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## STATUTORY INSTRUMENTS

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# 1981 No. 1675

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

### PART V **N.I.**

#### CRIMINAL JURISDICTION AND PROCEDURE

##### *Jurisdiction to deal with offences*

#### **General jurisdiction to deal with charges** **N.I.**

**16.**—(1) Subject to the provisions of this Part, a magistrates' court for a county court division may conduct a preliminary investigation or a preliminary inquiry into an indictable offence or hear and determine a complaint charging a summary offence, if in any such case—

- (a) the offence was committed in the county court division, or
- (b) the offence was committed elsewhere than in the county court division and the defendant is or is resident (or in the case of a body corporate has its registered office or principal place of business) within the county court division; or
- (c) it appears necessary or expedient with a view to the better administration of justice that the person charged with the offence should be tried or jointly tried with, or in the same place as, some other person who is charged with an offence and who is in custody or is being or is to be proceeded against within that county court division; or
- (d) the court under this or any other enactment or otherwise has jurisdiction to deal with the offence.

(2) A magistrates' court for a county court division having jurisdiction to hear a complaint charging a person with an offence may hear and determine a complaint charging that person with a summary offence committed in any other county court division.

(3) A resident magistrate exercising the powers conferred by Article 45 and 46 shall have jurisdiction to try summarily an indictable offence in any case in which under paragraph (1) he would have jurisdiction to conduct a preliminary investigation or a preliminary inquiry into the offence.

(4) Nothing in this Order shall deprive a court in Northern Ireland of any jurisdiction to deal with any offence, whether committed in the United Kingdom or elsewhere, as to which the court has jurisdiction at the making of this Order.

#### **Offences committed on boundaries or on journeys: offences begun in one jurisdiction and completed in another** **N.I.**

**17.**—(1) Where an offence has been committed on the boundary between two or more county court divisions, or within five hundred yards of such a boundary, or in any harbour, river, arm of the sea or other water lying between two or more county court divisions, the offence may be treated for the purposes of this Order as having been committed in either or any of those county court divisions.

(2) An offence begun in one county court division and completed in another may be treated for the purposes of this Order as having been committed in either.

**Status:** Point in time view as at 13/02/2015.

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(3) Where an offence has been committed on any person, or on or in respect of any property, in or on a vehicle or vessel engaged on any journey or voyage through two or more county court divisions, the offence may be treated for the purposes of this Order as having been committed in either or any of those county court divisions.

(4) Where the side or any part of a road or any water along which a vehicle or vessel passed in the course of the journey or voyage forms the boundary between two or more county court divisions, the offence may be treated for the purposes of this Order as having been committed in either or any of those county court divisions.

### [<sup>F1</sup>Offences committed on ships and abroad **N.I.**

**17A.** Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the law of Northern Ireland as they apply in relation to offences under that Act or instruments under that Act.]

**F1** 1995 c. 21

### Summary trial of charges in and out of petty sessions **N.I.**

**18.**—(1) Except as otherwise provided by this Article, a complaint charging a summary offence or an indictable offence with which the court has decided to deal summarily under this Order or any other enactment shall be heard and determined by a court of summary jurisdiction.

(2) A resident magistrate, if satisfied that a person charged with a summary offence or with an indictable offence which he has decided to deal with summarily in accordance with this Order or any other enactment is unable to give bail for his appearance before a court of summary jurisdiction, may hear and determine the complaint out of petty sessions.

*Para. (3) rep. by 2002 c. 26*

(4) Procedure before a resident magistrate or [<sup>F2</sup> lay magistrate] sitting out of petty sessions shall be as before a court of summary jurisdiction and—

- (a) a resident magistrate<sup>F2</sup> . . . so sitting may in relation to any matter which he has jurisdiction to hear and determine under paragraph (2)<sup>F2</sup>. . . exercise all the powers of a court of summary jurisdiction; and
- (b) orders made by a resident magistrate or [<sup>F2</sup> lay magistrate] so sitting shall have effect as orders made by a court of summary jurisdiction sitting for the petty sessions district for which the resident magistrate<sup>F2</sup> or lay magistrate] acted.

**F2** 2002 c. 26

### Time within which complaint charging offence must be made to give jurisdiction **N.I.**

<sup>F3F4</sup>**19.**—(1) Where no period of limitation is provided for by any other enactment—

- (a) a magistrates' court shall not have jurisdiction to hear and determine a complaint charging the commission of a summary offence other than an offence which is also triable upon indictment unless the complaint was made within six months from the time when the offence was committed or ceased to continue; and
- (b) a complaint charging the commission of an indictable offence may be made to a justice of the peace and dealt with at any time and, accordingly, a resident magistrate may at any time after an indictable offence was alleged to have been committed exercise any

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jurisdiction conferred on him by Articles 45 and 46 or by any other enactment to try that offence summarily.

(2) Subject to paragraph (4), a complaint charging the commission of an offence which is both punishable upon summary conviction or triable upon indictment may be made and dealt with at any time and, accordingly, nothing in any other enactment (however framed or worded) which, as regards any offence to which it applies, would but for this Article impose a time-limit on the power of a magistrates' court to hear and determine a complaint charging the commission of a summary offence or impose a limitation on the time for taking summary proceedings shall apply in relation to any offence which is both punishable upon summary conviction or triable upon indictment.

(3) Without prejudice to the generality of paragraph (2), that paragraph includes enactments which impose a time-limit that applies only in certain circumstances (for example where the proceedings are not instituted by or with the consent of the Director of Public Prosecutions for Northern Ireland or some other specified authority).

(4) Where as regards any indictable offence there is imposed by any enactment (however framed or worded and whether falling within paragraph (2) or not) a limitation on the time for taking proceedings on indictment for that offence no summary proceedings for that offence shall be taken after the latest time for taking proceedings on indictment.

