1969. No. 69 **[C]**

MAGISTRATES' COURTS RULES

RULES, DATED 28TH MARCH 1969, MADE BY THE MINISTER OF HOME AFFAIRS UNDER SECTION 23 OF THE MAGISTRATES' COURTS ACT (NORTHERN IRELAND) 1964.

I, the Right Honourable Robert Wilson Porter, Q.C., Minister of Home Affairs for Northern Ireland, in exercise of the powers conferred on me by section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(a) and all other powers thereunto enabling, do hereby, upon the recommendation of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, make the Rules hereinafter set forth.

Dated this 28th day of March 1969.

R. W. Porter,
Minister of Home Affairs
for Northern Ireland.

Citation

1. These Rules shall be cited as the Magistrates' Courts (Preliminary Enquiry) Rules (Northern Ireland) 1969.

Commencement

2. These Rules shall come into operation on the first day of May 1969.

Interpretation

3.—(1) In these Rules—

(*a*) "the Act" means the Criminal Procedure (Committal for Trial) Act (Northern Ireland) 1968(b);

(*b*) "preliminary enquiry" means a preliminary enquiry under the Act.

(2) The provisions of Rules 24 to 26 of the Magistrates' Courts Rules (Northern Ireland) 1965(c) shall not apply to a preliminary enquiry.

(3) Any reference in these Rules to a Form by number is a reference to that Form as numbered in the Schedule.

Service on clerk of petty sessions of notice of intention by prosecutor to request court to hold preliminary enquiry

4.—(1) A notice under section 2(1) of the Act of intention by the complainant or prosecutor on his behalf to request a magistrates' court to hold a preliminary enquiry shall be in Form 1 and a list of witnesses referred to in Form 1 giving the number of pages in each written statement of evidence shall be in Form 2.

(2) The statement of complaint referred to in section 2(2)(*a*) of the Act shall be in Form 3 and the list of exhibits referred to in section 2(2)(*c*) of the Act shall be in Form 4.

(a) 1964. c. 21 (N.I.).
(b) 1968. c. 32 (N.I.).
(c) S.R. & O. (N.I.) 1965, No. 206.

(3) Such notice, lists and copies of the documents referred to in section 2(2) of the Act shall be furnished to the clerk of petty sessions in accordance with section 2(1) thereof—

(*a*) by serving them upon him personally at his office or upon a responsible member of his office thereat; or

(*b*) by enclosing them in an envelope and sending it addressed to him at his office by registered post or by the recorded delivery service.

(4) The clerk of petty sessions or anyone authorised by him to do so shall complete the particulars in and sign the Form of receipt at the bottom of Form 1 and where service was under paragraph (3)(*a*) give the receipt to the person who served the said documents or where it was served under paragraph (3)(*b*) send the receipt by registered post or by the recorded delivery service to the complainant or to the prosecutor acting on behalf of the complainant at the address specified in the said Form.

Service on accused of copy of notice and of documents referred to in section 2(2) of Act

5.—(1) The copy of the said notice, lists and of the documents referred to in section 2(2) of the Act shall be served upon the accused in the same manner as a summons upon complaint for an indictable offence is required to be served under paragraphs (1) to (6) of Rule 11 of the Magistrates' Courts Rules (Northern Ireland) 1965.

(2) The accused or, in the case of a body corporate, the secretary or clerk of that body shall upon delivery of the said notice, lists and documents complete the particulars in and sign the Form of receipt at the bottom of Form 1 and shall hand the receipt to the member of the Royal Ulster Constabulary who served the said notice, lists and documents or, where the accused is a body corporate, the said secretary or clerk shall send the receipt by registered post or by the recorded delivery service to the complainant or to the prosecutor acting on behalf of the complainant at the address specified in the said Form.

