

EXPLANATORY NOTES

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

Chapter 4

£6.90

CRIMINAL JUSTICE (COMMITTAL REFORM) ACT (NORTHERN IRELAND) 2022

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 ('*The Act*') which received Royal Assent on 7 March 2022. They have been prepared by the Department of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.

2. These Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. Where a section or part of a section or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Act gives effect to a commitment given by the Northern Ireland Executive ('*the* Executive') in November 2015 in the Fresh Start Agreement to tackle the impact of criminality and paramilitarism in Northern Ireland through, inter alia, the implementation of further measures to speed up criminal justice and support victims to give evidence. In keeping with that commitment, the primary objective of the Act is to improve the operation of the criminal justice system by reforming committal proceedings, which is the procedure used to determine whether there is sufficient evidence available to justify putting a person on trial in the Crown Court. The purpose of committal is not to determine whether the accused is guilty of an offence.

4. In recent history in the criminal justice system, committal proceedings have been by way of a committal hearing, either a preliminary investigation where witnesses can be called to give evidence and be cross examined, or a preliminary inquiry carried out based on written statements and evidence, or by way of a mixed committal which is a combination of both methods. The practice of hearing oral evidence, particularly cross-examination can have a significant impact on victims and witnesses, who may have to give (sometimes traumatic) evidence more than once.

5. Oral evidence hearings can also be lengthy, if these are multi-defendant cases and/or the number of witnesses required to give evidence is extensive these can last 1-2 days, and in exceptional circumstances may require significantly longer. Problems are often experienced in organising witnesses to attend, which can lead to adjournments and consequently increase delay in the magistrates' court before the case can be sent to the Crown Court. This attracts cost to the criminal justice system.

6. The Act specifically addresses a recommendation from the Independent Three Person Panel, appointed by the Executive to report on a strategy for tackling paramilitary

activity, criminality and organised crime, arising from the Fresh Start Agreement. The Panel recommended that the practice of witnesses having to provide evidence on oath and face cross-examination as part of committal proceedings should be abolished.

7. The Act supports the delivery of a number of other commitments made by the Executive and Department of Justice regarding the reform of committal proceedings. The Act will assist in the delivery of recommendations made in inspection reports by Criminal Justice Inspection Northern Ireland (CJINI) and Sir John Gillen in his report into the law and procedures in serious sexual offence cases. Reforming the committal process is also a priority in the New Decade, New Approach Deal, published in January 2020.

8. CJINI have made a number of recommendations in respect of reforming committal proceedings in the past, most recently in its Without Witness Report – A thematic Inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, published in November 2018. Amongst the report's recommendations was that 'Once direct transfer to the Crown Court is established for murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015'.

9. Sir John Gillen, in his report into the law and procedures in serious sexual offences, published in May 2019, made sixteen key recommendations, supplemented by more than two hundred and fifty supporting recommendations. In his key recommendations, Sir John called for - 'Radical steps to combat excessive delay in the criminal justice system. A wholly new mind-set is required, which will involve front-loading the legal system with an early-time limited and case managed system that has at its core early joint engagement by both prosecution and defence representatives.' To support this recommendation, he made a further twenty-six recommendations aimed at tackling delay in the criminal justice system, including the following recommendation in respect of committal proceedings - 'The Department of Justice should make provision for the direct transfer of serious sexual offences to the Crown Court, bypassing the committal process pursuant to the affirmative resolution procedure under section 11(4) of the Justice Act (Northern Ireland) 2015.'

10. In addition to commitments made by the Executive regarding efforts to speed up the justice system and specifically the reform of the committal process, a number of commitments have also previously been made by the Department of Justice. The most significant of these includes plans by the Department to deliver recommendations arising from the Northern Ireland Audit Office Report – Speeding up Justice: avoidable delay in the criminal justice system, published in March 2018, which recommended that 'the Department should establish an action plan and a timetable for the eradication of the committal process'.

11. Therefore, in addition to abolishing oral evidence, the Act also amends provisions within the Justice Act (Northern Ireland) 2015 which provide for the direct transfer, also referred to as direct committal, of cases to the Crown Court, without the need for a traditional committal hearing. The Justice Act (Northern Ireland) 2015, as enacted, provided that an accused would be directly committed to the Crown Court in the following circumstances:

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

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

12. The Act repeals section 10 of the Justice Act (Northern Ireland) 2015, removing the process for an accused to be directly committed to the Crown Court if they indicate to the magistrates' court an intention to plead guilty to an offence to be prosecuted on indictment, before the start of a traditional committal hearing. Due to the passage of time and growing calls for more extensive action and following a review of the direct committal provisions, the Department believes that providing a single mechanism to directly commit cases to the Crown Court on the basis of offence type provides a more effective approach to deliver the fundamental change required.

