



AN BILLE UM NOS IMEACHTA COIRIUIL, 1965 **CRIMINAL PROCEDURE BILL, 1965**

athraithe ó
changed from

AN BILLE UM CHEARTAS COIRIÚIL, 1965 **CRIMINAL JUSTICE BILL, 1965**

Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas

EXPLANATORY MEMORANDUM

General

1. The main objects of the Bill are as follows:—

- (a) to replace the present preliminary investigation of indictable offences by a simpler and more expeditious procedure which, apart from exceptional cases, dispenses with the necessity for taking depositions;
- (b) to extend considerably the existing powers of prohibiting publication of proceedings on the preliminary examination; and
- (c) to repeal, and re-enact with amendments, various enactments relating to the grant of bail.

The provisions of the Bill are explained in the following paragraphs.

PART I

PRELIMINARY

This Part makes provision for the short title of the Bill, its coming into operation and the repeal of existing enactments. It also contains a section (*section 4*) preserving the rights of a private prosecutor under the new preliminary procedure.

PART II

PRELIMINARY EXAMINATION OF INDICTABLE OFFENCES IN THE DISTRICT COURT

Present Law

2. Under the present law, before a person may be put on trial for an indictable offence, that is, an offence which may be tried by a judge and jury, there must first be a preliminary investigation before a district justice. The procedure on the preliminary investigation is that the evidence of all witnesses, whether for the prosecution or the defence, is taken down in the form of depositions which are written out in longhand by the district court clerk in narrative form. Having heard the evidence, including any statement the accused himself may make after being cautioned, the district justice decides whether the prosecution has established a sufficient case against the accused to warrant putting him on trial. The preliminary investigation does not apply to some indictable offences of a minor character which may be tried summarily with the consent of the accused and certain other indictable offences which may be dealt with by the District Court on a plea of guilty.

Reports of Committee on Court Practice and Procedure

3. The present procedure was the subject of examination by the Committee on Court Practice and Procedure (First Interim Report: Pr. 7164). The Majority Report of the Committee recommended the retention of the preliminary investigation, subject to certain modifications. These would allow a person to be sent forward for trial in certain cases without taking depositions where that person, though not wishing to plead guilty, was satisfied to waive the preliminary investigation. In other cases evidence would be recorded by way of affidavit rather than by deposition and the affidavits would be prepared before the preliminary investigation by the State Solicitor in charge of the prosecution from statements taken by the Gardai and by his personally interviewing witnesses. The accused would be served with particulars of the offences, copies of the affidavits and a list of the prosecution witnesses but he would also have the right to require the prosecution to have the witnesses attend and make a deposition and be subject to cross-examination. The prosecution would have a similar right in certain circumstances. The use of the affidavit was excluded in certain circumstances, e.g., for the evidence of any person under the age of 15 years. It was proposed that before an affidavit was submitted in evidence it should be read aloud by the clerk of the court in the presence of the accused.

4. The Minority Report recommended that the preliminary investigation in the case of indictable offences to be tried on indictment should be abolished, with the provision of certain safeguards. It proposed that, in lieu of depositions, the accused would receive notice before his trial of the persons to be called to give evidence, together with a statement of the evidence to be tendered by each of them.

5. The Committee were unanimously of opinion that publication by newspaper, radio or television of the proceedings or evidence at the preliminary investigation should be prohibited unless the accused by himself or his legal advisers in court expressly requested the district justice to remove the prohibition. If this recommendation were adopted the Committee thought it desirable that there should be specific statutory recognition of the fact that the holding of a preliminary investigation is open to the public unless the Court considers it desirable because of the nature or circumstances of the case or otherwise in the interests of justice to order that the investigation be held in private.

6. The Committee were evenly divided on whether or not to recommend a further prohibition on the publication of the fact that a preliminary investigation had been held and of the result of such an investigation. They decided to record disagreement and to make no recommendation on this aspect of publication.

Procedure in Part II

7. The new procedure in *Part II* is based on the views expressed in the Reports of the Committee and is intended to achieve the abolition of the deposition procedure in all cases apart from those—which experience of the existing procedure suggests will be exceptional—where either the prosecution or the accused require any relevant evidence to be given on oath and recorded at that stage.

8. *Section 5 (1)* provides that a justice of the District Court shall conduct a preliminary examination in accordance with this Part where a person is before him charged with an indictable offence and the case is not being tried summarily or the accused does not plead guilty. *Subsection (2)* applies to the new procedure references in any enactment to the existing preliminary investigation.

