Changes to legislation: *The Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 is up to date with all changes known to be in force on or before 20 April 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1988 No. 1846 (N.I. 16)

The Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988

- - - - - - *26th October 1988*

Modifications etc. (not altering text)

C1 Order: functions transferred from Secretary of State to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(1)(2), **Sch. 1** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Title, commencement and transitional provision

1.—(1) This Order may be cited as the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988.

(2) This Article, and Articles 2 and 11, shall come into operation on the expiration of 21 days from the day on which the Order is made.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Secretary of State may by order appoint[F1].

(4) An order under paragraph (3) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with any provision thereby brought into operation.

F1 fully exercised by SR 1989/328

Interpretation

2. The Interpretation Act (Northern Ireland) 1954[F2] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

F2 1954 c. 33 (NI)

Transfer of serious fraud cases to Crown Court

Notices of transfer and designated authorities

3.—(1) If—

(a) a person has been charged with an indictable o#ence; and

(b) in the opinion of an authority designated by paragraph (2) or of one of such an authority's o#cers acting on the authority's behalf the evidence of the o#ence charged—

(i) would be su#cient for the person charged to be committed for trial; and

(ii) reveals a case of fraud of such **[**F3seriousness or complexity**]** that it is appropriate that the management of the case should without delay be taken over by the Crown Court; and

(c) before the magistrates' court in whose jurisdiction the o#ence has been committed—

(i) has commenced hearing the evidence for the prosecution (other than a deposition relating to the arrest or to the remand of the accused), where the court is conducting a preliminary investigation, or

(ii) has begun to conduct a preliminary inquiry,

the authority or one of the authority's o#cers acting on the authority's behalf gives the court a notice (in this Order referred to as a notice of transfer) certifying that opinion,

the functions of the magistrates' court shall cease in relation to the case, except as provided by Article 4(3) and (6) of this Order and by **[**F4any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003**]** .

(2) The authorities mentioned in paragraph (1) (in this Order referred to as designated authorities) are—

(a) the Director of Public Prosecutions for Northern Ireland;

(b) the Director of the Serious Fraud O#ce;

(c) the Commissioners of Inland Revenue;

(d) the Commissioners of Customs and Excise; and

(e) the Secretary of State.

(3) A designated authority's decision to give notice of transfer shall not be subject to appeal or liable to be questioned in any court.

F3 Words in art. 3(1)(b)(ii) substituted (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 72, **Sch. 3 para. 2** (as modified in its application to Northern Ireland by Sch. 4 para. 35)

F4 Words in art. 3(1) substituted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435), art. 49(1), **Sch. 4 para. 9(2)**; S.R. 2015/194, art. 2, Sch. (with art. 3)

Notices of transfer—procedure

4.—(1) A notice of transfer shall specify the proposed place of trial and in selecting that place the designated authority shall have regard to the considerations to which section 48(1) of the Judicature (Northern Ireland) Act 1978[F5] requires a magistrates' court committing a person for trial to have regard when selecting the place at which he is to be tried.

(2) A notice of transfer shall specify the charge or charges to which it relates and include or be accompanied by such additional matter as regulations under paragraph (7) may require.

(3) If a magistrates' court has remanded a person to whom a notice of transfer relates in custody, it shall have power—

(a) to order that he shall be safely kept in custody until delivered in due course of law; or

(b) to release him on bail that is to say, by directing him to appear before the Crown Court for trial;

and where his release on bail is conditional on his providing one or more surety or sureties and the court fixes the amount in which the surety is to be bound with a view to his entering into his recognizance subsequently, the court shall in the meantime make an order such as is mentioned in sub#paragraph (*a*).

(4) Where notice of transfer is given after a person to whom it relates has been remanded on bail to appear before a magistrates' court on an appointed day, the requirement that he shall so appear shall cease on the giving of the notice, unless the notice states that it is to continue.

(5) Where the requirement that a person, to whom the notice of transfer relates, shall appear before a magistrates' court ceases by virtue of paragraph (4), it shall be his duty to appear before the Crown Court at the place specified by the notice of transfer as the proposed place of trial or at any place substituted for it by a direction under section 48(2) or (3) of the Judicature (Northern Ireland) Act 1978[F6] .

(6) If the notice states that the requirement to appear is to continue, when a person, to whom the notice of transfer relates, appears before the magistrates' court, the court shall have—

(a) the powers and duty conferred on a magistrates' court by paragraph (3), but subject as there provided; and

(b) power to enlarge, in the surety's absence, a recognizance conditioned in accordance with Article 47(1)(*b*) or 48 of the Magistrates' Courts (Northern Ireland) Order 1981[F7] so that the surety is bound to secure that the person charged also appears before the Crown Court.

(7) The Attorney General—

(a) shall by regulations make provision requiring the giving of a copy of a notice of transfer, together with **[**[F8]copies of the documents containing the evidence (including oral evidence)**]** on which any charge to which it relates is based—

(i) to any person to whom the notice of transfer relates; and

(ii) to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial; and

(b) may by regulations make such further provision in relation to notices of transfer, including provision as to the duties of a designated authority in relation to such notices, as appears to him to be appropriate.

