



# Magistrates' Courts Act 1980

## 1980 CHAPTER 43

### PART I **U.K.**

#### CRIMINAL JURISDICTION AND PROCEDURE

##### *Jurisdiction to issue process and deal with charges*

### 1 **Issue of summons to accused or warrant for his arrest.** **E+W**

- (1) Upon an information being laid before a justice of the peace for an area to which this section applies that any person has, or is suspected of having, committed an offence, the justice may, in any of the events mentioned in subsection (2) below, but subject to subsections (3) to (5) below,—
- (a) issue a summons directed to that person requiring him to appear before a magistrates' court for the area to answer to the information, or
  - (b) issue a warrant to arrest that person and bring him before a magistrates' court for the area or such magistrates' court as is provided in subsection (5) below.
- (2) A justice of the peace for an area to which this section applies may issue a summons or warrant under this section—
- (a) if the offence was committed or is suspected to have been committed within the area, or
  - (b) if it appears to the justice necessary or expedient, with a view to the better administration of justice, that the person charged should be tried jointly with, or in the same place as, some other person who is charged with an offence, and who is in custody, or is being or is to be proceeded against, within the area, or
  - (c) if the person charged resides or is, or is believed to reside or be, within the area, or
  - (d) if under any enactment a magistrates' court for the area has jurisdiction to try the offence, or
  - (e) if the offence was committed outside England and Wales and, where it is an offence exclusively punishable on summary conviction, if a magistrates court

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for the area would have jurisdiction to try the offence if the offender were before it.

- (3) No warrant shall be issued under this section unless the information is in writing and substantiated on oath.
- (4) No warrant shall be issued under this section for the arrest of any person who has attained [<sup>F1</sup> the age of 18 years] unless—
  - (a) the offence to which the warrant relates is an indictable offence or is punishable with imprisonment, or
  - (b) the person's address is not sufficiently established for a summons to be served on him.
- (5) Where the offence charged is not an indictable offence—
  - (a) no summons shall be issued by virtue only of paragraph (c) of subsection (2) above, and
  - (b) any warrant issued by virtue only of that paragraph shall require the person charged to be brought before a magistrates' court having jurisdiction to try the offence.
- (6) Where the offence charged is an indictable offence, a warrant under this section may be issued at any time notwithstanding that a summons has previously been issued.
- (7) A justice of the peace may issue a summons or warrant under this section upon an information being laid before him notwithstanding any enactment requiring the information to be laid before two or more justices.
- (8) The areas to which this section applies are [<sup>F2</sup>commission areas].

#### Textual Amendments

- F1** Words in s. 1(4) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68(d), 101(1), Sch. 8 para. 6(1)(a), **Sch. 12 para. 22(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F2** Words in s. 1(8) substituted (1.4.1996) by virtue of 1994 c. 19, s. 1(3), **Sch. 2 para. 11(1)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22, 23(2)); S.I. 1995/3198, **art. 3 Sch. 1**; S.I. 1996/674, arts. 1(2), 2, **Sch. Pt. I para. 2(1)**; S.I. 1996/675, arts. 1(2), 2, **Sch. Pt. I para. 2(1)**

#### Modifications etc. (not altering text)

- C1** S. 1(2) modified by Road Traffic Act 1974 (c. 50, SIF 107:1), **s. 5(8)** (as inserted by Transport Act 1982 (c. 49, SIF 107:1), s. 74(1), **Sch. 5 para. 18(8)**)
- C2** S. 1(2) modified by Road Traffic Regulation Act 1984 (c. 27, SIF 107:1), ss. 111(8), 143, 144, 145(5), **Sch. 12 para. 10(3)**

## 2 Jurisdiction to deal with charges. **E+W**

- (1) A magistrates' court for [<sup>F3</sup>a commission area <sup>F4</sup>. . .] shall have jurisdiction to try all summary offences committed within [<sup>F3</sup>the commission area]. . .
- (2) Where a person charged with a summary offence appears or is brought before a magistrates' court in answer to a summons issued under paragraph (b) of section 1(2) above, or under a warrant issued under that paragraph, the court shall have jurisdiction to try the offence.

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- (3) A magistrates' court for [<sup>F3</sup>a commission area <sup>F4</sup>. . .] shall have jurisdiction as examining justices over any offence committed by a person who appears or is brought before the court, whether or not the offence was committed within [<sup>F3</sup>the commission area]. . .
- (4) Subject to sections 18 to 22 below and any other enactment (wherever contained) relating to the mode of trial of offences triable either way, a magistrates' court shall have jurisdiction to try summarily an offence triable either way in any case in which under subsection (3) above it would have jurisdiction as examining justices.
- (5) A magistrates' court shall, in the exercise of its powers under section 24 below, have jurisdiction to try summarily an indictable offence in any case in which under subsection (3) above it would have jurisdiction as examining justices.
- (6) A magistrates' court for any area by which a person is tried for an offence shall have jurisdiction to try him for any summary offence for which he could be tried by a magistrates' court for any other area.
- (7) Nothing in this section shall affect any jurisdiction over offences conferred on a magistrates' court by any enactment not contained in this Act.

#### Textual Amendments

- F3** Words in s. 2(1)(3) substituted (1.4.1996) by virtue of 1994 c. 19, s. 1(3), **Sch. 2 para. 11(2)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22, 23(2)); S.I. 1995/3198, art. 3, **Sch. 1**; S.I. 1996/674, reg. 2, **Sch. Pt. I para. 2(2)(a)(b)**
- F4** Words in s. 2(1)(3) repealed (1.4.1996) by S.I. 1996/675, art. 2, **Sch. Pt. I para. 2(2)(a)(b)**

#### Modifications etc. (not altering text)

- C3** S. 2(1) modified by **Road Traffic Act 1974** (c. 50, SIF 107:1), s. 5(8) (as inserted by Transport Act 1982) (c. 49, SIF 107:1), s. 74(1), Sch. 5 para. 18(8)
- C4** S. 2(1) modified by **Road Traffic Regulation Act 1984** (c. 27, SIF 107:1), ss. 111(8), 143, 144, 145(5), **Sch. 12 para. 10(3)**

### 3 Offences committed on boundaries, etc. **E+W**

- (1) Where an offence has been committed on the boundary between two or more areas to which this section applies, or within 500 yards of such a boundary, or in any harbour, river, arm of the sea or other water lying between two or more such areas, the offence may be treated for the purposes of the preceding provisions of this Act as having been committed in any of those areas.
- (2) An offence begun in one area to which this section applies and completed in another may be treated for the purposes of the preceding provisions of this Act as having been wholly committed in either.
- (3) Where an offence has been committed on any person, or on or in respect of any property, in or on a vehicle or vessel engaged on any journey or voyage through two or more areas to which this section applies, the offence may be treated for the purposes of the preceding provisions of this Act as having been committed in any of those areas; and where the side or any part of a road or any water along which the vehicle or vessel passed in the course of the journey or voyage forms the boundary between two or more

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areas to which this section applies, the offence may be treated for the purposes of the preceding provisions of this Act as having been committed in any of those areas.

(4) The areas to which this section applies are [<sup>F5</sup>commission areas].

#### Textual Amendments

**F5** Words in s. 3(4) substituted (1.4.1996) by S.I. 1996/675, art. 2, Sch. Pt. I para. 2(3)

#### [<sup>F6</sup>3A Offences committed on ships and abroad. **E+W**

Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the law of England and Wales as they apply in relation to offences under that Act or instruments under that Act.]

#### Textual Amendments

**F6** S. 3A inserted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), Sch. 13 para.55 (with s. 312(1))

#### [<sup>F7</sup>3B Transfer of trials of summary offences. **E+W**

- (1) Where a person is required to appear, or to be brought, before a magistrates' court on an information charging him with a summary offence, he or the prosecutor may apply to the court for the offence to be tried by a magistrates' court which is named in the application but which would not, apart from subsection (2) below, have jurisdiction to try the offence.
- (2) Where an application under this section is granted, the court named in it shall have jurisdiction to try the offence.
- (3) The Lord Chancellor may make regulations specifying—
  - (a) matters which a court must consider in deciding whether to grant or refuse an application under this section; and
  - (b) circumstances in which a court must grant or refuse such an application.
- (4) The power to make regulations under subsection (3) above shall be exercisable by statutory instrument which shall be subject to annulment by resolution of either House of Parliament.]

#### Textual Amendments

**F7** S. 3B inserted (*prosp.*) by 1999 c. 22, ss. 80(1), 108(1) (with Sch. 14 para. 7(2))

### *Committal proceedings*

#### 4 General nature of committal proceedings. **E+W**

- (1) The functions of examining justices may be discharged by a single justice.

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- (2) Examining justices shall sit in open court except where any enactment contains an express provision to the contrary and except where it appears to them as respects the whole or any part of committal proceedings that the ends of justice would not be served by their sitting in open court.
- [<sup>F8</sup>(3) Subject to subsection (4) below, evidence tendered before examining justices shall be tendered in the presence of the accused.]
- (4) Examining justices may allow evidence to be [<sup>F9</sup>tendered] before them in the absence of the accused if—
- they consider that by reason of his disorderly conduct before them it is not practicable for the evidence to be [<sup>F9</sup> tendered] in his presence, or
  - he cannot be present for reasons of health but is represented by [<sup>F10</sup> a legal representative] and has consented to the evidence being [<sup>F9</sup>tendered] in his absence.

#### Textual Amendments

- F8** S. 4(3) substituted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the substituting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para. 2(2)** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F9** Words in s. 4(4) inserted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para. 2(3)** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F10** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37, 82), s. 125(3), **Sch. 18 para. 25(3)(a)**

## 5 Adjourning of inquiry. **E+W**

- (1) A magistrates' court may, before beginning to inquire into an offence as examining justices, or at any time during the inquiry, adjourn the hearing, and if it does so shall remand the accused.
- (2) The court shall when adjourning fix the time and place at which the hearing is to be resumed; and the time fixed shall be that at which the accused is required to appear or be brought before the court in pursuance of the remand [<sup>F11</sup>or would be required to be brought before the court but for section 128(3A) below].

#### Textual Amendments

- F11** Words added by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 59(1), **Sch. 9 para. 1(a)**

## [<sup>F12</sup>5A Evidence which is admissible. **E+W**

- (1) Evidence falling within subsection (2) below, and only that evidence, shall be admissible by a magistrates' court inquiring into an offence as examining justices.
- (2) Evidence falls within this subsection if it—
- is tendered by or on behalf of the prosecutor, and
  - falls within subsection (3) below.
- (3) The following evidence falls within this subsection—
- written statements complying with section 5B below;

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- (b) the documents or other exhibits (if any) referred to in such statements;
  - (c) depositions complying with section 5C below;
  - (d) the documents or other exhibits (if any) referred to in such depositions;
  - (e) statements complying with section 5D below;
  - (f) documents falling within section 5E below.
- (4) In this section “document” means anything in which information of any description is recorded.]

#### Textual Amendments

**F12** Ss. 5A-5F inserted (with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para.3** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

#### Modifications etc. (not altering text)

**C5** S. 5A extended (with effect as mentioned in Sch. 1 Pt. III para. 39 of 1996 c. 25) by 1972 c. 71, **s. 46(1A)(a)(1B)(a)** (as inserted by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 22(3)** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**)

### <sup>F13</sup>**5B** Written statements. **E+W**

- (1) For the purposes of section 5A above a written statement complies with this section if—
- (a) the conditions falling within subsection (2) below are met, and
  - (b) such of the conditions falling within subsection (3) below as apply are met.
- (2) The conditions falling within this subsection are that—
- (a) the statement purports to be signed by the person who made it;
  - (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
  - (c) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.
- (3) The conditions falling within this subsection are that—
- (a) if the statement is made by a person under 18 years old, it gives his age;
  - (b) if it is made by a person who cannot read it, it is read to him before he signs it and is accompanied by a declaration by the person who so read the statement to the effect that it was so read;
  - (c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c) above is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.
- (4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

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- (5) Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.
- (6) In this section “document” means anything in which information of any description is recorded.

