case of a trial without a jury, the judge] may draw such inference as appears proper.

(3) In [<sup>F18</sup>doing anything under paragraph (2) or in deciding whether to do anything under it] the judge shall have regard—

- (a) to the extent of the departure or failure, and
- (b) to whether there is any justification for it.

(4) [<sup>F19</sup>Except as provided by this Article, in the case of a trial with a jury] no part—

- (a) of a statement given under Article 8(5), or
- (b) of any other information relating to the case for the accused or, if there is more than one, the case for any of them, which was given in pursuance of a requirement imposed under Article 8,

may be disclosed at a stage in the trial after the jury have been sworn without the consent of the accused concerned.]

**F15** Art. 9 substituted (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 72, Sch. 3 para. 6 (as modified in its application to Northern Ireland by Sch. 4 para. 35)

**F16** Art. 9 (as originally enacted) amended (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 59; S.I. 2006/3422, art. 2(b)(c)

**F17** Words in art. 9(2) (as substituted by Criminal Procedure and Investigations Act 1996 (c. 25), Sch. 3 para. 6) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 60(2); S.I. 2006/3422, art. 2(b)(c)

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- F18** Words in art. 9(3) (as substituted by Criminal Procedure and Investigations Act 1996 (c. 25), Sch. 3 para. 6) substituted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 60(3); S.I. 2006/3422, **art. 2(b)(c)**
- F19** Words in art. 9(4) (as substituted by Criminal Procedure and Investigations Act 1996 (c. 25), Sch. 3 para. 6) substituted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 60(4); S.I. 2006/3422, **art. 2(b)(c)**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act amended by [1996 c. 25 s.79Sch 4 para.35](#)
- Act amended by [1996 c. 25 s.79Sch 4 para.35](#)
- Act rev.in pt. by [1996 c. 25 s. 72Sch.3 s.79Sch.4 para.36](#)
- Act rev.in pt. by [1996 c. 25 s. 72Sch.3 s.79Sch.4 para.36](#)
- Act rev.in pt. (prosp.) by [1996 c. 25 ss.7479Sch.4 para.36](#)
- Act rev.in pt. (prosp.) by [1996 c. 25 ss.7479Sch.4 para.36](#)