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**An Bille um Nós Imeachta Coiriúil, 2021**  
**Criminal Procedure Bill 2021**

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*Meabhrán Mínitheach agus Airgeadais Athbhreithnithe*  
*Revised Explanatory and Financial Memorandum*

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**AN BILLE UM NÓS IMEACHTA COIRIÚIL, 2021**  
**CRIMINAL PROCEDURE BILL 2021**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Introduction**

The principal purpose of the Criminal Procedure Bill 2021 is to provide for the introduction of preliminary trial hearings. The Bill also makes a small number of other amendments to criminal legislation as set out below.

The main provisions of the Bill are as follows:

**Part 1** of the Bill is a standard part which gives the Title of the Bill and provides definitions for some important terms used later throughout the Bill. This Part also contains a standard commencement provision.

**Part 2** of the Bill is the main part of the Bill and deals with preliminary trial hearings. The principal purpose of these hearings is to deal with certain matters ahead of the beginning of the trial so as to ensure that the parties are ready to proceed on the day of the trial, and to minimise interruptions to unitary nature of the trial while it is in train.

**Part 3** of the Bill deals with the provision of information to juries to assist them with their deliberations. This section arises from a recommendation of the Law Reform Commission in its 2013 Report on Jury Service, to the effect that section 57 of the Criminal Justice (Theft and Fraud Offences) Act 2001, which concerns the provision of specified documentation to juries, should be extended to all trials on indictment.

**Part 4** of the Bill makes various amendments to Criminal Procedure legislation as set out below, including to:

- section 4 of the Criminal Procedure Act 1967
- section 4E of the Criminal Procedure Act 1967
- section 4Q(2)(b) of the Criminal Procedure Act 1967.
- Section 21 of the Criminal Justice Act 1984
- section 23 of the Criminal Procedure Act 2010
- section 34 of the Criminal Procedure Act 2010

**Provisions of the Bill: -**

**Part 1 – Preliminary and General**

Part 1 of the Bill (Sections 1-2) is a standard part which gives the Title of the Bill and provides definitions for some important terms used later throughout the Bill. This Part also contains a standard commencement provision.

## **Part 2 – Preliminary Trial Hearings**

Part 2 of the Bill (Sections 3-11) is the main part of the Bill and deals with preliminary trial hearings.

The principal purpose of these hearings is to deal with certain matters ahead of the beginning of the trial so as to ensure that the parties are ready to proceed on the day of the trial, and to minimise interruptions to the unitary nature of the trial while it is in train.

### **Section 3**

*Section 3* is an interpretation section, which explains what is meant by certain terms used throughout the part of the Bill which deals with preliminary trial hearings.

### **Section 4**

*Section 4* of the Bill provides that this legislation applies to trials on indictment, whether the person has been sent forward for trial before or after the commencement of the Bill, provided that the trial has not already started.

### **Section 5**

*Section 5* of the Bill defines what is meant by a ‘relevant offence’ in relation to preliminary trial hearings. A relevant offence is one which carries a maximum sentence of ten years or more, or one which has been specified by the Minister for Justice in an Order. The section also sets out the matters the Minister shall take into account in deciding whether to make something a ‘relevant offence’.

### **Section 6**

*Section 6(1)* provides a general power for a court to hold a preliminary hearing, of its own motion, for any indictable offence, where the court is satisfied that it would be in the interests of justice and conducive to the expeditious or efficient conduct of the proceedings, regardless of whether the prosecution or the defence is requesting one.

*6(2)* provides that, for a relevant offence as defined in section 5, the court must agree to hold at least one preliminary hearing, if either the prosecution or the defence requests it.

*6(3)* provides that a preliminary hearing can take place at any time up to the swearing in of the jury (or the start of the trial if the case is before the Special Criminal Court).

*6(4)* sets out how the court should determine the timing of a preliminary hearing, and the factors it should take into account in doing so, including the interests of justice, disruption to the jury or witnesses in the trial, and protecting the interests of the victim.

