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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 9**

**ALLOCATION AND SENDING FOR TRIAL**

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## GENERAL RULES

### When this Part applies

**9.1.**—<sup>F3</sup>(1) This Part applies to—

- (a) the allocation and sending of cases to the Crown Court for trial under—
  - (i) sections 17A to 26 of the Magistrates' Courts Act 1980, and
  - (ii) sections 50A to 52 of the Crime and Disorder Act 1998; and
- (b) the sending back or referring of cases to a magistrates' court for trial under—
  - (i) section 46ZA of the Senior Courts Act 1981, and
  - (ii) paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998.]

(2) Rules 9.6 and 9.7 apply in a magistrates' court where the court must, or can, send a defendant to the Crown Court for trial, without allocating the case for trial there.

(3) Rules 9.8 to 9.14 apply in a magistrates' court where the court must allocate the case to a magistrates' court or to the Crown Court for trial.

<sup>F4</sup>(4) Rule 9.15 applies in a magistrates' court where, after applying other rules in this Part, the court can commit for sentence to the Crown Court a defendant who pleads guilty to an offence related to one sent for trial there.]

<sup>F5</sup>(5) Rule 9.16 applies in the Crown Court where the court can send back or refer a defendant to a magistrates' court for trial.]

<sup>F6</sup>[*Note. At the first hearing in a magistrates' court the court may (and in some cases must) order trial in that court, or may (and in some cases must) send the defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998.*

*The decision depends upon—*

- (a) *the classification of the offence (and the general rule, subject to exceptions, is that an offence classified as triable only on indictment must be sent to the Crown Court for trial; an offence classified as triable only summarily must be tried in a magistrates' court; and an offence classified as triable either way, on indictment or summarily, must be allocated to one or the other court for trial, subject to the defendant's right to choose Crown Court trial : see in particular sections 50A, 51 and 51A of the 1998 Act and section 19 of the Magistrates' Courts Act 1980 );*
- (b) *the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act );*
- (c) *whether the defendant is awaiting Crown Court trial for another offence;*
- (d) *whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence;*
- (e) *in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000; and*
- (f) *in a case of low-value shoplifting, whether the defendant chooses Crown Court trial: see section 22A of the 1980 Act .]*

<sup>F7</sup>*A magistrates' court's powers] of sending and allocation, including its powers (i) to receive a defendant's indication of an intention to plead guilty (see rules 9.7, 9.8 and 9.13) and (ii) to give*

an indication of likely sentence (see rule 9.11), may be exercised by a single justice: see sections 51 and 51A(11) of the 1998 Act, and sections 17E, 18(5) and 24D of the 1980 Act(1).]

[<sup>F8</sup>The circumstances in which the Crown Court can send back or refer a case for magistrates' court trial are summarised in the note to rule 9.16.]

#### Textual Amendments

- F3** Rule 9.1(1) substituted (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815), rules 2(e), 9(a)(i)
- F4** Rule 9.1(4) inserted (4.4.2022) by The Criminal Procedure (Amendment) Rules 2022 (S.I. 2022/45), rules 1, 6(a)
- F5** Rule 9.1(5) inserted (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815), rules 2(e), 9(a)(ii)
- F6** Words in rule 9.1 Note substituted (4.10.2021) by The Criminal Procedure (Amendment No. 2) Rules 2021 (S.I. 2021/849), rules 1, 6(a)
- F7** Words in rule 9.1 substituted (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815), rules 2(e), 9(a)(iii)
- F8** Words in rule 9.1 inserted (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815), rules 2(e), 9(a)(iv)

#### Commencement Information

- I1** Rule 9.1 in force at 5.10.2020, see Preamble

### Exercise of magistrates' court's powers

**9.2.**—[<sup>F9</sup>(1) This rule applies to the exercise of a magistrates' court's powers to which this Part applies.]

(2) The general rule is that the court must exercise its powers at a hearing in public, but it may exercise any power it has to—

- (a) withhold information from the public; or
- (b) order a hearing in private.

(3) The general rule is that the court must exercise its powers in the defendant's presence, but it may exercise the powers to which the following rules apply in the defendant's absence on the conditions specified—

- [<sup>F10</sup>(a) where rule 9.7 (Sending for Crown Court trial) applies, if the defendant is represented;]
- [<sup>F11</sup>(b)] where rule 9.8 (Adult defendant: request for plea), rule 9.9 (Adult defendant: guilty plea) or rule 9.13 (Young defendant) applies, if—
- (i) the defendant is represented, and
  - (ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable; <sup>F12</sup> ...
- [<sup>F11</sup>(c)] where rule 9.10 (Adult defendant: not guilty plea) or rule 9.11 (Adult defendant: allocation for magistrates' court trial) applies, if—
- (i) the defendant is represented and waives the right to be present, or

(1) 1980 c. 43; section 17E was inserted by paragraphs 1 and 3 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 18 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 24D was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Procedure Rules 2020, PART 9. (See end of Document for details)*