#### Textual Amendments

**F13** Ss. 5A-5F inserted (with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para.3**; S.I. 1997/683, **art. 1(2)**

#### Modifications etc. (not altering text)

**C6** S. 5B extended (with effect as mentioned in Sch. 1 Pt. III para. 39 of 1996 c. 25) by 1972 c. 71, **s. 46(1A)(b)** (as inserted by 1996 c. 25, s. 47, **Sch. 1 Pt. II para. 22(3)** (with s. 78(1); S.I. 1997/683, **art. 1(2)**)

S. 5B extended (with modifications) (with effect as mentioned in Sch. 1 Pt. III para. 39 of 1996 c. 25) by 1972 c. 71, **s. 46(1B)(b)** (as inserted by 1996 c. 25, **Sch. 1 Pt. II para. 22(3)** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**)

**C7** S. 5B modified (prosp.) by 1997 c. 39, **ss. 9(1), 11(2)** (with ss. 1(4), 11(3))

#### <sup>F14</sup>5C **Depositions.** **E+W**

- (1) For the purposes of section 5A above a deposition complies with this section if—
  - (a) a copy of it is sent to the prosecutor under section 97A(9) below,
  - (b) the condition falling within subsection (2) below is met, and
  - (c) the condition falling within subsection (3) below is met, in a case where it applies.
- (2) The condition falling within this subsection is that before the magistrates' court begins to inquire into the offence concerned as examining justices a copy of the deposition is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.
- (3) The condition falling within this subsection is that, if the deposition refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2) above is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.
- (4) So much of any deposition as is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any deposition as is not read aloud.
- (5) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in court by the person whose evidence is taken as the deposition.
- (6) In this section “document” means anything in which information of any description is recorded.

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#### Textual Amendments

**F14** Ss. 5A-5F inserted (with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para.3**; S.I. 1997/683, **art. 1(2)**

#### Modifications etc. (not altering text)

**C8** S. 5C modified (prosp.) by 1997 c. 39, **ss. 9(1), 11(2)** (with **ss. 1(4), 11(3)**)

### <sup>F15</sup>**5D Statements.** **E+W**

- (1) For the purposes of section 5A above a statement complies with this section if the conditions falling within subsections (2) to (4) below are met.
- (2) The condition falling within this subsection is that, before the committal proceedings begin, the prosecutor notifies the magistrates' court and each of the other parties to the proceedings that he believes—
  - (a) that the statement might by virtue of section 23 or 24 of the <sup>M1</sup>Criminal Justice Act 1988 (statements in certain documents) be admissible as evidence if the case came to trial, and
  - (b) that the statement would not be admissible as evidence otherwise than by virtue of section 23 or 24 of that Act if the case came to trial.
- (3) The condition falling within this subsection is that—
  - (a) the prosecutor's belief is based on information available to him at the time he makes the notification,
  - (b) he has reasonable grounds for his belief, and
  - (c) he gives the reasons for his belief when he makes the notification.
- (4) The condition falling within this subsection is that when the court or a party is notified as mentioned in subsection (2) above a copy of the statement is given, by or on behalf of the prosecutor, to the court or the party concerned.
- (5) So much of any statement as is in writing and is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

#### Textual Amendments

**F15** Ss. 5A-5F inserted (with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para.3**; S.I. 1997/683, **art. 1(2)**

#### Modifications etc. (not altering text)

**C9** S. 5D modified (prosp.) by 1997 c. 39, **ss. 9(1), 11(2)** (with **ss. 1(4), 11(3)**)

#### Marginal Citations

**M1** 1988 c. 33.



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**F16 5E Other documents.** **E+W**

- (1) The following documents fall within this section—
  - (a) any document which by virtue of any enactment is evidence in proceedings before a magistrates' court inquiring into an offence as examining justices;
  - (b) any document which by virtue of any enactment is admissible, or may be used, or is to be admitted or received, in or as evidence in such proceedings;
  - (c) any document which by virtue of any enactment may be considered in such proceedings;
  - (d) any document whose production constitutes proof in such proceedings by virtue of any enactment;
  - (e) any document by the production of which evidence may be given in such proceedings by virtue of any enactment.
- (2) In subsection (1) above—
  - (a) references to evidence include references to prima facie evidence;
  - (b) references to any enactment include references to any provision of this Act.
- (3) So much of any document as is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any document as is not read aloud.
- (4) In this section “document” means anything in which information of any description is recorded.

**Textual Amendments**

**F16** Ss. 5A-5F inserted (with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para.3**; S.I. 1997/683, **art. 1(2)**

**F17 5F Proof by production of copy.** **E+W**

- (1) Where a statement, deposition or document is admissible in evidence by virtue of section 5B, 5C, 5D or 5E above it may be proved by the production of—
  - (a) the statement, deposition or document, or
  - (b) a copy of it or the material part of it.
- (2) Subsection (1)(b) above applies whether or not the statement, deposition or document is still in existence.
- (3) It is immaterial for the purposes of this section how many removes there are between a copy and the original.
- (4) In this section “copy”, in relation to a statement, deposition or document, means anything onto which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly.

**Textual Amendments**

**F17** Ss. 5A-5F inserted (with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para.3**; S.I. 1997/683, **art. 1(2)**

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## 6 Discharge or committal for trial. **E+W**

[<sup>F18</sup>(1) A magistrates' court inquiring into an offence as examining justices shall on consideration of the evidence—

- (a) commit the accused for trial if it is of opinion that there is sufficient evidence to put him on trial by jury for any indictable offence;
- (b) discharge him if it is not of that opinion and he is in custody for no other cause than the offence under inquiry;

but the preceding provisions of this subsection have effect subject to the provisions of this and any other Act relating to the summary trial of indictable offences.

(2) If a magistrates' court inquiring into an offence as examining justices is satisfied that all the evidence tendered by or on behalf of the prosecutor falls within section 5A(3) above, it may commit the accused for trial for the offence without consideration of the contents of any statements, depositions or other documents, and without consideration of any exhibits which are not documents, unless—

- (a) the accused or one of the accused has no legal representative acting for him in the case, or
- (b) a legal representative for the accused or one of the accused, as the case may be, has requested the court to consider a submission that there is insufficient evidence to put that accused on trial by jury for the offence;

and subsection (1) above shall not apply to a committal for trial under this subsection.]

(3) Subject to section 4 of the <sup>M2</sup>Bail Act 1976 and section 41 below, the court may commit a person for trial—

- (a) in custody, that is to say, by committing him to custody there to be safely kept until delivered in due course of law, or
- (b) on bail in accordance with the <sup>M3</sup>Bail Act 1976, that is to say, by directing him to appear before the Crown Court for trial;

and where his release on bail is conditional on his providing one or more surety or sureties and, in accordance with section 8(3) of the <sup>M4</sup>Bail Act 1976, the court fixes the amount in which the surety is to be bound with a view to his entering into his recognizance subsequently in accordance with subsections (4) and (5) or (6) of that section the court shall in the meantime commit the accused to custody in accordance with paragraph (a) of this subsection.

(4) Where the court has committed a person to custody in accordance with paragraph (a) of subsection (3) above, then, if that person is in custody for no other cause, the court may, at any time before his first appearance before the Crown Court, grant him bail in accordance with the <sup>M5</sup>Bail Act 1976 subject to a duty to appear before the Crown Court for trial.

(5) Where a magistrates' court acting as examining justices commits any person for trial or determines to discharge him, the clerk of the court shall, on the day on which the committal proceedings are concluded or the next day, cause to be displayed in a part of the court house to which the public have access a notice—

- (a) in either case giving that person's name, address, and age (if known);
- (b) in a case where the court so commits him, stating the charge or charges on which he is committed and the court to which he is committed;
- (c) in a case where the court determines to discharge him, describing the offence charged and stating that it has so determined;

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but this subsection shall have effect subject to [<sup>F19</sup>section 4 of the Sexual Offences (Amendment) Act 1976 (anonymity of complainant in rape etc. cases)].

- (6) A notice displayed in pursuance of subsection (5) above shall not contain the name or address of any person under [<sup>F20</sup>the age of 18 years] unless the justices in question have stated that in their opinion he would be mentioned in the notice apart from the preceding provisions of this subsection and should be mentioned in it for the purpose of avoiding injustice to him.

#### Textual Amendments

- F18** S. 6(1)(2) substituted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the substituting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para. 4** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F19** Words substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123(6), 170(1), Sch. 8 para. 16, **Sch. 15 para. 66**
- F20** Words in s. 6(6) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68(d), 101(1), Sch. 8 para. 6(1)(a), **Sch. 12 para. 22(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**

#### Modifications etc. (not altering text)

- C10** S. 6 modified (10.4.1995) by 1994 c. 33, **ss. 34(2)(a)(4)-(7), 36(2)(a)(3)-(8), 37(2)(a)(3)-(7), 38**; S.I. 1995/721, art. 2, **Sch.**

#### Marginal Citations

- M2** 1976 c. 63.  
**M3** 1976 c. 63.  
**M4** 1976 c. 63.  
**M5** 1976 c. 63

## 7 Place of trial on indictment. **E+W**

A magistrates' court committing a person for trial shall specify the place at which he is to be tried, and in selecting that place shall have regard to—

- (a) the convenience of the defence, the prosecution and the witnesses,
- (b) the expediting of the trial, and
- (c) any direction given by or on behalf of the Lord Chief Justice with the concurrence of the Lord Chancellor under section 4(5) of the <sup>M6</sup>Courts Act 1971.

#### Modifications etc. (not altering text)

- C11** S. 7 applied (prosp.) by War Crimes Act 1991 (c. 13, SIF 39:4), ss. 1(4), 3(4), **Sch. Pt. I para. 2(1)** (which affecting provision was repealed (4.7.1996) before coming into force by Criminal Procedure and Investigations Act 1996 (c. 25), ss. 46(1)(b), 80, **Sch. 5 para. 2** (with s. 78(1))
- C12** S. 7 applied (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 53(5), **Sch. 6 para. 1(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**

#### Marginal Citations

- M6** 1971 c. 23.

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## 8 Restrictions on reports of committal proceedings. **E+W+S**

- (1) Except as provided by subsections (2), (3) and (8) below, it shall not be lawful to publish in Great Britain a written report, or to <sup>F21</sup>include in a relevant programme for reception]in Great Britain a report, of any committal proceedings in England and Wales containing any matter other than that permitted by subsection (4) below.
- (2) <sup>F22</sup>Subject to subsection (2A) below]a magistrates' court shall, on an application for the purpose made with reference to any committal proceedings by the accused or one of the accused, as the case may be, order that subsection (1) above shall not apply to reports of those proceedings.
- <sup>F23</sup>(2A) Where in the case of two or more accused one of them objects to the making of an order under subsection (2) above, the court shall make the order if, and only if, it is satisfied, after hearing the representations of the accused, that it is in the interests of justice to do so.
- (2B) An order under subsection (2) above shall not apply to reports of proceedings under subsection (2A) above, but any decision of the court to make or not to make such an order may be contained in reports published <sup>F24</sup>or included in a relevant programme]before the time authorised by subsection (3) below.]
- (3) It shall not be unlawful under this section to publish <sup>F25</sup>or include in a relevant programme]a report of committal proceedings containing any matter other than that permitted by subsection (4) below—
- (a) where the magistrates' court determines not to commit the accused, or determines to commit none of the accused, for trial, after it so determines;
  - (b) where the court commits the accused or any of the accused for trial, after the conclusion of his trial or, as the case may be, the trial of the last to be tried;
- and where at any time during the inquiry the court proceeds to try summarily the case of one or more of the accused under section 25(3) or (7) below, while committing the other accused or one or more of the other accused for trial, it shall not be unlawful under this section to publish <sup>F25</sup>or include in a relevant programme]as part of a report of the summary trial, after the court determines to proceed as aforesaid, a report of so much of the committal proceedings containing any such matter as takes place before the determination.
- (4) The following matters may be contained in a report of committal proceedings published <sup>F26</sup>or included in a relevant programme]without an order under subsection (2) above before the time authorised by subsection (3) above, that is to say—
- (a) the identity of the court and the names of the examining justices;
  - (b) the names, addresses and occupations of the parties and witnesses and the ages of the accused and witnesses;
  - (c) the offence or offences, or a summary of them, with which the accused is or are charged;
  - (d) the names of <sup>F27</sup>the legal representatives]engaged in the proceedings;
  - (e) any decision of the court to commit the accused or any of the accused for trial, and any decision of the court on the disposal of the case of any accused not committed;
  - (f) where the court commits the accused or any of the accused for trial, the charge or charges, or a summary of them, on which he is committed and the court to which he is committed;