9. *Section 6* provides that the prosecutor shall cause to be served on the accused a statement of the charges against him, a copy of any sworn information in writing which gave rise to the proceedings, a list of the witnesses whom the prosecutor proposes to call at the trial, a statement of the evidence that is to be given by each of the witnesses and a list of any exhibits. The accused will also be entitled to inspect all the exhibits. Copies of the documents will be furnished to the Court.

10. *Section 7* contains the provisions about the conduct of the proceedings at the preliminary examination in the course of which the justice considers the documents and exhibits, any submissions by or on behalf of the prosecutor or the accused, the evidence of any witness who may be examined on sworn deposition and anything the accused may, after caution, wish to say.

11. If the justice is of opinion that there is a sufficient case to put the accused on trial for the offence with which he has been charged, *section 8* requires him to send the accused forward for trial on that charge. If he considers that some other indictable offence is disclosed, he causes him to be charged with that offence, and, unless the accused pleads guilty (in which case *section 13* applies), sends him forward for trial after having recorded anything the accused, after caution, may have said in relation to that charge. He may also deal summarily with the offence as a minor one under *section 2* of the Criminal Justice Act, 1951. If he considers that a summary offence only is disclosed he may, provided the Attorney General consents, cause the accused to be charged with that offence and deal with it accordingly. In any other case, the justice must order the accused to be discharged as to the offence under examination.

12. The attendance of witnesses at the trial will be secured by means of witness orders made by the justice at the conclusion of the preliminary examination, or witness summonses issued out of the trial court (*sections 9 and 10*).

13. *Section 11* provides for the service of additional documents by the Attorney General after the accused has been sent forward for trial in cases where there may be further prosecution witnesses, further exhibits, etc.

14. *Section 12* allows the accused to waive the preliminary examination altogether except where the prosecutor requires a witness to attend to give evidence on sworn deposition. The justice shall then send him forward for trial with a plea of not guilty and the various statements of evidence, etc., are supplied to the accused and to the trial court. A person under seventeen years of age may not waive the preliminary examination without the consent of his parent or guardian.

15. *Section 3* of the Criminal Justice Act, 1951, which deals with the procedure where an accused pleads guilty in the District Court to certain indictable offences, is being repealed and replaced by *subsections (1), (2) and (4) of section 13*. Under the 1951 Act the District Court may deal with these offences summarily if the Attorney General does not object or, if the accused signs a plea of guilty, send him forward for trial with that plea. A person so sent forward may, on being arraigned, withdraw his written plea and plead not guilty. *Section 13* provides that the accused is now to be sent forward for sentence and not for trial. *Section 4* of the 1951 Act, which prescribes the maximum punishment for indictable offences dealt with summarily, is re-enacted by *subsection (3) of this section* in so far as it applies to offences dealt with on a plea of guilty.

16. *Section 14* makes special provision for taking depositions if at any time a district justice is of opinion that a prospective witness may be unable to attend or be prevented from attending to give evidence at the trial and that it is necessary in the interests

of justice to take his evidence by way of sworn deposition. The deposition must be taken in the presence of the justice and of the accused and the deponent may be cross-examined and re-examined on his evidence. The justice must also inform the accused of the circumstances in which it may be read as evidence at the trial.

17. Section 15 replaces section 9 of the Criminal Justice Act, 1951, which allows a deposition taken on the preliminary investigation to be read as evidence at the trial in certain circumstances, and applies it to cover depositions taken under the new procedure (i.e. under section 7 or 14). No change is made in the existing provision in section 9 of the 1951 Act that only in the case of the deponent's death may a deposition taken at the preliminary examination on the application of the prosecutor be read at the trial without the accused's consent. However, a deposition taken under section 14 may be read if the justice considers this to be in the interests of justice.

18. Subsections (1) and (2) of section 16 give effect to the unanimous view of the Committee on Court Practice and Procedure that there should be specific statutory recognition of the fact that the preliminary examination is open to the public unless the Court considers it desirable because of the nature or circumstances of the case or otherwise in the interests of justice to order that the examination be held in private. Existing statutory provisions requiring the holding of proceedings *in camera* (such as incest cases and certain proceedings under the Official Secrets Act, 1963) are not affected but, subject to this, the power of excluding persons from the Court does not apply to press representatives. Subsection (3) preserves the existing absolute right of a parent or other relative or friend of an accused person under the age of twenty-one years or of an injured party in indecent cases who is under that age or is a woman to be present (section 20 (4) of the Criminal Justice Act, 1951).

