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## STATUTORY INSTRUMENTS

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# 1981 No. 1675

## The Magistrates' Courts (Northern Ireland) Order 1981

### PART V

#### CRIMINAL JURISDICTION AND PROCEDURE

##### *Summary trial*

##### **Issue of summons to accused or warrant for his arrest**

[<sup>F1</sup>20.—(1) On a complaint being made to a lay magistrate that a person has, or is suspected of having, committed a summary offence, the lay magistrate may issue a summons directed to that person requiring him to appear before a magistrates' court to answer to the complaint.

(2) On a complaint being made to a lay magistrate that a person has, or is suspected of having, committed an indictable offence, the lay magistrate may either—

- (a) issue a summons requiring him to appear before a magistrates' court; or
- (b) issue a warrant to arrest that person and bring him before a magistrates' court

(3) Where the offence charged in the complaint is an indictable offence, a warrant under this Article may be issued by a lay magistrate at any time notwithstanding that a summons has previously been issued and whether before or after the time mentioned in such summons for the appearance of the person summoned.

(4) Where a lay magistrate is satisfied that a summons issued under paragraph (1) has not been served, the lay magistrate may, without a complaint being made to him, re-issue the summons extending the time for the appearance of the person summoned.

(5) Where a district judge (magistrates' courts) is satisfied that a person suspected of having committed a summary offence cannot for any reason be served with a summons, the district judge (magistrates' courts) may issue a warrant for the arrest of that person notwithstanding that a summons has not been first issued.

(6) A warrant may be issued in respect of any offence notwithstanding that the offence was committed outside Northern Ireland if an indictment for the offence may legally be preferred in Northern Ireland.

(7) A warrant shall not be issued under this Article unless the complaint is in writing and substantiated on oath.]

**F1** [Art. 20](#) substituted (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), [Sch. 1 para. 86\(8\)](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387](#), art. 2(k) (with art. 3)

##### **Signing of summons by clerks of petty sessions**

**21.**—(1) Notwithstanding anything in section 6(1) of the Magistrates' Courts Act (Northern Ireland) 1964 or any other statutory provision, a clerk of petty sessions may exercise the functions

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of a justice of the peace relating to the making of complaints, other than complaints on oath, under Article 20 or any other statutory provision providing for complaints to be made to a justice of the peace or authorising a justice of the peace to issue summonses; and Article 20 or by any other statutory provision or rule of law regulating, or relating to, the making of complaints, other than complaints on oath, to, or the issuing of summonses by, a justice of the peace shall apply by virtue of this paragraph in relation to the making of such complaints to, or the issuing of summonses by, a clerk of petty sessions as if he were a justice of the peace.

(2) Notwithstanding anything in Article 2 (4) or any other statutory provision, nothing in this Article shall enable an assistant or deputy clerk of petty sessions to exercise the functions of a justice of the peace under any statutory provision providing for complaints to be made to a justice of the peace or authorising a justice of the peace to issue summonses.

### Summary trial

**22.**—(1) Where the accused appears or is represented at the hearing of a complaint charging a summary offence, the court shall state the substance of the complaint and ask whether the accused pleads guilty or not guilty.

(2) The court may, after hearing the evidence and such representations, if any, as may be made to it by or on behalf of the parties, convict the accused or dismiss the complaint.

(3) If the accused or his representative on his behalf informs the court that he pleads guilty, the court may convict him without hearing the evidence.

### Non appearance of accused: general provisions

**23.**—(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence the accused fails to appear, a magistrates' court may adjourn the hearing or, if satisfied that there are no sufficient grounds for adjournment or further adjournment, may, subject to this Article, proceed in his absence.

(2) Where the accused has failed to appear in answer to a summons, the court shall not proceed in his absence unless it is proved that the summons was duly served upon him or that he is evading service.

(3) A court of summary jurisdiction shall not in the absence of the accused sentence him to imprisonment or order his detention of a young offenders centre or make an order under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968<sup>F2</sup> that a suspended sentence or order for detention shall take effect.

