

*Status: This version of this schedule contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the War Crimes Act 1991, SCHEDULE. (See end of Document for details)*

PROSPECTIVE

SCHEDULE

Section 1(4).

PROCEDURE IN LIEU OF COMMITTAL

[<sup>F1</sup>PART I

ENGLAND AND WALES]

**Textual Amendments**

**F1** Sch. Pt. I repealed (E.W.N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1)(b), 80, Sch. 5 para. 2 (with s. 78(1))

*Notice of transfer*

- [<sup>F2</sup>1 (1) Where a person has been charged in England or Wales with an offence to which section 1 of this Act applies and in the opinion of the Attorney General or the Director of Public Prosecutions (or of an officer of either of them acting on his behalf) the evidence of the offence charged—
- (a) would be sufficient for that person to be committed for trial; but
  - (b) reveals a case of such complexity that it is appropriate that the case should without delay be taken over by the Crown Court,
- a notice certifying that opinion may be served by the Attorney General or the Director of Public Prosecutions (or by such an officer acting as aforesaid) on the magistrates' court in whose jurisdiction the offence has been charged.
- (2) Any such notice shall be served before the magistrates' court begins to inquire into the case as examining justices.
- (3) On the service of such a notice the functions of the magistrates' court shall cease in relation to the case except as provided by paragraphs 3 and 4 below or by section 20(4) of the <sup>M1</sup>Legal Aid Act 1988.
- (4) The decision to serve such a notice shall not be subject to appeal or liable to be questioned in any court.
- (5) In this Part of this Schedule “prosecuting authority” means the Attorney General or the Director of Public Prosecutions and “notice of transfer” means a notice under this paragraph.]

**Textual Amendments**

**F2** Sch. Pt. I repealed (E.W.N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1)(b), s. 80, Sch. 5 para. 2 (with s. 78(1))

**Marginal Citations**

**M1** 1988 c. 34.

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### *Contents of notice*

- [<sup>F3</sup>2 (1) A notice of transfer shall specify the proposed place of trial; and in selecting that place the prosecuting authority shall have regard to the considerations to which section 7 of the <sup>M2</sup>Magistrates' Courts Act 1980 requires a magistrates' court committing a person for trial 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 5 below may require.]

#### **Textual Amendments**

**F3** Sch. Pt. I repealed (E.W.N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1)(b), s. 80, Sch. 5 para. 2 (with s. 78(1))

#### **Marginal Citations**

**M2** 1980 c. 43.

### *Remand*

- [<sup>F4</sup>3 (1) If a magistrates' court has remanded a person to whom a notice of transfer relates in custody, it shall have power, subject to section 4 of the <sup>M3</sup> Bail Act 1976 and regulations under section 22 of the <sup>M4</sup> Prosecution of Offences Act 1985—
- (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 in accordance with the Bail Act 1976, that is to say, by directing him to appear before the Crown Court for trial;
- and where his release on bail is conditional on his providing one or more sureties and, in accordance with section 8(3) of the Bail Act 1976, the court fixes the amount in which the surety is to be bound with a view to his entering into his recognisance subsequently in accordance with subsections (4) and (5) or (6) of that section, the court shall in the meantime make an order such as is mentioned in paragraph (a) of this sub-paragraph.
- (2) If the conditions specified in sub-paragraph (3) below are satisfied, a court may exercise the powers conferred by sub-paragraph (1) above in relation to a person charged without his being brought before it in any case in which by virtue of subsection (3A) of section 128 of the <sup>M5</sup> Magistrates' Court Act 1980 it would have the power further to remand him on an adjournment such as is mentioned in that subsection.
- (3) The conditions mentioned in sub-paragraph (2) above are—
- (a) that the person in question has given his written consent to the powers conferred by sub-paragraph (1) above being exercised without his being brought before the court; and
- (b) that the court is satisfied that, when he gave his consent, he knew that the notice of transfer had been issued.
- (4) 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

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requirement that he shall so appear shall cease on the giving of the notice unless the notice states that it is to continue.