[[F9](7A) Regulations under paragraph (7)(a) may provide that there shall be no requirement for copies of documents to accompany the copy of the notice of transfer if they are referred to, in documents sent with the notice of transfer, as having already been supplied.**]**

(8) Regulations made under paragraph (6) shall be subject to**[**[F10] negative resolution**]**.

F5 1978 c. 23
F6 1978 c. 23
F7 1981 NI 26
F8 Words in art. 4(7)(a) substituted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), **s. 45(2)** (as modified in its application to Northern Ireland by Sch. 4 para. 18)
F9 Art. 4(7A) inserted (4.7.1996 with application as mentioned in s. 45(8) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), **s. 45(3)** (as modified in its application to Northern Ireland by Sch. 4 para. 18)
F10 Words in art. 4(8) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(3), **Sch. 2 para. 11(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Applications for dismissal

5.—(1) Where notice of transfer has been given, any person to whom the notice relates, at any time before he is arraigned (and whether or not an indictment has been presented against him), may apply orally or in writing to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial or at any place substituted for it by a direction mentioned in Article 4(5), for the charge, or any of the charges, in the case to be dismissed; and the judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment presented against the applicant) if it appears to him that the evidence against the applicant would not be su#cient for a jury properly to convict him.

(2) No oral application may be made under paragraph (1) unless the applicant has given the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial or at any place substituted for it by a direction mentioned in Article 4(5) written notice of his intention to make the application.

(3) Oral evidence may be given on such an application only with the leave of the judge or by his order, and the judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.

(4) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but he does not do so, the judge may disregard any document indicating the evidence that he might have given.

(5) Dismissal of the charge, or all the charges, against the applicant shall have the same e#ect as a refusal by a magistrates' court to commit for trial, except that no further proceedings may be brought on a dismissed charge except by means of the presentment of an indictment such as is specified in paragraph (*c*), (*d*), (*e*) or (*f*) of section 2(2) of the Grand Jury (Abolition) Act (Northern Ireland) 1969[F11] .

(6) Crown Court rules may make provision for the purposes of this Article and, without prejudice to the generality of this paragraph—

(a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);

(b) as to the contents and form of notices or other documents;

(c) as to the manner in which evidence is to be submitted; and

(d) as to persons to be served with notices or other material.

F11 1969 c. 15 (NI)

Preparatory hearings

Power to order preparatory hearing

6.—(1) Where it appears to a judge of the Crown Court that the evidence on an indictment reveals a case of fraud of such**[**[F12]seriousness or complexity**]** that substantial benefits are likely to accrue from a hearing (in this Order referred to as a preparatory hearing) before**[**[F13] the time when the jury are sworn**]**, for the purpose of—

[[F14](a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial;

(b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them;

(c) determining an application to which section 45 of the Criminal Justice Act 2003 applies; or**]**

(d) assisting the judge's management of the trial,

he may order that such a hearing shall be held.

(2) A judge may make an order under paragraph (1) on the application either of the prosecution or of the person indicted or, if the indictment charges a number of persons, any of them, or of his own motion.

[F15(2A) The reference in paragraph (1) to the time when the jury are sworn includes the time when the jury would be sworn but for—

(a) the making of an order under Part 7 of the Criminal Justice Act 2003, or

(b) the application of section 75 of the Terrorism Act 2000.**]**

(3) F16. . . . . .

(4) F16. . . . . .

(5) F16. . . . . .

F12 Words in art. 6(1) substituted (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 72, **Sch. 3 para. 3(2)** (as modified in its application to Northern Ireland by Sch. 4 para. 35)

F13 Words in art. 6(1) substituted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 57(2); S.I. 2006/3422, **art. 2(b)(c)**

F14 Art. 6(1)(a)-(c) substituted (8.1.2007 for certain purposes, otherwise prosp.) by Criminal Justice Act 2003 (c. 44), ss. 45(4), 50(3), 336(3); S.I. 2006/3422, **art. 2(a)**

F15 Art. 6(2A) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 57(3); S.I. 2006/3422, **art. 2(b)(c)**

F16 Art. 6(3)-(5) repealed (4.7.1996 with application as mentioned in Sch. 3 para. 8 of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), ss. 72, 80, Sch. 3 para. 3(3), **Sch. 5** (as modified in its application to Northern Ireland by Sch. 4 paras. 35, 36)

Commencement of trial and arraignment

7.—(1) If a judge orders a preparatory hearing, the trial shall begin with that hearing.

(2) Arraignment shall accordingly take place at the start of the preparatory hearing.

The preparatory hearing

8.—(1) At the preparatory hearing the judge may exercise any of the powers specified in this Article.

(2) The judge may adjourn a preparatory hearing from time to time.

(3) He may determine—

(a) any question as to the admissibility of evidence; and

[F17(aa) a question arising under Article 43 of the Criminal Justice (Northern Ireland) Order 1996 (relevance of external law to certain charges of conspiracy, attempt and incitement); and**]**

(b) any other question of law relating to the case.

(4) He may order the prosecution—

(a) to supply the court and the defendant or, if there is more than one, each of them with a statement (a case statement) of the following—

(i) the principal facts of the prosecution case;

(ii) the witnesses who will speak to those facts;