Objection to preliminary enquiry

6.—(1) Without prejudice to section 2(5) of the Act, the court shall ascertain that the accused or each of them has received a copy of the notice and of the documents required to be served on him under section 2(2) thereof and unless the accused is or, if there are more than one accused before the court, all of the accused are legally represented, shall explain generally the purpose of a preliminary enquiry and of a preliminary investigation and the differences of procedure between such enquiry and such investigation.

(2) After the charge or charges as set out in the complaint or complaints is or are read aloud and, if necessary, explained in ordinary language the court shall then ascertain that the accused understands, or all of them understand, the nature of the complaint or complaints and ask him or each of them separately whether he objects to a preliminary enquiry into the charge or any of the charges against him.

(3) Where two or more persons are charged together with an offence and one or more than one of them or his or their legal representative objects to a preliminary enquiry into that offence, he shall be asked, or each of them separately shall be asked, whether he objects to a preliminary enquiry into that offence in respect of any person or persons who do not so object and if he objects to such enquiry to explain the grounds for such objection.

(4) In order to consider the grounds for such objection and in order to be satisfied in accordance with section 1(3) of the Act that the interests of any person charged with an offence together with another or others would not be unduly or unreasonably prejudiced by conducting a preliminary enquiry into that charge in respect of that other or others, the court shall read the statements of the evidence relevant to that particular charge and hear any submission by or on behalf of the other or others so charged.

Conduct of preliminary enquiry

7.—(1) The court in proceeding to conduct a preliminary enquiry may require the prosecutor to make an opening statement on behalf of the prosecution for the purpose of presenting the written statements of the witnesses upon whose evidence the complaint or complaints are based before the court further proceeds in accordance with section 4(1) of the Act to consider such statements and any exhibits or to read aloud the contents of such statements or purport thereof or before proceeding to consider any submissions (other than submissions under Rule 6) made by the prosecutor or by or on behalf of the accused.

(2) Where at any stage of the enquiry a written statement is admitted in evidence in accordance with section 3 of the Act the name and address of the maker of the statement shall be read aloud unless the court in the interests of justice otherwise directs.

(3) Where a person is required under section 4(2) of the Act to give evidence for the prosecution on oath and such evidence is recorded as a written deposition, the court shall where any accused is not legally represented explain to that accused that he has the right to cross-examine the witness and that the prosecutor may re-examine him.

(4) After the court has considered the written statements and admitted as evidence such of them (in whole or in part) as it considers proper and any depositions of witnesses for the prosecution, the charge or charges shall, unless the court has decided not to commit the accused for trial, be again read to the accused and the court shall inform the accused that he has the right, if he so desires, to give evidence on his own behalf and to require the attendance of witnesses and to call witnesses and to tender any written statement of a witness which complies with section 3 of the Act.

(5) Next the court shall address the accused to the following effect—

"You are not obliged to say anything in answer to this charge unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence at your trial. Do you wish to say anything in answer to the charge?"

(6) Whatever the accused says in answer to the charge shall be taken down in writing on Form 5, read over to him and signed by the presiding resident magistrate or justice of the peace and, if the accused so wishes, by him.

(7) Immediately after complying with the requirements of this rule relating to the statement of the accused, and whether or not the accused has made a statement, the court shall ask him whether he wishes to give evidence himself, require the attendance of witnesses and to call witnesses and shall before doing so explain that he is not obliged to give evidence or to call witnesses and that anyone giving evidence is liable to be cross-examined.

(8) The court shall also ask the accused whether he wishes instead of calling witnesses to tender any written statement of evidence on his behalf which complies with section 3 of the Act.

(9) If the accused in answer thereto states that he wishes to give evidence or to call witnesses, or both give evidence and call witnesses, the court shall proceed to take the evidence of the accused on oath if the accused wishes to give evidence himself and to record it as a deposition and to take the evidence on oath of any witness called by the accused who is able to give relevant evidence on behalf of the accused and that evidence shall also be recorded as a deposition.

