

These notes refer to the Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 (c.4) which received Royal Assent on 7 March 2022

Criminal Justice (Committal Reform) Act (Northern Ireland) 2022

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

3. The Act gives effect to a commitment given by the Northern Ireland Executive (*'the Executive'*) in November 2015 in the Fresh Start Agreement to tackle the impact of criminality and paramilitarism in Northern Ireland through, inter alia, the implementation of further measures to speed up criminal justice and support victims to give evidence. In keeping with that commitment, the primary objective of the Act is to improve the operation of the criminal justice system by reforming committal proceedings, which is the procedure used to determine whether there is sufficient evidence available to justify putting a person on trial in the Crown Court. The purpose of committal is not to determine whether the accused is guilty of an offence.
4. In recent history in the criminal justice system, committal proceedings have been by way of a committal hearing, either a preliminary investigation where witnesses can be called to give evidence and be cross examined, or a preliminary inquiry carried out based on written statements and evidence, or by way of a mixed committal which is a combination of both methods. The practice of hearing oral evidence, particularly cross-examination can have a significant impact on victims and witnesses, who may have to give (sometimes traumatic) evidence more than once.
5. Oral evidence hearings can also be lengthy, if these are multi-defendant cases and/or the number of witnesses required to give evidence is extensive these can last 1-2 days, and in exceptional circumstances may require significantly longer. Problems are often experienced in organising witnesses to attend, which can lead to adjournments and consequently increase delay in the magistrates' court before the case can be sent to the Crown Court. This attracts cost to the criminal justice system.
6. The Act specifically addresses a recommendation from the Independent Three Person Panel, appointed by the Executive to report on a strategy for tackling paramilitary activity, criminality and organised crime, arising from the Fresh Start Agreement. The Panel recommended that the practice of witnesses having to provide evidence on oath and face cross-examination as part of committal proceedings should be abolished.

7. The Act supports the delivery of a number of other commitments made by the Executive and Department of Justice regarding the reform of committal proceedings. The Act will assist in the delivery of recommendations made in inspection reports by Criminal Justice Inspection Northern Ireland (CJINI) and Sir John Gillen in his report into the law and procedures in serious sexual offence cases. Reforming the committal process is also a priority in the New Decade, New Approach Deal, published in January 2020.
8. CJINI have made a number of recommendations in respect of reforming committal proceedings in the past, most recently in its Without Witness Report – A thematic Inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, published in November 2018. Amongst the report’s recommendations was that ‘Once direct transfer to the Crown Court is established for murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015’.
9. Sir John Gillen, in his report into the law and procedures in serious sexual offences, published in May 2019, made sixteen key recommendations, supplemented by more than two hundred and fifty supporting recommendations. In his key recommendations, Sir John called for - ‘Radical steps to combat excessive delay in the criminal justice system. A wholly new mind-set is required, which will involve front-loading the legal system with an early-time limited and case managed system that has at its core early joint engagement by both prosecution and defence representatives.’ To support this recommendation, he made a further twenty-six recommendations aimed at tackling delay in the criminal justice system, including the following recommendation in respect of committal proceedings - ‘The Department of Justice should make provision for the direct transfer of serious sexual offences to the Crown Court, bypassing the committal process pursuant to the affirmative resolution procedure under section 11(4) of the Justice Act (Northern Ireland) 2015.’
10. In addition to commitments made by the Executive regarding efforts to speed up the justice system and specifically the reform of the committal process, a number of commitments have also previously been made by the Department of Justice. The most significant of these includes plans by the Department to deliver recommendations arising from the Northern Ireland Audit Office Report – Speeding up Justice: avoidable delay in the criminal justice system, published in March 2018, which recommended that ‘the Department should establish an action plan and a timetable for the eradication of the committal process’.
11. Therefore, in addition to abolishing oral evidence, the Act also amends provisions within the Justice Act (Northern Ireland) 2015 which provide for the direct transfer, also referred to as direct committal, of cases to the Crown Court, without the need for a traditional committal hearing. The Justice Act

(Northern Ireland) 2015, as enacted, provided that an accused would be directly committed to the Crown Court in the following circumstances:

- Following an indication by the accused to the magistrates' court, before the court has begun to conduct committal proceedings, that they intend to plead guilty to an offence to be prosecuted on indictment (section 10 of the Justice Act (Northern Ireland) 2015);
- Upon appearing before the magistrates' court charged with a specified offence, which the Justice Act (Northern Ireland) 2015 defines as murder and manslaughter, or inchoate forms of those offences (section 11); or
- Upon appearing before the magistrates' court charged with a non-specified offence to be prosecuted on indictment, which the court considers to be related to a specified offence of a co-accused appearing on the same occasion (section 12). The Justice Act (Northern Ireland) 2015 provided the magistrates' court with the discretionary power to directly commit an accused charged with a non-specified offence where the court considers that the charges are related to a specified offence charge of a co-accused who has previously been directly committed to the Crown Court for those charges (section 12).

The amendments brought forward in the Act extend the range of offences to which the direct committal arrangements apply, and simplify the direct committal processes provided for in the Justice Act (Northern Ireland) 2015.

