

STATUTORY INSTRUMENTS

1981 No. 1675

The Magistrates' Courts (Northern Ireland) Order 1981

PART V

CRIMINAL JURISDICTION AND PROCEDURE

Provisions applying to preliminary investigations and preliminary inquiries

Committal proceedings to be in open court

35. The place in which a magistrates' court is sitting to conduct ^{F1}... a preliminary inquiry shall be deemed to be an open court except where—

- (a) any statutory provision contains an express provision to the contrary; or
- (b) it appears to the court that the ends of justice would not be served by sitting in open court for the whole or any part of the ^{F1}... inquiry.

F1 Words in [art. 35](#) repealed (17.10.2022) by [Criminal Justice \(Committal Reform\) Act \(Northern Ireland\) 2022](#) (c. 4), s. 5(2), [Sch. para. 8\(3\)\(d\)](#); S.R. 2022/221, art. 2(d)

Adjournment of committal proceedings to another petty sessions district

^{F2}**36.**

F2 [Art. 36](#) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015](#) (c. 9), s. 106(2), [Sch. 1 para. 86\(10\)](#), [Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); S.R. 2016/387, art. 2(k)(m) (with art. 3)

Discharge or committal for trial

37.—^{F3}(1)

- (2) Where the court conducting a preliminary inquiry is of opinion, after considering—
- (a) the documents referred to in Article 32 (1) (b) (i) and (iii) and the statements admitted in evidence under Article 33 (1);
 - (b) any written depositions;
 - (c) the exhibits;
 - (d) any submissions made under Article 34 (1); and
 - (e) the statement of the accused made and signed under Article 34 (3),

that the evidence is sufficient to put the accused upon trial by jury for any indictable offence it shall commit him for trial; and if it is not of that opinion, it shall, if he is in custody for no cause other than the offence which is the subject of the inquiry, discharge him.

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- (3) The court may commit the accused for trial—
- (a) in custody, that is to say, by committing him to^{F4} custody] there to be kept until delivered in due course of law; or
 - (b) subject to Article 38, on bail, that is to say, by taking from him a recognizance conditioned for his appearance at the time and place of trial;

and may, if the accused is remanded in custody, certify in the prescribed manner its consent to the accused being released on bail until his trial and in that event shall fix the amount of the recognizance with a view to its being taken subsequently.

(4) Subject to Article 38, a magistrates' court upon an application by or on behalf of a person committed for trial, may release that person from prison, if he is in custody for no other cause, at any time before the first sitting of the court before which he is to be tried upon his entering into a recognizance pursuant to paragraph (3) (b).

(5)^{F5} . . . magistrates' court rules may provide for the transmission to the court or trial of documents and exhibits connected with a preliminary^{F6} . . . inquiry.

(6) If the court conducting the preliminary inquiry discharges the accused the court shall read aloud the contents of every written statement admitted in evidence; and where the contents of the written statements are so read out an order made under Article 44 (2) shall not apply to the evidence contained in those statements.

F3 [Art. 37\(1\)](#) repealed (17.10.2022) by [Criminal Justice \(Committal Reform\) Act \(Northern Ireland\) 2022](#) (c. 4), s. 5(2), [Sch. para. 8\(3\)\(e\)](#); S.R. 2022/221, art. 2(d)

F4 1989 NI 15

F5 Words in [art. 37\(5\)](#) repealed (3.4.2006) by [Constitutional Reform Act 2005](#) (c. 4), ss. 15(2), 146, 148(1), [Sch. 5 para. 68](#), [Sch. 18 Pt. 3](#); S.I. 2006/1014, [art. 2\(a\)](#), [Sch. 1](#)

F6 Words in [art. 37\(5\)](#) repealed (17.10.2022) by [Criminal Justice \(Committal Reform\) Act \(Northern Ireland\) 2022](#) (c. 4), s. 5(2), [Sch. para. 8\(3\)\(f\)](#); S.R. 2022/221, art. 2(d)

Bail in treason, etc.

38. A person charged with treason or with any offence under the Treason Felony Act 1848^{F7} shall not be admitted to bail except by order of the High Court or of the Secretary of State.

F7 1848 c. 12

Binding over complainant and witnesses to attend trial

39.—(1) A magistrates' court conducting a preliminary^{F8} . . . inquiry shall bind each witness whose deposition it has taken, other than the accused and any witness merely as to his character, by a recognizance to attend and to give evidence at the trial of any indictment against the accused and, except where the complainant is a public or local authority or an officer of a public or local authority acting as such or is a constable acting as such, it shall bind the complainant by a recognizance to prosecute the accused at the trial.

(2) Where it appears to the court, after taking into account any representation made by or on behalf of the accused or the prosecution, that the attendance at the trial of any witness examined before the court is unnecessary by reason of any statement by the accused, or of the accused having admitted before the court the truth of the charge or of the evidence of the witness being merely of a formal nature, the court shall—

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- (a) if the witness has not already been bound over, bind him over conditionally to attend the trial, that is to say, on notice being given to him and not otherwise;
- (b) if the witness has already been bound over, direct that he shall be treated as having been bound over to attend the trial conditionally as aforesaid.

