SCHEDULES

SCHEDULE 1

Article 4(5)

NOTICE OF TRANSFER: PROCEDUTE IN LIEU OF COMMITTAL

Contents of notice of transfer

1.—(1) A notice of transfer shall specify the proposed place of trial; and in selecting that place the Director of Public Prosecutions for Northern Ireland shall have regard to the considerations to which a magistrates' court committing a person for trial is required by section 48(1) of the Judicature (Northern Ireland) Act 1978[F1] to have regard when selecting the place at which he is to be tried.

(2) A notice of transfer shall specify the charge or charges to which it relates and include or be accompanied by such additional material as regulations under paragraph 3 may require.

F1 1978 c. 23

Remand

2.—(1) If a magistrates' court has remanded in custody a person to whom a notice of transfer relates, it shall have power—

(a) to order that he shall be safely kept in custody until delivered in due course of law; or

(b) to release him on bail that is to say, by directing him to appear before the Crown Court for trial.

(2) Where—

(a) a person's release on bail under sub-paragraph (1)(b) is conditional on his providing one or more sureties; and

(b) the court fixes the amount in which a surety is to be bound with a view to his entering into his recognisance subsequently,

the court shall in the meantime make an order such as is mentioned in sub-paragraph (1)(a).

(3) Where a notice of transfer is given after a person to whom it relates has been remanded on bail to appear before a magistrates' court on an appointed day, the requirement that he shall so appear shall cease on the giving of the notice unless the notice states that it is to continue.

(4) Where that requirement ceases by virtue of sub-paragraph (3), it shall be the duty of the person in question to appear before the Crown Court at the place specified by the notice of transfer as the proposed place of trial or at any place substituted for it by a direction under section 48(2) or (3) of the Judicature (Northern Ireland) Act 1978.

(5) If, in a case where the notice states that the requirement mentioned in sub-paragraph (3) is to continue, a person to whom the notice relates appears before the magistrates' court, the court shall have—

(a) the powers and duties conferred on a magistrates' court by sub-paragraph (1) but subject as there provided; and

(b) power to enlarge, in the surety's absence, a recognisance conditioned in accordance with Article 47(1)(b) or 48 of the Magistrates' Courts (Northern Ireland) Order 1981[F2] so that the surety is bound to secure that the person charged appears also before the Crown Court.

F2 1981 NI 26

Regulations

3.—(1) The Attorney General—

(a) shall by regulations make provision requiring a copy of a notice of transfer, together with **[**[F3]copies of the documents containing the evidence (including oral evidence)**]** on which any charge to which it relates is based, to be given—

(i) to any person to whom the notice of transfer relates; and

(ii) to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial; and

(b) may by regulations make such further provision in relation to notices of transfer, including provision as to the duties of the Director of Public Prosecutions for Northern Ireland in relation to such notices, as appears to him to be appropriate.

[[F4](1A) Regulations under sub-paragraph (1)(a) may provide that there shall be no requirement for copies of documents to accompany the copy of the notice of transfer if they are referred to, in documents sent with the notice of transfer, as having already been supplied.**]**

(2) Regulations made under this paragraph shall be subject to**[**[F5] negative resolution**]**.

F3 Words in Sch. 1 para. 3(1)(a) substituted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), **s. 45(5)** (as modified in its application to Northern Ireland by Sch. 4 para. 18)

F4 Sch. 1 para. 3(1A) inserted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), **s. 45(6)** (as modified in its application to Northern Ireland by Sch. 4 para. 18)

F5 Words in Sch. 1 para. 3(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 12, **Sch. 14 para. 33** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Applications for dismissal

4.—(1) Where a notice of transfer has been given, any person to whom the notice relates may, at any time before he is arraigned (and whether or not an indictment has been preferred against him), apply orally or in writing to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial or at any place substituted for it by a direction mentioned in paragraph 2(4), for the charge, or any of the charges, in the case to be dismissed.

(2) The judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) which is the subject of any such application if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.

(3) No oral application may be made under sub-paragraph (1) unless the applicant has given the Crown Court mentioned in that sub-paragraph written notice of his intention to make the application.

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

(5) No leave or order under sub-paragraph (4) shall be given or made in relation to oral evidence from a child (within the meaning of Article 4) who is alleged—

(a) to be a person against whom an offence to which the notice of transfer relates was committed; or

(b) to have witnessed the commission of such an offence.

(6) 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 he might have given.

(7) Dismissal of the charge, or all the charges, against the applicant shall have 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), (e) or (f) of section 2(2) of the Grand Jury (Abolition) Act (Northern Ireland) 1969[F6].

