

1989 No. 294

SUPREME COURT, NORTHERN IRELAND

CROWN COURT

The Crown Court (Serious Fraud) Rules
(Northern Ireland) 1989

Made 25th July 1989

Coming into operation 1st September 1989

To be laid before Parliament

We, the Crown Court Rules Committee, in exercise of the powers conferred upon us by section 52(1) of the Judicature (Northern Ireland) Act 1978(a), Articles 5(6), 6 and 8 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988(b) and of all other powers enabling us in that behalf, hereby with the concurrence of the Lord Chancellor make the following Rules:—

PART I

INTRODUCTION

Citation and commencement

1. These Rules may be cited as the Crown Court (Serious Fraud) Rules (Northern Ireland) 1989 and shall come into operation on 1st September 1989.

Interpretation

2.—(1) In these Rules unless the context otherwise requires

“the chief clerk” means the chief clerk of the Court at the place where a case is to be tried and includes such other member of the Northern Ireland Court Service as may be authorised to act on his behalf for the purpose in question.

“the Order” means the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988; and a reference to an Article by number is a reference to the Article so numbered in the Order.

(2) Any reference in these Rules to a form by number is a reference to that form so numbered in the Schedule to these Rules.

(3) The forms set out in the Schedule to these Rules or forms substantially to the like effect may be used with such variations as the circumstances may require.

(a) 1978 c. 23

(b) S.I. 1988/1846 (N.I. 16)

Service of documents

3.—(1) Any notice or other document which is required by these rules to be given to any person may be served personally on that person or sent to him by post at his usual or last known residence or place of business in Northern Ireland or, in the case of a company, at the company's registered office in Northern Ireland.

(2) If the person to be served is acting by a solicitor, the notice or other document may be served by delivering it, or sending it by post to the solicitor's address for service.

PART II

DISMISSAL OF TRANSFERRED CHARGES

Oral applications for dismissal

4.—(1) Where notice of transfer has been given under Article 3 and a person to whom it relates intends to apply orally under Article 5(1) for any charge in the case to be dismissed, he shall give notice in writing in Form 1 of his intention to the chief clerk.

(2) A notice of intention to make such an application shall be given not later than 28 days after the day on which notice of transfer was given, and a copy thereof shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(3) The time for giving notice may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (4) below.

(4) An application for an extension of time for giving notice shall be made in writing in Form 1 specifying the grounds of the application and shall be sent to the chief clerk; and a copy thereof shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(5) The chief clerk shall give notice in Form 3 of the judge's decision on an application under paragraph (3) above—

(a) to the applicant;

(b) to the authority by or on behalf of whom notice of transfer was given; and

(c) to any other person to whom the notice of transfer relates.

(6) A notice of intention to make an application under Article 5(1) shall be accompanied by a copy of any material on which the applicant relies and shall—

(a) specify the charge or charges to which it relates; and

(b) state whether the leave of the judge is sought under Article 5(3) to adduce oral evidence on the application, indicating which witnesses it is proposed to call at the hearing.

(7) Where leave is sought from the judge for oral evidence to be given on an application, notice of his decision, including, if leave has been granted, an indication of what witnesses are to be called, shall be given by the chief clerk

in Form 3 to the authority by or on behalf of whom the notice of transfer was given and to any other party to whom the notice of transfer relates.

(8) Where an application for dismissal under Article 5(1) is to be made orally, the chief clerk shall list the application for hearing before a judge of the Crown Court.

Written applications for dismissal

5.—(1) A written application for dismissal under Article 5(1) shall be made in Form 1.

(2) The application shall be sent to the chief clerk and shall be accompanied by a copy of any statement or other document, and identify any article, on which the applicant relies.

(3) A copy of the application and of any accompanying documents shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(4) A written application for dismissal shall be made not later than 28 days after the day on which notice of transfer was given unless the time for making the application is extended, either before or after it expires, by the Crown Court; and paragraphs (4) and (5) of rule 4 above shall apply for the purposes of this paragraph as if references therein to giving notice of intention to make an oral application were references to making a written application under this rule.

