



# Northern Ireland (Emergency Provisions) Act 1991

## 1991 CHAPTER 24

### PART I

#### SCHEDULED OFFENCES

##### *Preliminary inquiries, bail and young persons in custody*

### **2 Preliminary inquiry into scheduled offences**

- (1) Where in any proceedings before a magistrates' court for a scheduled offence (not being an extra-territorial offence as defined in section 1(3) of the Criminal Jurisdiction Act 1975) the prosecutor requests the court to conduct a preliminary inquiry into the offence under the Magistrates' Courts (Northern Ireland) Order 1981, the court shall, notwithstanding anything in Article 31 of that Order, conduct a preliminary inquiry into the offence unless the court is of opinion that in the interests of justice a preliminary investigation should be conducted into the offence under that Order.
- (2) Where in any proceedings a person charged with a scheduled offence is also charged with another offence which is not a scheduled offence, that other offence shall be treated as a scheduled offence for the purposes of this section.

### **3 Limitation of power to grant bail in case of scheduled offences**

- (1) This section applies to any person who has attained the age of fourteen and is charged with a scheduled offence which is neither being tried summarily nor certified by the Director of Public Prosecutions for Northern Ireland as in his opinion suitable to be so tried.
- (2) Subject to subsection (7) below, a person to whom this section applies shall not be admitted to bail except—
  - (a) by a judge of the High Court or the Court of Appeal; or

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- (b) by the judge of the court of trial on adjourning the trial of a person charged with a scheduled offence.
- (3) A judge may, in his discretion, admit to bail in pursuance of subsection (2) above a person to whom this section applies except where he is satisfied that there are substantial grounds for believing that that person, if released on bail (whether subject to conditions or not), would—
- (a) fail to surrender to custody, or
  - (b) commit an offence while on bail, or
  - (c) interfere with any witness, or
  - (d) otherwise obstruct or attempt to obstruct the course of justice, whether in relation to himself or in relation to any other person,
- or, if released subject to conditions, would fail to comply with all or any of those conditions.
- (4) In exercising his discretion in accordance with subsection (3) above in relation to a person, a judge shall have regard to such of the following considerations as appear to him to be relevant, namely—
- (a) the nature and seriousness of the offence with which the person is charged,
  - (b) the character, antecedents, associations and community ties of the person,
  - (c) the time which the person has already spent in custody and the time which he is likely to spend in custody if he is not admitted to bail, and
  - (d) the strength of the evidence of his having committed the offence,
- as well as to any others which appear to be relevant.
- (5) Without prejudice to any other power to impose conditions on admission to bail, a judge may impose such conditions on admitting a person to bail under this section as appear to him to be likely to result in that person's appearance at the time and place required, or to be necessary in the interests of justice or for the prevention of crime.
- (6) Where a person to whom this section applies is a serving member of—
- (a) any of Her Majesty's forces; or
  - (b) the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve,
- he may be admitted to bail on condition that he is held in military or (as the case may be) police custody if the judge is satisfied that suitable arrangements have been made for holding him in such custody; and where a person is admitted to bail on such a condition it shall be lawful for him to be held in such custody in accordance with the conditions of his bail.
- (7) The power to admit a person to bail in accordance with subsection (6) above shall, notwithstanding subsection (2) above, be exercisable by a resident magistrate as well as by a judge.

#### **4 Legal aid to applicants for bail in case of scheduled offences**

- (1) Where it appears to a judge of the High Court or the Court of Appeal—
- (a) that a person charged with a scheduled offence intends to apply to be admitted to bail; and
  - (b) that it is desirable in the interests of justice that that person should have legal aid but that he has not sufficient means to enable him to obtain that aid,

the judge may assign to him a solicitor and counsel, or counsel only, in the application for bail.

- (2) If, on a question of granting a person free legal aid under this section, there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.
- (3) Articles 32, 36 and 40 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (statements, payments, rules and stamp duty) shall apply in relation to legal aid under this section as they apply in relation to legal aid under Part III of that Order as if any legal aid under this section were given in pursuance of a criminal aid certificate under Article 29 of that Order.

## **5 Maximum period of remand in custody in case of scheduled offences**

Notwithstanding Article 47(2) and (3) of the Magistrates' Courts (Northern Ireland) Order 1981, the period for which a person charged with a scheduled offence (or with a scheduled offence and another offence which is not a scheduled offence) may be remanded in custody by a magistrates' court shall be a period of not more than twenty-eight days beginning with the day following that on which he is so remanded.

## **6 Holding in custody of young persons charged with scheduled offences**

- (1) Where a young person charged with a scheduled offence has been remanded or committed for trial as respects that offence and is not released on bail, he may—
  - (a) notwithstanding the provisions of any enactment, and
  - (b) whether or not he was remanded or committed for trial at a time when this section was not in force,be held in custody in such prison or other place as may be specified in a direction given by the Secretary of State under this section.
- (2) The Secretary of State may give a direction in respect of a person to whom this section applies if he considers that it is necessary, in order to prevent his escape or to ensure his safety or the safety of others, to make special arrangements as to the place at which that person is to be held in custody while on remand or while committed for trial.
- (3) A direction may be given by the Secretary of State at any time after the young person to whom it relates has been charged with a scheduled offence, and may be varied or revoked by a further direction.
- (4) In this section “young person” means a person who has attained the age of fourteen and is under the age of seventeen.

## **7 Directions under s. 6**

- (1) A direction under section 6 above shall, if it has not previously ceased to have effect, cease to have effect at the expiration of such period as may be specified in the direction (being a period not exceeding two months beginning with the date of the direction) unless continued in force by a further direction.
- (2) Where, by virtue of a direction, a young person is held in custody in a prison or other place and the direction ceases to have effect (whether or not by reason of the expiry or

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cesser of section 6 above) it shall be lawful for him to continue to be held in custody in that prison or place until arrangements can be made for him to be held in custody in accordance with the law then applicable to his case.

- (3) Nothing in subsection (2) above shall be taken to make lawful the holding in custody of any person who would, disregarding that subsection, be entitled to be released from custody.