- (5) Where that requirement ceases by virtue of sub-paragraph (4) above, 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 76 of the <sup>F5</sup> Senior Courts Act 1981 ] .
- (6) If, in a case where the notice states that the requirement mentioned in sub-paragraph (4) above 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) above but subject as there provided; and
  - (b) power to enlarge, in the surety's absence, a recognisance conditioned in accordance with section 128(4)(a) of the Magistrates' Courts Act 1980 so that the surety is bound to secure that the person charged appears also before the Crown Court.]

#### Textual Amendments

- F4** Sch. Pt. I repealed (E.W.N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1)(b), s. 80, **Sch. 5 para. 2** (with s. 78(1))
- F5** Words in Act substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, art. 2(d)

#### Marginal Citations

- M3** 1976 c. 63.
- M4** 1985 c. 23.
- M5** 1980 c. 43.

#### Witnesses

- <sup>F64</sup> For the purposes of the <sup>M6</sup>Criminal Procedure (Attendance of Witnesses) Act 1965—
- (a) any magistrates' court for the petty sessions area for which the court from which a case was transferred sits shall be treated as examining magistrates; and
  - (b) a person indicated in the notice of transfer as a proposed witness shall be treated as a person who has been examined by the court.]

#### Textual Amendments

- F6** Sch. Pt. I repealed (E.W.N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1)(b), s. 80, **Sch. 5 para. 2** (with s. 78(1))

#### Marginal Citations

- M6** 1965 c. 69.

#### Regulations

- <sup>F75</sup> (1) The Attorney General—

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- (a) shall by regulations make provision requiring a copy of the notice of transfer, together with a statement of the 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 a prosecuting authority in relation to such notices, as appears to him to be appropriate.
- (2) The power to make regulations under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### **Textual Amendments**

**F7** *Sch. Pt. I* repealed (E.W.N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1)(b), s. 80, **Sch. 5 para. 2** (with s. 78(1))

#### *Applications for dismissal*

- [<sup>F8</sup>6 (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 for the charge, or any of the charges, in the case to be dismissed; and the judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.
- (2) No oral application may be made under sub-paragraph (1) above unless the applicant has given the Crown Court mentioned in that sub-paragraph written notice of his intention to make the application.
- (3) 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.
- (4) 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.
- (5) Dismissal of the charge, or all the charges, against the applicant shall have the same effect as a refusal by examining magistrates to commit for trial, except that no further proceedings may be brought on a dismissed charge except by means of the preferment of a voluntary bill of indictment.
- (6) 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;

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- (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.]

#### Textual Amendments

**F8** Sch. Pt. I repealed (E.W.N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1)(b), s. 80, Sch. 5 para. 2 (with s. 78(1))

## [<sup>F9</sup>PART II]

### NORTHERN IRELAND

#### Textual Amendments

**F9** Sch. Pt. II repealed (N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1), 80, Sch. 5 (as substituted by 1996 c. 25, s. 79(4), Sch. 4 paras. 19(1), 36) (with s. 78(1))

#### *Notice of transfer*

- [<sup>F107</sup> (1) Where a person has been charged in Northern Ireland with an offence to which section 1 of this Act applies and in the opinion of the Attorney General or Director of Public Prosecutions for Northern Ireland (or of an officer of either of them acting on his behalf) the evidence of the offence charged—
- (a) would be sufficient for that person to be committed for trial; but
  - (b) reveals a case of such complexity that it is appropriate that the case should without delay be taken over by the Crown Court,
- a notice certifying that opinion may be served by the Attorney General or Director of Public Prosecutions for Northern Ireland (or by such an officer acting as aforesaid) on the magistrates' court in whose jurisdiction the offence has been charged.
- (2) Any such notice shall be served before the magistrates' court—
- (a) has commenced hearing the evidence for the prosecution (other than a deposition relating to the arrest or to the remand of the accused), where the court is conducting a preliminary investigation; or
  - (b) has begun to conduct a preliminary inquiry.
- (3) On the service of such a notice the functions of the magistrates' court shall cease in relation to the case except as provided by paragraph 9 below or by Article 29(2)(d) of the <sup>M7</sup>Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.
- (4) The decision to serve such a notice shall not be subject to appeal or liable to be questioned in any court.
- (5) In this Part of this Schedule “prosecuting authority” means the Attorney General or Director of Public Prosecutions for Northern Ireland and “notice of transfer” means a notice under this paragraph.]