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- (g) where the committal proceedings are adjourned, the date and place to which they are adjourned;
  - (h) any arrangements as to bail on committal or adjournment;
  - (i) whether legal aid was granted to the accused or any of the accused.
- (5) If a report is published [<sup>F28</sup>or included in a relevant programme]in contravention of this section, the following persons, that is to say—
- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
  - (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;
  - [<sup>F29</sup>(c) in the case of the inclusion of a report in a relevant programme, any body corporate which provides the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.]
- shall be liable on summary conviction to a fine not exceeding [<sup>F30</sup>level 5 on the standard scale].
- (6) Proceedings for an offence under this section shall not, in England and Wales, be instituted otherwise than by or with the consent of the Attorney-General.
- (7) Subsection (1) above shall be in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports and proceedings of magistrates' and other courts.
- (8) For the purposes of this section committal proceedings shall, in relation to an information charging an indictable offence, be deemed to include any proceedings in the magistrates' court before the court proceeds to inquire into the information as examining justices; but where a magistrates' court which has begun to try an information summarily discontinues the summary trial in pursuance of section 25(2) or (6) below and proceeds to inquire into the information as examining justices, that circumstance shall not make it unlawful under this section for a report of any proceedings on the information which was published [<sup>F31</sup>or included in a relevant programme]before the court determined to proceed as aforesaid to have been so published [<sup>F31</sup>or included in a relevant programme].
- (9) ..... <sup>F32</sup>
- (10) In this section—
- ..... <sup>F33</sup>
  - ..... <sup>F34</sup>
- “publish”, in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public.
- [<sup>F35</sup>“relevant programme” means a programme included in a programme service (within the meaning of the Broadcasting Act 1990).]

**Textual Amendments**

- F21** Words substituted by virtue of Broadcasting Act 1990 (c.42, SIF 96), ss. 4(6), 87(6), 203(1), **Sch. 20 para. 29(1)(a)**
- F22** Words inserted by Criminal Justice (Amendment) Act 1981 (c. 27, SIF 82), s. 1(1)(4)
- F23** S. 8(2A)(2B) inserted by Criminal Justice (Amendment) Act 1981 (c. 27, SIF 82), s. 1(2)(4)

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- F24** Words substituted by virtue of Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1), **Sch. 20 para. 29(1)(b)** and Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 57(1), **Sch. 5 para. 37(2)**
- F25** Words substituted by virtue of Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 57(1), **Sch. 5 para. 37(2)** and by Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1), **Sch. 20 para. 29(1)(c)**
- F26** Words substituted by virtue of Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 57(1), **Sch. 5 para. 37(2)** and by Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1), **Sch. 20 para. 29(1)(b)**
- F27** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37, 82), s. 125(3), **Sch. 18 para. 25(5)**
- F28** Words substituted by virtue of Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 57(1), **Sch. 5 para. 37(2)** and Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 29(1)(b)**
- F29** S. 8(5)(c) substituted (for para. (c) and the para. (d) inserted by Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 57(1), **Sch. 5 para. 37(4)**) by virtue of Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 29(1)(d)**
- F30** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289F, 289G
- F31** Words substituted by virtue of Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 57(1), **Sch. 5 para. 37(2)** and Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1), **Sch. 20 para. 29(1)(b)**
- F32** S. 8(9) repealed by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 4(4)
- F33** Definition of "broadcast" repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1)(3), Sch. 20 para. 29(1)(e), **Sch. 21**
- F34** Definition of "cable programme" inserted by Cable and Broadcasting Act 1984 (c. 46, SIF 96), s. 57(1), **Sch. 5 para. 37(5)** and repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 4(6), 87(6), 203(1)(3), Sch. 20 para. 29(1)(e), **Sch. 21**
- F35** Definition of "relevant programme" inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20**, para. 29(1)(e)

VALID FROM 01/04/2005

### *<sup>F36</sup>Pre-trial hearings*

#### **Textual Amendments**

- F36** Ss. 8A-8D and cross-heading inserted (1.4.2005) by Courts Act 2003 (c. 39), ss. 45, 110, **Sch. 3**; S.I. 2005/910, **art. 3(p)**

#### **8A Power to make rulings at pre-trial hearing** **E+W**

- (1) For the purposes of this section a hearing is a pre-trial hearing if—
- (a) it relates to an information—
    - (i) which is to be tried summarily, and
    - (ii) to which the accused has pleaded not guilty, and
  - (b) it takes place before the start of the trial.
- (2) For the purposes of subsection (1)(b), the start of a summary trial occurs when the court begins—
- (a) to hear evidence from the prosecution at the trial, or
  - (b) to consider whether to exercise its power under section 37(3) of the Mental Health Act 1983 (power to make hospital order without convicting the accused).

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- (3) At a pre-trial hearing, a magistrates' court may make a ruling as to any matter mentioned in subsection (4) if—
  - (a) the condition in subsection (5) is met,
  - (b) the court has given the parties an opportunity to be heard, and
  - (c) it appears to the court that it is in the interests of justice to make the ruling.
- (4) The matters are—
  - (a) any question as to the admissibility of evidence;
  - (b) any other question of law relating to the case.
- (5) The condition is that, if the accused is not legally represented, the court must—
  - (a) ask whether he wishes to be granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service, and
  - (b) if he does, decide whether or not to grant him that right.
- (6) A ruling may be made under this section—
  - (a) on an application by a party to the case, or
  - (b) of the court's own motion.
- (7) For the purposes of this section and section 8B, references to the prosecutor are to any person acting as prosecutor, whether an individual or body.

#### **8B Effect of rulings at pre-trial hearing** **E+W**

- (1) Subject to subsections (3) and (6), a ruling under section 8A has binding effect from the time it is made until the case against the accused or, if there is more than one, against each of them, is disposed of.
- (2) The case against an accused is disposed of if—
  - (a) he is acquitted or convicted,
  - (b) the prosecutor decides not to proceed with the case against him, or
  - (c) the information is dismissed.
- (3) A magistrates' court may discharge or vary (or further vary) a ruling under section 8A if—
  - (a) the condition in section 8A(5) is met,
  - (b) the court has given the parties an opportunity to be heard, and
  - (c) it appears to the court that it is in the interests of justice to do so.
- (4) The court may act under subsection (3)—
  - (a) on an application by a party to the case, or
  - (b) of its own motion.
- (5) No application may be made under subsection (4)(a) unless there has been a material change of circumstances since the ruling was made or, if a previous application has been made, since the application (or last application) was made.
- (6) A ruling under section 8A is discharged in relation to an accused if—
  - (a) the magistrates' court commits or sends him to the Crown Court for trial for the offence charged in the information, or
  - (b) a count charging him with the offence is included in an indictment by virtue of section 40 of the Criminal Justice Act 1988.

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## 8C Restrictions on reporting **E+W**

- (1) Except as provided by this section no report of matters falling within subsection (2) may be published in England and Wales.
- (2) The following matters fall within this subsection—
  - (a) a ruling under section 8A;
  - (b) proceedings on an application for a ruling under section 8A;
  - (c) an order under section 8B that a ruling under section 8A be discharged, varied or further varied;
  - (d) proceedings on an application under section 8B for a ruling under section 8A to be discharged, varied or further varied.
- (3) A magistrates' court dealing with any matter falling within subsection (2) may order that subsection (1) does not apply, or does not apply to a specified extent, to a report of the matter.
- (4) Where there is only one accused and he objects to the making of an order under subsection (3)—
  - (a) the court may make the order if (and only if) satisfied after hearing the representations of the accused that it is in the interests of justice to do so, and
  - (b) if the order is made, it shall not apply to the extent that a report deals with any such objection or representations.
- (5) Where there are two or more accused and one or more of them objects to the making of an order under subsection (3)—
  - (a) the court may make the order if (and only if) satisfied after hearing the representations of each of the accused that it is in the interests of justice to do so, and
  - (b) if the order is made, it shall not apply to the extent that a report deals with any such objection or representations.
- (6) Subsection (1) does not apply to the publication of a report of matters after the case against the accused or, if more than one, against each of them, is disposed of.
- (7) Subsection (1) does not apply to a report which contains only one or more of the following matters—
  - (a) the identity of the court and the names of the justices;
  - (b) the names, ages, home addresses and occupations of the accused and witnesses;
  - (c) the offence or offences, or a summary of them, with which the accused or any of the accused are charged;
  - (d) the names of counsel and solicitors in the proceedings;
  - (e) where the proceedings are adjourned, the date and place to which they are adjourned;
  - (f) any arrangements as to bail;
  - (g) whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service was granted to the accused or any of the accused.
- (8) The addresses that may be included in a report by virtue of subsection (7) are addresses—
  - (a) at any relevant time, and



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- (b) at the time of their inclusion in the publication.
- (9) In subsection (8), “relevant time” means a time when events giving rise to the charges to which the proceedings relate are alleged to have occurred.
- (10) Nothing in this section affects any prohibition or restriction imposed by virtue of any other enactment on the publication of a report of any matter.
- (11) In this section and in section 8D—
  - (a) references to publication of a report of matters falling within subsection (2)
    - (i) include references to inclusion of those matters in any speech, writing, relevant programme or other communication in whatever form which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but
    - (ii) do not include references to inclusion of those matters in a document prepared for use in particular legal proceedings;
  - (b) “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990.

#### **8D Offences in connection with reporting** E+W

- (1) If a report is published in contravention of section 8C each of the following persons is guilty of an offence—
  - (a) in the case of a publication of a report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
  - (b) in the case of the inclusion of a report in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
  - (c) in the case of any other publication, any person publishing it.
- (2) If an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of, or
  - (b) to be attributable to any neglect on the part of,an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In subsection (2), “officer” means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (4) If the affairs of a body corporate are managed by its members, “director” in subsection (3) means a member of that body.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.
- (6) Proceedings for an offence under this section may not be instituted otherwise than by or with the consent of the Attorney General.]

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### Summary trial of information

#### 9 Procedure on trial. **E+W**

- (1) On the summary trial of an information, the court shall, if the accused appears, state to him the substance of the information and ask him whether he pleads guilty or not guilty.
- (2) The court, after hearing the evidence and the parties, shall convict the accused or dismiss the information.
- (3) If the accused pleads guilty, the court may convict him without hearing evidence.

#### 10 Adjourning of trial. **E+W**

- (1) A magistrates' court may at any time, whether before or after beginning to try an information, adjourn the trial, and may do so, notwithstanding anything in this Act, when composed of a single justice.
  - (2) The court may when adjourning either fix the time and place at which the trial is to be resumed, or, unless it remands the accused, leave the time and place to be determined later by the court; but the trial shall not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice thereof.
  - (3) A magistrates' court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, exercise its power to adjourn after convicting the accused and before sentencing him or otherwise dealing with him; but, if it does so, the adjournment shall not be for more than 4 weeks at a time unless the court remands the accused in custody and, where it so remands him, the adjournment shall not be for more than 3 weeks at a time.
- [<sup>F37</sup>(3A) A youth court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—
- (a) that the court commits the accused for trial for another offence; or
  - (b) that the accused is charged with another offence.]
- (4) On adjourning the trial of an information the court may remand the accused and, where the accused has attained [<sup>F38</sup>the age of 18 years], shall do so if the offence is triable either way and—
    - (a) on the occasion on which the accused first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
    - (b) the accused has been remanded at any time in the course of proceedings on the information;
 and, where the court remands the accused, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the court in pursuance of the remand [<sup>F39</sup>or would be required to be brought before the court but for section 128(3A) below].

