

SCHEDULES

SCHEDULE 6

Section 53(5).

NOTICES OF TRANSFER: PROCEDURE 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 shall have regard to the considerations to which a magistrates' court committing a person for trial is required by section 7 of the 1980 Act 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 4 below may require.

Remand

- 2 (1) If a magistrates' court has remanded in custody a person to whom a notice of transfer relates, it shall have power, subject to section 4 of the Bail Act 1976 and regulations under section 22 of the 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.
- (2) Where—
 - (a) a person's release on bail under paragraph (b) of sub-paragraph (1) above is conditional on his providing one or more sureties; and
 - (b) in accordance with subsection (3) of section 8 of the Bail Act 1976, the court fixes the amount in which a 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 that sub-paragraph.
- (3) If the conditions specified in sub-paragraph (4) 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 1980 Act it would have the power further to remand him on an adjournment such as is mentioned in that subsection.
- (4) The conditions referred to in sub-paragraph (3) 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

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- (b) that the court is satisfied that, when he gave his consent, he knew that the notice of transfer had been issued.
- (5) 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.
- (6) Where that requirement ceases by virtue of sub-paragraph (5) 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 Supreme Court Act 1981.
- (7) If, in a case where the notice states that the requirement mentioned in sub-paragraph (5) 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 1980 Act so that the surety is bound to secure that the person charged appears also before the Crown Court.

Witnesses

- 3 For the purposes of the 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.

Regulations

- 4 (1) The Attorney General—
 - (a) shall by regulations make provision requiring a copy of a 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 the Director of Public Prosecutions 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.

Applications for dismissal

- 5 (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

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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.

- (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) above 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) above shall be given or made in relation to oral evidence from a child (within the meaning of section 53 of this Act) 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 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.
- (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.

Reporting restrictions

- 6 (1) Except as provided by this paragraph, it shall not be lawful—
 - (a) to publish in Great Britain a written report of an application under paragraph 5(1) above; or
 - (b) to include in a relevant programme for reception in Great Britain 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) above shall not apply to reports of an application under paragraph 5(1) above may be made by the judge dealing with the application.

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- (3) Where in the case of two or more accused one of them objects to the making of an order under sub-paragraph (2) above, 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) above shall not apply to reports of proceedings under sub-paragraph (3) above, 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) below.
- (5) It shall not be unlawful under this paragraph to publish or include in a relevant programme a report of an application under paragraph 5(1) above containing any matter other than that permitted by sub-paragraph (8) below where the application is successful.
- (6) Where—
 - (a) two or more persons were jointly charged; and
 - (b) applications under paragraph 5(1) above are made by more than one of them,sub-paragraph (5) above 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) above before the time authorised by sub-paragraphs (5) and (6) above, that is to say—
 - (a) the identity 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;
 - (g) whether legal aid was granted to the accused or any of the accused.
- (9) The addresses that may be published or included in a relevant programme under sub-paragraph (8) above 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 periodical;
 - (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 engaged in providing the service in which the programme

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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, in England and Wales, be instituted otherwise than by or with the consent of the Attorney General.
- (12) Sub-paragraph (1) above shall be in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports of court proceedings.
- (13) In this paragraph—
“publish”, in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;
“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 occurred.

Avoidance of delay

- 7 (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 functions under paragraph 2 or 3 above or section 20(4) of the Legal Aid Act 1988 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 section 53 of this Act 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.

Procedures for indictment of offenders

- 8 (1) In subsection (2) of section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (procedures for indictment of offenders), after paragraph (aa), there shall be inserted the following paragraph—
“(ab) the offence is specified in a notice of transfer under section 53 of the Criminal Justice Act 1991 (violent or sexual offences against children); or”.
- (2) In paragraph (iA) of the proviso to that subsection—
(a) after the words “paragraph (aa)” there shall be inserted the words “or (ab)”;
and
(b) for the words “regulations under section 5(9) of the Criminal Justice Act 1987” there shall be substituted the the words “regulations under the relevant provision”.

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- (3) At the end of that proviso there shall be inserted the words “and in paragraph (iA) above “the relevant provision” means section 5(9) of the Criminal Justice Act 1987 in a case to which paragraph (aa) above applies, and paragraph 4 of Schedule 6 to the Criminal Justice Act 1991 in a case to which paragraph (ab) above applies”.

Legal aid

- 9 In section 20(4) of the Legal Aid Act 1988 (power of magistrates' court to grant legal aid for Crown Court proceedings), in paragraph (b), after the word “cases)” there shall be inserted the words “or section 53 of the Criminal Justice Act 1991 (transfer of certain cases involving children)”.