F3 mod. by SI 1994/1323, 2328

F4 mod. by 1985 c. 49

#### Modifications etc. (not altering text)

- C1 Art. 19 excluded (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), **ss. 41(8)(b)**, 126(2)
- C2 Art. 19 excluded (10.4.2009) by Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(8)**
- C3 Art. 19 excluded (13.2.2015 for specified purposes) by Planning Act (Northern-Ireland) 2011 (c. 25), **ss. 172(3)**, 254(1), (2) (with s. 211); S.R. 2015/49, art. 2
- C4 Art. 19(1) excluded (26.5.2008) by Business Protection from Misleading Marketing Regulations 2008 (S.I. 2008/1276), **reg. 10(6)**
- C5 Art. 19(1) excluded (26.5.2008) by Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), **reg. 14(6)** (with savings in reg. 28(2)(3))
- C6 Art. 19(1) excluded (13.9.2010) by Forestry Act (Northern Ireland) 2010 (c. 10), **ss. 34(1)**, 39(1) (with s. 37); S.R. 2010/309, **art. 2**, Sch.
- C7 Art. 19(1) excluded by S.R. 1996/558, reg. 26A(1) (as inserted (1.1.2012) by Welfare of Animals (Slaughter or Killing) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/407), **reg. 5**)
- C8 Art. 19(1) excluded by SR 1996/558 reg. 26A (as inserted (1.1.2012) by The Welfare of Animals (Slaughter or Killing) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011/407), regs. 1, 5)
- C9 Art. 19(1) excluded (30.4.2012) by The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (S.I. 2012/1017), regs. 1(2), **71(4)** (with regs. 73, 74)
- C10 Art. 19(1) excluded (8.5.2012) by The Textile Products (Labelling and Fibre Composition) Regulations 2012 (S.I. 2012/1102), regs. 1, **7(6)**
- C11 Art. 19(1)(a) excluded (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **299(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)
- C12 Art. 19(1)(a) modified (at 10.10 am. on 8.10.2008) by Landsbanki Freezing Order 2008 (S.I. 2008/2668), **art. 10(5)**
- C13 Art. 19(1)(a) excluded by Child Support (Northern Ireland) Order 1991 (S.I. 1991/2628 (N.I. 23)), art. 16A(6) (as added (13.8.2010) by Welfare Reform Act (Northern Ireland) 2010 (c. 13), **ss. 32(3)**, 36(1)(n))
- C14 Art. 19(1)(a) modified (6.6.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 68(6)**, 111(3) (with Sch. 6 para. 7); S.R. 2012/214, art. 2(m)

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- C15** Art. 19(1)(a) modified (6.6.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 69(4)(b)**, 111(3) (with Sch. 6 para. 7); S.R. 2012/214, art. 2(m)
- C16** Art. 19(1)(a) excluded (7.8.2014) by The Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (S.I. 2014/1615), regs. 1(2), **9(4)**
- C17** Art. 19(1)(a) excluded (13.2.2015 for specified purposes) by Planning Act (Northern-Ireland) 2011 (c. 25), **ss. 244, 254(1), (2)** (with s. 211); S.R. 2015/49, art. 2

### Summary trial

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

**20.**—(1) Upon a complaint being made to a justice of the peace for any county court division that a person has, or is suspected of having, committed a summary offence in respect of which a magistrates' court for that county court division has jurisdiction to hear a charge the justice may issue a summons directed to that person requiring him to appear before such court to answer to the complaint.

(2) Where a justice of the peace for any county court division issues a summons under paragraph (1) directed to a person requiring him to appear before a magistrates' court for that county court division, the justice may, upon a complaint being made to him that the person in respect of whom the summons has been issued has, or is suspected of having, committed in another county court division a summary offence, issue a summons directed to that person requiring him to appear before that court to answer to the complaint.

(3) Upon a complaint being made to a justice of the peace for any county court division that a person has, or is suspected of having, committed an indictable offence into which a magistrates' court for that county court division has jurisdiction to conduct a preliminary investigation or a preliminary inquiry the justice may either issue a summons requiring him to appear before such magistrates' court or [<sup>F5</sup>issue a warrant for the arrest of that person].

(4) Where the offence charged in the complaint is an indictable offence, a warrant under this Article may be issued by a justice of the peace 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.

[<sup>F6(4A)</sup> Where a justice of the peace for any county court division is satisfied that a summons issued under paragraph (1) by him or another justice of the peace for the same county court division has not been served, he 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 resident magistrate is satisfied that a person suspected of having committed a summary offence cannot for any reason be serviced with a summons, he 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 to which Article 16(1) (b) applies, 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.

- F5** Words in art. 20(3) substituted (26.2.2010) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **92(7)**; S.R. 2010/36, **art. 2** (with art. 3)
- F6** 2003 NI 13

### Signing of summons by clerks of petty sessions **N.I.**

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 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 **N.I.**

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 **N.I.**

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>F7</sup> that a suspended sentence or order for detention shall take effect.

F7 1968 c. 29 (NI)

### Non-appearance of accused: plea of guilty **N.I.**

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>F8</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,

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and the clerk of petty sessions is notified by or on behalf of the complainant that the<sup>[F9]</sup> documents mentioned in paragraph (1A)] have been served upon the accused with the summons,<sup>F9</sup> . . .

<sup>[F9]</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>[F9]</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>[F9]</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>F9</sup> statements referred to in paragraph (1A)(b)];
- (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>F10</sup>negative resolution].

**F8** 1998 NI 9

**F9** 2003 NI 13

**F10** 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** **N.I.**

**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>F11</sup>Proceedings invalid where accused did not know of them** **N.I.**

**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

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(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.]

F11 1989 NI 12

#### **Non-appearance of complainant** **N.I.**

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** **N.I.**

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** **N.I.**

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 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 [F12 Articles 25 and 26 of the Criminal Justice (Children) (Northern Ireland) Order 1998].