**F2** 1968 c. 29 (NI)

### Non-appearance of accused: plea of guilty

**24.**—(1) Subject to paragraph (7), to this Article shall apply where a summons has been issued requiring a person to appear before a court of summary jurisdiction, other than a<sup>F3</sup> youth] court, to answer to a complaint charging a summary offence, not being—

- (a) an offence which is also triable on indictment; or
- (b) an offence for which the accused is liable to be sentenced to be imprisoned for a term exceeding six months,

and the clerk of petty sessions is notified by or on behalf of the complainant that the<sup>F4</sup> documents mentioned in paragraph (1A)] have been served upon the accused with the summons,<sup>F4</sup> . . .

<sup>F4</sup>(1A) The documents referred to in paragraph (1) are—

- (a) a notice containing such statement of the effect of this Article as may be prescribed; and
- (b) either of the following—
  - (i) a concise statement in the prescribed form of such facts relating to the charge as will be placed before the court by or on behalf of the complainant if the accused pleads guilty without appearing before the court; or
  - (ii) a copy of such written statement or statements complying with subsections (2)(a) and (b) and (4) of section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28) (proof by written statement) as will be so placed in those circumstances.]

(2) Subject to paragraphs (3) to (5), where the clerk of petty sessions receives a notification in writing purporting to be given by the accused or by a solicitor acting on his behalf that the accused desires to plead guilty without appearing before the court, the clerk shall inform the complainant of the receipt of the notification and if at the time and place appointed for the hearing or adjourned hearing of the complaint the accused does not appear it is proved to the satisfaction of the court, on oath or by affidavit or in the prescribed manner, that the<sup>[F4]</sup> documents mentioned in paragraph (1A)] have been served upon the accused with the summons, the—

- (a) subject to this Article and article 23 (3) the court may proceed to hear and dispose of the case in the absence of the accused, whether or not the complainant is also absent, in like manner as if both parties had appeared and the accused had pleaded guilty; or
- (b) if the court decides not to proceed as mentioned in sub-paragraph (a), the court shall adjourn or further adjourn the trial for the purpose of dealing with the complaint as if that notification had not been given.

(3) If at any time before the hearing the clerk of petty sessions receives an intimation in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification given under paragraph (2) the clerk shall inform the complainant of that withdrawal and the court shall deal with the complaint as if this Article had not been made.

<sup>[F4]</sup>(4) Before accepting the plea of guilty and convicting the accused in his absence under paragraph (2), the court shall cause the following to be read out before the court—

- (a) in a case where a statement of facts as mentioned in paragraph (1A)(b)(i) was served on the accused with the summons, that statement;
- (b) in a case where a statement or statements as mentioned in paragraph (1A)(b)(ii) was served on the accused with the summons and the court does not otherwise direct, that statement or those statements;
- (c) the notification given under paragraph (2); and
- (d) any submission received with the notification which the accused wishes to be brought to the attention of the court with a view to mitigation of sentence.

(4A) Where the court gives a direction under paragraph (4)(b), the court shall read aloud the purport of so much of any statement as is not read out under that paragraph.

(4B) Whether or not a direction under sub-paragraph (b) of paragraph (4) is given in relation to any statement served as mentioned in that sub-paragraph, the court need not cause to be read out the declaration required by section 1(2)(b) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968.]

(5) If the court proceeds under paragraph (2)(a) to hear and dispose of the case in the absence of the accused, the court shall not—

- (a) except on a resumption of the hearing after an adjournment under Article 50, permit any statement to be made by or on behalf of the complainant with respect to any facts relating to the offence charged other than the<sup>[F4]</sup> statements referred to in paragraph (1A)(b)];

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(b) without adjourning under that Article order him to be subject to any disqualification.

(6) Where the court adjourns in pursuance of this Article, notice of the adjournment shall be served on the accused and that notice shall specify the reason for the adjournment.

(7) The Lord Chancellor may by order provide that this Article shall not apply in relation to such offences in addition to those specified in paragraph (1) (a) and (b) as may be specified in the order, and an order under this paragraph shall be subject to [<sup>F5</sup>negative resolution].

**F3** 1998 NI 9

**F4** 2003 NI 13

**F5** Words in art. 24(7) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 134** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### **Non-appearance of accused: issue of warrant**

**25.**—(1) Without prejudice to the power of a court of summary jurisdiction under Article 138 to estreat a recognizance to appear, where the accused has failed to appear at a hearing or adjourned hearing the court may, if the complaint has been substantiated on oath and the court considers it undesirable by reason of the gravity of the offence to proceed in the absence of the accused, issue a warrant for his arrest.