13. The Department therefore considers the most effective way of achieving a more extensive reform of the committal process is to define, through the Act, a broader range of offences to be directly committed to the Crown Court under section 11. In reaching this decision a number of factors have been considered.

14. Firstly, this approach allows the Department to better address previous commitments, and concerns raised through inspection and scrutiny reports regarding particular offence types, such as offences related to paramilitary activity and serious sexual offences.

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

16. Thirdly, the Department's aim over the longer term is to eradicate the traditional committal process entirely through the expansion of direct committal to a wider range of offences. It is therefore preferential to provide a single process whereby all cases to be tried in the Crown Court are directly transferred once it has been determined that the offence(s) with which the accused is charged is to be prosecuted on indictment. In some cases, the nature of the offence type with which an accused is charged dictates entirely whether an accused will be prosecuted in the Crown Court. The Department's current plans are, therefore, to extend direct committal to those offences, which in the case of an adult, are triable only on indictment. As more offence types however, are brought within the scope of offences to be directly committed to the Crown Court under section 11, the pool of cases that would have been eligible to be directly committed under the Early Guilty Plea transfer mechanism (section 10) would have become ever decreasingly smaller.

17. Finally, since 2015 the Department has worked extensively with criminal justice organisations to plan for the introduction of direct committal. During that period a number of risks have been identified in relation to the implementation of the direct committal of an accused to the Crown Court following an indication of a guilty plea. Despite efforts to mitigate those risks, concerns remain around the operational out-workings of section 10 which could potentially have a detrimental impact on the criminal justice system. Upon implementation, section 10 would have introduced a new feature into the criminal justice system, which would allow cases to be returned from the Crown Court to the magistrates' court if an accused did not ultimately enter a guilty plea at the arraignment hearing. In its implementation this new process introduces a number of significant risks and operational complexities, compared against the more straightforward arrangements for direct committal based on offence type. In light of commitments for more extensive reform of committal proceedings the Department has decided that a direct committal model based on offence type provides a better, and more straightforward basis, for implementing more extensive reforms to the committal process.

18. To deliver the changes outlined, the Act amends section 11 of the Justice Act (Northern Ireland) 2015 to extend the offences which are to be directly committed to the Crown Court, without the need for a traditional committal hearing to include all offences which, in the case of an adult, can be tried only on indictment. This amendment seeks to provide a single list of offences to which direct committal will apply regardless as to whether the accused is an adult or a youth.

19. For cases where an accused is charged with an offence to which direct committal applies, the Act provides additional clarity that any other offences which the magistrates' court considers to be related to the relevant offence will also be directly transferred to the Crown Court at the same time. The Act defines a related offence as one which could be included in the same indictment as the relevant offence.

20. The Act also makes a number of other changes to support the direct committal process. These include, as referred to above, explicit powers for the magistrates' court to order inquiries and reports relevant to the sentencing of an accused who has indicated an intention to plead guilty to an offence(s) which has been directly committed to the Crown Court. These powers seek to provide the Crown Court with the opportunity to promptly sentence an accused, if appropriate to do so, if they plead guilty to an offence(s) which has been directly committed.

21. The Act provides new powers for the Director of Public Prosecutions in Northern Ireland to discontinue proceedings, to which the direct transfer provisions in the Justice Act (Northern Ireland) 2015 apply, between the direct committal of the accused to the Crown Court and the presentation of an indictment setting out the charges for which the accused is to be prosecuted. The powers seek to address a situation whereby, following the direct transfer of a case to the Crown Court, there is a material change in circumstances of the case, such as new evidence emerging, which leads the prosecution to conclude that the test for prosecution is not, or is no longer, met. It is anticipated that, with the introduction of direct transfer, such situations may arise more frequently as cases will be transferred to the Crown Court at an earlier stage in the criminal justice process. These are similar to powers available to prosecutors and other relevant public authorities in England and Wales through section 23A of the Prosecution of Offences Act 1985.

22. The Application to Dismiss process provided within section 14 of the Justice Act (Northern Ireland) 2015, is amended by the Act to ensure a consistent approach across all criminal cases to be heard in the Crown Court regarding the calling of oral evidence in advance of trial. The Act therefore removes the option within the Application to Dismiss process to call oral evidence, thus maintaining consistency with the abolition of oral evidence as part of the traditional committal process.