Reply by prosecution

6.—(1) Not later than seven days from the date of service of notice of intention to apply orally for the dismissal of any charge contained in a notice of transfer, the authority by or on behalf of whom notice of transfer was given may apply to the Crown Court for leave under Article 5(3) to adduce oral evidence at the hearing of the application, indicating what witnesses it is proposed to call.

(2) Not later than seven days from the date of receiving a copy of an application for dismissal under rule 5(2) above, the authority by or on behalf of whom notice of transfer was given may apply to the Crown Court for an oral hearing of the application.

(3) An application under paragraph (1) or (2) above shall be made in writing in Form 2 to the chief clerk specifying the grounds of the application and, in the case of an application under paragraph (2) above, stating whether the leave of the judge is sought under Article 5(3) to adduce oral evidence and, if so, indicating what witnesses it is proposed to call.

(4) Notice of the judge's determination upon an application under paragraph (1) or (2) above, indicating what witnesses (if any) are to be called shall be served in Form 3 by the chief clerk on the authority making the application and on any other party to whom the notice of transfer relates.

(5) Where, having received the material specified in rule 4(6) or, as the case may be, rule 5(2) above, the authority by or on behalf of whom notice of transfer was given proposes to adduce in reply thereto any written comments or any further evidence, the authority shall serve any such comments, copies

of the statements or other documents outlining the evidence of any proposed witnesses and copies of any further documents on the chief clerk not later than fourteen days from the date of receiving the said material, and shall at the same time serve copies thereof on all parties to whom the notice of transfer relates.

(6) The time for—

(a) making an application under paragraph (1) or (2) above; or

(b) serving any material on the chief clerk under paragraph (5) above, may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (7) below.

(7) An application for an extension of time under paragraph (6) above shall be made in writing in Form 2 and shall be served on the chief clerk; and a copy thereof shall be served at the same time on the applicant for dismissal and on any other person to whom the notice of transfer relates.

Determination of applications for dismissal — procedural matters

7.—(1) A judge may grant leave for a witness to give oral evidence on an application for dismissal notwithstanding that notice of intention to call the witness has not been given in accordance with the foregoing provisions of these rules.

(2) Where an application for dismissal is determined otherwise than at an oral hearing, the chief clerk shall as soon as practicable, send to all the parties to the case a notice, in Form 4, of the outcome of the application.

Amendment of Crown Court Rules (Northern Ireland) 1979

8. For Rule 44 of the Crown Court Rules (Northern Ireland) 1979(a) there shall be substituted the following new rule:—

“44. The periods specified for the purposes of paragraphs (a) and (b) of section 48(5) of the Act shall be 8 days and 14 weeks respectively, and accordingly the trial of a person committed by a magistrates’ court or whose case has been transferred to the Crown Court under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988—

(a) shall not begin until the expiration of 8 days beginning with the date of his committal or the date of the giving of the notice of transfer as the case may be, except with his consent and the consent of the prosecutor, and

(b) shall, unless the court has otherwise ordered, begin not later than the expiration of 14 weeks beginning with the date of his committal or the date of the giving of the notice of transfer, as the case may be”.

PART III

PREPARATORY HEARINGS

Form of application for a preparatory hearing

9.—(1) An application in pursuance of Article 6(2) shall be made in writing in Form 5 to the chief clerk and shall include a concise statement of the

grounds, having regard to the matters specified in paragraph (1) of that Article, for the making of the application.

(2) The person making the application shall at the same time serve a copy thereof on the other party or, if there is more than one, each of the other parties in the case.

Time for making application

10.—(1) An application for a preparatory hearing shall be made—

- (a) not later than 28 days from the presentment of the indictment; and
- (b) in any event before the arraignment of the defendant.

(2) The time specified by rule 10(1)(a) for making an application for a preparatory hearing may be extended, either before or after it expires, on an application made in accordance with paragraph (3) below.

(3) An application for an extension of time under paragraph (2) above shall be made in writing in Form 5, specifying the grounds of the application and served on the chief clerk, and a copy thereof shall be served on the other party or if there is more than one, each of the other parties in the case.

(4) The chief clerk shall give notice of the judge's decision on an application under paragraph (2) above to the applicant and to the other party or, if there is more than one, each of the other parties in the case.