(3) Where in pursuance of paragraph (2) a witness has been, or is treated as having been, bound over conditionally to attend the trial of a person committed for trial, then, at any time before the opening of the Crown Court at which the person is to be tried, if the prosecution or the person committed for trial gives notice to the chief clerk that he wishes the witness to attend at the trial, the chief clerk shall forthwith give notice in writing to the witness that he is required so to attend in pursuance of his recognizance.

(4) A magistrates' court on committing any person for trial shall inform him of his right to require the attendance at the trial of any witness bound over, or treated as bound over, conditionally as aforesaid and of the steps he must take for the purpose of enforcing such attendance.

(5) If any witness on being required to enter into a recognizance under this article refuses to do so, the court may commit him to prison until the trial of the accused or until he sooner enters into the recognizance, so, however, that if the court does not commit the accused for trial or if for any reason it appears to the court that the attendance of the witness will not be necessary it may release the witness.

F8 Words in art. 39(1) repealed (17.10.2022) by [Criminal Justice \(Committal Reform\) Act \(Northern Ireland\) 2022 \(c. 4\), s. 5\(2\), Sch. para. 8\(3\)\(g\)](#); S.R. 2022/221, art. 2(d)

Committal after non-appearance of accused

40.—(1) Where an indictment has been presented at any court against a person who is then at large and who has not appeared and pleaded to such indictment, whether or not he has been bound by recognizance to appear, the clerk of the court may, subject to paragraph (2), at any time after the sitting of the court at which the indictment was presented upon the application of the prosecution grant him a certificate of such indictment having been presented.

(2) A certificate shall not be granted under paragraph (1) in respect of any indictment in respect of which the judge has, pursuant to section 2 (3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969^{F9} directed the entry of “No Bill”.

(3) Upon production of the certificate to any justice of the peace, the justice may issue a warrant to arrest such person and for his appearance before a magistrates' court.

(4) Upon the arrest of a person for whom a warrant is issued under paragraph (3) and upon its being proved on oath that the person so arrested is the person who is charged and named in the indictment, the magistrates' court before whom such person has been brought shall, without further inquiry, commit him for trial remanding him to prison meanwhile or admitting him to bail in accordance with the provisions of Article 37.

(5) Nothing in this Article shall be deemed to prevent any judge, the chief clerk or other officer from issuing any warrant (which he might otherwise by law issue) in any such case for the arrest of any such person.

F9 [1969 c. 15 \(NI\)](#)

Power to take deposition of dying person

41. Where a resident magistrate or other justice of the peace is satisfied by the evidence of a duly qualified medical practitioner that a person (in this Article referred to as the “dying person”) who

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is able and willing to give material information relating to any indictable offence or to any person accused of any such offence, is dangerously ill and not likely to recover from such illness, and it is not practicable to take the dying person's deposition in accordance with the preceding provisions of this Part he may take in writing the deposition of the dying person on oath, wherever that person may be, and shall sign the deposition.

Reading at court of trial deposition or statements taken at preliminary investigation or inquiry of a dying person

42.—(1) The deposition of a witness whose attendance is stated to be unnecessary under Article 39 (2) ^{F10}... may, subject to this Article, be read at the court of trial provided—

- (a) it is proved, either by the oath of a credible witness or by a certificate purporting to be signed by the resident magistrate or [^{F11} lay magistrate] before whom the deposition purports to have been taken or by the clerk of petty sessions, that the deposition was taken in the presence of the accused and that the accused or his counsel or solicitor (or in the case of a witness called by the accused, the prosecution) had an opportunity of cross-examining the witness;
- (b) the deposition purports to be signed by the resident magistrate or [^{F11} lay magistrate] before whom it purports to be taken; and
- (c) in the case of a witness conditionally bound over to attend the trial under Article 39 no notice has been served upon him requiring his attendance.

(2) Paragraph (1) shall not have effect if it is proved that the deposition, or, where the proof required by paragraph (1) (a) is given by means of a certificate, that the certificate, was not in fact signed by the magistrate or clerk of petty sessions by whom it purports to have been signed.

(3) The statement of a witness admitted in evidence at a preliminary inquiry ^{F12}... which complies with the provisions of [^{F13} Article 33] may, with the leave of the court, be read as evidence at the trial—

- (a) by agreement between the prosecution and the defence, or
- (b) if the court is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success.

(4) Where notice is given requesting the attendance of a witness conditionally bound over under Article 39 at the court of trial and such notice is given so late as to make such attendance impracticable the judge of that court may, unless he is satisfied that such attendance is essential in the interests of justice, disallow the notice and authorise the reading of the deposition of that witness at the trial of an accused.