#### Textual Amendments

**F10** Sch. Pt. II repealed (N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1), 80, Sch. 5 (as substituted by 1996 c. 25, s. 79(4), Sch. 4 paras. 19(1), 36) (with s. 78(1))

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### Marginal Citations

**M7** S.I.1981/228 (N.I.8).

### *Contents of notice*

- [<sup>F118</sup> (1) A notice of transfer shall specify the proposed place of trial; and in selecting that place the prosecuting authority shall have regard to the considerations to which section 48(1) of <sup>M8</sup> the Judicature (Northern Ireland) Act 1978 requires a magistrates' court committing a person for trial 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 10 below may require.]

### Textual Amendments

**F11** Sch. Pt. II repealed (N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1), 80, Sch. 5 (as substituted by 1996 c. 25, s. 79(4), Sch. 4 paras. 19(1), 36) (with s. 78(1))

### Marginal Citations

**M8** 1978 c. 23.

### *Remand*

- <sup>F129</sup> (1) If a magistrates' court has remanded a person to whom a notice of transfer relates in custody, 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;
- and where his release on bail is conditional on his providing one or more sureties and the court fixes the amount in which the 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 paragraph (a) of this sub-paragraph.
- (2) 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.
- (3) Where that requirement ceases by virtue of sub-paragraph (2) above, it shall be 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.
- (4) If, in a case where the notice states that the requirement mentioned in sub-paragraph (2) above 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) above but subject as there provided; and

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- (b) power to enlarge, in the surety's absence, a recognisance conditioned in accordance with Article 47(1)(b) or 48 of the <sup>M9</sup>Magistrates' Courts (Northern Ireland) Order 1981 so that the surety is bound to secure that the person charged appears also before the Crown Court.

**Textual Amendments**

**F12** Sch. Pt. II repealed (N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1), 80, Sch. 5 (as substituted by 1996 c. 25, s. 79(4), Sch. 4 paras. 19(1), 36) (with s. 78(1))

**Marginal Citations**

**M9** S.I. 1981/1675 (N.I.26).

*Regulations*

- <sup>F13</sup><sub>10</sub> (1) The Attorney General for Northern Ireland—
- (a) shall by regulations make provision requiring a copy of the notice of transfer, together with a statement of the 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 a prosecuting authority in relation to such notices, as appears to him to be appropriate.
- (2) Regulations made under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the <sup>M10</sup>Statutory Instruments Act 1946 shall apply accordingly.

**Textual Amendments**

**F13** Sch. Pt. II repealed (N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1), 80, Sch. 5 (as substituted by 1996 c. 25, s. 79(4), Sch. 4 paras. 19(1), 36) (with s. 78(1))

**Marginal Citations**

**M10** 1946 c. 36.

*Applications for dismissal*

- <sup>F14</sup><sub>11</sub> (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 for the charge, or any of the charges, in the case to be dismissed; and the judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.

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- (2) No oral application may be made under sub-paragraph (1) above unless the applicant has given the Crown Court mentioned in that sub-paragraph written notice of his intention to make the application.
- (3) 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.
- (4) 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.
- (5) 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 <sup>M11</sup>Grand Jury (Abolition) Act (Northern Ireland) 1969.
- (6) 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.

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**Textual Amendments**

**F14** Sch. Pt. II repealed (N.I.) (4.7.1996) by 1996 c. 25, ss. 46(1), 80, Sch. 5 (as substituted by 1996 c. 25, s. 79(4), Sch. 4 paras. 19(1), 36) (with s. 78(1))

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**Marginal Citations**

**M11** 1969 c. 15 (N.I.).



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