F12 1998 NI 9

*Right to claim trial by jury for certain summary offences*

**Right to claim trial by jury for certain summary offences** **N.I.**

**29.**—(1) Where a person over the age of fourteen years is charged before a court of summary jurisdiction with a summary offence for which he is liable, or would if he were adult be liable, to be sentenced by the court to imprisonment for a term exceeding six months<sup>F13</sup>. . . , he may, subject to the provisions of this Article, claim to be tried by a jury, unless the offence is an offence under—

- (a) any provision of the Explosives Act 1875<sup>F14</sup>;
- (b) section 1 or 2 of the Protection of the Person and Property Act (Northern Ireland) 1969<sup>F15</sup>;
- (c) section 4 of the Explosives Act (Northern Ireland) 1970<sup>F16</sup>;
- (d) Article 3(1), 3(1) and (3), 4 or 5 of the Criminal Damage (Northern Ireland) Order 1977<sup>F17</sup> which is triable summarily by virtue of Article 9(1) of that Order;

*Sub#para. (e) rep. by 1991 NI 3*

- [F18(f) Article 3, 61(2) or 64 of the Firearms (Northern Ireland) Order 2004]
- [F19(g) Article 18(3) of the Public Order (Northern Ireland) Order 1987 (riotous behaviour)]
- [F20(h) Article 5(1) or (2) of the Criminal Justice (Northern Ireland) Order 2003 (absconding by person admitted to bail)]
- [F20(i) paragraph 1(1) or (2) of Schedule 2 to the Justice (Northern Ireland) Act 2004 (absconding by person admitted to bail in respect of a scheduled offence).]
- [F21(j) Article 22 of the Public Order (Northern Ireland) Order 1987;
- (k) the Crossbows (Northern Ireland) Order 1988;
- (l) section 139(1), 139A(1) [F22or (2)] or 141(1) of the Criminal Justice Act 1988;
- (m) Article 53 or 54(1) of the Criminal Justice (Northern Ireland) Order 1996;
- (n) section 1 or 2 of the Knives Act 1997.]
- [F23(o) section 93 of the Justice (Northern Ireland) Act 2010.]

(2) Where under paragraph (1) or any other enactment a person charged with a summary offence is entitled to claim to be tried by a jury, his claim shall be of no effect unless he appears in person and makes it before he pleads to the charge; and, where under any enactment the prosecution is entitled to claim that the accused shall be tried by a jury, the claim shall be of no effect unless it is made before the accused pleads to the charge.

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(3) A magistrates' court before which a person is charged with a summary offence for which he may claim to be tried by a jury shall, before asking him whether he pleads guilty, inform him of his right and, if the court thinks it desirable for the information of the accused, tell him to which court he would be committed for trial and explain what is meant by being tried summarily; and shall then ask him whether he wishes, instead of being tried summarily, to be tried by a jury.

(4) Where the accused is charged with an offence for which he is entitled under paragraph (1) to be tried by a jury if he has been previously convicted of a like offence but not otherwise, the court shall explain to him that he may have a right to claim trial by a jury and, after giving him the same information as is provided by paragraph (3), shall ask him whether, if he has that right, he wishes, instead of being tried summarily, to be tried by a jury.

(5) If—

- (a) under this Article or under any other enactment a person charged with a summary offence is entitled to claim to be tried by a jury and claims to be so tried; or
- (b) the prosecution exercises any right conferred by any enactment to claim that the accused shall be tried by a jury;

the court shall deal with the complaint in all respects as if it were for an offence punishable on conviction on indictment only; and the offence, whether or not indictable otherwise than by virtue of any such claim, shall be deemed to be an indictable offence.

<b>F13</b>	2003 c. 42
<b>F14</b>	1875 c. 17
<b>F15</b>	1969 c. 29 (NI)
<b>F16</b>	1970 c. 10 (NI)
<b>F17</b>	1977 NI 4
<b>F18</b>	2004 NI 3
<b>F19</b>	2003 NI 13
<b>F20</b>	2004 c. 4
<b>F21</b>	Art. 29(1)(j)-(n) added (16.7.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), <b>90(10)</b> ; S.R. 2008/293, <b>art. 2</b> , Sch. para. 14
<b>F22</b>	Words in art. 29(1)(l) inserted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 110(1), 111(1)(h), <b>Sch. 7 para. 3(1)</b> (with s. 106(4))
<b>F23</b>	Art. 29(1)(o) inserted (5.5.2011) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 110(1), 111(1)(h), <b>Sch. 7 para. 3(2)</b> (with s. 106(4))

### *Preliminary investigation of indictable offences*

#### **Preliminary investigation** **N.I.**

**30.**—(1) Subject to<sup>F24</sup> Articles 28 and 29 of the Criminal Justice (Children) (Northern Ireland) Order 1998], the preliminary investigation of an indictable offence may be conducted by a magistrates' court.

(2) Subject to paragraph (3), the written depositions of witnesses and other evidence at a preliminary investigation shall be given or taken in the presence of the accused, and the accused shall be at liberty to cross-examine any witness for the prosecution.

(3) The court may allow evidence to be given before it in the absence of the accused if the court considers that by reason of his disorderly conduct before the court it is not practicable for the evidence to be given in the presence of the accused.

(4) After the evidence of witnesses for the prosecution has been taken, the accused may<sup>F25</sup> . . . , give evidence on his own behalf and call witnesses; and the prosecution shall be at liberty to cross-examine any witness for the accused and any accused giving evidence on his own behalf.

(5) Any such statement shall be taken down in writing and may be given in evidence at the trial of the accused without further proof thereof.

F24 1998 NI 9  
F25 1989 NI 12

### *Preliminary inquiry into indictable offences*

#### **Power to conduct preliminary inquiry** N.I.

**31.**—(1) If the prosecution requests a magistrates' court to conduct a preliminary inquiry and the accused does not object to such an inquiry, a magistrates' court, instead of conducting a preliminary investigation, may conduct a preliminary inquiry into an indictable offence.