19. Section 17 gives effect to the unanimous recommendation of the Courts Committee that the present law be amended to prohibit publication by newspaper, radio or television of the proceedings or evidence at the preliminary examination unless the accused by himself or his legal advisers in court expressly request the district justice to remove the prohibition, except to the extent (see subsection (3)) that publication at the request of the accused is made subject to the permission of the district justice. The Committee considered that the publication of the evidence and proceedings may frequently be the cause of injustice to an accused person and prejudice his fair trial as, in most cases, only the case for the prosecution is presented at this stage and a long period may elapse before the trial when the defence may be heard. At present, apart from certain proceedings which must be held *in camera*, the District Court, on the preliminary investigation of an indictable offence, may prohibit or restrict the publication of information in relation to the proceedings or any part of them if it is satisfied that it is expedient for the purpose of ensuring that the accused will not be prejudiced in his trial but the prohibition ceases to be in force on the conclusion of the trial or the entry of a *nolle prosequi* or, in certain circumstances, within one month after a refusal of informations. These provisions (section 20 (1) (b) and (c) and 20 (2)) of the Criminal Justice Act, 1951, are being repealed in the *Schedule*.

20. The Committee were evenly divided and made no recommendation on the question whether the fact that a preliminary examination has been held and of the result of it should be published. The members who were against any publication took the view that the reputation and prospects of an accused person may be irremediably prejudiced even by publication of the fact that he has been accused of certain crimes, particularly those of a sexual or unnatural nature. The other view equally strongly held was that the public is entitled to the protection afforded by the publication of the fact that a person has been accused of certain offences, par-

ticularly in cases of fraud and sexual offences against young persons, and also that, since in most cases there would have already been publication of the facts of arrest and charge by the Gardai, the public is entitled to learn of the outcome of the preliminary investigation. If the result were not published there might be undesirable public speculation as to the manner in which the charge was disposed of.

21. As regards this aspect of publication *section 17 (1)* proposes to allow the publication of a statement of the fact that a preliminary examination has been held in relation to a named person on a specified charge and of the decision thereon. *Subsection (2)* provides for the punishment of a contravention of this provision.

22. *Section 18* makes specific provision for including in the indictment against a person who is being sent forward for trial any counts founded on facts or evidence disclosed in any of the documents which were considered by the justice at the preliminary examination, and is in accordance with existing practice.

23. *Section 19 (1)* amends *section 2* of the Criminal Justice Act, 1951 (which enables certain indictable offences of a minor nature to be tried summarily), by requiring the consent of the Attorney General for the summary trial of an offence under *section 38* of the Offences Against the Person Act, 1861 (i.e., assault with intent to commit felony, or on peace officers, etc.). This offence is specified at reference number 9 of the First Schedule to the 1951 Act, which contains a list of the indictable offences which may be tried summarily. The Attorney General's consent is also being made necessary in larceny cases where the value of the property involved exceeds £200. As *section 2* of the 1951 Act stands, the Attorney General's consent is necessary only for the summary trial of an offence in the nature of a public mischief, obstruction of the administration of justice or the enforcement of the law, or perjury (reference numbers 1, 2 and 3 of the Schedule).

24. *Section 19 (2)* amends the Schedule in a number of respects. *Paragraph (a)* of the subsection removes the monetary limit of £50 on the value of stolen property which may be dealt with summarily but, as stated, the Attorney General's consent is necessary where the value of the property involved exceeds £200. *Paragraph (b)* deletes the reference in the Schedule to an offence under *section 65* of the Road Traffic Act, 1933 (fraud, etc., in obtaining a motor insurance policy or guarantee). This section was repealed by the Road Traffic Act, 1961, and the offence is now a summary one. *Paragraph (c)* adds to the list of offences which may be tried summarily an offence under *section 13* of the Debtors (Ireland) Act, 1872 (obtaining credit, etc., fraudulently) and offences under *sections 20 to 23* and *section 51* of the Malicious Damage Act, 1861. The latter offences are those involving damage exceeding £1 to trees, shrubs, etc., growing in gardens (*section 20*) or elsewhere (*section 21*) exceeding £5 or (*section 22*) exceeding one shilling after two previous convictions. *Section 23* relates to damage to plants, etc., in a garden, conservatory, etc., after one previous conviction. *Section 51*, as amended by *section 12 (1)* of the Criminal Justice Act, 1951, relates to damage to any property whatsoever to an amount exceeding £50. The First Schedule to the 1951 Act, as amended by *section 19 (2)*, is set out in the appendix to this memorandum.

25. *Section 19 (3)* provides that free legal aid will not be available at the preliminary examination, except in murder cases.