(10) Where the accused is legally represented, his counsel or solicitor may, if the accused gives evidence himself and calls witnesses, be heard on his behalf both before and after such evidence is taken.

Modification of Rules where corporation is accused

8. Any reference in these Rules to an accused shall where the accused is a corporation be construed as a reference to the representative of the corporation within the meaning of Schedule 5 to the Magistrates' Courts Act (Northern Ireland) 1964 and the reference to Form 5 in Rule 7(6) shall be taken as a reference to Form 6.

Court may address accused through court official

9. It shall be sufficient compliance with the provisions of these Rules requiring the court to address the accused (whether in reading the charge, any written statement, asking any questions, giving information, administering a warning or otherwise) for the presiding resident magistrate or justice of the peace to cause the accused to be addressed in the appropriate manner by an official of the court.

Proof by formal admission

10. Where under section 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968(**d**) a fact is admitted orally in court by or on behalf of the complainant or any accused for the purpose of a preliminary enquiry the court shall cause the admission to be written down and signed by or on behalf of the party making the admission.

Written statement of evidence to be in prescribed form and exhibits to be properly identified

11.—(1) Written statements of the evidence of a witness tendered in evidence to a Magistrates' Court at a preliminary enquiry shall be in Form 7.

(2) Where such statement refers to any document or object as an exhibit, that document or object shall, wherever possible, be identified by means of a label or other mark of identification signed by the maker of the statement and before the court treats any document or object referred to as an exhibit in such a written statement as an exhibit produced and identified in court by the maker of the statement, the court shall be satisfied that the document or object is sufficiently described in the statement for it to be identified.

Procedure where court decides not to admit statement or part thereof as evidence

12. Where the court decides not to admit as evidence any written statement or part thereof tendered in evidence at the preliminary enquiry into any charge against an accused, the presiding resident magistrate or justice of the peace shall announce such decision forthwith and shall thereupon write or cause to be written upon such statement, or as the case may be, against that part the

(**d**) 1968. c. 28 (N.I.).

words "This statement is not admitted as evidence." or, alternatively, "The part of this statement consisting of is not admitted as evidence." and in either case he shall subscribe his name thereto.

Authentication of statements, depositions or admissions

13. The clerk of petty sessions shall authenticate by certificate in Form 8 the written statements admitted in evidence, the depositions and any formal admission made for the purpose of the enquiry.

Documents and exhibits referred to, etc., at preliminary enquiry to be sent to the court of trial

14.—(1) Within seven days after the close of a preliminary enquiry at which any person is committed for trial, and in any case before the first day of the sitting of the court to which he is committed, the clerk of petty sessions shall send to the clerk of the Crown and peace—

(*a*) the statement of complaint upon which such person was committed for trial;

(*b*) the written statements admitted in evidence at and any depositions taken at the preliminary enquiry;

(*c*) any formal admission of facts made under section 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 for the purpose of the enquiry;

(*d*) the certificate in Form 8 of the clerk of petty sessions authenticating those statements, depositions or such admissions;

(*e*) all statements made by the accused before the magistrates' court;

(*f*) if the accused is committed for trial on bail, the recognizance of the accused;

(*g*) any recognizance entered into by any person as surety for the accused;

(h) a list in Form 9 of the exhibits, documentary or otherwise, produced or referred to in evidence at the enquiry;

(*i*) every exhibit lodged in court; and

(*j*) any other relevant document.

(2) Paragraph (1) shall apply to the committal for trial of persons under section 48 of the Magistrates' Courts Act (Northern Ireland) 1964 as if paragraphs (*a*) to (*e*) and (*h*) and (*i*) were omitted.

(3) Where after a preliminary enquiry the accused is not committed for trial the written statements of the evidence of the witnesses tendered at the enquiry shall be preserved for a period of three years by the clerk of petty sessions.

(4) The court may direct that the written statements required to be read aloud under section 5(2) of the Act shall be so read by the clerk of petty sessions or other court official.