- (ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable [<sup>F13</sup>and]
- [<sup>F14</sup>(d) where rule 9.15 (Committal for sentence for offence related to an offence sent for trial) applies, unless—
- (i) it appears to the court to be contrary to the interests of justice to do so, and
- (ii) the court considers that there is an acceptable reason for the defendant's absence.]
- [<sup>F15</sup>(4) The court may exercise its power to adjourn—
- (a) if either party asks; or
- (b) on its own initiative.]
- (5) Where the court on the same occasion deals with two or more offences alleged against the same defendant, the court must deal with those offences in the following sequence—
- (a) any to which rule 9.6 applies (Prosecutor's notice requiring Crown Court trial);
- (b) any to which rule 9.7 applies (sending for Crown Court trial, without allocation there), in this sequence—
- (i) any the court must send for trial, then
- (ii) any the court can send for trial; and
- (c) any to which rule 9.14 applies (Allocation and sending for Crown Court trial).
- (6) Where the court on the same occasion deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court then in the following sequence—
- (a) the court must explain, in terms each defendant can understand (with help, if necessary), that if the court sends one of them to the Crown Court for trial then the court must send for trial in the Crown Court, too, any other of them—
- (i) who is charged with the same offence as the defendant sent for trial, or with an offence which the court decides is related to that offence,
- (ii) who does not wish to plead guilty to each offence with which he or she is charged, and
- (iii) (if that other defendant is under 18, and the court would not otherwise have sent him or her for Crown Court trial) where the court decides that sending is necessary in the interests of justice
- even if the court by then has decided to allocate that other defendant for magistrates' court trial; and
- (b) the court may ask the defendants questions to help it decide in what order to deal with them.
- (7) After following paragraph (5), if it applies, where the court on the same occasion—
- (a) deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court;
- (b) allocates any of them to a magistrates' court for trial; and
- (c) then sends another one of them to the Crown Court for trial,

the court must deal again with each one whom, on that occasion, it has allocated for magistrates' court trial.

*[Note. See sections 50A, 51, 51A and 52 of the Crime and Disorder Act 1998(2) and sections 17A, 17B, 17C, 18, 23, 24A, 24B and 24C of the Magistrates' Courts Act 1980(3).*

(2) 1998 c. 37; section 52 was amended by paragraphs 68 and 69 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

Under sections 57A to 57E of the 1998 Act(4), the court may require a defendant to attend by live link a hearing to which this Part applies.

Where a defendant waives the right to be present then the court may nonetheless require his or her attendance by summons or warrant: see section 26 of the 1980 Act(5).

Under section 52A of the 1998 Act(6), reporting restrictions apply to the proceedings to which rules 9.6 to 9.14 apply.

F16

Part 46 contains rules allowing a representative to act on a defendant's behalf for the purposes of these Rules.

Part 3 contains rules about the court's powers of case management.]

#### Textual Amendments

- F9 Rule 9.2(1) substituted (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815), rules 2(e), 9(b)
- F10 Rule 9.2(3)(a) inserted (4.10.2021) by The Criminal Procedure (Amendment No. 2) Rules 2021 (S.I. 2021/849), rules 1, 6(b)(i)
- F11 Rule 9.2(3)(a)(b) renumbered as rule 9.2(3)(b)(c) (4.10.2021) by The Criminal Procedure (Amendment No. 2) Rules 2021 (S.I. 2021/849), rules 1, 6(b)(i)
- F12 Word in rule 9.2(3)(b) omitted (4.4.2022) by virtue of The Criminal Procedure (Amendment) Rules 2022 (S.I. 2022/45), rules 1, 6(b)(i)
- F13 Word in rule 9.2(3)(c) inserted (4.4.2022) by The Criminal Procedure (Amendment) Rules 2022 (S.I. 2022/45), rules 1, 6(b)(ii)
- F14 Rule 9.2(3)(d) inserted (4.4.2022) by The Criminal Procedure (Amendment) Rules 2022 (S.I. 2022/45), rules 1, 6(b)(iii)
- F15 Rule 9.2(4) substituted (2.10.2023) by The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, 7(a)(i)
- F16 Words in rule 9.2 Note omitted (2.10.2023) by virtue of The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, 7(a)(ii)

#### Commencement Information

- I2 Rule 9.2 in force at 5.10.2020, see Preamble

### Matters to be specified on sending for trial

- 9.3.—(1) Where the court sends a defendant to the Crown Court for trial, it must specify—
- (a) each offence to be tried;

- (3) 1980 c. 43; sections 17A, 17B and 17C were inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25). Section 17A was amended by paragraph 62 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 23 was amended by section 125 of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41) and paragraphs 1 and 8 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Sections 24A, 24B and 24C were inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
- (4) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (5) 1980 c. 43; section 26 was amended by paragraphs 1 and 12 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
- (6) 1998 c. 37; section 52A was inserted by paragraphs 15 and 19 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by paragraphs 46 and 47 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**Status:** Point in time view as at 02/10/2023.

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- (b) in respect of each, the power exercised to send the defendant for trial for that offence; and
- (c) the Crown Court centre at which the trial will take place.

(2) In a case in which the prosecutor serves a notice to which rule 9.6(1)(a) applies (notice requiring Crown Court trial in a case of serious or complex fraud), the court must specify the Crown Court centre identified by that notice.

(3) In any other case, in deciding the Crown Court centre at which the trial will take place, the court must take into account—

- (a) the convenience of the parties and witnesses;
- (b) how soon a suitable courtroom will be available; and
- (c) the directions on the allocation of Crown Court business contained in the Practice Direction.

[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(7).]

**Commencement Information**

**I3** Rule 9.3 in force at 5.10.2020, see Preamble

**Duty of justices’ legal adviser**

**9.4.**—(1) This rule applies—

- (a) only in a magistrates’ court; and
- (b) unless the court—
  - (i) includes a District Judge (Magistrates’ Courts), and
  - (ii) otherwise directs.