(2) If the prosecution does not request the court to conduct a preliminary inquiry<sup>F26</sup> or if] the accused objects to such an inquiry the court shall conduct a preliminary investigation.

(3) Where two or more persons are charged together with an indictable offence and—

- (a) one or more of those persons objects to the conducting of a preliminary inquiry, but
- (b) the other person or persons do not so object,

the court may proceed to conduct such an inquiry in respect of any such person not so objecting unless any person so objecting satisfies the court that his interests would be unduly or unreasonably prejudiced by the conduction of such inquiry.

F26 1986 NI 15

#### **Documents to be furnished to court and served on accused** N.I.

**32.**—(1) If the prosecution intends to request the court to conduct a preliminary inquiry the prosecution shall—

- (a) furnish a written notice of that intention together with copies of the documents mentioned in sub-paragraph (b) to the clerk of petty sessions for the district in which the preliminary inquiry is to be held; and
- (b) cause a copy of that notice together with the following documents, that is to say—
  - (i) a statement of the complaint made against him;
  - (ii) a statement of the evidence of each witness upon whose evidence the complaint is based;
  - (iii) a list of exhibits, if any, to be produced or referred to by the witness referred to in head (ii) together with—
    - [<sup>F27</sup>(aa) in the case of a written exhibit, a copy of that exhibit or a notice of the time and place when that exhibit may be examined by the accused or his solicitor or any witness whom the accused may wish to call at his trial to give evidence relating to it; and
    - (bb) in the case of any other exhibit, a notice of the time and place when that exhibit may be examined as mentioned in paragraph (aa);]

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to be served on the accused, or if there is more than one accused person upon each such person, a reasonable time before the day fixed for the conduct of the preliminary inquiry.

(2) The accused shall have the right to inspect every exhibit, either by himself or in consultation with his solicitor or any witness whom the accused may wish to call at his trial.

(3) The prosecution may withdraw the request for, and the accused may object to, the conducting of a preliminary inquiry at any time up to the commencement of such inquiry.

(4) If, when the accused appears before the court and the charge is read to him according to law,—

(a) the court is not satisfied that the accused understands the effect of proceeding by way of preliminary inquiry; or

(b) the court is satisfied that in all the circumstances the accused has not had sufficient notice of any evidence to be tendered at the preliminary inquiry; or

(c) the documents mentioned in paragraph (1) (b) have not been served on the accused,

the court shall remand the accused in accordance with Article 47.

F27 1991 NI 16

### Requirements as to written statements **N.I.**

**33.**—(1) A magistrates' court conducting a preliminary inquiry may admit the statement of the evidence to be given by a witness to the like extent as oral evidence to the like effect by that person if the following conditions are complied with, that is to say—

(a) the statement shall be in writing,

(b) the statement shall purport to be signed by the person who made it,

(c) the statement shall contain a declaration by that person to the effect that—

(i) it is true to the best of his knowledge and belief, and

(ii) he made the statement knowing that, if it were tendered in evidence, whether at a preliminary inquiry or at the trial of the accused, he would be liable to prosecution if he wilfully said in it anything which he knew to be false or did not believe to be true,

which declaration shall be endorsed with the signature of the person who recorded the statement, or to whom the statement was delivered by the maker of the statement for the purposes of the proceedings,

(d) none of the parties objects to the statement being admitted in evidence upon a ground which would constitute a valid objection to oral evidence to the like effect as the contents of the statement,

(e) if the statement is made by a person under the age of twenty-one, his age shall be set forth in the statement, and

(f) if it is made by a person who cannot read, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read and that after it was so read the maker of the statement assented to it.

(2) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this Article shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(3) Nothing in this Article shall prevent the giving in evidence of any confession, or other statement, made at any time by the accused which is admissible in law against him.

## Preliminary inquiry **N.I.**

34.—(1) A magistrates' court conducting a preliminary inquiry shall—

- (a) consider the documents mentioned in Article 32 (1) (b) other than a statement which is not admitted in evidence by reason of an objection taken to it under Article 33 (1) (d), together with the exhibits admitted in evidence, and
- (b) read aloud so much of every written statement as is admitted in evidence, or the purport thereof, if requested to do so by either the prosecution or the accused, and
- (c) consider any submissions which may be made by or on behalf of the prosecution or the accused.

(2) The court, the prosecution and the accused may each require any person, whether his statement has been tendered in evidence or not, to attend and give evidence on oath which evidence shall be recorded as a written deposition and any such witness may be cross-examined and re-examined on his evidence; and where the evidence of a person is so recorded as a written deposition the court shall disregard any statement made by that person which has been furnished under Article 32.

(3) The court shall ask the accused if he has anything to say in answer to the charge and at the same time shall caution the accused that he is not obliged to say anything unless he wishes to do so and that whatever he does say may be taken down in writing and may be given in evidence at his trial; and whatever the accused says in answer after such caution shall be taken down in writing and read over to him and shall be signed by the resident magistrate<sup>F28</sup> . . . conducting the preliminary inquiry.

(4) The accused's statement made and appearing to be signed under paragraph (3) may be given in evidence at his trial without further proof unless it is proved that it was not signed by the resident magistrate<sup>F28</sup> . . . by whom it purports to have been signed.

(5) It shall be a sufficient compliance with this Article requiring the court to read aloud the contents of any written statement, or the purport of any such statement, or to address the accused, for the presiding resident magistrate<sup>F28</sup> . . . to cause the statement, or the purport of that statement, to be read or the accused to be addressed in the appropriate manner, by an official of the court.

**F28** 2002 c. 26

*Provisions applying to preliminary investigations and preliminary inquiries*

## Committal proceedings to be in open court **N.I.**

35. The place in which a magistrates' court is sitting to conduct a preliminary investigation or 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 investigation or inquiry.