#### Textual Amendments

**F37** S. 10(3A) inserted (30.9.1998) by 1998 c. 37, s. 47(5); S.I. 1998/2327, art.2(1)(k)

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**F38** Words in s. 10(4) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68(d), 101(1), Sch. 8 para. 6(1)(a), **Sch. 12**, para. 22(1); S.I. 1992/333, art. 2(2), **Sch. 2**

**F39** Words added by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 59(1), **Sch. 9 para. 1(b)**

#### Modifications etc. (not altering text)

**C13** S. 10 applied by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 41(1), 123(6), **Sch. 8 para. 16**

**C14** S. 10 excluded (30.11.2009) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 2, 153, **Sch. 2 para. 22(6)**; S.I. 2009/3074, **art. 2(b)(n)**

**C15** S. 10 excluded (30.11.2009) by Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Sch. 1 para. 97A(9) (as inserted by Criminal Justice and Immigration Act 2008 (c. 4), ss. 6, 153, **Sch. 4 para. 107** (with Sch. 27, paras. 1, 5); S.I. 2009/3074, **art. 2(f)(p)(xv)** (with art. 4))

**C16** S. 10 excluded (30.11.2009) by Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Sch. 8 para. 6A(9) (as inserted by Criminal Justice and Immigration Act 2008 (c. 4), ss. 6, 153, **Sch. 4 para. 108(6)** (with Sch. 27 paras. 1, 5); S.I. 2009/3074, **art. 2(f)(p)(xv)** (with art. 4))

**C17** S. 10 excluded (30.11.2009) by Criminal Justice Act 2003 (c. 44), Sch. 8 para. 25A(6) (as inserted by Criminal Justice and Immigration Act 2008 (c. 4), ss. 6, 153, **Sch. 4 para. 109** (with Sch. 27 paras. 1, 5); S.I. 2009/3074, **art. 2(f)(p)(xv)** (with art. 4))

**C18** S. 10 excluded (prosp.) by Street Offences Act 1959 (c. 57), Sch. para. 11(6) (as inserted by Policing and Crime Act 2009 (c. 26), ss. 17(4), 116(1), **Sch. 1**)

## 11 Non-appearance of accused: general provisions. **E+W**

- (1) Subject to the provisions of this Act, where at the time and place appointed for the trial or adjourned trial of an information the prosecutor appears but the accused does not, the court may proceed in his absence.
- (2) Where a summons has been issued, the court shall not begin to try the information in the absence of the accused unless either it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the summons was served on the accused within what appears to the court to be a reasonable time before the trial or adjourned trial or the accused has appeared on a previous occasion to answer to the information.
- (3) A magistrates' court shall not in a person's absence sentence him to imprisonment or detention in a detention centre or make [<sup>F40</sup>a [<sup>F41</sup>detention and training order] or] an order under section 23 of the <sup>M7</sup>Powers of Criminal Courts Act 1973 that a suspended sentence passed on him shall take effect.
- (4) A magistrates' court shall not in a person's absence impose any disqualification on him, except on resumption of the hearing after an adjournment under section 10(3) above; and where a trial is adjourned in pursuance of this subsection the notice required by section 10(2) above shall include notice of the reason for the adjournment.

#### Textual Amendments

**F40** Words in s. 11(3) inserted (1.3.1998) by 1994 c. 33, s. 168(2), **Sch. 10 para. 39**; S.I. 1998/277, **art. 3**

**F41** Words in s. 11(3) substituted (1.4.2000) by 1998 c. 37, s. 119, **Sch. 8 para.39**; S.I. 1999/3426, **art. 3(b)**

#### Marginal Citations

**M7** 1973 c. 62.

*Status: Point in time view as at 01/04/2000. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Magistrates' Courts Act 1980, Part I is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**[12** <sup>F42</sup>**Non-appearance of accused: plea of guilty.** **E+W+S**

- (1) This section shall apply where—
- (a) a summons has been issued requiring a person to appear before a magistrates' court, other than a youth court, to answer to an information for a summary offence, not being—
    - (i) an offence for which the accused is liable to be sentenced to be imprisoned for a term exceeding 3 months; or
    - (ii) an offence specified in an order made by the Secretary of State by statutory instrument; and
  - (b) the clerk of the court is notified by or on behalf of the prosecutor that the documents mentioned in subsection (3) below have been served upon the accused with the summons.
- (2) The reference in subsection (1)(a) above to the issue of a summons requiring a person to appear before a magistrates' court other than a youth court includes a reference to the issue of a summons requiring a person who has attained the age of 16 at the time when it is issued to appear before a youth court.
- (3) The documents referred to in subsection (1)(b) above are—
- (a) a notice containing such statement of the effect of this section as may be prescribed;
  - <sup>F43</sup>(b) either of the following, namely—
    - (i) a concise statement of such facts relating to the charge as will be placed before the court by the prosecutor if the accused pleads guilty without appearing before the court, or
    - (ii) a copy of such written statement or statements complying with subsections (2)(a) and (b) and (3) of section 9 of the Criminal Justice Act 1967 (proof by written statement) as will be so placed in those circumstances; and
  - (c) if any information relating to the accused will or may, in those circumstances, be placed before the court by or on behalf of the prosecutor, a notice containing or describing that information.
- (4) Where the clerk of the court receives a notification in writing purporting to be given by the accused or by a legal representative acting on his behalf that the accused desires to plead guilty without appearing before the court—
- (a) the clerk of the court shall inform the prosecutor of the receipt of the notification; and
  - (b) the following provisions of this section shall apply.
- (5) If at the time and place appointed for the trial or adjourned trial of the information—
- (a) the accused does not appear; and
  - (b) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that the documents mentioned in subsection (3) above have been served upon the accused with the summons,
- the court may, subject to section 11(3) and (4) above and subsections (6) to (8) below, proceed to hear and dispose of the case in the absence of the accused, whether or not the prosecutor is also absent, in like manner as if both parties had appeared and the accused had pleaded guilty.

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- (6) If at any time before the hearing the clerk of the court receives an indication in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification—
- (a) the clerk of the court shall inform the prosecutor of the withdrawal; and
  - (b) the court shall deal with the information as if the notification had not been given.
- (7) Before accepting the plea of guilty and convicting the accused under subsection (5) above, the court shall cause the following to be read out before the court by the clerk of the court, namely—
- [<sup>F44</sup>(a) in a case where a statement of facts as mentioned in subsection (3)(b)(i) above was served on the accused with the summons, that statement;
- (aa) in a case where a statement or statements as mentioned in subsection (3)(b)(ii) above was served on the accused with the summons and the court does not otherwise direct, that statement or those statements;]
  - (b) any information contained in a notice so served, and any information described in such a notice and produced by or on behalf of the prosecutor;
  - (c) the notification under subsection (4) above; and
  - (d) any submission received with the notification which the accused wishes to be brought to the attention of the court with a view to mitigation of sentence.
- [<sup>F45</sup>(7A) Where the court gives a direction under subsection (7)(aa) above the court shall cause an account to be given orally before the court by the clerk of the court of so much of any statement as is not read aloud.
- (7B) Whether or not a direction under paragraph (aa) of subsection (7) above is given in relation to any statement served as mentioned in that paragraph the court need not cause to be read out the declaration required by section 9(2)(b) of the Criminal Justice Act 1967.]
- (8) If the court proceeds under subsection (5) above to hear and dispose of the case in the absence of the accused, the court shall not permit—
- (a) any other statement with respect to any facts relating to the offence charged; or
  - (b) any other information relating to the accused,
- to be made or placed before the court by or on behalf of the prosecutor except on a resumption of the trial after an adjournment under section 10(3) above.
- (9) If the court decides not to proceed under subsection (5) above to hear and dispose of the case in the absence of the accused, it shall adjourn or further adjourn the trial for the purpose of dealing with the information as if the notification under subsection (4) above had not been given.
- (10) In relation to an adjournment on the occasion of the accused's conviction in his absence under subsection (5) above or to an adjournment required by subsection (9) above, the notice required by section 10(2) above shall include notice of the reason for the adjournment.
- (11) No notice shall be required by section 10(2) above in relation to an adjournment—
- (a) which is for not more than 4 weeks; and
  - (b) the purpose of which is to enable the court to proceed under subsection (5) above at a later time.

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- (12) No order shall be made under subsection (1) above unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (13) Any such document as is mentioned in subsection (3) above may be served in Scotland with a summons which is so served under the Summary Jurisdiction (Process) Act 1881.

#### Extent Information

**E1** S. 12(13) extends to Scotland see s. 155(2) (as amended by 1994 c. 33, s. 45, **Sch. 5 para. 3(4)**)

#### Textual Amendments

**F42** S. 12 substituted (E.W.) (4.9.1995) by 1994 c. 33, s. 45, **Sch. 5 para. 1**; S.I. 1995/1957, **art. 4**

**F43** S. 12(3)(b)(i)(ii) substituted for s. 12(3)(b) (4.5.1999) by 1998 c. 15, **s. 1(1)**; S.I. 1999/1197, **art. 2** (with art. 3)

**F44** S. 12(7)(a)(aa) substituted for s. 12(7)(a) (4.5.1999) by 1998 c. 15, **s. 1(2)**; S.I. 1999/1197, **art. 2** (with art. 3)

**F45** S. 12(7A)(7B) inserted (4.5.1999) by 1998 c. 15, **s. 1(3)**; S.I. 1999/1197, **art. 2** (with art. 3)

#### [<sup>F46</sup>12A Application of section 12 where accused appears. **E+W+S**

- (1) Where the clerk of the court has received such a notification as is mentioned in subsection (4) of section 12 above but the accused nevertheless appears before the court at the time and place appointed for the trial or adjourned trial, the court may, if he consents, proceed under subsection (5) of that section as if he were absent.
- (2) Where the clerk of the court has not received such a notification and the accused appears before the court at that time and place and informs the court that he desires to plead guilty, the court may, if he consents, proceed under section 12(5) above as if he were absent and the clerk had received such a notification.
- (3) For the purposes of subsections (1) and (2) above, subsections (6) to (11) of section 12 above shall apply with the modifications mentioned in subsection (4) or, as the case may be, subsection (5) below.
- (4) The modifications for the purposes of subsection (1) above are that—
- before accepting the plea of guilty and convicting the accused under subsection (5) of section 12 above, the court shall afford the accused an opportunity to make an oral submission with a view to mitigation of sentence; and
  - where he makes such a submission, subsection (7)(d) of that section shall not apply.
- (5) The modifications for the purposes of subsection (2) above are that—
- subsection (6) of section 12 above shall apply as if any reference to the notification under subsection (4) of that section were a reference to the consent under subsection (2) above;
  - subsection (7)(c) and (d) of that section shall not apply; and
  - before accepting the plea of guilty and convicting the accused under subsection (5) of that section, the court shall afford the accused an opportunity to make an oral submission with a view to mitigation of sentence.]

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### Textual Amendments

**F46** S. 12A inserted (4.9.1995) by 1994 c. 33, s. 45, Sch. 5 para.2; S.I. 1995/1957, art.4

## 13 Non-appearance of accused: issue of warrant. **E+W**

- (1) Subject to the provisions of this section, where the court, instead of proceeding in the absence of the accused, adjourns or further adjourns the trial, the court may, <sup>F47</sup> . . . , issue a warrant for his arrest.
- (2) Where a summons has been issued, the court shall not issue a warrant under this section [<sup>F48</sup>unless the condition in subsection (2A) below or that in subsection (2B) below is fulfilled].
  - <sup>F49</sup>(2A) The condition in this subsection is that it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the summons was served on the accused within what appears to the court to be a reasonable time before the trial or adjourned trial.
  - (2B) The condition in this subsection is that—
    - (a) the adjournment now being made is a second or subsequent adjournment of the trial,
    - (b) the accused was present on the last (or only) occasion when the trial was adjourned, and
    - (c) on that occasion the court determined the time for the hearing at which the adjournment is now being made.]
  - <sup>F50</sup>(3) A warrant for the arrest of any person who has attained the age of 18 shall not be issued under this section unless—
    - (a) the information has been substantiated on oath and the offence to which the warrant relates is punishable with imprisonment, or
    - (b) the court, having convicted the accused, proposes to impose a disqualification on him.
  - (3A) A warrant for the arrest of any person who has not attained the age of 18 shall not be issued under this section unless—
    - (a) the information has been substantiated on oath, or
    - (b) the court, having convicted the accused, proposes to impose a disqualification on him.]
  - <sup>F51</sup>(4) This section shall not apply to an adjournment on the occasion of the accused's conviction in his absence under subsection (5) of section 12 above or to an adjournment required by subsection (9) of that section.]
  - (5) Where the court adjourns the trial—
    - (a) after having, either on that or on a previous occasion, received any evidence or convicted the accused without hearing evidence on his pleading guilty under section 9(3) above; or
    - (b) after having on a previous occasion convicted the accused without hearing evidence on his pleading guilty under section [<sup>F52</sup>12(5)] above,the court shall not issue a warrant under this section unless it thinks it undesirable, by reason of the gravity of the offence, to continue the trial in the absence of the accused.