(2) On the court’s behalf, a justices’ legal adviser may—

- (a) read the allegation of the offence to the defendant; <sup>F17</sup>and]
- (b) give any explanation and ask any question required by the rules in this Part; <sup>F18</sup>...
- <sup>F19</sup>(c) .....
- <sup>F20</sup>(3) .....

[Note. For the functions of a justices’ legal adviser, see sections 28 and 29 of the Courts Act 2003(8).

[<sup>F21</sup>See also rule 2.12 (Duties of justices’ legal adviser).]

**Textual Amendments**

**F17** Word in rule 9.4(2)(a) inserted (2.10.2023) by The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, 7(b)(i)

**F18** Word in rule 9.4(2)(b) omitted (2.10.2023) by virtue of The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, 7(b)(ii)

(7) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(8) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

- F19** Rule 9.4(2)(c) omitted (2.10.2023) by virtue of The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, 7(b)(iii)
- F20** Rule 9.4(3) omitted (2.10.2023) by virtue of The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, 7(b)(iii)
- F21** Words in rule 9.4 Note inserted (2.10.2023) by The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, 7(b)(iv)

#### Commencement Information

- I4** Rule 9.4 in force at 5.10.2020, see Preamble

### Duty of magistrates' court officer

**9.5.**—(1) The magistrates' court officer must—

- (a) serve notice of a sending for Crown Court trial on—
- (i) the Crown Court officer, and
  - (ii) the parties;
- (b) in that notice record—
- (i) the matters specified by the court under rule 9.3 (Matters to be specified on sending for trial),
  - (ii) any decision by the defendant under rule 9.7 (Sending for Crown Court trial) to require Crown Court trial for low-level shoplifting,
  - (iii) any indication given by the defendant under rule 9.7 of intended guilty plea,
  - (iv) any decision by the defendant under rule 9.11 (Adult defendant: allocation to magistrates' court for trial) to decline magistrates' court trial, <sup>F22</sup>...
  - [<sup>F23</sup>(v) any opinion stated by the court under rule 9.15 (Committal for sentence for offence related to an offence sent for trial), and]
  - [<sup>F24</sup>(vi) the date on which any custody time limit will expire;]
- (c) record any indication of likely sentence to which rule 9.11 [<sup>F25</sup>or rule 9.13] applies; and
- (d) give the court such other assistance as it requires.

(2) The magistrates' court officer must include with the notice served on the Crown Court officer—

- (a) the initial details of the prosecution case served by the prosecutor under rule 8.2;
- (b) a record of any—
- (i) listing or case management direction affecting the Crown Court,
  - (ii) direction about reporting restrictions,
  - (iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(9),
  - (iv) recognizance given by a surety, or
  - (v) representation order; and
- (c) if relevant, any available details of any—

(9) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

**Status:** Point in time view as at 02/10/2023.

**Changes to legislation:** There are currently no known outstanding effects for the  
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- (i) interpreter,
- (ii) intermediary, or
- (iii) other supporting adult, where the defendant is assisted by such a person.

[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(10), and section 20A of the Magistrates' Courts Act 1980(11).]

#### Textual Amendments

- F22** Word in rule 9.5(1)(b)(iv) omitted (4.4.2022) by virtue of The Criminal Procedure (Amendment) Rules 2022 (S.I. 2022/45), rules 1, 6(c)(ii)
- F23** Rule 9.5(1)(b)(v) inserted (4.4.2022) by The Criminal Procedure (Amendment) Rules 2022 (S.I. 2022/45), rules 1, 6(c)(iii)
- F24** Rule 9.5(1)(b)(v) renumbered as rule 9.5(1)(b)(vi) (4.4.2022) by The Criminal Procedure (Amendment) Rules 2022 (S.I. 2022/45), rules 1, 6(c)(i)
- F25** Words in rule 9.5(1)(c) inserted (4.10.2021) by The Criminal Procedure (Amendment No. 2) Rules 2021 (S.I. 2021/849), rules 1, 6(c)

#### Commencement Information

- I5** Rule 9.5 in force at 5.10.2020, see Preamble

### SENDING WITHOUT ALLOCATION FOR CROWN COURT TRIAL

#### Prosecutor's notice requiring Crown Court trial

**9.6.—**(1) This rule applies where a prosecutor with power to do so requires a magistrates' court to send for trial in the Crown Court—

- (a) a case of serious or complex fraud; or
  - (b) a case which will involve a child witness.
- (2) The prosecutor must serve notice of that requirement—
- (a) on the magistrates' court officer and on the defendant; and
  - (b) before trial in a magistrates' court begins under Part 24 (Trial and sentence in a magistrates' court).
- (3) The notice must identify—
- (a) the power on which the prosecutor relies; and
  - (b) the Crown Court centre at which the prosecutor wants the trial to take place.
- (4) The prosecutor—
- (a) must, when choosing a Crown Court centre, take into account the matters listed in rule 9.3(3) (court deciding to which Crown Court centre to send a case); and
  - (b) may change the centre identified before the case is sent for trial.

(10) 1998 c. 37; section 51 was substituted and section 51D inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). They were amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(11) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).