(2) Where an accused has been convicted in his absence by a court of summary jurisdiction of an offence punishable with imprisonment and the court—

(a) cannot proceed in his absence by virtue of Article 23(3); or

(b) considers it undesirable by reason of the gravity of the offence to proceed in his absence; the court may issue a warrant for his arrest.

(3) Where the accused has failed to appear in answer to a summons, the court shall not issue a warrant for his arrest unless it is proved that the summons was duly served upon him or that he is evading service.

(4) Where the accused has failed to appear at an adjourned hearing the court shall not issue a warrant unless it is satisfied that reasonable steps have been taken to bring to the attention of the accused notice of the time and place of the adjourned hearing.

(5) Paragraph (1) shall not apply to an adjournment by reason of the requirements of Article 24(2)(b) and that paragraph and paragraph (2) shall not apply to an adjournment on the occasion of the accused's conviction in his absence under Article 24(2) except where the accused fails to appear at the time and place appointed for the adjourned hearing.

### **[<sup>F6</sup>Proceedings invalid where accused did not know of them**

**25A.**—(1) Where a summons has been issued under Article 20 and a magistrates' court has begun to hear the complaint to which the summons relates, then, if—

(a) the accused, at any time during or after the trial, makes a statutory declaration that he did not know of the summons or the proceedings until a date specified in the declaration, being a date after the court has begun to hear the complaint; and

(b) within 21 days of that date the declaration is served on the clerk of petty sessions, without prejudice to the validity of the complaint, the summons and all subsequent proceedings shall be void.

(2) For the purposes of paragraph (1) a statutory declaration shall be deemed to be duly served on the clerk of petty sessions if it is delivered to him, or left at his office, or is sent in a registered letter or by the recorded delivery service addressed to him at his office.

(3) If on the application of the accused it appears to a court of summary jurisdiction that it was not reasonable to expect the accused to serve such a statutory declaration as is mentioned in paragraph (1) within the period allowed by that paragraph, the court may accept service of such a declaration by the accused after that period has expired; and a statutory declaration accepted under this paragraph shall be deemed to have been served as required by that paragraph.

(4) Where any proceedings have become void by virtue of paragraph (1), the complaint shall not be heard again by the same resident magistrate or justice of the peace or, where the complaint was heard by a juvenile court, any member of the court which heard the complaint.]

F6 1989 NI 12

### **Non-appearance of complainant**

**26.** Where an accused appears at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence the court may, if the complainant (having in the case of a warrant due notice of the accused's arrest) does not appear,—

- (a) dismiss the complaint; or
- (b) order it to be struck out; or
- (c) adjourn or further adjourn the hearing to a future day; or
- (d) if evidence has been received on a previous occasion, proceed in the absence of the complainant.

### **Non-appearance of both parties**

**27.** Where at the time and place appointed for the hearing or adjourned hearing of a complaint charging a summary offence neither the complainant nor the accused appears, the court may—

- (a) dismiss the complaint; or
- (b) order it to be struck out; or
- (c) adjourn or further adjourn; or
- (d) if evidence has been received on a previous occasion, proceed in their absence.

### **Power of court of summary jurisdiction to authorise taking deposition of person sick or unable to attend**

**28.—(1)** Where a court of summary jurisdiction is satisfied by the evidence of a duly qualified medical practitioner that a person, who is able and willing to give material information relating to a summary offence, or relating to any person accused of such offence, is so ill as to be unable to travel or where for any reason the attendance of a person before the court cannot conveniently be procured the court may adjourn the hearing in order that a deposition of that person may be taken in writing before a resident magistrate or other justice of the peace sitting out of petty sessions.

(2) Subject to paragraph (3), the deposition shall be admissible in evidence either for or against the accused without further proof thereof if it purports to be signed by the resident magistrate or justice of the peace by whom it purports to be taken.

(3) The deposition shall not be admissible in evidence either for or against the accused unless it is proved that reasonable notice of the intention to take the deposition had been served upon the person (whether complainant or accused) against whom it is proposed to be given in evidence and that he

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or his counsel or solicitor had or would have had if he had chosen to be present, an opportunity of cross-examining the person making the deposition.

(4) The provisions of this section are in addition to and not in derogation of<sup>F7</sup> Articles 25 and 26 of the Criminal Justice (Children) (Northern Ireland) Order 1998].

**F7** 1998 NI 9

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