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#### Textual Amendments

- F47** Words in s. 13(1) repealed (1.9.1998 subject as mentioned in S.I. 1998/1837, **art. 4**) by 1998 c. 15, s. **3(1)**; S.I. 1998/1837, **arts2, 4**
- F48** Words in s. 13(2) substituted (4.7.1996 with application where the court proposes to issue a warrant under s. 13 on or after 1.10.1996) by 1996 c. 25, s. **48(2)(4)** (with s. 78(1)); S.I. 1996/2343, **art. 2**
- F49** S. 13(2A)(2B) inserted (4.7.1996 with application where the court proposes to issue a warrant under s. 13 on or after 1.10.1996) by 1996 c. 25, s. **48(3)(4)** (with s. 78(1)); S.I. 1996/2343, **art. 2**
- F50** S. 13(3)(3A) substituted for s. 13(3) (1.9.1998 subject as mentioned in S.I. 1998/1837, **art. 4**) by 1998 c. 15, s. **3(2)**; S.I. 1998/1837, **arts2, 4**
- F51** S. 13(4) substituted (4.9.1995) by 1994 c. 33, s. 45, **Sch. 5 para. 3(2)**; S.I. 1995/1957, **art. 4**
- F52** Words in s. 13(5) substituted (4.9.1995) by 1994 c. 33, s. 45, **Sch. 5 para. 3(3)**; S.I. 1995/1957, **art. 4**

#### Modifications etc. (not altering text)

- C19** S. 13(1)-(3A)(5) applied (25.8.2000) by 2000 c. 6, **ss. 2(5)**, 168(1)

### 14 Proceedings invalid where accused did not know of them. **E+W**

- (1) Where a summons has been issued under section 1 above and a magistrates' court has begun to try the information to which the summons relates, then, if—
- (a) the accused, at any time during or after the trial, makes a statutory declaration that he did not know of the summons or the proceedings until a date specified in the declaration, being a date after the court has begun to try the information; and
  - (b) within 21 days of that date the declaration is served on the clerk to the justices, without prejudice to the validity of the information, the summons and all subsequent proceedings shall be void.
- (2) For the purposes of subsection (1) above a statutory declaration shall be deemed to be duly served on the clerk to the justices if it is delivered to him, or left at his office, or is sent in a registered letter or by the recorded delivery service addressed to him at his office.
- (3) If on the application of the accused it appears to a magistrates' court (which for this purpose may be composed of a single justice) that it was not reasonable to expect the accused to serve such a statutory declaration as is mentioned in subsection (1) above within the period allowed by that subsection, the court may accept service of such a declaration by the accused after that period has expired; and a statutory declaration accepted under this subsection shall be deemed to have been served as required by that subsection.
- (4) Where any proceedings have become void by virtue of subsection (1) above, the information shall not be tried again by any of the same justices.

### 15 Non-appearance of prosecutor. **E+W**

- (1) Where at the time and place appointed for the trial or adjourned trial of an information the accused appears or is brought before the court and the prosecutor does not appear, the court may dismiss the information or, if evidence has been received on a previous occasion, proceed in the absence of the prosecutor.



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- (2) Where, instead of dismissing the information or proceeding in the absence of the prosecutor, the court adjourns the trial, it shall not remand the accused in custody unless he has been brought from custody or cannot be remanded on bail by reason of his failure to find sureties.

## 16 Non-appearance of both parties. **E+W**

Subject to section 11(3) and (4) and to section 12 above, where at the time and place appointed for the trial or adjourned trial of an information neither the prosecutor nor the accused appears, the court may dismiss the information or, if evidence has been received on a previous occasion, proceed in their absence.

*Offences triable on indictment or summarily*

## 17 Certain offences triable either way. **E+W**

- (1) The offences listed in Schedule 1 to this Act shall be triable either way.
- (2) Subsection (1) above is without prejudice to any other enactment by virtue of which any offence is triable either way.

## [17A] <sup>F53</sup>Initial procedure: accused to indicate intention as to plea. **E+W**

- (1) This section shall have effect where a person who has attained the age of 18 years appears or is brought before a magistrates' court on an information charging him with an offence triable either way.
- (2) Everything that the court is required to do under the following provisions of this section must be done with the accused present in court.
- (3) The court shall cause the charge to be written down, if this has not already been done, and to be read to the accused.
- (4) The court shall then explain to the accused in ordinary language that he may indicate whether (if the offence were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty—
  - (a) the court must proceed as mentioned in subsection (6) below; and
  - (b) he may be committed for sentence to the Crown Court under section 38 below if the court is of such opinion as is mentioned in subsection (2) of that section.
- (5) The court shall then ask the accused whether (if the offence were to proceed to trial) he would plead guilty or not guilty.
- (6) If the accused indicates that he would plead guilty the court shall proceed as if—
  - (a) the proceedings constituted from the beginning the summary trial of the information; and
  - (b) section 9(1) above was complied with and he pleaded guilty under it.
- (7) If the accused indicates that he would plead not guilty section 18(1) below shall apply.
- (8) If the accused in fact fails to indicate how he would plead, for the purposes of this section and section 18(1) below he shall be taken to indicate that he would plead not guilty.

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- (9) Subject to subsection (6) above, the following shall not for any purpose be taken to constitute the taking of a plea—
- (a) asking the accused under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty;
  - (b) an indication by the accused under this section of how he would plead.]

#### Textual Amendments

**F53** Ss. 17A-17C inserted (4.7.1996 with application where a person appears or is brought before a magistrates' court on or after 1.10.1997) by 1996 c. 25, s. 49(2)(6) (with s. 78(1)); S.I. 1997/2199, art.2

#### <sup>F54</sup> 17B Intention as to plea: absence of accused. **E+W**

- (1) This section shall have effect where—
- (a) a person who has attained the age of 18 years appears or is brought before a magistrates' court on an information charging him with an offence triable either way,
  - (b) the accused is represented by a legal representative,
  - (c) the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for proceedings under section 17A above to be conducted in his presence, and
  - (d) the court considers that it should proceed in the absence of the accused.
- (2) In such a case—
- (a) the court shall cause the charge to be written down, if this has not already been done, and to be read to the representative;
  - (b) the court shall ask the representative whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty;
  - (c) if the representative indicates that the accused would plead guilty the court shall proceed as if the proceedings constituted from the beginning the summary trial of the information, and as if section 9(1) above was complied with and the accused pleaded guilty under it;
  - (d) if the representative indicates that the accused would plead not guilty section 18(1) below shall apply.
- (3) If the representative in fact fails to indicate how the accused would plead, for the purposes of this section and section 18(1) below he shall be taken to indicate that the accused would plead not guilty.
- (4) Subject to subsection (2)(c) above, the following shall not for any purpose be taken to constitute the taking of a plea—
- (a) asking the representative under this section whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty;
  - (b) an indication by the representative under this section of how the accused would plead.

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### Textual Amendments

**F54** **Ss. 17A-17C** inserted (4.7.1996 with application where a person appears or is brought before a magistrates' court on or after 1.10.1997) by 1996 c. 25, s. 49(2)(6) (with s. 78(1)); S.I. 1997/2199, art.2

### <sup>F55</sup> 17C Intention as to plea: adjournment. **E+W**

A magistrates' court proceeding under section 17A or 17B above may adjourn the proceedings at any time, and on doing so on any occasion when the accused is present may remand the accused, and shall remand him if—

- (a) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
- (b) he has been remanded at any time in the course of proceedings on the information;

and where the court remands the accused, the time fixed for the resumption of proceedings shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) below.

### Textual Amendments

**F55** **Ss. 17A-17C** inserted (4.7.1996 with application where a person appears or is brought before a magistrates' court on or after 1.10.1997) by 1996 c. 25, s. 49(2)(6) (with s. 78(1)); S.I. 1997/2199, art.2

VALID FROM 18/06/2012

### <sup>F56</sup> 17D Maximum penalty under section 17A(6) or 17B(2)(c) for certain offences **E+W**

- (1) If—
  - (a) the offence is a scheduled offence (as defined in section 22(1) below);
  - (b) the court proceeds in relation to the offence in accordance with section 17A(6) or 17B(2)(c) above; and
  - (c) the court convicts the accused of the offence,the court shall consider whether, having regard to any representations made by him or by the prosecutor, the value involved (as defined in section 22(10) below) appears to the court to exceed the relevant sum (as specified for the purposes of section 22 below).
- (2) If it appears to the court clear that the value involved does not exceed the relevant sum, or it appears to the court for any reason not clear whether the value involved does or does not exceed the relevant sum—
  - (a) subject to subsection (4) below, the court shall not have power to impose on the accused in respect of the offence a sentence in excess of the limits mentioned in section 33(1)(a) below; and

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- (b) sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 shall not apply as regards that offence.
- (3) Subsections (9) to (12) of section 22 below shall apply for the purposes of this section as they apply for the purposes of that section (reading the reference to subsection (1) in section 22(9) as a reference to subsection (1) of this section).
- (4) Subsection (2)(a) above does not apply to an offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking).

#### Textual Amendments

**F56** Ss. 17D, 17E inserted (prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 41, 336, **Sch. 3 para. 3**

VALID FROM 18/06/2012

#### 17E **Functions under sections 17A to 17D capable of exercise by single justice** **E** **+W**

- (1) The functions of a magistrates' court under sections 17A to 17D above may be discharged by a single justice.
- (2) Subsection (1) above shall not be taken as authorising—
  - (a) the summary trial of an information (otherwise than in accordance with section 17A(6) or 17B(2)(c) above); or
  - (b) the imposition of a sentence,
 by a magistrates' court composed of fewer than two justices.]

#### Textual Amendments

**F56** Ss. 17D, 17E inserted (prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 41, 336, **Sch. 3 para. 3**

#### 18 **Initial procedure on information against adult for offence triable either way.** **E** **+W**

- (1) Sections 19 to 23 below shall have effect where a person who has attained [<sup>F57</sup>the age of 18 years] appears or is brought before a magistrates' court on an information charging him with an offence triable either way [<sup>F58</sup>and—
  - (a) he indicates under section 17A above that (if the offence were to proceed to trial) he would plead not guilty, or
  - (b) his representative indicates under section 17B above that (if the offence were to proceed to trial) he would plead not guilty]
- (2) Without prejudice to section 11(1) above, everything that the court is required to do under sections 19 to 22 below must be done before any evidence is called and, subject to subsection (3) below and section 23 below, with the accused present in court.
- (3) The court may proceed in the absence of the accused in accordance with such of the provisions of sections 19 to 22 below as are applicable in the circumstances if the court

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considers that by reason of his disorderly conduct before the court it is not practicable for the proceedings to be conducted in his presence; and the subsections (3) to (5) of section 23 below, so far as applicable, shall have effect in relation to proceedings conducted in the absence of the accused by virtue of this subsection (references in those subsections to the person representing the accused being for this purpose read as references to the person, if any, representing him).

(4) A magistrates' court proceeding under sections 19 to 23 below may adjourn the proceedings at any time, and on doing so on any occasion when the accused is present may remand the accused, and shall remand him if—

- (a) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
- (b) he has been remanded at any time in the course of proceedings on the information;

and where the court remands the accused, the time fixed for the resumption of the proceedings shall be that at which he is required to appear or be brought before the court in pursuance of the remand [<sup>F59</sup>or would be required to be brought before the court but for section 128(3A) below].

