

**PRACTICE DIRECTION 3/2011**

**IN THE CROWN COURT OF NORTHERN IRELAND**

**LISTING OF TRIALS, AGREEMENT OF NON-ESSENTIAL WITNESSES  
AND OBTAINING OF WITNESS AVAILABILITY**

**Introduction**

**The purpose of this Practice Direction is to:**

- **ensure that both the prosecution and the defence take adequate and prompt steps to check witness availability so as to ensure that avoidable adjournments, and hence avoidable delay, can be prevented;**
- **improve arrangements for the notification of witnesses and checking witness availability in order to avoid witnesses being notified unnecessarily that they will be required to give evidence; and**
- **ensure the early agreement of non-essential witnesses whose evidence may be read at trial.**

**As part of this process Crown Court offices will no longer allocate stand-by or trial dates before arraignment.**

**NOTE. The target times set by (Practice Direction 5 of 2006) are unaffected.**

1. This direction specifies the procedure to be followed for the early agreement of non-essential witnesses, the listing of trials and the obtaining of witness availability.
2. A defendant will be arraigned within 6 weeks of being sent for trial.
3. After a defendant has been sent for trial, and in advance of the arraignment date, the PPS will send to the defence a list of witnesses whose evidence it is suggested can be agreed.
4. Where a defendant enters a not guilty plea at arraignment, the judge will determine whether or not the case is:
  - (a) suitable for an early trial; or
  - (b) not suitable for an early trial as there are issues which could require time to resolve (for example screening, PII, disclosure, expert witness issues).

### **Cases suitable for early trial**

5. Where the case is suitable for early trial the judge will, at arraignment, fix the stand by and trial dates for a date within the next 12 weeks.
6. The judge will, at arraignment, ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed.
7. Following arraignment, both the PPS and the solicitor(s) for the defendant(s) will **immediately** notify all witnesses whose attendance is required at trial of the stand by and trial dates. The initial contact will be by telephone call or email on the day of arraignment, or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses, by:
  - (a) in the case of civilian witnesses by a requirement to attend served by the PSNI;
  - (b) in the case of expert witnesses contact by the PPS or the PSNI as appropriate; or
  - (c) in the case of police witnesses by the PPS or PSNI as appropriate.
8. Where a witness does not confirm within five working days of the delivery of the requirement to attend, or in respect of defence witnesses within five working days of being notified, that they will attend court, an application for a witness summons will be made **immediately** by the party requiring the attendance of the witness(es).
9. Confirmation of attendance at court will be on the basis of receipt of a pro-forma reply or direct contact with the witness from civilian prosecution witnesses, or in the case of defence witnesses direct contact with the witness to confirm their attendance.
10. The judge will list the case for a review hearing 2 weeks after the arraignment where the stand by and trial dates will be confirmed or varied in light of the PPS and defence information about witness availability.
11. Where it becomes apparent that the date may have to be varied, both the prosecution and the defence will come to the review hearing with witness availability for a further 12 week period starting with the original trial date, or will have furnished the witness availability to the case progression officer in advance of the first review hearing if possible.

### **Cases not suitable for early trial**

12. At arraignment, when a judge is determining whether or not a case is suitable for an early trial, the judge will determine this on the basis that the case involves issues which could require time to resolve, for example screening, PII, disclosure, expert witness issues etc.

13. At arraignment, the judge will ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed.
14. The judge will determine which issues require resolution, and get indicative timescales from the representatives when the issues are likely to be resolved.
15. The judge will then timetable a hearing for all issues to be resolved. This hearing should be within 4 – 6 weeks of arraignment. The parties should attend with the availability of the witnesses required for trial, and, if possible, the judge will fix the stand-by and trial dates at that hearing.
16. If it has not been possible to fix the stand by and trial dates at arraignment, then once the issues in the case have been resolved, or the judge is satisfied that they can be resolved by the trial, the judge will fix the stand by and trial dates for a date within the next 12 weeks.
17. Once the dates have been fixed the PPS and the solicitor(s) for the defendant(s) will **immediately** notify all witnesses whose attendance is required at trial of the stand by and trial dates. The initial contact will be by telephone call or email on the day on which the date is fixed , or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses by:
  - (a) in the case of civilian witnesses by a requirement to attend served by the PSNI;
  - (b) in the case of expert witnesses contact by the PPS or the PSNI as appropriate; or
  - (c) in the case of police witnesses by the PPS or PSNI as appropriate.
18. Where a witness does not confirm within five working days of the delivery of the requirement to attend, or in respect of defence witnesses within five working days of being notified, that they will attend court, an application for a witness summons will be made **immediately** by the party requiring the attendance of the witness(es).
19. Confirmation of attendance at court will be on the basis of receipt of a pro-forma reply or direct contact with civilian prosecution witnesses, or in the case of defence witnesses direct contact with the witness to confirm their attendance.
20. Where it becomes apparent that the date may have to be varied, both the prosecution and the defence will come back before the court with witness availability for a further 12 week period starting with the original trial date, or will have furnished the witness availability to the case progression officer in advance, if possible

**COMMENCEMENT and EXTENT**

This Practice Direction will come into effect on 5<sup>th</sup> September 2011.

This Practice Direction applies to the County Court Division of Belfast, and the County Court Division of Antrim.

Dated this 31<sup>st</sup> day of August 2011

By the Direction of the Lord Chief Justice

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