

## SCHEDULE 1

Order 118

### *THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996*

#### **Application**

1. This Order shall apply in relation to acquittals in respect of offences alleged to be committed on or after 30th June 1997.

#### **Interpretation**

2. In this Order—

“the Act” means the Criminal Procedure and Investigations Act 1996(1);

“acquitted person” means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the Act and “acquittal” means the acquittal of that person of that offence;

“conviction” means the conviction which occasioned a certification under section 54(2) of the Act;

“deponent” means a deponent to an affidavit filed under rule 5, 7, 8 or 9;

“magistrates' court” has the same meaning as in Article 2 of the Magistrates' Courts (Northern Ireland) Order 1981(2);

“prosecution” means the individual or body which acted as the prosecution in the proceedings which led to the acquittal;

“record of court proceedings” means a transcript of the evidence in the proceedings which led to the conviction for the administration of justice offence referred to in section 54(1)(b) of the Act or, as the case may be, the proceedings which led to the acquittal.

#### **Exercise of jurisdiction**

3. The jurisdiction of the High Court under section 54(3) of the Act shall be exercised, subject to rule 10(11), by a judge in chambers.

#### **Time limit for making application**

4. An application under section 54(3) of the Act shall be made not later than 28 days after—

(a) the expiry of the period allowed for appealing (whether by case stated or otherwise), or making an application for leave to appeal, against the conviction referred to in section 54(1)(b) of the Act; or

(b) where notice of appeal or application for leave to appeal against the conviction is given, the determination of the appeal or application for leave to appeal and, for this purpose, “determination” includes abandonment (within the meaning of rule 16 of the Criminal Appeal Rules (Northern Ireland) 1968(3) or, as the case may be, Article 150 of the Magistrates' Courts (Northern Ireland) Order 1981(4)).

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(1) 1996 c. 25; as modified in its application to Northern Ireland by Schedule 4 to the Act

(2) S.I.1981/1675 (N.I. 26)

(3) S.R. 1968 No. 218; to which there are amendments not relevant to these Rules

(4) S.I. 1981/1675 (N.I. 26)

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### **Application**

5.—(1) An application by the prosecution under section 54(3) of the Act shall be commenced by originating motion.

(2) The application shall be supported by an affidavit which deals with the conditions in section 55(1), (2) and (4) of the Act and which exhibits—

- (a) any relevant documents (which may include a copy of any record of court proceedings); and
- (b) a copy of the certification under section 54(2).

### **Notice to the acquitted person**

6.—(1) The prosecution shall serve the notice of motion along with any supporting affidavit on the acquitted person within 4 days of issue of the application and at the same time shall also serve a notice—

- (a) specifying the date on which the notice of motion was issued; and
- (b) informing the acquitted person that—
  - (i) the result of the application may be the making of an order by the High Court quashing the acquittal, and
  - (ii) if he wishes to respond to the application he must within 28 days of the date of service on him of the notice, file in the Central Office any affidavit on which he intends to rely.

(2) Order 10 rule 1(3) shall not apply in relation to any notice of motion served in accordance with paragraph (1).

### **Affidavit of service on an acquitted person**

7. The prosecution shall, as soon as practicable after serving the documents referred to in rule 6, file in the Central Office an affidavit of service which exhibits both a copy of the notice of motion and a copy of the accompanying notice required to be served with the notice of motion.

### **Response of acquitted person**

8.—(1) If the acquitted person wishes to respond to the application, he shall, within 28 days of service on him under rule 6, file in the Central Office an affidavit which—

- (a) deals with the conditions in section 55(1), (2) and (4) of the Act; and
- (b) exhibits any relevant documents (which may include a copy of any record of court proceedings).

(2) The acquitted person shall, within 4 days of the filing of the documents mentioned in paragraph (1), serve a copy of them on the prosecution.

### **Evidence**

9.—(1) An affidavit filed under rule 5, 7, 8 or this rule may contain statements of information or belief with the sources and grounds thereof.

(2) The prosecution may, not later than 10 days after expiry of the period allowed under rule 8(1), apply ex parte for an order granting leave to file further affidavit evidence.

(3) If the Court grants leave, the order shall specify a period within which further affidavit evidence or records are to be filed, and the Central Office shall serve a copy of the order on the prosecution and on the acquitted person.

(4) The prosecution shall, within 4 days of filing further evidence in the Central Office, serve a copy of that evidence on the acquitted person.

### **Determination of the application**

10.—(1) Subject to paragraph (3), the Court shall determine whether or not to make an order under section 54(3) of the Act on the basis of the written material provided under rules 5, 7, 8 and 9 in the absence of the prosecution, the acquitted person, or of any deponent.

(2) The determination shall not be made and any hearing under paragraph (3) shall not take place before the expiry of—

- (a) 10 days after the expiry of the period allowed under rule 8(1), or
- (b) where the court has made an order under rule 9(3), 10 days after the expiry of any period allowed by that order.

(3) The Court may, of its own motion, or on the application of the prosecution or acquitted person, order a hearing of the application if it thinks fit.

(4) An application under paragraph (3) shall state whether a hearing is desired in order for a deponent for the other party to attend and be cross-examined and, if so, the reasons for wishing the deponent to attend.

(5) An application under paragraph (3) shall be made no later than 7 days—

- (a) after the expiry of the period allowed under rule 8(1); or
- (b) where the court has made an order under rule 9(3), after the expiry of any period allowed by that order.

(6) Where a hearing is ordered, the court may, of its own motion or on the application of the prosecution or acquitted person, order a deponent to attend in order to be cross-examined.

(7) The prosecution or the acquitted person, as the case may be, shall within 4 days after lodging an application under paragraph (3) serve a copy of it on the other party and file in the Central Office an affidavit of service.

(8) A party served under paragraph (7) shall, within 5 days of service, file any representations he wishes to make as to whether or not a hearing should be ordered.

(9) The Court shall not determine an application for a hearing under paragraph (3) unless—

- (a) an affidavit of service has been filed as required by paragraph (7); and
- (b) the period for filing representations allowed under paragraph (8) has expired, or
- (c) representations have been filed under paragraph (8).

The requirements imposed by sub-paragraphs (a) and (c) are satisfied even though the affidavit of service or, as the case may be, the representations are filed outside the time limits allowed.

(10) The Central Office shall serve notice on the prosecution and the acquitted person of an order made under the foregoing paragraphs of this rule and where a hearing is ordered, the notice shall—

- (a) set out the date, time and place of the hearing; and
- (b) give details of any deponent ordered to attend for cross-examination.

(11) A hearing ordered under paragraph (3) above shall be in open court unless the Court otherwise directs.

(12) The Central Office shall serve notice of any order made under section 54(3) of the Act quashing the acquittal or of a decision not to make such an order on the prosecution, the acquitted person; and

- (a) where the court before which the acquittal or conviction occurred was a magistrates' court, on the clerk of petty sessions for the petty sessions district for which that court sits;

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- (b) where the court before which the acquittal or conviction occurred was the Crown Court, on the chief clerk of the Crown Court sitting at the place where the acquittal or conviction occurred.