26. *Section 20* provides for the evidencing of the consent of the Attorney General required under the earlier provisions of *Part II*.

PART III: REMAND

27. *Sections 21, 22* and *23* contain procedural provisions regarding remand in custody or on bail by the District Court and the form of a recognisance.

28. *Section 24*, which deals with the period of remand, amends the present law in a number of respects. The effect of *subsection (2)* is to extend to the whole country the power of the Dublin Metropolitan Justices to remand an offender *on bail* for longer than eight days if both the accused and the prosecutor consent. *Subsection (3)* gives authority to the District Court, again with the consent of the accused and the prosecutor, to remand *in custody* for a period of more than eight days but not exceeding thirty days. However, the present limit of eight days will continue to apply on the occasion of the first remand in custody.

29. *Section 25 (1)* authorises the Court to commit a person to the custody of a member of the Garda Síochána for a period not exceeding four days. Outside the Dublin Metropolitan District the Court must first satisfy itself that suitable facilities are available for the custody of the person during the period of remand (*subsection (2)*).

30. *Section 26* amends the law in so far as it allows a peace commissioner to accept from a person charged with an offence the deposit of a sum of money equivalent to the amount of bail instead of requiring him to find a surety or sureties.

31. *Section 27* obliges a district justice or a peace commissioner to satisfy himself in every case as to the sufficiency of the persons proposed to be accepted as bailsmen.

32. *Section 28* contains general provisions as to admission to bail. *Subsection (3)* provides for an appeal to the High Court where bail is refused or where the applicant is dissatisfied with the bail granted.

33. *Section 29* provides that persons charged with treason, murder and certain other serious offences may not be admitted to bail except by order of the High Court. At present the District Court has power to grant bail except in treason cases. *Subsection (3)* is on the lines of section 12 of the Official Secrets Act, 1963, and provides that the High Court shall order that any part of the proceedings in relation to the grant of bail to a person charged with certain of the offences mentioned in *subsection (1)* of this section shall be *in camera* on application being made by the prosecution on the ground that publication would be prejudicial to the safety or preservation of the State. The decision of the Court on the application for bail must be announced in public.

34. *Section 30* provides that a justice or peace commissioner on issuing a warrant for the arrest of any person may, by endorsement on the warrant, authorise the release of the person on bail, after arrest, by a member of the Garda Síochána. It re-enacts section 21 of the Criminal Justice Administration Act, 1914, which is being repealed.

35. *Section 31* is a re-enactment of section 14 of the Criminal Justice Act, 1951, providing for release on bail in certain cases by members of the Garda Síochána. It contains, in addition, a provision on the lines of *section 26* for the acceptance of the deposit of a sum of money equivalent to the amount of bail, in lieu of a surety or sureties.

36. *Section 32* indicates the venue in proceedings to estreat a recognisance and *section 33* contains provisions dealing with the arrest of an accused who is about to abscond.

PART IV

MISCELLANEOUS

37. *Section 34* is a new provision in the law which will enable the Attorney General to obtain from the Supreme Court, by way of case stated, a final determination of the law in a case where,

in the opinion of the Attorney General, a trial judge was wrong in law in directing the jury to return a verdict in favour of the accused. The decision of the Supreme Court will not prejudice in any way the decision of the trial judge in favour of the accused person. *Subsection (2)* provides for the trial judge to be consulted by the Attorney General when the statement of case is being drawn up and for his observations to be included in it.

38. *Sections 35 and 36* contain minor amendments of the Extradition Act, 1965, and *sections 37 and 38* are designed to remove procedural difficulties which the Scottish and Channel Islands authorities have encountered in the operation of that Act.

SCHEDULE

ENACTMENTS REPEALED

39. The Indictable Offences (Ireland) Act, 1849, was repealed by the Petty Sessions (Ireland) Act, 1851, so far as it applied outside the Dublin Metropolitan District, but it continued to operate in Dublin. The provisions of the 1849 Act now being repealed deal with the preliminary investigation procedure and the admission in evidence of depositions of persons who have died before the trial (*sections 17, 18, 25 and 27*). Section 19 provides that the place where a preliminary examination takes place is not to be deemed an open court. Section 20 provides for the binding over of witnesses to attend the trial. Section 21 gave power to a justice to remand an accused for a period not exceeding eight days. This period could be extended, where the parties consented, by virtue of *section 20 (2) and 43 (1) (d)* of the Criminal Justice Administration Act, 1914. *Sections 22 to 24* of the 1849 Act deal with remand, admission to bail and release on bail.