[Note. Under section 51B of the Crime and Disorder Act 1998(12), the Director of Public Prosecutions or a Secretary of State may require the court to send a case for trial in the Crown Court if, in that prosecutor’s opinion, the evidence of the offence charged—

- (a) is sufficient for the person charged to be put on trial for the offence; and
- (b) reveals a case of fraud of such seriousness or complexity that it is appropriate that the management of the case should without delay be taken over by the Crown Court.

Under section 51C of the Crime and Disorder Act 1998(13), the Director of Public Prosecutions may require the court to send for trial in the Crown Court a case involving one of certain specified violent or sexual offences if, in the Director’s opinion—

- (a) the evidence of the offence would be sufficient for the person charged to be put on trial for that offence;
- (b) a child would be called as a witness at the trial; and
- (c) for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Crown Court.

‘Child’ for these purposes is defined by section 51C(7) of the 1998 Act.]

#### Commencement Information

**I6** Rule 9.6 in force at 5.10.2020, see Preamble

### **Sending for Crown Court trial**

**9.7.**—(1) This rule applies where a magistrates’ court must, or can, send a defendant to the Crown Court for trial without first allocating the case for trial there.

- (2) The court must read the allegation of the offence to the defendant.
- (3) The court must explain, in terms the defendant can understand (with help, if necessary)—
  - (a) the allegation, unless it is self-explanatory;
  - (b) that the offence is one for which the court, as appropriate—
    - (i) must send the defendant to the Crown Court for trial because the offence is one which can only be tried there or because the court for some other reason is required to send that offence for trial,
    - (ii) may send the defendant to the Crown Court for trial if the magistrates’ court decides that the offence is related to one already sent for trial there, or
    - (iii) (where the offence is low-value shoplifting and the defendant is 18 or over) must send the defendant to the Crown Court for trial if the defendant wants to be tried there; and
  - (c) that reporting restrictions apply, which the defendant may ask the court to vary or remove.
- (4) In the following sequence, the court must then—
  - (a) invite the prosecutor to—
    - (i) identify the court’s power to send the defendant to the Crown Court for trial for the offence, and

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(12) 1998 c. 37; section 51B was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and paragraphs 46 and 48 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(13) 1998 c. 37; section 51C was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and modified by section 63 of, and paragraph 36 of Schedule 6 to, the Serious Crime Act 2007 (c. 27).

*Status: Point in time view as at 02/10/2023.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Procedure Rules 2020, PART 9. (See end of Document for details)*

- (ii) make representations about any ancillary matters, including bail and directions for the management of the case in the Crown Court;
- (b) invite the defendant to make representations about—
  - (i) the court’s power to send the defendant to the Crown Court, and
  - (ii) any ancillary matters;
- (c) (where the offence is low-value shoplifting and the defendant is 18 or over) offer the defendant the opportunity to require trial in the Crown Court; and
- (d) decide whether or not to send the defendant to the Crown Court for trial.
- (5) If the court sends the defendant to the Crown Court for trial, it must—
  - (a) ask whether the defendant intends to plead guilty in the Crown Court and—
    - (i) if the answer is ‘yes’, make arrangements for the Crown Court to take the defendant’s plea as soon as possible, or
    - (ii) if the defendant does not answer, or the answer is ‘no’, make arrangements for a case management hearing in the Crown Court; and
  - (b) give any other ancillary directions.

*[Note. See sections 51, 51A and 51E of the Crime and Disorder Act 1998(14), and sections 22A and 24A of the Magistrates’ Courts Act 1980(15).*

*See also Part 6 (Reporting, etc. restrictions).]*

#### **Commencement Information**

**17** Rule 9.7 in force at 5.10.2020, see Preamble

### *ALLOCATION FOR MAGISTRATES’ COURT OR CROWN COURT TRIAL*

#### **Adult defendant: request for plea**

- 9.8.**—(1) This rule applies where—
- (a) the defendant is 18 or over; and
  - (b) the court must decide whether a case is more suitable for trial in a magistrates’ court or in the Crown Court.
- (2) The court must read the allegation of the offence to the defendant.
- (3) The court must explain, in terms the defendant can understand (with help, if necessary)—
- (a) the allegation, unless it is self-explanatory;
  - (b) that the offence is one which can be tried in a magistrates’ court or in the Crown Court;
  - (c) that the court is about to ask whether the defendant intends to plead guilty;
  - (d) that if the answer is ‘yes’, then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;

(14) 1998 c. 37; section 51 was substituted, and sections 51A and 51E inserted, by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51 was amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(15) 1980 c. 43; section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

- (e) that if the defendant does not answer, or the answer is ‘no’, then—
- (i) the court must decide whether to allocate the case to a magistrates’ court or to the Crown Court for trial,
  - (ii) the value involved may require the court to order trial in a magistrates’ court (where the offence is one to which section 22 of the Magistrates’ Courts Act 1980(16) applies), and
  - (iii) if the court allocates the case to a magistrates’ court for trial, the defendant can nonetheless require trial in the Crown Court (unless the offence is one to which section 22 of the Magistrates’ Courts Act 1980 applies and the value involved requires magistrates’ court trial); and
- (f) that reporting restrictions apply, which the defendant may ask the court to vary or remove.
- (4) The court must then ask whether the defendant intends to plead guilty.

[Note. See section 17A of the Magistrates’ Courts Act 1980(17).