Notification of order for preparatory hearing

11. Notice of an order for a preparatory hearing shall be given in Form 6 and shall be served by the chief clerk on each person indicted and on the prosecution.

Disclosure of prosecution case

12. Where an order is made under Article 6(3) or 8(4) for the prosecution to prepare and serve any documents, the order shall identify the documents to be served and require the prosecution to serve a copy of each such document on each person indicted; and the chief clerk shall serve a copy of the order on each person indicted and on the prosecution.

Defence disclosure

13.—(1) Where an order is made under Article 6(4) or 8(5) the chief clerk shall serve a copy of the order in Form 7 on each party to whom the order applies and on the prosecution.

(2) Except to the extent that disclosure is required by section 1 of the Evidence of Alibi Act (Northern Ireland) 1972(a) a statement required by virtue of an order under Article 8(5) need not disclose who will give evidence and the order shall include a statement to that effect.

(3) The order shall include a warning that if any party departs from the case which he disclosed at the preparatory hearing, or fails to comply with a requirement imposed at the hearing—

(a) 1972 c. 6 (N.I.)

- (a) the judge or, with the leave of the judge, any other party may make such comment as appears to him appropriate and the jury may draw such inference as appears proper; and
- (b) where the court is satisfied that any such departure or failure on the part of a defendant constitutes an unnecessary or improper act or omission on his part, and that another party to the proceedings has incurred costs as a result thereof, the court may make an order as to the payment of those costs by the defendant under section 2 of the Costs in Criminal Cases Act (Northern Ireland) 1968(a).

Orders at or for purposes of preparatory hearings — supplementary

14.—(1) Where a judge makes an order at or for the purposes of a preparatory hearing, the order shall so far as is practicable set out the matters required to be done thereunder by reference to the relevant provisions of Article 8(4) or (5) as the case may be.

(2) Without prejudice to any other requirements which may be imposed on a party under the Order, it shall be the duty of a party where a judge has made an order for a preparatory hearing to inform the court of any significant matter which might affect the proper and convenient trial of the case.

Application for leave to appeal from orders made at preparatory hearing

15.—(1) An application to the judge of the Crown Court for leave to appeal under Article 8(11) shall be made orally within 2 days of the making of the order or ruling to which it relates.

(2) Unless the application is made on the occasion of the order or ruling to which it relates, the applicant shall serve notice in writing thereof, specifying the grounds of the application, on the chief clerk and on all parties to the preparatory hearing directly affected by the order or ruling in question.

Amendment of Crown Court Rules (Northern Ireland) 1979

16. For rule 32 of the Crown Court Rules (Northern Ireland) 1979 there shall be substituted the following rule:

“32.—(1) Subject to the succeeding paragraphs of this rule, an indictment shall be presented not later than 11.00 a.m. on the day prior to the arraignment of the person accused therein.

(2) In any case in which a notice of transfer has been given under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988, the indictment shall be presented within 28 days of the giving of notice of transfer.

(3) In any case, other than a case to which (2) applies, where the prosecutor considers that the evidence on the indictment is likely to reveal a case of serious or complex fraud, the indictment shall be presented within 28 days of the date of committal.

(4) In any case, other than a case to which paragraph (2) applies, where it appears to the judge that a preparatory hearing is likely to be

ordered, he may direct that the indictment be presented within 14 days from the date of his direction.

(5) The requirements contained in the preceding paragraph of this rule may be waived if—

- (i) the accused consents to this course; and
- (ii) the court gives leave.”.

Dated 17th May 1989.

Brian Hutton
Robert Porter
V. A. Care
J. D. W. Mills
J. Brady
R. Appleton
Trevor Smyth

I concur
Dated 25th July 1989.

Mackay of Clashfern, C.

IN THE CROWN COURT IN NORTHERN IRELAND

Application for dismissal of transferred charge(s) under Article 5, Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988

This form may be used to give notice of intention to apply orally or in writing, for dismissal of transferred charge(s), for application to call witnesses or for an extension of time within which to apply. Applications for dismissal must be received by the Court, within **28 days** of the date on the Notice of Transfer.