40. The sections of the Petty Sessions (Ireland) Act, 1851, to be repealed provide for sittings of examining justices not to be in open court (*section 9.2*), the binding over of witnesses (*section 13.6*), the manner in which the evidence is to be taken in proceedings for indictable offences (*section 14*), the disposal of the prisoner (*section 15*), the admission to bail of persons charged with offences (*section 16*), the case where a party charged with an indictable offence who has been bailed is about to abscond (*section 17*) and the manner in which the informations, depositions, etc., in proceedings for indictable offences shall be disposed of when taken (*section 19*)—the disposal of these documents is now a matter for rules of court.

41. *Sections 19, 20, 21 and 43 (1) (d)* of the Criminal Justice Administration Act, 1914, dealing with bail and remand are being re-enacted with amendments in *Part III*. The words being repealed in *section 62* of the Criminal Justice Act, 1936, are no longer appropriate.

42. *Section 3* of the Criminal Justice Act, 1951, dealing with the procedure where the accused pleads guilty in the District Court to certain indictable offences is replaced by *section 13* of the Bill (see paragraph 15). The provisions of *section 13 (3)* make the words proposed to be repealed in *section 4* of the 1951 Act unnecessary. *Section 9* of that Act is no longer necessary in view of the provisions of *section 15* (see paragraph 17). *Section 14* is being re-enacted by *section 31* of the Bill. *Section 20 (1)* empowers the District Court, on the preliminary investigation of an indictable offence, to make an order excluding the general public and prohibiting or restricting the publication of information regarding the proceedings if satisfied that it is expedient for the purpose of ensuring that the accused will not be prejudiced in his trial. It is being replaced by the provisions of *sections 16 and 17* of the Bill. *Section 20 (2)*, which provides for the circumstances in which such an order ceases to be in force, is not being re-enacted (see paragraph 19).

APPENDIX

First Schedule to the Criminal Justice Act, 1951, as amended by Section 19 (2) of the Bill

Indictable Offences which may be dealt with summarily by the District Court

Ref. No.	Offence
1	An offence in the nature of a public mischief. (a)
2	An indictable offence consisting of any form of obstruction of the administration of justice or the enforcement of the law. (a)
3	Perjury. (a)
4	Riot or unlawful assembly, where the Court is of opinion that the act constituting the offence was not done in furtherance of an organised conspiracy or, if so done, that the conspiracy is at an end.
5	Assault occasioning actual bodily harm.
6	Indecent assault.
7	An offence under section 16 of the Plate Assay (Ireland) Act, 1807, as amended by section 2 of the Plate Assay (Amendment) Act, 1931.
8	An offence under the Larceny Act, 1861. (b)
9	An offence under section 38 of the Offences against the Person Act, 1861. (a)
10	An offence under section 60 of the Offences against the Person Act, 1861.
11	An offence under section 1 of the Falsification of Accounts Act, 1875.
12	An offence under section 11 of the Criminal Law Amendment Act, 1885, where the accused person is over the age of sixteen years and the person with whom the act is alleged to have been committed is either under the age of sixteen or is an idiot, an imbecile or a feeble-minded person.
13	An offence under the Forgery Act, 1913.
14	An offence under section 25, 26, 27 or 28 of the Larceny Act, 1916.
15	An offence under any provision (other than sections 25, 26, 27 and 28) of the Larceny Act, 1916. (b)
16	An offence under section 24 of the Enforcement of Court Orders Act, 1926.
17	An offence under section 11 of the Wireless Telegraphy Act, 1926.
18(c)	
19	Attempted carnal knowledge constituting an offence under sections 1 (2), 2 (2) or 4 of the Criminal Law Amendment Act, 1935.
20	An offence under section 10 of this Act. (d)
21	An attempt to commit an offence which the District Court has, by virtue of any enactment (including this Act (d)), jurisdiction to try summarily.
22	An offence under section 13 of the Debtors (Ireland) Act, 1872.
23	An offence under sections 20, 21, 22, 23 or 51 of the Malicious Damage Act, 1861.

NOTES : (a) The consent of the Attorney General for summary trial is necessary in this case (Section 19 (i) of this Bill).

(b) The consent of the Attorney General is necessary where the value of the property involved exceeds £200 (*ibid*).

(c) Reference No. 18 in the First Schedule to the 1951 Act referred to an offence under section 65 of the Road Traffic Act, 1933. That section was repealed by the Road Traffic Act, 1961 and the offence is now a summary one.

(d) The Criminal Justice Act, 1951.

An Roinn Dlí agus Cirt,
Meitheamh, 1967.