(5) The deposition of a dying person taken and purporting to be signed in accordance with Article 41 may be read at the court of trial if it is proved that—

- (a) the dying person has since died or is unable to travel or give evidence; and
- (b) reasonable notice of the intention to take the deposition was served upon the person (whether prosecution or defence) against whom it is proposed to be given in evidence and that the accused or his counsel or solicitor, or as the case may require, the prosecution had or might have had, if he or, as the case may be, the prosecution had chosen to be present, an opportunity of cross-examining the dying person making the deposition.

F10 Words in art. 42(1) repealed (17.10.2022) by Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 (c. 4), s. 5(2), **Sch. para. 8(3)(h)**; S.R. 2022/221, art. 2(d)

F11 2002 c. 26

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- F12** Words in art. 42(3) repealed (17.10.2022) by Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 (c. 4), s. 5(2), **Sch. para. 8(3)(i)**; S.R. 2022/221, art. 2(d)
- F13** 1986 NI 15

Facts to be stated on open court on plea of guilty

43.—(1) Where an accused who has been committed for trial under the provisions of Article 37 (2) pleads guilty on arraignment to any count in the indictment preferred against him, the prosecution shall, unless the judge otherwise directs, before the accused is sentenced in respect of the offence charged in that count, state in open court sufficient of the facts upon which that count is based as will make known the identity of the accused, and the nature and gravity of the offence charged in that count.

(2) The failure of the prosecution to comply, or adequately to comply, with the provisions of paragraph (1) shall not affect the validity of any sentence passed upon the accused.

Reports of preliminary proceedings

44.—(1) Where at a preliminary ^{F14}... inquiry an opening statement is made on behalf of the prosecution, such statement shall not be printed [^{F15} published or included in a relevant programme].

(2) Subject to Article 37 (6), where at a preliminary ^{F16}... inquiry objection is taken as to the admissibility of any evidence the court may, if satisfied that the objection is made in good faith, order that such evidence and any discussion relating thereto shall not be printed [^{F15} published or included in a relevant programme] and, if it appears to the court that publication of any part of the evidence adduced before it (whether or not any objection is made thereto) would prejudice the trial of the accused, it may order that such part of the evidence shall not be printed [^{F15} published or included in a relevant programme].

(3) Any person who acts in contravention of paragraph (1) or of any order made under paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding [^{F17} level 5 on the standard scale], or to both.

(4) A prosecution for an offence under this Article shall not be instituted otherwise than by or with the consent of the Attorney General.

^{F18}(5) For the purposes of Article 7 (2) of the Prosecution of Offences (Northern Ireland) Order 1972^{F19}, paragraph (4) shall be deemed to be a relevant consent provision passed before 30th March 1972.

[^{F15}(6) In this Article “relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990) for reception in Northern Ireland.]

- F14** Words in art. 44(1) repealed (17.10.2022) by Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 (c. 4), s. 5(2), **Sch. para. 8(3)(j)**; S.R. 2022/221, art. 2(d)
- F15** 1990 c. 42
- F16** Words in art. 44(2) repealed (17.10.2022) by Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 (c. 4), s. 5(2), **Sch. para. 8(3)(j)**; S.R. 2022/221, art. 2(d)
- F17** 1984 NI 3
- F18** prosp. rep. by 2002 c. 26
- F19** 1972 NI 1

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Changes and effects yet to be applied to :

- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) arts.3\(4\)25](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.3\(5\)Sch.1](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.5\(2\)](#)
- Instrument mod (prosp) by [1994 c. 33 s. 91\(3\)](#)
- Instrument revoked by [1998 c. 41 s.74\(1\)\(3\)Sch.12 para.5Sch.14 Pt.I](#)

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

- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Order applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). [S.I. 2018/1125](#), reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))
- Order power to modify conferred by [2015 c. 9 \(N.I.\) s. 24\(5\)\(a\)](#) (see [s 24\(6\)](#))

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- [Sch.6 Pt.I paras.1819](#) revoked by [1995 c. 21 s. 314\(1\)Sch.12](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch.6 Pt.I para.5](#) revoked by [S.I. 1995/756 art.15Sch.](#)
- [Sch. 6 para. 128-130](#) repealed by [2011 c. 15 \(N.I.\) Sch. 3 Pt. 2](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 125](#) repealed by [2011 c. 16 \(N.I.\) Sch. 5](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 Pt. 3 para. 170](#) repealed by [S.I. 2007/916 \(N.I.\) Sch. 8 Pt. 1](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 144](#) repealed by [2006 c. 48 Sch. 15 Pt. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 21](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 25](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [art. 29A](#) excluded by [1975 c. 59, s. 4\(3\)](#) (as substituted) by [2015 c. 9 \(N.I.\) s. 7\(6\)](#)
- [art. 29A](#) inserted by [2015 c. 9 \(N.I.\) s. 7\(2\)](#)
- [art. 34\(1A\)-\(1E\)](#) inserted by [2015 c. 9 \(N.I.\) s. 8\(2\)](#)
- [art. 140\(2ZA\)](#) inserted by [2016 c. 18 \(N.I.\) Sch. 10 para. 16](#)