(5) The functions of a magistrates' court under sections 19 to 23 below may be discharged by a single justice, but the foregoing provision shall not be taken to authorise the summary trial of an information by a magistrates' court composed of less than two justices.

#### Textual Amendments

- F57** Words in s. 18(1) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), ss. 68(d), 101(1), [Sch. 8 para. 6\(1\)\(a\)](#), [Sch. 12 para. 22\(1\)](#); [S.I. 1992/333, art. 2\(2\)](#), [Sch. 2](#)
- F58** S. 18(1)(a)(b) and the word “and” immediately preceding inserted (4.7.1996 with application as mentioned in s. 49(6) of the inserting Act and [S.I. 1997/2199](#)) by [1996 c. 25, s. 49\(3\)\(6\)](#) (with [s. 78\(1\)](#)); [S.I. 1997/2199, art.2](#)
- F59** Words added by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 59(1), [Sch. 9 para. 1\(c\)](#)

## 19 **Court to begin by considering which mode of trial appears more suitable.** **E** **+W**

(1) The court shall consider whether, having regard to the matters mentioned in subsection (3) below and any representations made by the prosecutor or the accused, the offence appears to the court more suitable for summary trial or for trial on indictment.

(2) Before so considering, the court—

- <sup>F60</sup>(a) .....
- (b) shall afford first the prosecutor and then the accused an opportunity to make representations as to which mode of trial would be more suitable.

(3) The matters to which the court is to have regard under subsection (1) above are the nature of the case; whether the circumstances make the offence one of serious character; whether the punishment which a magistrates' court would have power to inflict for it would be adequate; and any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other.

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(4) If the prosecution is being carried on by the Attorney General, the Solicitor General or the Director of Public Prosecutions and he applies for the offence to be tried on indictment, the preceding provisions of this section and sections 20 to 21 below shall not apply, and the court shall proceed to inquire into the information as examining justices.

[<sup>F61</sup>(5) The power of the Director of Public Prosecutions under subsection (4) above to apply for an offence to be tried on indictment shall not be exercised except with the consent of the Attorney General.]

#### Textual Amendments

**F60** S. 19(2)(a) repealed (4.7.1996 with application as mentioned in s. 49(6) of the repealing Act and S.I. 1997/2199) by 1996 c. 25, ss. 49(4)(6), 80, **Sch. 5** table3 (with s. 78(1)); S.I. 1997/2199, **art.2**

**F61** S. 19(5) added by Prosecution of Offences Act 1985 (c. 23, SIF 39:1), s. 31(5), **Sch. 1 Pt. I para. 2**

#### Modifications etc. (not altering text)

**C20** S. 19(5) modified (24.4.2009 for certain purposes and 31.10.2009 otherwise) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), art. 205, **Sch. 1 para. 18(1)**

## 20 Procedure where summary trial appears more suitable. **E+W**

(1) If, where the court has considered as required by section 19(1) above, it appears to the court that the offence is more suitable for summary trial, the following provisions of this section shall apply (unless excluded by section 23 below).

(2) The court shall explain to the accused in ordinary language—

- (a) that it appears to the court more suitable for him to be tried summarily for the offence, and that he can either consent to be so tried or, if he wishes, be tried by a jury; and
- (b) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court under section 38 below if the convicting court, [<sup>F62</sup>is of such opinion as is mentioned in subsection (2) of that section].

(3) After explaining to the accused as provided by subsection (2) above the court shall ask him whether he consents to be tried summarily or wishes to be tried by a jury, and—

- (a) if he consents to be tried summarily, shall proceed to the summary trial of the information;
- (b) if he does not so consent, shall proceed to inquire into the information as examining justices.

#### Textual Amendments

**F62** Words in s. 20(2)(b) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 100, 102(2), **Sch. 11 para.25**; S.I. 1992/333, art. 2(2), **Sch. 2**

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**[<sup>F63</sup>20A Procedure where summary trial appears more suitable: supplementary **E**  
**+W****

- (1) Where the case is dealt with in accordance with section 20(7) above, no court (whether a magistrates' court or not) may impose a custodial sentence for the offence unless such a sentence was indicated in the indication of sentence referred to in section 20 above.
- (2) Subsection (1) above is subject to sections 3A(4), 4(8) and 5(3) of the Powers of Criminal Courts (Sentencing) Act 2000.
- (3) Except as provided in subsection (1) above—
  - (a) an indication of sentence shall not be binding on any court (whether a magistrates' court or not); and
  - (b) no sentence may be challenged or be the subject of appeal in any court on the ground that it is not consistent with an indication of sentence.
- (4) Subject to section 20(7) above, the following shall not for any purpose be taken to constitute the taking of a plea—
  - (a) asking the accused under section 20 above whether (if the offence were to proceed to trial) he would plead guilty or not guilty; or
  - (b) an indication by the accused under that section of how he would plead.
- (5) Where the court gives an indication of sentence under section 20 above, it shall cause each such indication to be entered in the register.
- (6) In this section and in section 20 above, references to a custodial sentence are to a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000, and references to a non-custodial sentence shall be construed accordingly.]

**Textual Amendments**

**F63** Ss. 20, 20A substituted (prosp.) for s. 20 by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 41, 336, [Sch. 3 para. 6](#)

**Modifications etc. (not altering text)**

**C21** S. 20A(1) excluded (prosp.) by [2000 c. 6, s. 5\(3\)](#) (as substituted by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 41, 336, [Sch. 3 Pt. 1 para. 26](#))

**21 Procedure where trial on indictment appears more suitable. **E+W****

If, where the court has considered as required by section 19(1) above, it appears to the court that the offence is more suitable for trial on indictment, the court shall tell the accused that the court has decided that it is more suitable for him to be tried for the offence by a jury, and shall proceed to inquire into the information as examining justices.

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## 22 **Certain offences triable either way to be tried summarily if value involved is small.** **E+W**

- (1) If the offence charged by the information is one of those mentioned in the first column of Schedule 2 to this Act (in this section referred to as “scheduled offences”) then, <sup>F64</sup> . . . the court shall, before proceeding in accordance with section 19 above, consider whether, having regard to any representations made by the prosecutor or the accused, the value involved (as defined in subsection (10) below) appears to the court to exceed the relevant sum.

For the purposes of this section the relevant sum is [<sup>F65</sup>£5,000].

- (2) If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value involved does not exceed the relevant sum, the court shall proceed as if the offence were triable only summarily, and sections 19 to 21 above shall not apply.
- (3) If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value involved exceeds that relevant sum, the court shall thereupon proceed in accordance with section 19 above in the ordinary way without further regard to the provisions of this section.
- (4) If, where subsection (1) above applies, it appears to the court for any reason not clear whether, for the offence charged, the value involved does or does not exceed the relevant sum, the provisions of subsections (5) and (6) below shall apply.
- (5) The court shall cause the charge to be written down, if this has not already been done, and read to the accused, and shall explain to him in ordinary language—
- (a) that he can, if he wishes, consent to be tried summarily for the offence and that if he consents to be so tried, he will definitely be tried in that way; and
  - (b) that if he is tried summarily and is convicted by the court, his liability to imprisonment or a fine will be limited as provided in section 33 below.
- (6) After explaining to the accused as provided by subsection (5) above the court shall ask him whether he consents to be tried summarily and—
- (a) if he so consents, shall proceed in accordance with subsection (2) above as if that subsection applied;
  - (b) if he does not so consent, shall proceed in accordance with subsection (3) above as if that subsection applied.
- (7) . . . . . <sup>F66</sup>
- (8) Where a person is convicted by a magistrates' court of a scheduled offence, it shall not be open to him to appeal to the Crown Court against the conviction on the ground that the convicting court's decision as to the value involved was mistaken.
- (9) If, where subsection (1) above applies, the offence charged is one with which the accused is charged jointly with a person who has not attained [<sup>F67</sup>the age of 18 years], the reference in that subsection to any representations made by the accused shall be read as including any representations made by the person [<sup>F68</sup>under 18].
- (10) In this section “the value involved”, in relation to any scheduled offence, means the value indicated in the second column of Schedule 2 to this Act, measured as indicated in the third column of that Schedule; and in that Schedule “the material time” means the time of the alleged offence.



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[<sup>F69</sup>(11) Where—

- (a) the accused is charged on the same occasion with two or more scheduled offences and it appears to the court that they constitute or form part of a series of two or more offences of the same or a similar character; or
- (b) the offence charged consists in incitement to commit two or more scheduled offences,

this section shall have effect as if any reference in it to the value involved were a reference to the aggregate of the values involved.]

[<sup>F70</sup>(12) Subsection (8) of section 12A of the Theft Act 1968 (which determines when a vehicle is recovered) shall apply for the purposes of paragraph 3 of Schedule 2 to this Act as it applies for the purposes of that section.]

#### Textual Amendments

- F64** Words in s. 22(1) repealed (3.2.1995) by 1994 c. 33, s. 168(3), **Sch.11**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix C
- F65** Sum in s. 22(1) substituted (3.2.1995) by virtue of 1994 c. 33, s.46; S.I. 1995/127, art. 2(1), **Sch.1**
- F66** S. 22(7) repealed by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123(6), 170(2), Sch. 8 para. 16, **Sch. 16**
- F67** Words in s. 22(9) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68(d), 101(1), Sch. 8 para. 6(1)(a), **Sch. 12 para. 22(1)**; S.I. 1992/333, art.2(2), **Sch. 2**
- F68** Words in s. 22(9) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68, 101(1), Sch. 8 para.6(1)(b), **Sch. 12**, para. 22(1); S.I. 1992/333, art. 2(2), **Sch. 2**
- F69** S. 22(11) inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 38(3)(4), 123(6), **Sch. 8 para. 16**
- F70** S. 22(12) added (1.4.1992) by Aggravated Vehicle-Taking Act 1992 (c. 11), s. 2(2); S.I. 1992/764, art. 2

#### Modifications etc. (not altering text)

- C22** S. 22(11)(b) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94, **Sch. 6 para. 5(a)** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)(g)

## 23 Power of court, with consent of legally represented accused, to proceed in his absence. **E+W**

(1) Where—

- (a) the accused is represented by [<sup>F71</sup>a legal representative]who in his absence signifies to the court the accused's consent to the proceedings for determining how he is to be tried for the offence being conducted in his absence; and
- (b) the court is satisfied that there is good reason for proceeding in the absence of the accused,

the following provisions of this section shall apply.

- (2) Subject to the following provisions of this section, the court may proceed in the absence of the accused in accordance with such of the provisions of sections 19 to 22 above as are applicable in the circumstances.
- (3) If, in a case where subsection (1) of section 22 above applies, it appears to the court as mentioned in subsection (4) of that section, subsections (5) and (6) of that section shall not apply and the court—

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- (a) if the accused's consent to be tried summarily has been or is signified by the person representing him, shall proceed in accordance with subsection (2) of that section as if that subsection applied; or
  - (b) if that consent has not been and is not so signified, shall proceed in accordance with subsection (3) of that section as if that subsection applied.
- (4) If, where the court has considered as required by section 19(1) above, it appears to the court that the offence is more suitable for summary trial then—
- (a) if the accused's consent to be tried summarily has been or is signified by the person representing him, section 20 above shall not apply, and the court shall proceed to the summary trial of the information; or
  - (b) if that consent has not been and is not so signified, section 20 above shall not apply and the court shall proceed to inquire into the information as examining justices and may adjourn the hearing without remanding the accused.
- (5) If, where the court has considered as required by section 19(1) above, it appears to the court that the offence is more suitable for trial on indictment, section 21 above shall not apply, and the court shall proceed to inquire into the information as examining justices and may adjourn the hearing without remanding the accused.