For the circumstances in which a magistrates’ court may (and, in some cases, must) commit a defendant to the Crown Court for sentence after that defendant has indicated an intention to plead guilty where this rule applies, [F<sup>26</sup>see sections 18 and 20 of the Sentencing Act 2020].

See also Part 6 (Reporting, etc. restrictions).]

#### Textual Amendments

**F26** Words in rule 9.8 substituted (8.2.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2, 7(a)

#### Commencement Information

**I8** Rule 9.8 in force at 5.10.2020, see Preamble

### Adult defendant: guilty plea

- 9.9.**—(1) This rule applies where—
- (a) rule 9.8 applies; and
  - (b) the defendant indicates an intention to plead guilty.
- (2) The court must exercise its power to deal with the case—
- (a) as if the defendant had just pleaded guilty at a trial in a magistrates’ court; and
  - (b) in accordance with rule 24.11 (Procedure if the court convicts).

[Note. See section 17A of the Magistrates’ Courts Act 1980.]

#### Commencement Information

**I9** Rule 9.9 in force at 5.10.2020, see Preamble

(16) [1980 c. 43](#); section 22 was amended by sections 38 and 170(2) of, and Schedule 16 to, the Criminal Justice Act [1988 \(c. 33\)](#), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act [1991 \(c. 53\)](#), section 2(2) of the Aggravated Vehicle Taking Act [1992 \(c. 11\)](#) and sections 46 and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act [1994 \(c. 33\)](#).

(17) [1980 c. 43](#); section 17A was inserted by section 49 of the Criminal Procedure and Investigations Act [1996 \(c. 25\)](#) and amended by paragraph 62 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act [2000 \(c. 6\)](#) and paragraphs 1 and 2 of Schedule 3 to the Criminal Justice Act [2003 \(c. 44\)](#).

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Procedure Rules 2020, PART 9. (See end of Document for details)*

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### **Adult defendant: not guilty plea**

**9.10.**—(1) This rule applies where—

- (a) rule 9.8 applies; and
- (b) the defendant—
  - (i) indicates an intention to plead not guilty, or
  - (ii) gives no indication of intended plea.

(2) In the following sequence, the court must then—

- (a) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies, explain in terms the defendant can understand (with help, if necessary) that—
  - (i) if the court decides that the value involved clearly is less than £5,000, the court must order trial in a magistrates' court,
  - (ii) if the court decides that it is not clear whether that value is more or less than £5,000, then the court will ask whether the defendant agrees to be tried in a magistrates' court, and
  - (iii) if the answer to that question is 'yes', then the court must order such a trial and if the defendant is convicted then the maximum sentence is limited;
- (b) invite the prosecutor to—
  - (i) identify any previous convictions of which it can take account, and
  - (ii) make representations about how the court should allocate the case for trial, including representations about the value involved, if relevant;
- (c) invite the defendant to make such representations;
- (d) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies—
  - (i) if it is not clear whether the value involved is more or less than £5,000, ask whether the defendant agrees to be tried in a magistrates' court,
  - (ii) if the defendant's answer to that question is 'yes', or if that value clearly is less than £5,000, order a trial in a magistrates' court,
  - (iii) if the defendant does not answer that question, or the answer is 'no', or if that value clearly is more than £5,000, apply paragraph (2)(e); and
- (e) exercise its power to allocate the case for trial, taking into account—
  - (i) the adequacy of a magistrates' court's sentencing powers,
  - (ii) any representations by the parties, and
  - (iii) any allocation guidelines issued by the Sentencing Council.

*[Note. See sections 17A, 18, 19, 22 and 24A of the Magistrates' Courts Act 1980(18).*

*Under section 22 of the 1980 Act, some offences, which otherwise could be tried in a magistrates' court or in the Crown Court, must be tried in a magistrates' court in the circumstances described in this rule.*

*The convictions of which the court may take account are those specified by section 19 of the 1980 Act.*

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(18) 1980 c. 43; section 18 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

The Sentencing Council may issue allocation guidelines under section 122 of the Coroners and Justice Act 2009(19). The definitive allocation guideline which took effect on 1<sup>st</sup> March, 2016 provides:

- (1) In general, either way offences should be tried summarily unless—
  - (a) the outcome would clearly be a sentence in excess of the court’s powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or
  - (b) for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.

(2) In cases with no factual or legal complications the court should bear in mind its power to commit for sentence after a trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers.

(3) Cases may be tried summarily even where the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.

(4) All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence, including any personal mitigation to which the defence wish to refer.

Where the court decides that the case is suitable to be dealt with in the magistrates’ court, it must warn the defendant that all sentencing options remain open and, if the defendant consents to summary trial and is convicted by the court or pleads guilty, the defendant may be committed to the Crown Court for sentence.]