## Adjournment of committal proceedings to another petty sessions district **N.I.**

36.—(1) A magistrates' court which adjourns a preliminary investigation or a preliminary inquiry and remands the accused in custody may, if satisfied that it is desirable in the interests of justice or security to do so and that the accused would not thereby suffer hardship, order that the adjourned investigation or, as the case may be, inquiry shall be held at a time and place specified in the order being a place within the same petty sessions district as the prison to which the person charged or any person with whom he is charged in the same proceedings is remanded.

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(2) A magistrates' court before which any adjourned investigation or inquiry is held, if satisfied as mentioned in paragraph (1), may, without prejudice to any other power exercisable by it, order that such investigation or, as the case may be, inquiry shall be adjourned to—

- (a) a place within the same petty sessions district as that in which the investigation or inquiry was begun; or
- (b) a place within the same petty sessions district as the prison to which the person charged or any person with whom he is charged in the same proceedings is further remanded.

(3) Where an order is made under this Article the adjourned investigation or inquiry shall be held at the time and place specified in the order and may be so held before the magistrates' court by whom the investigation or inquiry is adjourned or before a court acting for the petty sessions district in which the place to which the investigation or inquiry is adjourned is situated and where the adjourned investigation or inquiry takes place before such last-mentioned court, the complaint and any depositions and recognizances already taken in, or notices and documents furnished in respect of, the matter shall be deemed for all purposes to have been made or taken by or before, or furnished to the clerk of, such last-mentioned court.

(4) Without prejudice to paragraphs (1) to (3), a magistrates' court may, if satisfied as mentioned in paragraph (1), adjourn any preliminary investigation of, or preliminary inquiry into an indictable offence or any adjourned investigation or inquiry to another magistrates' court having jurisdiction to conduct a preliminary investigation of or, as the case may be, a preliminary inquiry into, such an offence and in the case of an adjourned investigation or inquiry, the complaint and any depositions and recognizances already taken in, or notices and documents furnished in respect of, the matter shall be deemed for all purposes to have been made or taken by or before, or furnished to the clerk of, the last-mentioned court.

(5) Where an investigation or inquiry has been adjourned under this Article, the place to which the investigation or, as the case may be, the inquiry has been adjourned shall, without prejudice to section 7 of the Criminal Justice Act (Northern Ireland) 1945<sup>F29</sup> be deemed, for all purposes incidental upon the prosecution, trial and punishment of the offender, to be the place in which the offence was committed.

**F29** 1945 c. 15 (NI)

### Discharge or committal for trial **N.I.**

**37.**—(1) Subject to this Order, and any other enactment relating to the summary trial of indictable offences, where the court conducting the preliminary investigation is of opinion after taking into account any statement of the accused and any evidence given by him or on his behalf 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 investigation, discharge him.

- (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),



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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.

(3) The court may commit the accused for trial—

- (a) in custody, that is to say, by committing him to<sup>F30</sup> 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) <sup>F31</sup> . . . magistrates' court rules may provide for the transmission to the court or trial of documents and exhibits connected with a preliminary investigation or 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.

**F30** 1989 NI 15

**F31** 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

### **Bail in treason, etc. N.I.**

**38.** A person charged with treason or with any offence under the Treason Felony Act 1848<sup>F32</sup> shall not be admitted to bail except by order of the High Court or of the Secretary of State.

**F32** 1848 c. 12

### **Binding over complainant and witnesses to attend trial N.I.**

**39.**—(1) A magistrates' court conducting a preliminary investigation or 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—

- (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;

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(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.

#### **Committal after non-appearance of accused** **N.I.**

**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<sup>F33</sup> 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.

**F33** 1969 c. 15 (NI)

#### **Power to take deposition of dying person** **N.I.**

**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 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 **N.I.**

42.—(1) The deposition of a witness whose attendance is stated to be unnecessary under Article 39 (2) or the deposition taken at the preliminary investigation or inquiry of a witness who is proved at the trial to be dead or insane, or so ill as to be unable to travel or to be kept out of the way by the procurement of the accused or on his behalf, 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<sup>F34</sup> 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<sup>F34</sup> 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 (other than a statement which is to be disregarded under Article 34 (2)) which complies with the provisions of<sup>F35</sup> 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.

F34 2002 c. 26

F35 1986 NI 15

## Facts to be stated on open court on plea of guilty **N.I.**

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

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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 **N.I.**

44.—(1) Where at a preliminary investigation or inquiry an opening statement is made on behalf of the prosecution, such statement shall not be printed<sup>F36</sup> published or included in a relevant programme].

(2) Subject to Article 37 (6), where at a preliminary investigation or 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<sup>F36</sup> 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<sup>F36</sup> 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<sup>F37</sup> 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.

<sup>F38</sup>(5) For the purposes of Article 7 (2) of the Prosecution of Offences (Northern Ireland) Order 1972<sup>F39</sup>, paragraph (4) shall be deemed to be a relevant consent provision passed before 30th March 1972.

<sup>F36</sup>(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.]

<b>F36</b>	1990 c. 42
<b>F37</b>	1984 NI 3
<b>F38</b>	prosp. rep. by 2002 c. 26
<b>F39</b>	1972 NI 1

### Summary trial of indictable offences

#### Summary trial of certain indictable offences **N.I.**

45.—(1) Where—

- (a) an adult is charged before a resident magistrate (whether sitting as a court of summary jurisdiction or out of petty sessions under Article 18 (2)) with an indictable offence specified in Schedule 2; and
- (b) the magistrate, at any time, having regard to—
  - (i) any statement or representation made in the presence of the accused by or on behalf of the prosecution or the accused;
  - (ii) the nature of the offence;

(iii) the absence of circumstances which would render the offence one of a serious character; and

(iv) all the other circumstances of the case (including the adequacy of the punishment which the court has power to impose);

thinks it expedient to deal summarily with the charge; and

(c) the accused, subject to paragraph (2) having been given at least twenty-four hours' notice in writing of his right to be tried by a jury, consents to be dealt with summarily;

the magistrate may, subject to the provisions of this Article and Article 46, deal summarily with the charge and convict and sentence the accused whether upon the charge being read to him he pleads guilty or not guilty to the charge.

