



STATUTORY INSTRUMENTS.

S.I. No. 122 of 2022

RULES OF THE SUPERIOR COURTS (CRIMINAL PROCEDURE ACT
2021) 2022

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RULES OF THE SUPERIOR COURTS (CRIMINAL PROCEDURE ACT
2021) 2022

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, the Criminal Procedure Act 2021, section 11 and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 28th day of February 2022.

Donal O'Donnell (Chairperson)

Mary Irvine

John A. Edwards

Richard Humphreys

Yvonne McNamara

Gráinne Larkin

Stuart Gilhooly

Liam Kennedy

James Finn

Mary Cummins

I concur in the making of the following Rules of Court.

Dated this 9th day of March, 2022.

Helen McEntee

Minister for Justice

S.I. No. 122 of 2022

RULES OF THE SUPERIOR COURTS (CRIMINAL PROCEDURE ACT
2021) 2022

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Criminal Procedure Act 2021) 2022, shall come into force on the 16th day of March 2022.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2022.

2. The Rules of the Superior Courts are amended:

- (i) by the insertion immediately following Order 85 of the Order set out in Schedule 1 as Order 85A, and
- (ii) by the insertion immediately following Form No. 6 in Appendix DD of the forms set out in Schedule 2 as Forms No. 7 and 8.

Schedule 1

“Order 85A: Preliminary Hearings in the Central Criminal Court

I. Preliminary

1. In this Order:-

the “2021 Act” means the Criminal Procedure Act 2021;

“preliminary trial hearing” has the same meaning as in section 6(1) of the 2021 Act;

unless the context requires otherwise, expressions defined in section 2 and section 3(1) of the 2021 Act have the same meanings in this Order as are assigned to them by section 2 or, as the case may be, section 3(1) of the 2021 Act.

II. Application for preliminary trial hearing

2. (1) Where either the accused or the prosecution intends to apply to the Court to direct the holding of a preliminary trial hearing as regards the trial of an indictable offence to which section 4 of the 2021 Act applies, the moving party shall notify the Court and the other party at the first available opportunity and, subject to any direction of the Court in that regard, shall serve and file with the Registrar particulars of the application, which may be in the Form No. 7 in Appendix DD, (hereafter in this Order referred to as the “PTH Notice”) on the prosecutor or, as the case may be, the accused (or, where the accused is represented by a solicitor, the solicitor for the accused), at the time and in the manner directed or notified by the Court for such applications or, as the case may be, for such applications of the kind concerned.

(2) Where it is practicable to do so, a PTH Notice shall be served at least two months prior to the trial.

(3) The PTH Notice shall:

- (a) include the case or bill number, the name of the accused and (where known) the date of the trial;
- (b) include a statement of the charges;
- (c) specify whether a preliminary trial hearing is required to be held in accordance with section 6(2) of the 2021 Act;
- (d) if the trial is not one in which a preliminary trial hearing is required to be held in accordance with section 6(2) of the 2021 Act, set out briefly the reasons why the moving party seeks a preliminary trial hearing, including the reasons why it would be conducive to the expeditious and efficient conduct of the proceedings, and not contrary to the interests of justice for a preliminary trial hearing to be held;
- (e) specify each order under section 6(7) and/or section 6(8) of the 2021 Act which the moving party will apply or request to be made at a preliminary trial hearing; set out briefly the grounds or reasons for each such application or request, and indicate whether evidence (and if so, of whom) is intended to be offered or is required in support of any such application.

III. Response to application for preliminary trial hearing

3. (1) Where the prosecution or the accused is served with a PTH Notice, that party shall at the time and in the manner directed or notified by the Court:

- (a) serve replying particulars (hereafter in this Order referred to as the “PTH Reply”), which may be done by completion of the response section contained within Form No. 7, on the accused (or, where the accused is represented by a solicitor, the solicitor for the accused) or, as the case may be, the prosecutor, and
- (b) file copies of the PTH Notice and PTH Reply with the Registrar.