**Commencement Information**

**I10** Rule 9.10 in force at 5.10.2020, see Preamble

**Adult defendant: allocation for magistrates’ court trial**

- 9.11.**—(1) This rule applies where—
- (a) rule 9.10 applies; and
  - (b) the court allocates the case to a magistrates’ court for trial.
- (2) The court must explain, in terms the defendant can understand (with help, if necessary) that—
- (a) the court considers the case more suitable for trial in a magistrates’ court than in the Crown Court;
  - (b) if the defendant is convicted at a magistrates’ court trial, then in some circumstances the court may commit the defendant to the Crown Court for sentence;
  - (c) if the defendant does not agree to a magistrates’ court trial, then the court must send the defendant to the Crown Court for trial; and

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- (d) before deciding whether to accept magistrates' court trial, the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea at such a trial, but the court need not give such an indication.
- (3) If the defendant asks for such an indication of sentence and the court gives such an indication—
- (a) the court must then ask again whether the defendant intends to plead guilty;
  - (b) if, in answer to that question, the defendant indicates an intention to plead guilty, then the court must exercise its power to deal with the case—
    - (i) as if the defendant had just pleaded guilty to an offence that can be tried only in a magistrates' court, and
    - (ii) in accordance with rule 24.11 (Procedure if the court convicts); and
  - (c) if, in answer to that question, the defendant indicates an intention to plead not guilty, or gives no indication of intended plea, in the following sequence the court must then—
    - (i) ask whether the defendant agrees to trial in a magistrates' court,
    - (ii) if the defendant's answer to that question is 'yes', order such a trial, and
    - (iii) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.
- (4) If the defendant asks for an indication of sentence but the court gives none, or if the defendant does not ask for such an indication, in the following sequence the court must then—
- (a) ask whether the defendant agrees to trial in a magistrates' court;
  - (b) if the defendant's answer to that question is 'yes', order such a trial; and
  - (c) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.

[Note. See section 20 of the Magistrates' Courts Act 1980(20).

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant to the Crown Court for sentence after that defendant has been convicted at a magistrates' court trial, <sup>[F27]</sup>see sections 14, 15, 17 and 20 of the Sentencing Act 2020].

For the circumstances in which an indication of sentence to which this rule applies restricts the sentencing powers of a court, see section 20A of the 1980 Act(21).]

<sup>[F28]</sup>Where the court orders trial in a magistrates' court, see also rules 3.16 to 3.18 about preparation for trial.]

#### Textual Amendments

- F27** Words in rule 9.11 Note substituted (8.2.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2, **7(b)**
- F28** Words in rule 9.11 Note inserted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **6(d)**

#### Commencement Information

- I11** Rule 9.11 in force at 5.10.2020, see Preamble

(20) 1980 c. 43; section 20 was amended by section 100 of, and paragraph 25 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraph 63 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(21) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

## Adult defendant: prosecutor's application for Crown Court trial

**9.12.**—(1) This rule applies where—

- (a) rule 9.11 applies;
- (b) the defendant agrees to trial in a magistrates' court; but
- (c) the prosecutor wants the court to exercise its power to send the defendant to the Crown Court for trial instead.

(2) The prosecutor must—

- (a) apply before trial in a magistrates' court begins under Part 24 (Trial and sentence in a magistrates' court); and
- (b) notify—
  - (i) the defendant, and
  - (ii) the magistrates' court officer.

(3) The court must determine an application to which this rule applies before it deals with any other pre-trial application.

*[Note. See sections 8A and 25 of the Magistrates' Courts Act 1980(22). Under section 25(2B), the court may grant an application to which this rule applies only if it is satisfied that the sentence which a magistrates' court would have power to impose would be inadequate.]*

### Commencement Information

**I12** Rule 9.12 in force at 5.10.2020, see Preamble

## Young defendant

**9.13.**—(1) This rule applies where—

- (a) the defendant is under 18; and
- (b) the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court.

(2) The court must read the allegation of the offence to the defendant.

(3) The court must explain, in terms the defendant can understand (with help, if necessary)—

- (a) the allegation, unless it is self-explanatory;
- (b) that the offence is one which can be tried in the Crown Court instead of in a youth court;
- (c) that the court is about to ask whether the defendant intends to plead guilty;
- (d) that if the answer is 'yes', then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;
- (e) that if the defendant does not answer, or the answer is 'no', then the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court; <sup>F29</sup> ...

(22) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 25 was amended by section 31 of, and paragraph 3 of Schedule 1 and Schedule 2, to the Prosecution of Offences Act 1985 (c. 23), paragraph 6 of Schedule 8 to the Criminal Justice Act 1991 (c. 53), paragraphs 1 and 5 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 42 of the Criminal Justice Act 2003 (c. 44) and paragraphs 1 and 11 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).



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[<sup>F30</sup>(f) that before answering and at any time until the court decides whether to send the defendant for Crown Court trial or order trial in a youth court—

- (i) the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea there and then, but
- (ii) the court need not give such an indication; and]

[<sup>F31</sup>(g) that reporting restrictions apply, which the defendant may ask the court to vary or remove.

[<sup>F32</sup>(4) The defendant may then ask the court for such an indication of sentence.]

[<sup>F33</sup>(5)] [<sup>F34</sup>Whether the defendant asks for and the court gives such an indication or not, the] court must then ask whether the defendant intends to plead guilty.

[<sup>F33</sup>(6)] If the defendant's answer to that question is 'yes', the court must exercise its power to deal with the case—

- (a) as if the defendant had just pleaded guilty at a trial in a youth court; and
- (b) in accordance with rule 24.11 (Procedure if the court convicts).

[<sup>F33</sup>(7)] If the defendant does not answer that question, or the answer is 'no', in the following sequence the court must then—

- (a) invite the prosecutor to make representations about whether Crown Court or youth court trial is more appropriate;
- (b) invite the defendant to make such representations; and
- (c) exercise its power to allocate the case for trial [<sup>F35</sup>in the Crown Court or a youth court], taking into account—
  - (i) the offence and the circumstances of the offence,
  - (ii) the suitability of a youth court's sentencing powers,
  - (iii) where the defendant is jointly charged with an adult, whether it is necessary in the interests of justice for them to be tried together in the Crown Court, and
  - (iv) any representations by the parties.