(2) The requirement of the notice mentioned in paragraph (1) (c) may be waived in writing by the accused.

(3) A resident magistrate shall not deal summarily under this Article with any offence without the consent of the prosecution.

(4) For the purpose of this Article and Article 46 "adult" means a person who is, in the opinion of the court, of the age of<sup>F40</sup> eighteen] years or upwards.

F40 2002 c. 26

#### **Powers of court in dealing summarily with an indictable offence** **N.I.**

**46.**—(1) A resident magistrate may assume the power to deal with an offence summarily under Article 45 at any stage of the proceedings whether any evidence shall then have been given or not and, where such power is assumed, the provisions of any enactment (including this Order) for the time being in force relating to summary offences shall (subject to the succeeding provisions of this Article and to magistrates' courts rules) apply as if the offence were a summary offence and not an indictable offence.

(2) Notwithstanding that a magistrate has decided to deal summarily with an offence specified in Schedule 2 and that the accused has consented to be dealt with summarily the magistrate may reconsider his decision at any time prior to his determination to convict and sentence the accused, and, if satisfied that it is expedient to do so, he may decide, instead of dealing with the offence summarily, to commit the accused for trial and in such event depositions shall be taken or, as the case may require, a preliminary inquiry shall be conducted, and the offence dealt with in all respects as if the magistrate had not decided to deal with it summarily.

(3) Where a resident magistrate deals summarily with an offence specified in Schedule 2 and the offence is such that, had the accused been charged on indictment with that offence, he might lawfully have been convicted of an alternative offence, the magistrate may convict him of such alternative offence.

(4) Upon convicting the accused the magistrate may sentence him to be imprisoned for a term not exceeding twelve months or to a fine not exceeding<sup>F41</sup> the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984] or to both, so, however, that the accused shall not be sentenced to imprisonment for any greater term or to a fine of any greater amount than the term or fine to which he would be liable if tried on indictment.

(5) If the magistrate dismisses a charge with which he has dealt summarily under the provisions of Article 45 and of this Article, the dismissal shall in all cases have effect as though it were an acquittal on a trial of the charge upon indictment.

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**F41** 1984 NI 3

## Remands

### Period of remand in custody or in bail **N.I.**

47.—(1) Without prejudice to any other provision of this Order, in adjourning any proceedings for an offence a magistrates' court may remand the accused—

- (a) in custody, that is to say, commit him to custody to be brought at the end of the period of remand before that court or any other magistrates' court for the county court division for which the court is acting or before any other magistrates' court having jurisdiction to conduct the proceedings; or
- (b) on bail, that is to say, take from him a recognizance conditioned for his subsequent appearance before such court;

and may, if the accused is remanded in custody, certify in the prescribed manner its consent to the accused being remanded on bail in accordance with sub-paragraph (b) in which event the court shall fix the amount of the recognizance with a view to its being taken subsequently.

(2) Subject to<sup>F42</sup> . . . Article 49, the period for which the accused is remanded in custody shall not exceed—

- [<sup>F42</sup>(a) in the case where—
  - (i) the accused is before the court and he consents, or
  - (ii) the court has previously remanded the accused in custody for the same offence; or
  - (iii) the accused is already detained under a custodial sentence,
 twenty-eight days;]
- (b) in any other case, eight days;

commencing on the day following that on which the accused is remanded, so, however, that in a case to which [<sup>F42</sup> sub-paragraph (a)(iii)] applies, the court shall inquire as to the expected date of the accused's release from that detention, and if it appears that he will be released before twenty-eight days have expired, he shall not be remanded in custody for a period exceeding eight days or (if longer) a period ending with that date.

*Para. (3) rep. by 2003 NI 13*

(4) Where the accused is admitted to bail and he and prosecution consent, the period for which the accused is remanded may exceed the period referred to in paragraph (2),<sup>F42</sup> . . .

[<sup>F43</sup>(4A) In the exercise of its power under paragraph (1)(a) to remand in custody an accused to whom this paragraph applies, a magistrates' court may, on an application made under this paragraph by a member of the Royal Ulster Constabulary not below the rank of inspector, commit the accused to detention at a police station.

(4B) In the exercise of its power under paragraph (1)(a) to remand in custody an accused to whom this paragraph applies, a magistrates' court may, on an application made under this paragraph by a member of the Royal Ulster Constabulary not below the rank of inspector, commit the accused to the custody (otherwise than at a police station) of a constable.

(4C) The period for which an accused is remanded under paragraph (4A) or (4B) shall not exceed 3 days commencing on (and including) the day following that on which he is remanded.

(4D) Paragraphs (4A) and (4B) apply to an accused who—

- (a) is not under the age of 21 years; and



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(b) is not already detained under a custodial sentence.

(4E) An accused shall not be committed to detention at a police station under paragraph (4A) unless there is a need for him to be so detained for the purposes of inquiries into other offences; and, if a person is committed to such detention—

- (a) he shall, as soon as that need ceases, be brought back before the magistrates' court which committed him or any other magistrates' court for the county court division for which that court was acting or before any other magistrates' court having jurisdiction to conduct the proceedings;
- (b) he shall be treated as a person in police detention to whom the duties under Article 40 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (responsibilities in relation to persons detained) relate; and
- (c) his detention shall be subject to periodic review at the times set out in Article 41 of that Order (review of police detention).