#### Textual Amendments

**F71** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37, 82\), s. 125\(3\), Sch. 18 para. 25\(3\)\(a\)](#)

## 24 Summary trial of information against child or young person for indictable offence. **E+W**

- (1) Where a person under [<sup>F72</sup>the age of 18 years] appears or is brought before a magistrates' court on an information charging him with an indictable offence other than homicide, he shall be tried summarily unless—
- (a) <sup>F73</sup> . . . the offence is such as is mentioned in subsection (2) of section 53 of the <sup>M8</sup>Children and Young Persons Act 1933 (under which young persons convicted on indictment of certain grave crimes may be sentenced to be detained for long periods) and the court considers that if he is found guilty of the offence it ought to be possible to sentence him in pursuance of [<sup>F74</sup>subsection (3) of that section]; or
  - (b) he is charged jointly with a person who has attained [<sup>F72</sup>the age of 18 years] and the court considers it necessary in the interests of justice to commit them both for trial;

and accordingly in a case falling within paragraph (a) or (b) of this subsection the court shall commit the accused for trial if either it is of opinion that there is sufficient evidence to put him on trial or it has power under section 6(2) above so to commit him without consideration of the evidence.

[<sup>F75</sup>(1A) Where a magistrates' court—

- (a) commits a person under the age of 18 for trial for an offence of homicide; or
- (b) in a case falling within subsection (1)(a) above, commits such a person for trial for an offence,

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the court may also commit him for trial for any other indictable offence with which he is charged at the same time if the charges for both offences could be joined in the same indictment.]

- (2) Where, in a case falling within subsection (1)(b) above, a magistrates' court commits a person under [<sup>F72</sup>the age of 18 years] for trial for an offence with which he is charged jointly with a person who has attained that age, the court may also commit him for trial for any other indictable offence with which he is charged at the same time (whether jointly with the person who has attained that age or not) if [<sup>F76</sup>the charges for both offences could be joined in the same indictment].
- (3) If on trying a person summarily in pursuance of subsection (1) above the court finds him guilty, it may impose a fine of an amount not exceeding [<sup>F77</sup>£1000] or may exercise the same powers as it could have exercised if he had been found guilty of an offence for which, but for section [<sup>F78</sup>1(1) of the Criminal Justice Act 1982, it could have sentenced him to imprisonment for a term not exceeding—
- (a) the maximum term of imprisonment for the offence on conviction on indictment; or
  - (b) six months,
- whichever is the less.]
- (4) In relation to a person under the age of 14 subsection (3) above shall have effect as if for the words “ [<sup>F79</sup>£1000]” there were substituted the words “ [<sup>F80</sup>£250]”, <sup>F81</sup> . . .

#### Textual Amendments

- F72** Words in s. 24 substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68(d), 101(1), Sch. 8 para. 6(1)(a), **Sch. 12 para. 22(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F73** Words in s. 24(1)(a) repealed (9.1.1995) by 1994 c. 33, s. 168(2)(3), Sch. 10 para. 40, **Sch. 11**; S.I. 1994/3192, art. 2, **Sch**
- F74** Words in s. 24(1)(a) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 40(1)**; S.I. 1998/2327, **art. 2(1)(y)(2)(n)**
- F75** S. 24(1A) inserted (30.9.1998) by 1998 c. 37, s. 47(6); S.I. 1998/2327, **art. 2(1)(k)**
- F76** Words in s. 24(2) substituted (4.1.1999 for the purpose of sending any person for trial under s. 51 of the substituting Act from any area specified in S.I. 1998/2327, **Sch. 2** and otherwise *prosp.*) by 1998 c. 37, ss. 119, 121(2), **Sch. 8 para. 40(2)**; S.I. 1998/2327, art. 4(2)(c), **Sch. 2**
- F77** Word in s. 24(3) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(2)(a), 101(1), **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**
- F78** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 77, **Sch. 14 para. 47**
- F79** Word in s. 24(4) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(2)(a), 101(1), **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**
- F80** Word in s. 24(4) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(2)(b), 101(1), **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**
- F81** Words in s. 24(4) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**

#### Marginal Citations

- M8** 1933 c. 12.

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VALID FROM 18/06/2012

**[<sup>F82</sup>24A Child or young person to indicate intention as to plea in certain cases E+W**

- (1) This section applies where—
  - (a) a person under the age of 18 years appears or is brought before a magistrates' court on an information charging him with an offence other than one falling within section 51A(12) of the Crime and Disorder Act 1998 (“the 1998 Act”); and
  - (b) but for the application of the following provisions of this section, the court would be required at that stage, by virtue of section 51(7) or (8) or 51A(3) (b), (4) or (5) of the 1998 Act to determine, in relation to the offence, whether to send the person to the Crown Court for trial (or to determine any matter, the effect of which would be to determine whether he is sent to the Crown Court for trial).
- (2) Where this section applies, the court shall, before proceeding to make any such determination as is referred to in subsection (1)(b) above (the “relevant determination”), follow the procedure set out in this section.
- (3) Everything that the court is required to do under the following provisions of this section must be done with the accused person in court.
- (4) The court shall cause the charge to be written down, if this has not already been done, and to be read to the accused.
- (5) The court shall then explain to the accused in ordinary language that he may indicate whether (if the offence were to proceed to trial) he would plead guilty or not guilty, and that if he indicates that he would plead guilty—
  - (a) the court must proceed as mentioned in subsection (7) below; and
  - (b) (in cases where the offence is one mentioned in section 91(1) of the Powers of Criminal Courts (Sentencing) Act 2000) he may be sent to the Crown Court for sentencing under section 3B or (if applicable) 3C of that Act if the court is of such opinion as is mentioned in subsection (2) of the applicable section.
- (6) The court shall then ask the accused whether (if the offence were to proceed to trial) he would plead guilty or not guilty.
- (7) If the accused indicates that he would plead guilty, the court shall proceed as if—
  - (a) the proceedings constituted from the beginning the summary trial of the information; and
  - (b) section 9(1) above was complied with and he pleaded guilty under it, and, accordingly, the court shall not (and shall not be required to) proceed to make the relevant determination or to proceed further under section 51 or (as the case may be) section 51A of the 1998 Act in relation to the offence.
- (8) If the accused indicates that he would plead not guilty, the court shall proceed to make the relevant determination and this section shall cease to apply.
- (9) If the accused in fact fails to indicate how he would plead, for the purposes of this section he shall be taken to indicate that he would plead not guilty.

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- (10) Subject to subsection (7) above, the following shall not for any purpose be taken to constitute the taking of a plea—
- (a) asking the accused under this section whether (if the offence were to proceed to trial) he would plead guilty or not guilty;
  - (b) an indication by the accused under this section of how he would plead.

#### Textual Amendments

**F82** Ss. 24A-24D inserted (prosp.) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 41, 336, [Sch. 3 para. 10](#)

VALID FROM 18/06/2012

#### **24B Intention as to plea by child or young person: absence of accused** E+W

- (1) This section shall have effect where—
- (a) a person under the age of 18 years appears or is brought before a magistrates' court on an information charging him with an offence other than one falling within section 51A(12) of the Crime and Disorder Act 1998;
  - (b) but for the application of the following provisions of this section, the court would be required at that stage to make one of the determinations referred to in paragraph (b) of section 24A(1) above (“the relevant determination”);
  - (c) the accused is represented by a legal representative;
  - (d) the court considers that by reason of the accused’s disorderly conduct before the court it is not practicable for proceedings under section 24A above to be conducted in his presence; and
  - (e) the court considers that it should proceed in the absence of the accused.
- (2) In such a case—
- (a) the court shall cause the charge to be written down, if this has not already been done, and to be read to the representative;
  - (b) the court shall ask the representative whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty;
  - (c) if the representative indicates that the accused would plead guilty the court shall proceed as if the proceedings constituted from the beginning the summary trial of the information, and as if section 9(1) above was complied with and the accused pleaded guilty under it;
  - (d) if the representative indicates that the accused would plead not guilty the court shall proceed to make the relevant determination and this section shall cease to apply.
- (3) If the representative in fact fails to indicate how the accused would plead, for the purposes of this section he shall be taken to indicate that the accused would plead not guilty.
- (4) Subject to subsection (2)(c) above, the following shall not for any purpose be taken to constitute the taking of a plea—
- (a) asking the representative under this section whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty;

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- (b) an indication by the representative under this section of how the accused would plead.

#### Textual Amendments

**F82** Ss. 24A-24D inserted (prosp.) by Criminal Justice Act 2003 (c. 44), ss. 41, 336, **Sch. 3 para. 10**

VALID FROM 18/06/2012

#### 24C Intention as to plea by child or young person: adjournment **E+W**

- (1) A magistrates' court proceeding under section 24A or 24B above may adjourn the proceedings at any time, and on doing so on any occasion when the accused is present may remand the accused.
- (2) Where the court remands the accused, the time fixed for the resumption of proceedings shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) below.

#### Textual Amendments

**F82** Ss. 24A-24D inserted (prosp.) by Criminal Justice Act 2003 (c. 44), ss. 41, 336, **Sch. 3 para. 10**

VALID FROM 18/06/2012

#### 24D Functions under sections 24A to 24C capable of exercise by single justice **E+W**

- (1) The functions of a magistrates' court under sections 24A to 24C above may be discharged by a single justice.
- (2) Subsection (1) above shall not be taken as authorising—
  - (a) the summary trial of an information (other than a summary trial by virtue of section 24A(7) or 24B(2)(c) above); or
  - (b) the imposition of a sentence,
 by a magistrates' court composed of fewer than two justices.]

#### Textual Amendments

**F82** Ss. 24A-24D inserted (prosp.) by Criminal Justice Act 2003 (c. 44), ss. 41, 336, **Sch. 3 para. 10**

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## 25 Power to change from summary trial to committal proceedings, and vice versa. **E+W**

(1) Subsections (2) to (4) below shall have effect where a person who has attained [<sup>F83</sup>the age of 18 years] appears or is brought before a magistrates' court on an information charging him with an offence triable either way.

(2) Where the court has (otherwise than in pursuance of section 22(2) above) begun to try the information summarily, the court may, at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and proceed to inquire into the information as examining justices and, on doing so, [<sup>F84</sup>shall adjourn the hearing.]

(3) Where the court has begun to inquire into the information as examining justices, then, if at any time during the inquiry it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the case, that the offence is after all more suitable for summary trial, the court may, after doing as provided in subsection (4) below, ask the accused whether he consents to be tried summarily and, if he so consents, may [<sup>F85</sup>subject to subsection (3A) below ] proceed to try the information summarily; <sup>F86</sup>

[<sup>F87</sup>(3A) Where the prosecution is being carried on by the Attorney General or the Solicitor General, the court shall not exercise the power conferred by subsection (3) above without his consent and, where the prosecution is being carried on by the Director of Public Prosecutions, shall not exercise that power if the Attorney General directs that it should not be exercised.]

(4) Before asking the accused under subsection (3) above whether he consents to be tried summarily, the court shall in ordinary language—

(a) explain to him that it appears to the court more suitable for him to be tried summarily for the offence, but that this can only be done if he consents to be so tried; and

(b) unless it has already done so, explain to him, as provided in section 20(2)(b) above, about the court's power to commit to the Crown Court for sentence.

(5) Where a person under [<sup>F83</sup> the age of 18 years] appears or is brought before a magistrates' court on an information charging him with an indictable offence other than homicide, and the court—

(a) has begun to try the information summarily on the footing that the case does not fall within paragraph (a) or (b) of section 24(1) above and must therefore be tried summarily, as required by the said section 24(1); or

(b) has begun to inquire into the case as examining justices on the footing that the case does so fall,

subsection (6) or (7) below, as the case may be, shall have effect.

(6) If, in a case falling within subsection (5)(a) above, it appears to the court at any time before the conclusion of the evidence for the prosecution that the case is after all one which under the said section 24(1) ought not to be tried summarily, the court may discontinue the summary trial and proceed to inquire into the information as examining justices and, on doing so, [<sup>F84</sup>shall adjourn the hearing.]

(7) If, in a case falling within subsection (5)(b) above, it appears to the court at any time during the inquiry that the case is after all one which under the said section 24(1) ought to be tried summarily, the court may proceed to try the information summarily.

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[<sup>F88</sup>(8) If the court adjourns the hearing under subsection (2) or (6) above it may (if it thinks fit) do so without remanding the accused.]

