



Northern Ireland (Emergency Provisions) Act 1978

1978 CHAPTER 5

PART I

SCHEDULED OFFENCES

Preliminary enquiries, bail and young persons in custody

1 Preliminary enquiry 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 enquiry into the offence under the Criminal Procedure (Committal for Trial) Act (Northern Ireland) 1968, the court shall, notwithstanding anything in section 1 of that Act of 1968, conduct a preliminary enquiry 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 Part VI of the Magistrates' Courts Act (Northern Ireland) 1964.
- (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 subsection (1) above.

2 Limitation of power to grant bail in case of scheduled offences

- (1) Subject to the provisions of this section, a person to whom this section applies shall not be admitted to bail except—
 - (a) by a judge of the Supreme Court; or
 - (b) by the judge of the court of trial, on adjourning the trial of a person so charged.
- (2) A judge shall not admit any such person to bail unless he is satisfied that the applicant—

- (a) will comply with the conditions on which he is admitted to bail; and
 - (b) will not interfere with any witness ; and
 - (c) will not commit any offence while he is on bail.
- (3) 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.
- (4) Nothing in this section shall prejudice any right of appeal against the refusal of a judge to grant bail.
- (5) This section applies, subject to subsection (6) below, to any person—
- (a) who is charged with a scheduled offence; and
 - (b) who has attained the age of 14; and
 - (c) who is not a serving member of any of Her Majesty's regular naval, military or air forces.
- (6) This section does not apply to a person charged with a scheduled offence—
- (a) which is being tried summarily ; or
 - (b) which the Director of Public Prosecutions for Northern Ireland certifies is in his opinion suitable to be tried summarily.

3 Legal aid to applicants for bail in case of scheduled offences

- (1) Where it appears to a judge of the Supreme Court—
- (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) Sections 24, 27 and 32 of the Legal Aid and Advice Act (Northern Ireland) 1965 (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 II of that Act as if any legal aid under this section were given in pursuance of a criminal aid certificate under section 21 of that Act.

4 Holding in custody of young persons charged with scheduled offences

- (1) Where a person to whom this section applies has been remanded or committed for trial as respects a scheduled 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 (in this section and section 5 below referred to as "a direction").

- (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) This section applies to any young person charged with a scheduled offence.
- (5) In this section " young person " means a person who has attained the age of 14 and is under the age of 17.

5 Directions under s. 4

- (1) A direction 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 cesser of section 4 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.

Court and mode of trial

6 Court for trial on indictment of scheduled offences

- (1) A trial on indictment of a scheduled offence shall be held only at the Belfast City Commission.
- (2) A magistrates' court which commits a person for trial on indictment for a scheduled offence or two or more offences which are or include scheduled offences shall commit him for trial to the Belfast City Commission and section 47 of the Magistrates' Courts Act (Northern Ireland) 1964 (committal to assize or county court) shall have effect accordingly.
- (3) A county court judge may at any time, at the request of the Lord Chief Justice of Northern Ireland, sit and act as a judge at the Belfast City Commission for the trial on indictment of a scheduled offence, or for two or more such trials, and while so sitting and acting shall have all the jurisdiction, powers and privileges of a High Court judge included in the Commission, so far as concerns any such trial.

Status: This is the original version (as it was originally enacted).

- (4) A county court judge requested to sit and act as aforesaid for a period of time may, notwithstanding the expiry of that period, attend at the Belfast City Commission for the purpose of continuing to deal with, giving judgment in or dealing with any ancillary matter relating to, any case which may have begun before him when sitting as a judge at the Commission and shall have the same jurisdiction, powers and privileges as under subsection (3) above.