A copy of this form and of any statements or documentary evidence on which the applicant relies must be served at the same time on the authority by, or on behalf of whom, the notice of transfer was given and on any other person to whom the notice of transfer relates.

Case Details

The Crown Court at

Crown Court Case Number

Date of notice of transfer

Designated Authority

Applicant Surname:
Forename(s):
Address:

Date of birth:

Enter the name of the Court shown on the Notice of Transfer, and the date of the Notice

State name and address of the applicant to whom this application relates.

(If in custody give address where detained).

Application

Tick box as appropriate

- Notice of intention to apply orally for dismissal [Article 5(2)]
- Application to call witnesses in support of application for dismissal [Article 5(3)]
- Application for extension of time within which to give notice of intention to make an oral application.
- Written application for dismissal.

Application for extension of time within which to make a written application.

If applying for an extension only you will need to submit a complete form in due course.

Specify all charges and indicate those to which this application applies.

(If applying only for an extension, you do not need to complete this section).

If applying for an extension, state the grounds

For oral applications, indicate which witnesses you propose to call, if leave is given. For oral and written applications identify any material on which you rely.

Charges

Grounds for applying

- (a) Application for dismissal:
The evidence which has been disclosed would not be sufficient for a jury to properly convict.
- (b) Application for extension of time:

Witnesses and material on which you rely (copies of all documents must be attached)

Signature of applicant

Details of any person signing on behalf of applicant

Name

Solicitor
Address

Date

IN THE CROWN COURT IN NORTHERN IRELAND

Application by prosecution for oral hearing of defence application for dismissal

This form may be used by the prosecution to apply for:

- *an oral hearing of a defence application for dismissal;
- *an application for leave to call witnesses; or
- *an extension of time within which to apply for (a) an oral hearing or (b) to submit documents.

An application by the prosecution for an oral hearing, or for an extension of time within which to apply for an oral hearing, must be made **within 7 days** of receipt of notice of the defence application for dismissal. Written comments or material must be submitted to the chief clerk of the court **within 14 days** of the date of receipt of the defence application.

A copy of this form must be given to the applicant for dismissal and to any other person to whom the application to dismiss relates.

Case Details

Enter the name of the Court shown on the notice of transfer, and the date of receipt of the defence application.

The Crown Court at

Crown Court Case Number

Date of receipt of copy of defence application:

Defendant(s) Surname:
Forename(s):
Address:

State the name(s) and address(es) of the defendant(s) to whom this application relates. If in custody, give address where detained.

Date of birth:

Application

State the name, address and reference

Designated authority:

Ref:

Tick as appropriate.

Application for an oral hearing

- Application for leave to call witnesses under [Article 6(3)]
- Application for extension of time within which to apply for oral hearing
- Application for extension of time within which to submit documents

Specify all charges and indicate those to which the application for dismissal applies and those on which the prosecution intend to respond.

Charges

State the grounds on which the application is being made.

Grounds for applying

Indicate which witnesses you propose to call, if leave is given.

Witnesses

Signature

Date

IN THE CROWN COURT IN NORTHERN IRELAND

Notification of Court's Determination on Applications under Article 5, Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988

This form shall be used for notifying all parties of the court's determination of the following applications:

- *by the prosecution for oral hearing of a defence application for dismissal;
- *by the defence or prosecution for leave to call witnesses;
- *by the defence or prosecution for an extension of time within which to lodge an application for oral hearing; or
- *by the prosecution for extension of time within which to submit material to the court.

Case Details

The Crown Court at:

Crown Court case number:

Defendant(s) Surname:

Forename(s):

Address:

(If in custody give address where detained)

Date of birth:

Charges (indicate those to which the application applies)

Nature of Application

- Application by prosecution for oral hearing of application for dismissal of transferred charge(s)
- Defence*/Prosecution* application for leave to call witnesses
- Defence*/Prosecution* application for extension of time within which to lodge an application for oral hearing
- Prosecution application for extension of time within which to submit written comments or other material to the court.

* delete as appropriate.

Court's Decision

(Specify court's decision on each application considered. Where an application is refused the reasons for refusal should be stated).