*6(6)* provides that if the court thinks it is appropriate, the accused person can be arraigned at a preliminary hearing.

*6(7)* sets out a list of case-management matters that the court can assess and make orders in relation to, at a preliminary hearing. These include whether everyone is ready to proceed, whether any particular practical measures or facilities are needed etc.

*6(8)* sets out the types of order or decision of the court that can be made at a preliminary hearing. Many of these orders would currently be made during the trial, but in the absence of the jury. They are being brought forward to be dealt with at the preliminary stage to the greatest extent possible. The orders include whether a group of defendants is to be tried together or separately, whether questioning in relation to prior sexual history

is to be permitted, whether a victim's counselling notes are permitted to be examined, and many others, including any order relating to the conduct of the trial of the offence as appears necessary to the court to ensure due process and the interests of justice. The section also permits the court to make a 'relevant order', which is an order relating to the admissibility of evidence.

6(9) allows the court to make orders which it considers appropriate and in the interests of justice in relation to the conduct of the preliminary hearing itself, including in relation to accepting written submissions from the parties.

6(10) provides that it does not have to be the same judge for a preliminary hearing as for the trial, and that if there is more than one preliminary hearing there is no need for the same judge to preside over all of them. However 6(11) provides a power for the court to direct that it must be the same judge, where the court considers this is in the interests of justice, and 6(12) goes on to specify that where the preliminary hearing deals with admissibility of evidence, it must be the same judge for that hearing as presides at the trial.

6(13) provides that the requirement under 6(12) shall not apply where the judge is unavailable or the court considers there is another good reason.

6(14) provides that a ruling of the court at a preliminary hearing is binding and generally cannot be appealed until the trial has concluded. It also provides that where the court considers it appropriate, the ruling shall have effect as though it had been made during the trial.

6(15) provides that the court can set aside a ruling made at a preliminary hearing, either of its own motion or on application from the prosecution or the defence, if the court is satisfied that is in the interests of justice, but 6(16) only allows an application from the accused or the prosecution, to vary an order in accordance with 6(15), where there has been a material change in the circumstances relevant to the original order since it was made.

6(17) provides that a party who wishes to seek an order under subsection 6(8), shall inform the court of this at the first available opportunity.

6(18) provides that nothing in section 6 affects the existing right of a person to appeal a criminal conviction.

6(19) is a saver to make it clear that nothing in section 6 affects the existing power of a court to do all of these things otherwise than at a preliminary hearing.

6(20) provides that the court conducting the preliminary hearing has all the powers it would have during the trial.

6(21) provides that a legal aid certificate covering the person's trial also covers any associated preliminary trial hearings.

### **Section 7**

Section 7 of the Bill allows for appeals in limited circumstances, arising from a decision at a preliminary hearing to exclude compelling evidence, that, if it were admitted, could possibly lead to a finding of guilty, but is so significant that if it were excluded, the exclusion would likely lead to an acquittal. The section sets out the process for such an appeal, and provides for the accused to be legally represented at the appeal as necessary, and provided with legal aid where appropriate.

### **Section 8**

Section 8 of the Bill provides that, where an appeal has been brought in the limited circumstances allowed under Section 7, the trial does not proceed until the appeal has been determined.

### **Section 9**

*Section 9* of the Bill provides that the court shall generally conduct preliminary hearings in public, but where it is necessary to do so, it has the power to exclude the public from the hearing.

### **Section 10**

*Section 10* prohibits the publication or broadcast of the content of a preliminary hearing before the conclusion of the trial, except where the court permits. This provision is included in part to prevent possible contamination of the jury pool, where, for example inadmissible evidence might be discussed at such a hearing, before the jury is sworn in. There are some limited exceptions, for example the fact that a hearing is taking place can be published, or the fact that a certain order has been made, but the general content of the hearing may not be published while the trial is still in train.

### **Section 11**

*Section 11* of the Bill provides for Rules of Court to govern how preliminary trial hearings are run, what notice periods are required, the form for making applications and other ancillary matters.