12. The Act repeals section 10 of the Justice Act (Northern Ireland) 2015, removing the process for an accused to be directly committed to the Crown Court if they indicate to the magistrates' court an intention to plead guilty to an offence to be prosecuted on indictment, before the start of a traditional committal hearing. Due to the passage of time and growing calls for more extensive action and following a review of the direct committal provisions, the Department believes that providing a single mechanism to directly commit cases to the Crown Court on the basis of offence type provides a more effective approach to deliver the fundamental change required.
13. The Department therefore considers the most effective way of achieving a more extensive reform of the committal process is to define, through the Act, a broader range of offences to be directly committed to the Crown Court under section 11. In reaching this decision a number of factors have been considered.
14. Firstly, this approach allows the Department to better address previous commitments, and concerns raised through inspection and scrutiny reports regarding particular offence types, such as offences related to paramilitary activity and serious sexual offences.
15. Secondly, basing direct committal on specific offence types allows the Department to more accurately forecast the potential volumes of cases to which direct committal is likely to apply. Whilst a number of cases proceeding to

the Crown Court result in the accused pleading guilty, limited data is available regarding the number of accused indicating an intention to plead guilty whilst the case is still in the magistrates' court. It is therefore more difficult to determine the impact on the criminal justice system of direct committal for early guilty plea arrangements. Basing direct committal on offence type will help the Department to plan more effectively for the implementation and wider rollout of direct committal and to be able to better measure the impact of the changes on the criminal justice system. The Department does however recognize the benefits to victims, witnesses and the accused of 'fast-tracking' cases in which the accused wishes to plead guilty. The Act allows for a magistrates' court to order inquiries and reports which are relevant to sentencing in the event that an accused indicates an intention to plead guilty to an offence which is to be directly committed to the Crown Court. This will allow the Crown Court to be provided with relevant information to help speed up the sentencing process, in the event that the accused enters a formal guilty plea at arraignment.

16. Thirdly, the Department's aim over the longer term is to eradicate the traditional committal process entirely through the expansion of direct committal to a wider range of offences. It is therefore preferential to provide a single process whereby all cases to be tried in the Crown Court are directly transferred once it has been determined that the offence(s) with which the accused is charged is to be prosecuted on indictment. In some cases, the nature of the offence type with which an accused is charged dictates entirely whether an accused will be prosecuted in the Crown Court. The Department's current plans are, therefore, to extend direct committal to those offences, which in the case of an adult, are triable only on indictment. As more offence types however, are brought within the scope of offences to be directly committed to the Crown Court under section 11, the pool of cases that would have been eligible to be directly committed under the Early Guilty Plea transfer mechanism (section 10) would have become ever decreasingly smaller.
17. Finally, since 2015 the Department has worked extensively with criminal justice organisations to plan for the introduction of direct committal. During that period a number of risks have been identified in relation to the implementation of the direct committal of an accused to the Crown Court following an indication of a guilty plea. Despite efforts to mitigate those risks, concerns remain around the operational out-workings of section 10 which could potentially have a detrimental impact on the criminal justice system. Upon implementation, section 10 would have introduced a new feature into the criminal justice system, which would allow cases to be returned from the Crown Court to the magistrates' court if an accused did not ultimately enter a guilty plea at the arraignment hearing. In its implementation this new process introduces a number of significant risks and operational complexities, compared against the more straightforward arrangements for direct committal based on offence type. In light of commitments for more extensive reform of committal proceedings the Department has decided that a direct committal

model based on offence type provides a better, and more straightforward basis, for implementing more extensive reforms to the committal process.

18. To deliver the changes outlined, the Act amends section 11 of the Justice Act (Northern Ireland) 2015 to extend the offences which are to be directly committed to the Crown Court, without the need for a traditional committal hearing to include all offences which, in the case of an adult, can be tried only on indictment. This amendment seeks to provide a single list of offences to which direct committal will apply regardless as to whether the accused is an adult or a youth.
19. For cases where an accused is charged with an offence to which direct committal applies, the Act provides additional clarity that any other offences which the magistrates' court considers to be related to the relevant offence will also be directly transferred to the Crown Court at the same time. The Act defines a related offence as one which could be included in the same indictment as the relevant offence.
20. The Act also makes a number of other changes to support the direct committal process. These include, as referred to above, explicit powers for the magistrates' court to order inquiries and reports relevant to the sentencing of an accused who has indicated an intention to plead guilty to an offence(s) which has been directly committed to the Crown Court. These powers seek to provide the Crown Court with the opportunity to promptly sentence an accused, if appropriate to do so, if they plead guilty to an offence(s) which has been directly committed.
21. The Act provides new powers for the Director of Public Prosecutions in Northern Ireland to discontinue proceedings, to which the direct transfer provisions in the Justice Act (Northern Ireland) 2015 apply, between the direct committal of the accused to the Crown Court and the presentation of an indictment setting out the charges for which the accused is to be prosecuted. The powers seek to address a situation whereby, following the direct transfer of a case to the Crown Court, there is a material change in circumstances of the case, such as new evidence emerging, which leads the prosecution to conclude that the test for prosecution is not, or is no longer, met. It is anticipated that, with the introduction of direct transfer, such situations may arise more frequently as cases will be transferred to the Crown Court at an earlier stage in the criminal justice process. These are similar to powers available to prosecutors and other relevant public authorities in England and Wales through section 23A of the Prosecution of Offences Act 1985.
22. The Application to Dismiss process provided within section 14 of the Justice Act (Northern Ireland) 2015, is amended by the Act to ensure a consistent approach across all criminal cases to be heard in the Crown Court regarding the calling of oral evidence in advance of trial. The Act therefore removes the option within the Application to Dismiss process to call oral evidence, thus maintaining consistency with the abolition of oral evidence as part of the traditional committal process.

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23. Finally, the Act makes some minor amendments to add flexibility to the nature of court rules required to support direct committal, by adding that further arrangements in respect of the documentation associated with direct committal can be provided for in either magistrates' court rules, or Crown Court Rules, as required.