Signed
(an Officer of the Court)

Date

IN THE CROWN COURT IN NORTHERN IRELAND

Notification of the Court's determination of a written application for dismissal of transferred charge(s) under Article 5(1), Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988

Case Details

The Crown Court at:

Crown Court case number:

Defendant(s)* Surname:
Forename(s):
Address:

(If in custody give address where detained)

Date of birth:

Charges (those on which dismissal was sought to be separately identified)*

Court's Decision (Specify court's decision. Where an application is refused the reasons for refusal should be stated. Include details of any bail variations, and counts substituted, added or quashed).

Signed
(an Officer of the Court)

Date

IN THE CROWN COURT IN NORTHERN IRELAND

Application for Preparatory Hearing under Article 6, Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 or for extension of time within which to apply.

An application for a preparatory hearing, or for an extension of time, must be made **within 28 days** of the presentation of the indictment and before the defendant is arraigned.

A copy of this form must be given at the same time to the other party or parties in this case.

Case Details

Enter the name of the Court shown on the notice of transfer, and the case number.

The Crown Court at

Crown Court
Case Number:

.....

Date of indictment presented

State the name(s) of the defendant(s) to whom this application relates. (If in custody give address where detained).

Defendant(s)

Surname:
Forename(s):
Address:

Date of birth:

Application

Tick as appropriate

Defence Prosecution

Application for a preparatory hearing

Application for extension of time within which to apply for a preparatory hearing.

Charges

Specify all charges

Grounds for applying

State the grounds on which the application is being made.

Signature of applicant

.....

Details of any person applying on behalf of applicant

Name

.....

Solicitor
Address

Reference

Date

.....

IN THE CROWN COURT IN NORTHERN IRELAND

Notification of the Court's Determination of an Application and/or Order for a Preparatory Hearing under Article 6, Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988

Case Details

The Crown Court at:

Crown Court case number:

Defendant(s) Surname:
Forename(s):

(indicate to whom application relates)

(continue overleaf if necessary)

Date of birth:

Charges
(specify all charges)

Determination of Application

Granted Refused Ordered by Judge

Reasons for refusal:

Date and time of hearing (if known):

Identify each document to be prepared and served on each party by the prosecution under Article 6(3), and any time limit (continue overleaf if necessary).

Signed
(an Officer of the Court)

Date

IN THE CROWN COURT IN NORTHERN IRELAND

**Order for Defence Disclosure prior to Preparatory Hearing under Article 6(4) or
at Preparatory Hearing under Article 8(5), Criminal Justice (Serious Fraud)
(Northern Ireland) Order 1988**

Crown Court Case Number

Case Details

Defendant (where there is more than one, a separate form to be completed for each)

Surname:

Forename(s):

Date of birth:

Charges (specify all charges)

Requirements

Date by which any of these specified requirements is to be complied with:

Note: A summary required by virtue of Article 8(5) need not disclose who will give evidence except to the extent that disclosure is required by Section 1 of the Evidence of Alibi Act (Northern Ireland) 1972.**Warning**

If any party departs from the case which he disclosed at the preparatory hearing, or fails to comply with a requirement imposed at the hearing:

- (a) the judge or, with the leave of the judge, any other party may make such comment as appears to him appropriate and the jury may draw such inference as appears proper; and
- (b) where the court is satisfied that any such departure or failure on the part of the defendant constitutes an unnecessary or improper act or omission on his part, and that another party to the proceedings has incurred costs as a result thereof, the court may make an order as to payment of those costs by the defendant.

Signed
(an Officer of the Court)

Dated

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules make provision for the practice and procedure to be followed in the Crown Court for the purposes of applications under the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 [S.I. 1988/1846 (N.I. 16)].

The rules come into operation on 1st September 1989.

Part II of the Rules makes provision for the purposes of Article 5 of the Order to permit a person charged with offences of fraud whose case has been transferred to the Crown Court under Article 3 of that Order to apply to a Crown Court for the charges to be dismissed. Rule 8 makes a consequential amendment to Rule 44 of the Crown Court Rules (Northern Ireland) 1979.

Part III of the Rules regulates the practice and procedure for the purposes of the holding by Crown Court judges of preparatory hearings under Articles 6 and 8 of the Order in cases of serious and complex fraud.