7 Mode of trial on indictment of scheduled offences

- (1) A trial on indictment of a scheduled offence shall be conducted by the court without a jury.
- (2) The court trying a scheduled offence on indictment under this section shall have all the powers, authorities and jurisdiction which the court would have had if it had been sitting with a jury, including power to determine any question and to make any finding which would, apart from this section, be required to be determined or made by a jury, and references in any enactment to a jury or the verdict or finding of a jury shall be construed accordingly in relation to a trial under this section.
- (3) Where separate counts of an indictment allege a scheduled offence and an offence which is not a scheduled offence, the trial on indictment shall, without prejudice to section 5 of the Indictments Act (Northern Ireland) 1945 (orders for amendment of indictment, separate trial and postponement of trial), be conducted as if all the offences alleged in the indictment were scheduled offences.
- (4) Without prejudice to subsection (2) above, where the court trying a scheduled offence on indictment—
- (a) is not satisfied that the accused is guilty of that offence, but
 - (b) is satisfied that he is guilty of some other offence which is not a scheduled offence, but of which a jury could have found him guilty on a trial for the scheduled offence,
- the court may convict him of that other offence.
- (5) Where the court trying a scheduled offence convicts the accused of that or some other offence, then, without prejudice to its power apart from this subsection to give a judgment, it shall, at the time of conviction or as soon as practicable thereafter, give a judgment stating the reasons for the conviction.
- (6) A person convicted of any offence on a trial under this section without a jury may, notwithstanding anything in section 8 of the Criminal Appeal (Northern Ireland) Act 1968, appeal to the Court of Criminal Appeal under that section—
- (a) against his conviction, on any ground, without the leave of the Court of Criminal Appeal or a certificate of the judge of the court of trial; and
 - (b) against sentence passed on conviction, without that leave, unless the sentence is one fixed by law.
- (7) Where a person is so convicted, the time for giving notice of appeal under subsection (1) of section 20 of that Act of 1968 shall run from the date of judgment, if later than the date from which it would run under that subsection.

Evidence, onus of proof and treatment of convicted young persons

8 Admissions by persons charged with scheduled offences

- (1) In any criminal proceedings for a scheduled offence, or two or more offences which are or include scheduled offences, a statement made by the accused may be given in evidence by the prosecution in so far as—
 - (a) it is relevant to any matter in issue in the proceedings; and
 - (b) it is not excluded by the court in pursuance of subsection (2) below.
- (2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, prima facie evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies it that the statement was not so obtained—
 - (a) exclude the statement, or
 - (b) if the statement has been received in evidence, either—
 - (i) continue the trial disregarding the statement; or
 - (ii) direct that the trial shall be restarted before a differently constituted court (before which the statement in question shall be inadmissible).
- (3) This section does not apply to a summary trial.

9 Onus of proof in relation to offences of possession

- (1) Where a person is charged with possessing a proscribed article in such circumstances as to constitute an offence to which this section applies and it is proved that at the time of the alleged offence—
 - (a) he and that article were both present in any premises; or
 - (b) the article was in premises of which he was the occupier or which he habitually used otherwise than as a member of the public,the court may accept the fact proved as sufficient evidence of his possessing (and, if relevant, knowingly possessing) that article at that time unless it is further proved that he did not at that time know of its presence in the premises in question, or, if he did know, that he had no control over it.
- (2) This section applies to vessels, aircraft and vehicles as it applies to premises.
- (3) In this section " proscribed article " means an explosive, firearm, ammunition, substance or other thing (being a thing possession of which is an offence under one of the enactments mentioned in subsection (4) below).
- (4) This section applies to scheduled offences under the following enactments, that is to say—
 - The Explosive Substances Act 1883*
Section 3, so far as relating to subsection (1)(b) thereof (possessing explosive with intent to endanger life or cause serious damage to property).
 - Section 4 (possessing explosive in suspicious circumstances).
The Firearms Act (Northern Ireland) 1969

Status: This is the original version (as it was originally enacted).

Section 1 (possessing firearm or ammunition without, or otherwise than as authorised by, a firearm certificate).

Section 4 (possessing machine gun, or weapon discharging, or ammunition containing, noxious substance).

Section 14 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property).

Section 15(2) (possessing firearm or imitation firearm at time of committing, or being arrested for, a specified offence).

Section 19(1) to (3) (possession of a firearm or ammunition by a person who has been sentenced to imprisonment, etc.).

Section 19A (possessing firearm or ammunition in suspicious circumstances).
The Protection of the Person and Property Act (Northern Ireland) 1969

Section 2 (possessing petrol bomb, etc., in suspicious circumstances).

(5) This section does not apply to a summary trial.

10 Treatment of young persons convicted of scheduled offences

- (1) Section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968 (under which a court may sentence a child or young person convicted on indictment of an offence punishable in the case of an adult with imprisonment for fourteen years or more to detention for a period specified in the sentence) shall have effect in relation to a young person convicted of a scheduled offence committed while this subsection is in force with the substitution of the word " five " for the word " fourteen ".
- (2) Subsection (3) of section 74 of that Act (under which the maximum length of the term or the aggregate of the terms for which a person may be committed in custody to a remand home under section 74(1)(e) is one month) shall have effect in relation to a young person found guilty of a scheduled offence committed while this subsection is in force with the substitution of the words " six months " for the words " one month " .