



# Judicial Review and Courts Act 2022

## 2022 CHAPTER 35

### PART 2

#### COURTS, TRIBUNALS AND CORONERS

### CHAPTER 1

#### CRIMINAL PROCEDURE

*Offences triable either way: determining the mode of trial*

PROSPECTIVE

## **9 Powers to proceed if accused absent from allocation hearing**

- (1) The Magistrates' Courts Act 1980 is amended as follows.
- (2) In section 17B (power to proceed with indication of plea hearing in absence of disorderly but represented accused)—
  - (a) for the heading substitute “Power to proceed if accused does not appear to give indication as to plea”;
  - (b) for subsection (1) substitute—

“(1A) This section has effect where—

    - (a) a hearing is held for the purposes of section 17A,
    - (b) the accused does not appear at the hearing,
    - (c) any of the conditions in subsections (1B) to (1E) is met, and
    - (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.

*Status: This version of this provision is prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Judicial Review and Courts Act 2022, Section 9. (See end of Document for details)*

(1B) This condition is that a legal representative of the accused is present at the hearing and signifies the accused’s consent to the court’s proceeding in the accused’s absence.

(1C) This condition is that—

- (a) a legal representative of the accused is present at the hearing, and
- (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.

(1D) This condition is that—

- (a) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was served on the accused within what appears to the court to be a reasonable time before its date, and
- (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.

(1E) This condition is that—

- (a) the accused has appeared on a previous occasion to answer the charge, and
- (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.

(1F) This section also has effect where—

- (a) a hearing is held for the purposes of section 17A,
  - (b) the accused appears at the hearing,
  - (c) the court considers that by reason of the accused’s disorderly conduct before the court it is not practicable for the hearing to be conducted in the accused’s presence, and
  - (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.”;
- (c) in subsection (2), for the words before paragraph (a) substitute “If a legal representative of the accused is present at the hearing—”;
- (d) after subsection (4) insert—

“(5) If no legal representative of the accused is present at the hearing—

- (a) the court is to proceed in accordance with section 18(1), and
- (b) the accused is to be taken for the purposes of section 20 to have indicated that the accused would (if the offence were to proceed to trial) plead not guilty.”

(3) In section 18 (procedure for determining mode of trial), omit subsection (3).

(4) In section 23 (power to proceed with allocation hearing in absence of represented accused)—

- (a) for the heading substitute “Power to proceed if accused absent from allocation hearing”;
- (b) for subsection (1) substitute—

“(1A) This section has effect where—

- (a) a hearing is held in accordance with section 18(1) or (1A),

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- (b) the accused does not appear at the hearing,
- (c) any of the conditions in subsections (1B) to (1E) is met, and
- (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.

(1B) This condition is that a legal representative of the accused is present at the hearing and signifies the accused's consent to the court's proceeding in the accused's absence.

(1C) This condition is that—

- (a) a legal representative of the accused is present at the hearing, and
- (b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1D) This condition is that—

- (a) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was served on the accused within what appears to the court to be a reasonable time before its date, and
- (b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1E) This condition is that—

- (a) the accused has appeared on a previous occasion to answer the charge, and
- (b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1F) This section also has effect where—

- (a) a hearing is held in accordance with section 18(1) or (1A),
- (b) the accused appears at the hearing,
- (c) the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for the hearing to be conducted in the accused's presence, and
- (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.

(1G) This section also has effect where a magistrates' court determines that section 17B(5) applies and proceeds straight away to a hearing in accordance with section 18(1).";

- (c) in subsection (4), in the words before paragraph (a), after "If" insert "a legal representative of the accused is present at the hearing and";
- (d) after subsection (4) insert—

“(4A) If no legal representative of the accused is present at the hearing, and the court decides under section 19 above that the offence appears to it more suitable for summary trial, then section 20 above shall not apply, and the court shall proceed to the summary trial of the information.

(4B) In a case within subsection (4A)—

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- (a) the accused may, at any time before the taking of a plea in the summary trial, apply to the court for the question of the mode of trial to be reopened;
- (b) the court may, if it considers it in the interests of justice to do so (having regard, in particular, to the reason given by the accused for not appearing at the earlier hearing), accede to the application and arrange a hearing under paragraph (c);
- (c) if a hearing takes place under this paragraph and the accused appears at it, the court is not to proceed to summary trial by virtue of subsection (4A), but is to proceed in accordance with subsections (2) to (9) of section 20 above.”

(5) After section 24B insert—

**“24BA Power to proceed if child or young person absent from plea and allocation hearing**

- (1) This section has effect where—
  - (a) a hearing is held for the purposes of section 24A(2),
  - (b) the accused does not appear at the hearing,
  - (c) the accused has failed to give a written indication of plea (see section 24ZA(11)),
  - (d) either—
    - (i) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was served on the accused within what appears to the court to be a reasonable time before its date, or
    - (ii) the accused has appeared on a previous occasion to answer the charge,
  - (e) the court does not consider that there is an acceptable reason for the accused’s failure to attend, and
  - (f) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.
- (2) Section 24A ceases to apply.
- (3) If no legal representative of the accused is present at the hearing, the court is to proceed to make the relevant determination (within the meaning given by section 24A(2)) as if the accused had appeared at the hearing and indicated that the accused would plead not guilty.
- (4) If a legal representative of the accused is present at the hearing, the court is to proceed in accordance with subsection (2) of section 24B (and subsections (3) and (4) of that section are to apply accordingly).”

**Commencement Information**

**II** S. 9 not in force at Royal Assent, see [s. 51\(4\)](#)

**Status:**

This version of this provision is prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Judicial Review and Courts Act 2022, Section 9.