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

OVERVIEW OF THE ACT

24. The Act contains six sections and one schedule.

COMMENTARY ON SECTIONS

25. A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Abolition of preliminary investigation and mixed committals

Section 1: Abolition of preliminary investigations

This section abolishes preliminary investigations in which witnesses can be called to give evidence on oath as a means for conducting committal proceedings by repealing Article 30 of the Magistrates' Courts (Northern Ireland) Order 1981. This section also provides that all committal proceedings in a magistrates' court shall be by way of a preliminary inquiry provided for under the Magistrates' Courts (Northern Ireland) Order 1981.

Section 2: Abolition of mixed committals: evidence on oath not to be given at preliminary inquiry

This section abolishes mixed committals as a method for conducting committal proceedings by repealing Article 34(2) of the Magistrates' Courts (Northern Ireland) Order 1981, which provides for witnesses to give evidence on oath at a preliminary inquiry. The combined effect of sections 1 and 2 is that, upon commencement, it is not possible to call upon witnesses to give evidence on oath at a committal hearing, to cases to which the provisions apply.

Section 3: Consequential amendments and repeals

This section provides the necessary consequential amendments and repeals, which are to be made to a number of pieces of legislation in order to give effect to sections 1 and 2 which abolish preliminary investigations and mixed committals, and which are contained in the Schedule to the Act.

Direct committal for trial: miscellaneous amendments

Section 4: Direct committal for trial: miscellaneous amendments

This section makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015 which provides for certain cases which are to be prosecuted on indictment to be directly committed to the Crown Court without the need for a committal hearing.

Subsection (2) amends section 9 of the Justice Act (Northern Ireland) 2015 to provide operational clarity to criminal justice practitioners regarding the criteria that cases must meet before being considered for direct committal. The subsection provides that cases to which Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981, or Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 apply, shall only be directly committed to the Crown Court, subject to meeting the criteria set out in section 11 of the Justice Act (Northern Ireland) 2015, after a magistrates' court has decided not to deal summarily with the case.

Subsection (3) repeals section 10 of the Justice Act (Northern Ireland) 2015 which provides for the direct transfer to the Crown Court of an accused, upon his or her indication to a magistrates' court (before it has begun to conduct traditional committal proceedings) of an intention to plead guilty to an offence to be prosecuted on indictment.

Subsection (4) amends section 11 of the Justice Act (Northern Ireland) 2015 to amalgamate and streamline sections 11 and 12 of that Act following the decision by the Department to extend the list of offences to which direct committal will apply. The subsection extends the application of direct committal to include all offences which, in the case of an adult, would be considered to be triable only on indictment. The test for the court is whether the offence is, in the case of an adult, triable only on indictment.

Subsection (4) also provides the Department with the power to bring forward an order(s) to designate any other offence(s) to which direct committal under Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015 will apply.

Subsection (4) brings within section 11 the process originally provided for in section 12 of the Justice Act (Northern Ireland) 2015, whereby an accused, charged with an offence not falling within the direct committal offence types, can be directly committed to the Crown Court if the offence is related to an offence for which a co-accused has been directly committed.

Subsection (4) also introduces other changes to support the introduction of direct committal.

- It amends Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015 to provide that in cases where an accused is directly committed to the Crown Court for a relevant offence under that Chapter, the magistrates' court shall at the same time directly transfer any other offence(s) for which the accused is charged that it considers to be related. The subsection defines a related offence as one which the court determines could be included on the same indictment as the offence which is to be directly committed.
- It amends Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015 to allow for certain functions of the magistrates' courts, other than those related to committal proceedings, to continue after a case has been directly committed for trial. This provision seeks to maintain consistency with existing arrangements for cases, which proceed to the Crown Court through the traditional committal process for example, where an accused who is alleged to have breached the conditions of his or her bail in respect of an offence(s), which has been directly committed to the Crown Court, can be brought before a magistrates' court to answer those allegations. Magistrates' courts sit more frequently than Crown Court, and at a greater number of venues across Northern Ireland and this change facilitates prompt access to a court so that such allegations can be heard. This in turn is important in order to protect the administration of justice, particularly where there is a risk an accused might attempt to interfere with the criminal justice process.

Subsection (5) makes some minor amendments to section 13 of the Justice Act (Northern Ireland) 2015 to add flexibility to the nature of court rules required to support the direct committal process, by adding that further arrangements in respect of the documentation associated with direct committal can be provided for in either magistrates' court rules, or Crown Court Rules. This change is primarily designed to allow Crown Court Rules to provide further detail on arrangements for serving documents containing the evidence on which the directly committed charge is based, should those documents not be available to the magistrates' court at the point when the accused is to be directly committed to the Crown Court.