(4F) An accused shall not be committed to the custody (otherwise than at a police station) of a constable under paragraph (4B) unless there is a need for him to be kept in such custody for the purposes of inquiries into other offences; and if a person is committed to such custody, he shall, as soon as that need ceases, be brought back before the magistrates' court which committed him or any other magistrates' court for the county court division for which that court was acting or before any other magistrates' court having jurisdiction to conduct the proceedings.]

(5) The court may order the accused to be brought before it at any time before the expiration of the period for which he has been remanded.

(6) In this Article, “custodial sentence” includes—

- (a) an order for detention in a young offenders centre within the meaning of the Treatment of Offenders Act (Northern Ireland) 1968;
- [<sup>F44</sup>(b) a juvenile justice centre order within the meaning of the Criminal Justice (Children) (Northern Ireland) Order 1998<sup>F45</sup>.]

*Sub#para. (c) rep. by 1998 NI 9*

- F42 2003 NI 13
- F43 1991 NI 16
- F44 1998 NI 9
- F45 prosp. insertion by 2002 c. 26

#### Modifications etc. (not altering text)

- C18 Art. 47 applied (with modifications) (3.12.2014) by The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (S.I. 2014/3141), regs. 1(b), **110(8)** (with reg. 110(12))
- C19 Art. 47(2) modified by Extradition Act 2003 (c. 41), ss. 23(3)(b), 89(3)(b) (as inserted (15.1.2007) by Police and Justice Act 2006 (c. 48), ss. 42, 53, **Sch. 13 para. 7**); S.I. 2006/3364, **art. 2**
- C20 Art. 47(2) modified by Extradition Act 2003 (c. 41), s. 76B(3)(b) (as inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), ss. **70**, 116(1)); S.I. 2009/3096, **art. 3(m)** (with art. 4(1)(d))

#### Continuous bail **N.I.**

**48.** Where a person is remanded on bail<sup>F46</sup> any recognizance or condition of bail may provide] for his appearance at every time and place to which during the course of proceedings the hearing may be adjourned, without prejudice, however, to the power of the court to vary the order at any subsequent hearing.

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**F46** Words in art. 48 substituted (12.3.2007) by Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15)), arts. 1(2)(c), 21(1); S.R. 2007/55, art. 2

#### Remand in case of illness or accident **N.I.**

49. A magistrates' court, on being satisfied that a person accused of an offence who has been remanded on bail or in custody is by reason of illness or accident unable at the expiration of the period for which he is remanded to appear personally before the court, may in the absence of the accused, order him to be further remanded for such time as may be deemed reasonable and any recognizance requiring or conditioned for the appearance of the accused before the court shall be deemed to be varied so as to require the appearance of the accused at every time and place to which he is so remanded.

#### Remand to enable inquiries to be made after conviction **N.I.**

50. The powers of a magistrates' court to adjourn the hearing of a case shall include power, after a person has been convicted and before he has been sentenced or otherwise dealt with, to adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case, but such adjournment shall not in any single period exceed twenty-eight days commencing on the day after the adjournment or extend beyond the next sitting of the court, whichever is the longer, or if the person convicted is in custody, the period specified in paragraph (2) or, as the case may be, paragraph (3) of Article 47.

#### Remand for inquiry into physical or mental condition **N.I.**

51.—(1) Without prejudice to the powers of the court under Article 50, where a person is charged before a magistrates' court with an offence punishable on summary conviction with imprisonment or an indictable offence which is tried summarily, and the court is satisfied that the person charged did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition, the court may remand him for such period as the court thinks necessary to enable a medical examination and report to be made so, however, that no single period shall, where the person remanded is on bail, exceed twenty-eight days commencing on the day after that on which the person is remanded or extend beyond the next sitting of the court whichever is the longer or, where the person remanded is in custody, exceed the period specified in paragraph (2) or, as the case may be, paragraph (3) of Article 47.

(2) Where a person is remanded on bail under this Article, it shall be a condition of the recognizance that he shall—

- (a) undergo medical examination by a duly qualified medical practitioner and for the purpose attend at a hospital or place, or upon any such practitioner, specified in the recognizance; or
- (b) where the inquiry is into his mental condition (and the recognizance so specifies), undergo medical examination by two duly qualified practitioners (one of whom shall be a practitioner<sup>F47</sup> appointed by [<sup>F48</sup>the Health and Social Care Regulation and Quality Improvement Authority] for the purposes of Part II of the Mental Health (Northern Ireland) Order 1986]) and for the purpose attend at a hospital or place, or upon any duly qualified medical practitioner, specified in the recognizance, and comply with any directions which may be given to him by any practitioner so specified;

and if arrangements have been made for his reception, it may be a condition of the recognizance that the person shall, for the purpose of the examination, reside until the expiration of such period as may be specified in the recognizance or he is discharged therefrom, whichever occurs first, in a hospital or place so specified.

(3) Where a person charged before a magistrates' court with an indictable offence is remanded in custody or committed for trial in custody and the court is of opinion that an inquiry ought to be made into his physical or mental condition, the court may order such inquiry to be made.

(4) Where a person charged before a magistrates' court with an indictable offence is admitted to bail on his entering a recognizance conditioned for his appearance at the Crown Court and the magistrates' court is of opinion that an inquiry ought to be made as aforesaid, the conditions of the recognizance may, in addition to the condition for his appearance, include the like conditions as could be included in the conditions of the recognizance with respect to the like inquiry by virtue of paragraph (2).

**F47** 1986 NI 4

**F48** Words in art. 51(2)(b) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 7; S.R. 2009/114, art. 2](#)

### **Power of court to sentence person convicted by another court in same county court division** **N.I.**

**52.** Where a person has been convicted of an offence by a court of summary jurisdiction and the case has been adjourned or where a person has been remanded under Article 51 he may be sentenced or otherwise dealt with for that offence by any court of summary jurisdiction acting for the same petty sessions district or any other petty sessions district of the same county court division as the court by which he was convicted or remanded.