(2) The PTH Reply shall:

- (a) indicate whether the replying party agrees or disagrees that a preliminary trial hearing is required to be held in accordance with section 6(2) of the 2021 Act;
- (b) if a preliminary trial hearing is not required to be held in accordance with section 6(2) of the 2021 Act, indicate whether the replying party consents to, does not oppose, or opposes the application for a preliminary trial hearing, and set out in summary terms any reasons or grounds for any disagreement;
- (c) indicate whether the replying party consents to, does not oppose, or opposes the making of each order sought by the moving party under section 6(7) and/or section 6(8) of the 2021 Act or, where the replying party seeks an alternative form of order, the form of alternative order sought; set out briefly the grounds or reasons why any such order is opposed or an alternative order sought, and indicate if the replying party expects to require oral evidence (and if so, of whom) in support of any such opposition or such alternative order.

IV. Direction for preliminary trial hearing

4. (1) The Court may direct and fix a time for the holding of a preliminary trial hearing on any PTH Notice.

(2) Where each party applies for a preliminary trial hearing by serving a PTH Notice on the other, both such applications shall be heard or determined together.

5. Whether or not any application for a preliminary trial hearing has been made or intimated to the Court by either party, the Court may, having heard the parties, exercise its power under section 6(1) of the 2021 Act to direct the holding of a preliminary trial hearing, on any occasion on which the matter of the trial concerned is before the Court, and may direct the attendance of the parties before the Court for that purpose.

6. Where the Court determines an application for a preliminary trial hearing or exercises its power to direct the holding of a preliminary trial

hearing under section 6(1) of the 2021 Act, or is required to direct the holding of a preliminary trial hearing under section 6(2) of the 2021 Act, the Court may, having heard the parties and having had regard to the requirements of sections 6(4) and 6(5) of the 2021 Act, make such orders and give such directions for the preparation for, listing before the Court, and conduct, of any one or more preliminary trial hearings in respect of the trial concerned as the Court considers are necessary or appropriate consistent with the requirement of section 6 of the 2021 Act, including, without limitation:

- (i) directions as to the applications, requests and/or matters to be considered at any preliminary trial hearing and where the Court intends that a particular matter referred to in section 6(7) or 6(8) of the 2021 Act which is not the subject of a request or application by either party should be considered at a preliminary trial hearing, the Court may direct the parties to address that matter at a preliminary trial hearing;
- (ii) orders under section 6(9) of the 2021 Act and directions with regard to the conduct of any preliminary trial hearing;
- (iii) orders directing the attendance or production of the accused at the preliminary trial hearing, for the purposes of section 6(6) of the 2021 Act or otherwise;
- (iv) orders for the attendance of any witness at any preliminary trial hearing;
- (v) an order permitting the evidence of any witness at any preliminary trial hearing to be given by affidavit or otherwise, subject to the right of either party to apply to cross-examine such witness;
- (vi) orders for the exchange between the parties and filing with the Registrar of any written submissions in relation to any application, request and/or matter to be considered at a preliminary trial hearing, and time limits for same;
- (vii) orders for the exchange between the parties and filing with the Registrar of any written information which the Court considers necessary or desirable in order to enable the Court make any assessment required under section 6(7) of the 2021 Act;
- (viii) orders under section 9(2) of the 2021 Act;
- (ix) orders providing for the exchange of documents or information between the parties, or for the transmission by the parties to the Registrar of documents or information electronically on such terms and subject to such conditions and exceptions as the Court may direct.

V. Conduct of preliminary trial hearing

7. At any preliminary trial hearing, the Court may, having heard the parties and having had regard to the requirements of sections 6(4) and 6(5) of the 2021 Act:

- (i) make any order or ruling referred to in section 6(7) or 6(8) of the 2021 Act;
- (ii) as necessary, adjourn the preliminary trial hearing from time to time;
- (iii) make or amend any order mentioned in rule 6.

8. Unless otherwise directed or permitted by the Court, any evidence given at a preliminary trial hearing shall be given viva voce and on oath.