Subsection (6) provides the magistrates' court with powers to order the making of inquiries and reports relevant to the sentencing of the accused, should an accused indicate an intention to plead guilty to the offence(s) to be directly committed to the Crown Court. The purpose of this change is to provide the Crown Court with documentation required to support the early disposal, if appropriate, of the case should the accused enter a guilty plea at an early stage in the Crown Court. The subsection requires that the prosecution and the accused must be provided with the opportunity to make representations to the magistrates' court prior to that court making a decision regarding the ordering of relevant inquiries or reports.

Subsection (7) inserts a new section (13A) into the Justice Act (Northern Ireland) 2015 to provide new powers for the Director of Public Prosecutions for Northern Ireland to discontinue proceedings, in cases directly transferred to the Crown Court under Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015, between the time that a case is directly committed and the time that an indictment is presented in the Crown Court. The subsection also sets out the arrangements for discontinuing proceedings in such circumstances. The powers allow for the Director to discontinue proceedings which have been directly committed under Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015 by giving a notice to the Crown Court sitting at the specified place of trial. Proceedings against an accused will be discontinued on the giving of that notice to the Crown Court.

Subsection (7) also provides that the Director must provide reasons in the notice to the Crown Court as to the decision to discontinue proceedings. On discontinuing proceedings, the Director must also inform the accused of the decision, however he is not obliged to provide to the accused reasons as to why proceedings have been discontinued.

Where an accused against whom proceedings have been discontinued is in detention as a result of those proceedings, he must be released, unless there are other reasons for his detention.

Similarly, where an accused against whom proceedings have been discontinued is subject to a requirement to attend court or a police station in connection with those proceedings, that requirement ceases to have effect.

The new section provides that exercise of the power to discontinue proceedings by the Director, does not prevent fresh proceedings against the accused being initiated either in connection with the offence(s) linked to the proceedings that were discontinued, or for any other offences. The Act is not prescriptive as to how fresh proceedings may be initiated.

Subsection (8) amends the process whereby the accused or their representatives can apply to dismiss charges under section 14 of the Justice Act (Northern Ireland) 2015 where an accused has been directly committed for trial under Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015. This change is designed to maintain consistency with the Department's commitments to remove the option for victims and witnesses to be called to provide oral evidence on oath in advance of trial.

Subsection (9) makes a number of amendments to Schedule 2 to the Justice Act (Northern Ireland) 2015, which are mostly minor in nature, or consequential to the changes made to Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015 by this Act. The most substantive change made by the subsection relates to an amendment to paragraph 8 of Schedule 2 to the Justice Act (Northern Ireland) 2015, which in turn amends the Criminal Procedure and Investigations Act 1996, to define a timeframe in which a prosecutor must disclose to the defence copies of, or provide access to, material which could reasonably be considered to undermine the prosecution case or assist the case of the accused in cases directly transferred under Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015. The duty on the prosecution is to provide this material as soon as is reasonably practicable after the service of the evidence on which the charge(s) is based as referred to in section 13(2A) of the Justice Act (Northern Ireland) 2015, and the accused has been committed for trial under Chapter 2 of Part 2 of that Act.

Subsection (9)(c) provides that, where required, a legal aid certificate can be applied for following the issue of a notice of committal, thus providing the Crown Court with sufficient flexibility to deal with legal aid applications promptly with a view to progressing cases with minimal delay.

Subsection (10) updates a reference in section 102(7)(a) of the Justice Act (Northern Ireland) 2015 relating to the arrangements by which the Department can bring forward an order to extend the list of offences to which the direct committal provisions of the Justice Act (Northern Ireland) 2015 will apply.

Subsection (11) repeals section 57 of the Justice Act (Northern Ireland) 2016 following the amendment made to section 9 of the Justice Act (Northern Ireland) 2015 by this Act.

Final provisions

Section 5: Commencement and transitional provisions, etc.

Section 5 provides that the provisions relating to the abolition of oral evidence from the traditional committal process, and direct committal will not apply to proceedings instituted before the Department has commenced the relevant provisions of the Act. Paragraph 4 of Schedule 8 to the Justice Act (Northern Ireland) 2015 provides further definition as to when proceedings are instituted for that purpose.

Section 6: Short title

This section provides the short title for the Act which is the Criminal Justice (Committal Reform) Act (Northern Ireland) 2022.

Schedule

The Schedule details consequential amendments and repeals to give effect to sections 1 and 2 which abolish preliminary investigations and mixed committals.

HANSARD REPORTS

26. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly and the date Royal Assent was received.

STAGE	**DATE**
First Stage	3 November 2020
Second Stage	16 November 2020
Committee Stage Report	10 June 2021
Consideration Stage	23 November 2021
Further Consideration Stage	6 December 2021
Final Stage	14 December 2021
Royal Assent	7 March 2022

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