[*Note. See section 24A of the Magistrates' Courts Act 1980(23).*

*For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant who is under 18 to the Crown Court for sentence after that defendant has indicated a guilty plea, [<sup>F36</sup>see sections 16, 17, 19 and 20 of the Sentencing Act 2020] .]*

[<sup>F37</sup>Where the court orders trial in a youth court, see also rules 3.16 to 3.18 about preparation for trial.]

#### Textual Amendments

- F29** Word in rule 9.13(3)(e) omitted (4.10.2021) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, [6\(e\)\(ii\)](#)
- F30** Rule 9.13(f) inserted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, [6\(e\)\(iii\)](#)
- F31** Rule 9.13(3)(f) renumbered as rule 9.13(3)(g) (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, [6\(e\)\(i\)](#)
- F32** Rule 9.13(4) inserted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, [6\(e\)\(v\)](#)



- F33** Rule 9.13(4)(5)(6) renumbered as rule 9.13(5)(6)(7) (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **6(e)(iv)**
- F34** Words in rule 9.13(5) substituted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **6(e)(vi)**
- F35** Words in rule 9.13(7)(c) inserted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **6(e)(vii)**
- F36** Words in rule 9.13 Note substituted (8.2.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2, **7(c)**
- F37** Words in rule 9.13 Note inserted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **6(e)(viii)**

#### Commencement Information

- I13** Rule 9.13 in force at 5.10.2020, see Preamble

### Allocation and sending for Crown Court trial

**9.14.**—(1) This rule applies where—

- (a) under rule 9.10 or rule 9.13, the court allocates the case to the Crown Court for trial;
- (b) under rule 9.11, the defendant does not agree to trial in a magistrates' court; or
- (c) under rule 9.12, the court grants the prosecutor's application for Crown Court trial.

(2) In the following sequence, the court must—

- (a) invite the prosecutor to make representations about any ancillary matters, including bail and directions for the management of the case in the Crown Court;
- (b) invite the defendant to make any such representations; and
- (c) exercise its powers to—
  - (i) send the defendant to the Crown Court for trial, and
  - (ii) give any ancillary directions.

[Note. See sections 21 and 24A of the Magistrates' Courts Act 1980(24) and section 51 of the Crime and Disorder 1998(25). See also rule 9.3 (matters to be specified on sending for trial).]

#### Commencement Information

- I14** Rule 9.14 in force at 5.10.2020, see Preamble

### <sup>F38</sup> COMMITTAL FOR SENTENCE IN CONNECTION WITH SENDING FOR TRIAL

#### Textual Amendments

- F38** [Rule 9.15](#) and cross-heading and note inserted (4.4.2022) by [The Criminal Procedure \(Amendment\) Rules 2022 \(S.I. 2022/45\)](#), rules 1, **6(d)**

(24) 1980 c. 43; section 21 was amended by paragraphs 1 and 7 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(25) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

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**Changes to legislation:** There are currently no known outstanding effects for the  
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## Committal for sentence for offence related to an offence sent for trial

**9.15.**—(1) This rule applies where—

- (a) on a previous occasion the court has sent the defendant to the Crown Court for trial for an offence in exercise of a power to which rule 9.7, 9.13 or 9.14 applies;
- (b) on the present occasion, under rule 9.9 or 9.13 the defendant indicates an intention to plead guilty to, and is convicted of, an offence which the court decides is related to the offence for which the defendant was previously sent for trial;
- (c) the court decides to commit the defendant to the Crown Court for sentence for the related offence under—
  - (i) section 18 of the Sentencing Act 2020, if the defendant is over 18, or
  - (ii) section 19 of the 2020 Act, if the defendant is under 18; and
- (d) in the court’s opinion, if it were not committing the defendant for sentence under section 18 or 19 of the 2020 Act then it could, or would be required to, commit the defendant to the Crown Court for sentence for the related offence under—
  - (i) section 14 or 15 of that Act, if the defendant is over 18, or
  - (ii) section 16, 16A or 17 of that Act, if the defendant is under 18.

(2) The court must state that opinion for the Crown Court.

*[Note. See sections 18(4) and 19(3) of the Sentencing Act 2020 for the court’s powers to state the opinion to which this rule refers.*

*Under section 51E of the Crime and Disorder Act 1998 —*

- (a) *an offence classified as triable either way is related to an offence for which a defendant has been sent for trial in the Crown Court if both offences are based on the same prosecution evidence (and see rule 10.2(4)(c) in the rules about indictments); and*
- (b) *an offence classified as triable only summarily is related to an offence for which a defendant has been sent for trial in the Crown Court if both offences arise out of the same or connected circumstances.*

*Under section 51 of the 1998 Act —*

- (a) *if a magistrates’ court sends a defendant to the Crown Court for trial for an offence and on the same occasion deals with a related offence then the general rule is that the court must send the defendant to the Crown Court for trial for the related offence, too; but*
- (b) *if the court sends a defendant to the Crown Court for trial for an offence on one occasion and on a later occasion deals with a related offence then it may send the defendant to the Crown Court for trial for the related offence, too, or it may finish dealing with that offence itself and, if it convicts the defendant, may commit the defendant for sentence to the Crown Court instead.*