(8) Crown Court Rules may make provision for the purposes of this paragraph and, without prejudice to the generality of this sub-paragraph, may 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.

F6 1969 c. 15 (N.I.)

Reporting restrictions

5.—(1) Except as provided by this paragraph, it shall not be lawful—

(a) to publish in Northern Ireland a written report of an application under paragraph 4(1); or

(b) to include in a relevant programme for reception in Northern Ireland a report of such an application,

if (in either case) the report contains any matter other than that permitted by this paragraph.

(2) An order that sub-paragraph (1) shall not apply to reports of an application under paragraph 4(1) may be made by the judge dealing with the application.

(3) Where in case of 2 or more accused one of them objects to the making of an order under sub-paragraph (2), the judge shall make the order if, and only if, he is satisfied, after hearing the representations of the accused, that it is in the interests of justice to do so.

(4) An order under sub-paragraph (2) shall not apply to reports of proceedings under sub-paragraph (3), but any decision of the court to make or not to make such an order may be contained in reports published or included in a relevant programme before the time authorised by sub-paragraph (5).

(5) It shall not be unlawful under this paragraph to publish or include in a relevant programme a report of an application under paragraph 4(1) containing any matter other than that permnitted by sub-paragraph (8) where the application is successful.

(6) Where—

(a) 2 or more persons were jointly charged; and

(b) applications under paragraph 4(1) are made by more than one of them,

sub-paragraph (5) shall have effect as if for the words "the application is" there were substituted the words "all the applications are".

(7) It shall not be unlawful under this paragraph to publish or include in a relevant programme a report of an unsuccessful application at the conclusion of the trial of the person charged, or of the last of the persons charged to be tried.

(8) The following matters may be contained in a report published or included in a relevant programme without an order under sub-paragraph (2) before the time authorised by **[**[F7]sub-paragraphs (5) and (7)**]**, that is to say—

(a) the indentity 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 engaged in the proceedings;

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

(f) the arrangements as to bail;

[[F8](g) whether a right to representation funded by the Department of Justice was granted to the accused or any of the accused under the Access to Justice (Northern Ireland) Order 2003.**]**

(9) The addresses that may be published or included in a relevant programme under sub-paragraph (8) are addresses—

(a) at any relevant time; and

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

(10) If a report is published or included in a relevant programme in contravention of this paragraph, the following persons, that is to say—

(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 perpiodical;

(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 enagaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of the editor of a newspaper;

shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) Proceedings for an offence under this paragraph shall not be instituted otherwise than by or with the consent of the Attorney General.

(12) Sub-paragraph (1) shall be in addition to, and not in derogation from, the provisions, of any other statutory provision with respect to the publication of reports of court proceedings.

(13) In this paragraph—

"publish", in relation to report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;

[F9]"relevant programme" means a programme included in a programme service (within the meaning of the Broadcasting Act 1990);

"relevant time" means a time when events giving rise to the charges to which the proceedings relate occured.

F7 Words in Sch. 1 para. 5(8) substituted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), **s. 45(7)** (as modified in its application to Northern Ireland by Sch. 4 para. 18)

F8 Sch. 1 para. 5(8)(g) substituted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), art. 1(2), **Sch. 4 para. 12(3)**; S.R. 2015/194, art. 2, **Sch.** (with art. 3) (as amended (18.11.2014) by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 c. 11 (N.I.), **Sch. 2 para. 6(43)(a)(ix)**)

F9 1990 c. 42

Avoidance of delay

6.—(1) Where a notice of transfer has been given in relation to any case—

(a) the Crown Court before which the case is to be tried; and

(b) any magistrates' court which exercises any fuctions under paragraph 2 or **[**[F10]any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003**]** in relation to the case,

shall, in exercising any of its powers in relation to the case, have regard to the desirability of avoiding prejudice to the welfare of any relevant child witness that may be occasioned by unnecessary delay in bringing the case to trial.

(2) In this paragraph "child" has the same meaning as in Article 4 and "relevant child witness" means a child who will be called as a witness at the trial and who is alleged—

(a) to be a person against whom an offence to which the notice of transfer relates was committed; or

(b) to have witnessed the commission of such an offence.

F10 Words in Sch. 1 para. 6(1)(b) substituted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), art. 1(2), **Sch. 4 para. 12(4)**; S.R. 2015/194, art. 2, **Sch.** (with art. 3)

Changes to legislation:
The Children's Evidence (Northern Ireland) Order 1995, SCHEDULE 1 is up to date with all changes known to be in force on or before 10 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

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

- Act rev.in pt. (prosp.) by 1996 c. 25 ss 7479Sch.4 para.36
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