## **Part 3 – Provision of Information to Juries**

Part 3 of the Bill deals with the provision of information to juries to assist them with their deliberations. This section arises from a recommendation of the Law Reform Commission in its 2013 Report on Jury Service, to the effect that section 57 of the Criminal Justice (Theft and Fraud Offences) Act 2001, which concerns the provision of specified documentation to juries, should be extended to all trials on indictment.

### **Section 12**

*Section 12* of the Bill provides for information that can be given to a jury by the court in order to assist them with their deliberations.

This information includes documents, diagrams or recordings of speeches of counsel, evidence given during the trial, and including, where appropriate, an affidavit by an accountant or other suitably qualified person summarising, in a form likely to be comprehended by the jury, transactions by the accused or other persons which are relevant to the offence. The section provides that the other party must be given sight of this affidavit in advance, that the court must hear any representation either party makes in relation to it, and that the accountant or qualified person must attend as an expert witness at trial, and may be questioned in relation to their report.

## **Part 4 – Amendments to Certain Acts relating to Criminal Procedure**

Part 4 of the Bill makes various amendments to Criminal Procedure legislation as follows:

### **Section 13**

*Section 13* of the Bill makes a small technical amendment to section 4 of the Criminal Procedure Act 1967 to clarify that under section 4A, the Book of Evidence may be served on the accused or their legal representative (as is already provided in section 4B, which directly follows that section).

### **Section 14**

*Section 14* amends section 4E of the Criminal Procedure Act 1967 to take account of preliminary trial hearings. Specifically, this section provides that where there has been a decision at a preliminary trial hearing to exclude evidence, the defence cannot bring an application for charges to be dismissed on the basis of this exclusion until any appeal by the

prosecution of the decision to exclude the evidence has been dealt with by the court, and that where an appeal has been brought under this section after a preliminary hearing, the trial shall not proceed until the appeal has been determined.

#### **Section 15**

*Section 15* removes an unnecessary cross-reference in section 4Q(2)(b) of the Criminal Procedure Act 1967.

#### **Section 16**

*Section 16* of the Bill amends Section 21 of the Criminal Justice Act 1984. This is the provision dealing with admission of evidence by written statement.

Currently, the court may admit evidence in the form of a written statement, unless either the prosecution or the defence objects. This amendment would allow the court to require the party objecting to the evidence being admitted in written form to give their reasons for doing so, and permit the court, having taken those reasons into account, to proceed to direct that the evidence be admitted, provided that this is not contrary to the interests of justice.

#### **Section 17**

*Section 17* of the Bill amends section 23 of the Criminal Procedure Act 2010, which allows the prosecution to appeal an acquittal, where it has come about because of the exclusion of certain compelling prosecution evidence from being admitted at trial.

This section amends section 23 in two ways. Firstly, to take account of the existence of preliminary trial hearings, and secondly to provide that where there is a difference between evidence in the ‘book of evidence’ as it exists before the trial begins, and the actual evidence adduced during the trial, that the evidence as actually adduced is the version to be considered when deciding the threshold for these appeals.

#### **Section 18**

*Section 18* of the Bill amends section 34 of the Criminal Procedure Act 2010 to extend the notice which must be given before calling an expert witness to testify, either at a trial or a preliminary hearing, to 28 days, from the current period of 10 days, in order to allow the other party to prepare for their testimony.

The section also provides that a court can allow an expert witness to testify without the required notice where it is satisfied that the notice was not possible, or that it is in the interests of justice to allow the notice period to be waived.

### **Financial implications of the Bill**

While there is some potential for costs associated with running of preliminary trial hearings in themselves, and the provision of legal aid for accused persons who are participating, overall, any such increase in expenditure is not expected to be significant, since many of these matters would inevitably have arisen in any case during the course of the trial. The introduction of preliminary trial hearings in criminal proceedings is likely to lead to significant efficiencies in the conduct of criminal trials and there is considerable potential for cost savings in this area.

*Department of Justice*

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