#### *Sums adjudged to be paid by a conviction*

### **Fixing sum adjudged to be paid by a conviction with regard to means of offender** **N.I.**

**53.**—<sup>F49</sup>(1) A magistrates' court, in fixing the amount of a sum adjudged to be paid by a conviction (other than a fine which falls to be fixed under Article 29 of the Criminal Justice (Northern Ireland) Order 1996)]shall, amongst other things, take into consideration the means of the offender so far as they appear or are known to the court, the expedience of allowing such amount to be paid by instalments and the amount and frequency of any such instalments.

<sup>F49</sup>(2) Paragraph (1) applies whether taking into consideration the means of the offender has the effect of increasing or reducing the amount of the sum.]

**F49** 1996 NI 24

### **Power to impose fine in lieu of imprisonment** **N.I.**

**54.**—(1) Without prejudice to any other enactment, where a magistrates' court has power to impose imprisonment for<sup>F50</sup> an offence] and, apart from this Article, has not authority to impose a fine for that offence, the court may, subject to paragraph (2), instead of imposing a sentence of imprisonment impose a fine<sup>F50</sup> which—

- (a) for an offence punishable on conviction on indictment or on summary conviction, shall not exceed the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984; and
- (b) for an offence punishable on summary conviction only, shall—
  - (i) not exceed<sup>F51</sup> level 3 on the standard scale], and

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- (ii) not be of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence.]

*Para. (2) rep. by 1984 NI 3*

**F50** 1984 NI 3  
**F51** 1994 NI 15

### **Power to reduce fine or pecuniary penalty under certain enactments** **N.I.**

**55.**—(1) A magistrates' court may reduce the amount of any fine or other pecuniary penalty which it may impose for an offence under any enactment to which this Article applies, notwithstanding that the amount of the fine or other pecuniary penalty is prescribed under any such enactment.

(2) This Article applies to any enactment in force upon 1st January 1946, other than an enactment relating to Her Majesty's revenue under the control of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise except in so far as that enactment has been adapted and applied in relation to duties and taxes in respect of the imposing, charging, levying and collection of which the Parliament of Northern Ireland had under section 21 of the Government of Ireland Act 1920<sup>F52</sup> power to make laws.

(3) Nothing in this Article shall prejudice or affect the operation of section 34 (2) of the Finance Act 1935<sup>F53</sup> or section 150 (2) of the Customs and Excise Management Act 1979<sup>F54</sup>, (which relate to the enactments excluded by paragraph (2)).

**F52** 1920 c. 67  
**F53** 1935 c. 24  
**F54** 1979 c. 2

## *Imprisonment*

### **Consecutive terms of imprisonment** **N.I.**

**56.**—(1) Where a magistrates' court imposes imprisonment on any person, it may order that the term of that imprisonment shall commence on the expiration of any other term of imprisonment imposed by that or any other court; but where a magistrates' court imposes two or more terms of imprisonment to run consecutively the aggregate of those terms shall not, except as provided by this Article or any other enactment, exceed twelve months.

(2) Where two or more terms of imprisonment in respect of indictable offences tried summarily are imposed to run consecutively the aggregate of those terms shall not exceed eighteen months.

(3) Without prejudice to section 149 (3) of the Customs and Excise Management Act 1979 or section 63 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972<sup>F55</sup>, where a person has been sentenced by a magistrates' court to imprisonment in default of payment of, or in default of sufficient distress to satisfy, a sum adjudged to be paid by a conviction the court may order that the sentence shall begin at the expiration of any term of imprisonment imposed for that offence on that person in addition to such sum, but so that the aggregate term of sentences of imprisonment to which this paragraph applies shall not where a person is convicted of a summary offence exceed twelve months or where a person is convicted of an indictable offence tried summarily exceed eighteen months.

F55 1972 c. 11 (NI)

**Power to order detention for one day in precincts of the court in lieu of imprisonment** **N.I.**

57.—(1) Without prejudice to any other enactment, where a magistrates' court has power to impose imprisonment, the court in lieu of imposing imprisonment may, subject to paragraph (2), order the offender to be detained within the precincts of the court, or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct.

(2) The court shall, in making an order under this Article, take into consideration the distance between the place of detention and the offender's abode (if his abode is known to, or ascertainable by, the court) and shall not make any such order of detention under this Article as will deprive the offender of a reasonable opportunity of returning to his abode on the day on which the order of detention is made.

*Supplemental matters in connection with criminal procedure*

**Disposal of non-pecuniary forfeitures** **N.I.**

58. Subject to any other enactment governing forfeiture or the disposal of things forfeited, anything other than money forfeited on a conviction by a magistrates' court or the forfeiture of which may be enforced by such court shall be sold or otherwise disposed of in such manner as the court may direct; and the proceeds may be applied as if they were a fine imposed under the enactment on which the proceedings for the forfeiture are founded.

**Modifications etc. (not altering text)**

C21 Art. 58 excluded (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), ss. 103, 126(2), [Sch. 5 para. 6](#)

**Aiders and abettors** **N.I.**

59. Without prejudice to any other enactment, a person who aids, abets, counsels or procures the commission by another person<sup>F56</sup> of] a summary offence shall himself be guilty of that offence and may be tried and convicted (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him and may be tried either together with that other person or before or after that other person has been tried.

F56 1986 NI 15

**Attempt or incitement, etc., to commit summary offences** **N.I.**

60.—(1) <sup>F57</sup> .....

(2) Where a person is charged before a magistrates' court with a summary offence, and it appears to the court that the person charged did not commit the offence charged but that he was guilty of attempting to commit that offence, the court may convict him of attempting to commit that offence and may punish him in the same manner as if he has been charged with attempting to commit that offence.

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**F57** Art. 60(1) repealed (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(2), 92, 94(1), Sch. 6 para. 56, **Sch. 14** (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)(i)**

*Art. 61 rep. by 1989 NI 12*



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