*For the circumstances in which a magistrates’ court may (and, in some cases, must) commit a defendant to the Crown Court for sentence or for the making of other orders beyond a magistrates’ court’s powers, see sections 14, 15, 16, 16A, 17, 18, 19, 20 and 24 of the Sentencing Act 2020 and paragraph 11 of Schedule 16 to that Act. See also rules 24.11 (Procedure if the court convicts) and 28.12 (Sentencing, etc. after committal to the Crown Court). The note to rule 28.12 summarises the statutory provisions that apply.]]*

*f<sup>39</sup>*SENDING BACK, ETC. FOR MAGISTRATES' COURT TRIAL

**Textual Amendments**

**F39** Rule 9.16 and cross-heading inserted (15.8.2022) by **The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815), rules 2(e), 9(c)**

**Sending back or referring case for magistrates' court trial**

**9.16.**—(1) This rule applies where a magistrates' court sends the defendant to the Crown Court for trial and—

- (a) under section 46ZA of the Senior Courts Act 1981, the Crown Court can send the defendant back to a magistrates' court for trial for a summary offence or for an offence triable either way; or
  - (b) under paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998, where a summary offence remains outstanding the Crown Court must so inform the magistrates' court.
- (2) Where paragraph (1)(a) applies—
- (a) the Crown Court may exercise its power to send back—
    - (i) at a hearing, in public or in private, or without a hearing,
    - (ii) in the defendant's absence, but only if the defendant consents to being absent on its exercise, and
    - (iii) in the prosecutor's absence, but only if the prosecutor has had at least 5 business days in which to make representations; and
  - (b) if the defendant is under 18, the Crown Court must—
    - (i) consider sending the defendant back, and
    - (ii) explain why, if it does not do so.
- (3) Where paragraph (1)(a) applies and the Crown Court sends the defendant back—
- (a) the Crown Court must—
    - (i) specify the date on which the defendant must attend at or be taken to the magistrates' court, and
    - (ii) decide whether to grant or withhold bail;
  - (b) the Crown Court officer must make available to the magistrates' court officer a record of the Crown Court's order under paragraph (3)(a) and details of any—
    - (i) case management direction affecting the magistrates' court,
    - (ii) direction about reporting restrictions,
    - (iii) period for which the defendant was in custody during proceedings in the Crown Court,
    - (iv) decision about bail, for the purposes of section 5 of the Bail Act 1976,
    - (v) recognizance given by a surety,
    - (vi) representation order,
    - (vii) interpreter, intermediary, or supporting adult, and
    - (viii) information supplied by the parties for the purposes of case management by the court; and

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- (c) the Crown Court officer must at the same time serve on each party notice of the sending back and of the Crown Court's order, unless that party was present when the order was made.
- (4) Where paragraph (1)(b) applies—
  - (a) the Crown Court must exercise its power at a hearing; and
  - (b) unless the defendant pleads guilty to the summary offence, the Crown Court officer must notify the magistrates' court officer of the outcome of the proceedings.

*[Note. An offence may be classified as triable only on indictment; triable only summarily (a summary offence); or triable either way (on indictment or summarily). Offences classified either as triable only on indictment or as triable either way collectively are described as indictable offences.*

*Under section 46ZA(2) of the Senior Courts Act 1981 the Crown Court cannot send the defendant back to a magistrates' court for trial—*

- (a) *where the defendant is 18 or over, or is a corporation, and the offence is triable only on indictment; or*
- (b) *where the defendant is under 18 and the offence is homicide or one of the other offences listed in section 51A(12) of the Crime and Disorder Act 1998.*

*Under section 46ZA(3) of the 1981 Act the Crown Court cannot send an adult or corporate defendant back to a magistrates' court for trial for an offence triable either way unless the defendant consents.*

*Under section 46ZA(5) of the 1981 Act, in deciding whether to send a defendant back the Crown Court must take into account (a) any other related offence before the Crown Court (whether the same, or a different, person is accused or has been convicted of the other offence), and (b) any allocation guideline.*

*Under section 46ZA(6) of the 1981 Act, on sending a defendant back the Crown Court may give such directions as appear to be necessary with respect to the custody of the defendant or for the defendant's release on bail until the defendant can appear or be brought before the magistrates' court.*

*Under paragraph 6(7) of Schedule 3 to the Crime and Disorder Act 1998, the Crown Court must inform the magistrates' court of the outcome of the proceedings in the Crown Court where—*

- (a) *the offences for which the defendant was sent for trial include a summary offence;*
- (b) *that summary offence is not tried in the Crown Court under a power to do so;*
- (c) *in the Crown Court the defendant is convicted of an indictable offence;*
- (d) *the Crown Court considers that the summary offence is related to any indictable offence for which the defendant was sent for trial;*
- (e) *under paragraph 6(4), the defendant does not plead guilty in the Crown Court to the summary offence; and*
- (f) *under paragraph 6(6), the prosecutor does not wish to withdraw the prosecution for that offence.*

*Under paragraph 6(5) of Schedule 3 to the 1998 Act, the Crown Court then has no other powers, for example to send the defendant back to the magistrates' court on bail or in custody.*

*See also rule 28.10 (Committal or remission, etc. for sentence), which applies to the exercise of the Crown Court's powers under sections 25, 25A and 26 of the Sentencing Act 2020 to remit a convicted defendant to a magistrates' court for sentence.]]*



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