VI. Matters to be notified

9. (1) At the first available opportunity:

- (a) if either party intends to serve a PTH Notice, that party shall notify the Court accordingly, and the Court may give such directions as it thinks appropriate for the service of a PTH Notice and PTH Reply and may fix a time at which the PTH Notice is to be listed before it, or may dispense with the requirement of a PTH Notice and PTH Reply and direct the holding of a preliminary trial hearing and make further orders and give directions in relation to such preliminary trial hearing in accordance with rule 6;
- (b) if either party intends to apply for an order referred to in section 6(8)(a), (b) or (c) of the 2021 Act, that party shall notify the Court accordingly and failing such notification on that occasion, such intention shall be notified in writing, which may be by electronic mail, to the Registrar at the next opportunity.

VII. Miscellaneous

10. The Court, having heard the parties, may make an order under section 6(11) of the 2021 Act, or an order under section 6(15)(a) of the 2021 Act on any occasion on which the accused is before the Court prior to the commencement of the trial.

11. (1) Any application under section 6(15)(b) of the 2021 Act may be made at any sitting of the Court or at the commencement of the trial.

(2) Unless otherwise directed or permitted by the Court, notice in writing of any such application shall be in the Form No. 8 in Appendix DD and shall be served on the opposing party and a copy lodged with the Registrar not later than four days before the application is intended to be made.

(3) The notice shall specify the variation sought or the order sought to be discharged and shall set out brief particulars of the material change in circumstances relied on.

12. Where an appeal is made to the Court of Appeal under section 7 of the 2021 Act, a copy of the notice of appeal shall be lodged with the Registrar and the prosecution shall mention the matter to the Court on notice to the accused (or, where the accused is represented by a solicitor, the solicitor for the accused) as soon as practicable after notice of appeal has been given for the purposes of the making of further orders or giving of further directions consequent on the making of the appeal.

13. The Court may, for the purposes of section 6 of the 2021 Act, in any case in which it considers necessary, modify the procedure for the direction and conduct of any preliminary trial hearing, and may dispense with any step or action required, or may deem sufficient any step or action taken by any party in relation thereto provided that it is satisfied that no other party would be prejudiced.

14. All notices in writing and documents which a party is required by this Order to serve on or deliver to the other party or deliver to or lodge or file with the Registrar may be so served, delivered, lodged or filed in accordance with the provisions of these Rules concerning service and lodgment of documents, but additionally:

- (a) where so agreed by the parties, each party may serve or deliver notices and documents on or to each other by electronic means only, and
- (b) where so required by the Registrar, a party shall additionally lodge or file a copy of a notice or document with the Registrar by electronic means.”

Schedule 2

Form No. 7

CENTRAL CRIMINAL COURT**PARTICULARS OF APPLICATION FOR PRELIMINARY TRIAL
HEARING (PTH)**

The People at the suit of the Director of Public Prosecutions

v

.....

Case/Bill No.....

1. This application to direct the holding of a preliminary trial hearing in respect of the above trial in accordance with section 6(1) of the Criminal Procedure Act 2021 (the “2021 Act”) is made by the *accused/*prosecution.

2. The accused is charged that:

*3. The trial is scheduled to commence on the ...day of 20...

The moving party intends to seek the following orders, rulings and/or directions in accordance with section 6 of the 2021 Act at a preliminary trial hearing:

Orders, rulings and/or directions sought by moving party [NB: Strike through or delete any application below which is not relevant]	Replying party’s response (PTH Reply)
1. The trial is one in which a preliminary trial hearing is required to be held in accordance with section 6(2) of the 2021 Act because (a) the accused is charged with a relevant offence within the meaning of section 5 of the 2021 Act, namely; (b) this application is made to the Court for a preliminary trial hearing to be held, and (c) no preliminary trial hearing has previously been held in respect of the trial of the said offence	*Agree/*Disagree *Reasons for disagreement

2. The trial is not one in which a preliminary trial hearing is required to be held in accordance with section 6(2) of the 2021 Act, but it would be conducive to the expeditious and efficient conduct of the proceedings, and not contrary to the interests of justice for a preliminary trial hearing to be held. Reasons: *Evidence intended to be led:	*Agree/*Disagree *Reasons for disagreement *Evidence expected to be required:
3. The following orders/rulings regarding the availability of witnesses for the trial: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
4. The following orders/rulings regarding particular practical measures or technological equipment required for the conduct of the trial: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
5. The following orders/rulings arising from the extent to which the trial is ready to proceed (including any outstanding issues relating to disclosure):	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that:

Reasons: *Evidence intended to be led:	Reasons: *Evidence expected to be required:
6. The following orders/rulings arising from the likely length of the trial (which is estimated to be): Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
7. There being two or more persons charged in the same proceedings, namely, an order that the persons be tried separately: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:

8. An order under or pursuant to section 6 of the Criminal Justice (Administration) Act 1924 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
9. An order under or pursuant to section 15A of the Juries Act 1976 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
10. An order under or pursuant to *section 21 *section 22 of the Criminal Justice Act 1984 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:

11. An order under or pursuant to section 3 of the Criminal Law (Rape) Act 1981 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
12. An order under or pursuant to *section 13, *section 14, *section 14A, *section 14C, *section 19A *section 29 of the Criminal Evidence Act 1992 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
13. An order under or pursuant to section 39 of the Criminal Justice Act 1999 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:

14. An order under or pursuant to section 181 of the Criminal Justice Act 2006 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
15. An order under or pursuant to section 67 of the Criminal Justice (Mutual Assistance) Act 2008 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
16. An order under or pursuant to section 34 of the Criminal Procedure Act 2010 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
17. An order under or pursuant to section 21 of the Criminal Justice (Victims of Crime) Act 2017 that:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that:

Reasons: *Evidence intended to be led:	Reasons: *Evidence expected to be required:
18. An order under or pursuant to section 25 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
19. A relevant order, within the meaning of section 3(1) of the Criminal Procedure Act 2021, as to the admissibility of evidence (including an order under or pursuant to section 16 of the Criminal Evidence Act 1992), that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
20. The following other order, that could be made by the Court in the absence of the jury, that:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that:

Reasons: *Evidence intended to be led:	Reasons: *Evidence expected to be required:
21. The following other order, relating to the conduct of the trial of the offence concerned which it is submitted should appear necessary to the Court to ensure that due process and the interests of justice are observed, that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
22. The following orders, with regard to the conduct of the preliminary trial hearing, which it is submitted is appropriate and in accordance with the interests of justice, that: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:

23. Insert brief details of any other order, ruling or direction sought: Reasons: *Evidence intended to be led:	*Consenting/*Not opposing/*Opposing/*Proposing order or alternative order that: Reasons: *Evidence expected to be required:
--	--

Dated:.....20..

Signed:_____

*(Solicitor for) Accused/*Prosecutor

To: *Prosecutor/*(Solicitor for) Accused

I have completed the above reply to this application for a preliminary trial hearing

Dated:.....20..

Signed:_____

Prosecutor/(Solicitor for) Accused

To: *(Solicitor for) Accused/*Prosecutor

And to: Registrar

*Delete where inapplicable

Form No. 8
CENTRAL CRIMINAL COURT

NOTICE OF APPLICATION TO VARY/DISCHARGE ORDER MADE AT
PRELIMINARY TRIAL HEARING (PTH)

The People at the suit of the Director of Public Prosecutions

v

.....

Case/Bill No.....

TAKE NOTICE that an application will be made to the Court sitting at at o'clock or as soon as may be thereafter on the day of 20... on behalf of the *accused/*prosecution for an order in accordance with section 6(15)(b) of the Criminal Procedure Act 2021

*varying the order that made at the preliminary trial hearing in respect of the trial held on the day of 20... to the effect that[insert variation sought].

*discharging the order that made at the preliminary trial hearing in respect of the trial held on the day of 20...

on the grounds that there has been a material change in circumstances relevant to the said order, namely that

Dated:.....20..

Signed:_____

Prosecutor/(Solicitor for) Accused

To: *(Solicitor for) Accused/*Prosecutor

And to: Registrar

*Delete where inapplicable

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These rules amend the rules of the Superior Courts by the insertion of a new Order 85A and Forms Nos. 7 and 8 in Appendix DD to facilitate the operation of the Criminal Procedure Act 2021.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
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