#### Textual Amendments

- F83** Words in s. 25 substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), ss. 68(d), 101(1), [Sch. 8 para. 6\(1\)\(a\)](#), [Sch. 12, para. 22\(1\)](#); S.I. 1992/333, art. 2(2), [Sch. 2](#).
- F84** Words in s. 25(2)(6) substituted (4.7.1996 with effect as mentioned in [Sch. 1 Pt. III para. 39](#) of the substituting Act) by [1996 c. 25, s. 47](#), [Sch. 1 Pt. I para. 5\(2\)](#) (with s. 78(1)); S.I. 1997/683, [art. 1\(2\)](#)
- F85** Words inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\)](#), s. 31(5), [Sch. 1 Pt. I para. 3](#)
- F86** Words repealed by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\)](#), s. 31(6), [Sch. 2](#)
- F87** S. 25(3A) inserted by [Prosecution of Offences Act 1985 \(c. 23, SIF 39:1\)](#), s. 31(5), [Sch. 1 Pt. I para. 3](#)
- F88** S. 25(8) inserted (4.7.1996 with effect as mentioned in [Sch. 1 Pt. III para. 39](#) of the inserting Act) by [1996 c. 25, s. 47](#), [Sch. 1 Pt. I para. 5\(3\)](#) (with s. 78(1)); S.I. 1997/683, [art. 1\(2\)](#)

## 26 Power to issue summons to accused in certain circumstances. **E+W**

(1) Where—

- (a) in the circumstances mentioned in section 23(1)(a) above the court is not satisfied that there is good reason for proceeding in the absence of the accused; or
- (b) subsection (4)(b) or (5) of section 23 or subsection (2) or (6) of section 25 above applies, and the court adjourns the hearing in pursuance of that subsection without remanding the accused,

the justice or any of the justices of which the court is composed may issue a summons directed to the accused requiring his presence before the court.

(2) If the accused is not present at the time and place appointed—

- (a) in a case within subsection (1)(a) above, for the proceedings under section 19(1) or 22(1) above, as the case may be; or
- (b) in a case within subsection (1)(b) above, for the resumption of the hearing, the court may issue a warrant for his arrest.

## 27 Effect of dismissal of information for offence triable either way. **E+W**

Where on the summary trial of an information for an offence triable either way the court dismisses the information, the dismissal shall have the same effect as an acquittal on indictment.

## <sup>X1F89</sup>28 ..... **E+W**

#### Editorial Information

- X1** The insertion of the new crossheading "Transfer of criminal proceedings" on 1.4.2005 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.



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### Textual Amendments

- F89** S. 28 repealed (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the repealing Act) by 1996 c. 25, ss. 44, 47, 80, Sch. 1 Pt. I para. 6, **Sch. 5** table10 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

VALID FROM 01/04/2005

### <sup>F90</sup>Transfer of criminal proceedings

#### Textual Amendments

- F90** S. 27A and cross-heading inserted (1.4.2005) after s. 27 by Courts Act 2003 (c. 39), **ss. 46(1), 110**; S.I. 2005/910, **art. 3(p)**

### **27A Power to transfer criminal proceedings** **E+W**

- (1) Where a person appears or is brought before a magistrates' court—
  - (a) to be tried by the court for an offence, or
  - (b) for the court to inquire into the offence as examining justices,the court may transfer the matter to another magistrates' court.
- (2) The court may transfer the matter before or after beginning the trial or inquiry.
- (3) But if the court transfers the matter after it has begun to hear the evidence and the parties, the court to which the matter is transferred must begin hearing the evidence and the parties again.
- (4) The power of the court under this section to transfer any matter must be exercised in accordance with any directions given under section 30(3) of the Courts Act 2003.]

### *Power to remit person under 17 for trial to juvenile court*

### **29 Power of magistrates' court to remit a person under 17 for trial to a [<sup>F91</sup>youth court] in certain circumstances.** **E+W**

- (1) Where—
  - (a) a person under [<sup>F92</sup>the age of 18 years] (“the juvenile”) appears or is brought before a magistrates' court other than a [<sup>F91</sup>youth court] on an information jointly charging him and one or more other persons with an offence; and
  - (b) that other person, or any of those other persons, has attained that age,subsection (2) below shall have effect notwithstanding proviso (a) in section 46(1) of the <sup>M9</sup>Children and Young Persons Act 1933 (which would otherwise require the charge against the juvenile to be heard by a magistrates' court other than a [<sup>F91</sup>youth court]).

In the following provisions of this section “the older accused” means such one or more of the accused as have attained [<sup>F92</sup>the age of 18 years].

- (2) If—

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- (a) the court proceeds to the summary trial of the information in the case of both or all of the accused, and the older accused or each of the older accused pleads guilty; or
- (b) the court—
  - (i) in the case of the older accused or each of the older accused, proceeds to inquire into the information as examining justices and either commits him for trial or discharges him; and
  - (ii) in the case of the juvenile, proceeds to the summary trial of the information,

then, if in either situation the juvenile pleads not guilty, the court may before any evidence is called in his case remit him for trial to a [<sup>F91</sup>youth court] acting for the same place as the remitting court or for the place where he habitually resides.

- (3) A person remitted to a [<sup>F91</sup>youth court] under subsection (2) above shall be brought before and tried by a [<sup>F91</sup>youth court] accordingly.
- (4) Where a person is so remitted to a [<sup>F91</sup>youth court]—
  - (a) he shall have no right of appeal against the order of remission; and
  - (b) the remitting court may [<sup>F93</sup>, subject to section 25 of the Criminal Justice and Public Order Act 1994,] give such directions as appear to be necessary with respect to his custody or for his release on bail until he can be brought before the [<sup>F91</sup>youth court].
- (5) The preceding provisions of this section shall apply in relation to a corporation as if it were an individual who has attained [<sup>F92</sup>the age of 18 years].

#### Textual Amendments

- F91** Words in s. 29 substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), s. 100, [Sch. 11 para. 40\(2\)\(n\)](#); [S.I. 1992/333, art. 2\(2\)](#), [Sch. 2](#)
- F92** Words in s. 29 substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), ss. 68(d), 101(1), [Sch. 8 para. 6\(1\)\(a\)](#), [Sch. 12 para. 22\(1\)](#); [S.I. 1992/333, art. 2\(2\)](#), [Sch. 2](#)
- F93** Words in s. 29(4)(b) inserted (10.4.1995) by [1994 c. 33, s. 168\(2\)](#), [Sch. 10 para.41](#); [S.I. 1995/721, art. 2](#), [Sch. AppendixA](#)

#### Marginal Citations

- M9** [1933 c. 12.](#)

### *Remand for medical examination*

## 30 Remand for medical examination. **E+W**

- (1) If, on the trial by a magistrates' court of an offence punishable on summary conviction with imprisonment, the court is satisfied that the accused did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the court shall adjourn the case to enable a medical examination and report to be made and shall remand him; but the adjournment shall not be for more than 3 weeks at a time where the court remands him in custody nor for more than 4 weeks at a time where it remands him on bail.

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- (2) Where on an adjournment under subsection (1) above the accused is remanded on bail, the court shall impose conditions under paragraph (d) of section 3(6) of the <sup>M10</sup>Bail Act 1976 and the requirements imposed as conditions under that paragraph shall be or shall include requirements that the accused—
- (a) undergo medical examination by a [<sup>F94</sup>registered medical practitioner] or, where the inquiry is into his mental condition and the court so directs, two such practitioners; and
  - (b) for that purpose attend such an institution or place, or on such practitioner, as the court directs and, where the inquiry is into his mental condition, comply with any other directions which may be given to him for that purpose by any person specified by the court or by a person of any class so specified.
- (3) . . . . . <sup>F95</sup>

**Textual Amendments**

**F94** Words in s. 30(2)(a) substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para.28**; S.I. 1998/2327, **art. 2(1)(w)**

**F95** S. 30(3) repealed by **Prosecution of Offences Act 1985** (c. 23, SIF 39:1), s. 31(6), **Sch. 2**

**Marginal Citations**

**M10** 1976 c. 63.

*Powers in respect of offenders*

**31 General limit on power of magistrates' court to impose imprisonment. E+W**

- (1) Without prejudice to section 133 below, a magistrates' court shall not have power to impose imprisonment [<sup>F96</sup>or youth custody]for more than 6 months in respect of any one offence.
- (2) Unless expressly excluded, subsection (1) above shall apply even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment [<sup>F96</sup>or youth custody]for more than 6 months.
- (3) Any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine, shall not be limited by virtue of subsection (1) above.
- (4) In subsection (3) above "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

**Textual Amendments**

**F96** Words inserted by **Criminal Justice Act 1982** (c. 48, SIF 39:1), s. 77, **Sch. 14 para. 48**

**Modifications etc. (not altering text)**

**C23** S. 31 extended (N.I.) by **Finance Act 1983** (c. 28, SIF 40:2), s. 47, **Sch. 9 para. 1(1)(2)**

**C24** S. 31(1)(2) excluded by **Criminal Attempts Act 1981** (c. 47, SIF 39:1), s. 4(5)(b)(ii)

**C25** S. 31(3) modified by **Criminal Justice Act 1988** (c. 33, SIF 39:1), ss. 75(2), 123(6), **Sch. 8 para. 16**

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### 32 Penalties on summary conviction for offences triable either way. **E+W**

- (1) On summary conviction of any of the offences triable either way listed in Schedule 1 to this Act a person shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding the prescribed sum or both, except that—
- (a) a magistrates' court shall not have power to impose imprisonment for an offence so listed if the Crown Court would not have that power in the case of an adult convicted of it on indictment;
  - (b) on summary conviction of an offence consisting in the incitement to commit an offence triable either way a person shall not be liable to any greater penalty than he would be liable to on summary conviction of the last-mentioned offence; and
  - (c) ..... <sup>F97</sup>
- (2) For any offence triable either way which is not listed in Schedule 1 to this Act, being an offence under a relevant enactment, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the prescribed sum unless the offence is one for which by virtue of an enactment other than this subsection a larger fine may be imposed on summary conviction.
- (3) Where, by virtue of any relevant enactment, a person summarily convicted of an offence triable either way would, apart from this section, be liable to a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, subsection (2) above shall apply irrespective of whether the conviction is a first, second or subsequent one.
- (4) Subsection (2) above shall not affect so much of any enactment as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event.
- (5) Subsection (2) above shall not apply on summary conviction of any of the following offences:—
- (a) offences under section 5(2) of the <sup>M11</sup>Misuse of Drugs Act 1971 (having possession of a controlled drug) where the controlled drug in relation to which the offence was committed was a Class B or Class C drug;
  - (b) offences under the following provisions of that Act, where the controlled drug in relation to which the offence was committed was a Class C drug, namely—
    - (i) section 4(2) (production, or being concerned in the production, of a controlled drug);
    - (ii) section 4(3) (supplying or offering a controlled drug or being concerned in the doing of either activity by another);
    - (iii) section 5(3) (having possession of a controlled drug with intent to supply it to another);
    - (iv) section 8 (being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there);
    - (v) section 12(6) (contravention of direction prohibiting practitioner etc. from possessing, supplying etc. controlled drugs); or
    - (vi) section 13(3) (contravention of direction prohibiting practitioner etc. from prescribing, supplying etc. controlled drugs).

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- (6) Where, as regards any offence triable either way, there is under any enactment (however framed or worded) a power by subordinate instrument to restrict the amount of the fine which on summary conviction can be imposed in respect of that offence—
- (a) subsection (2) above shall not affect that power or override any restriction imposed in the exercise of that power; and
  - (b) the amount to which that fine may be restricted in the exercise of that power shall be any amount less than the maximum fine which could be imposed on summary conviction in respect of the offence apart from any restriction so imposed.

(7) ..... <sup>F98</sup>

(8) In subsection (5) above “controlled drug”, “Class B drug” and “Class C drug” have the same meaning as in the <sup>M12</sup>Misuse of Drugs Act 1971.

(9) In this section—

“fine” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation;

“the prescribed sum” means [<sup>F99</sup>£5,000] or such sum as is for the time being substituted in this definition by an order in force under section 143(1) below;

“relevant enactment” means an enactment contained in the <sup>M13</sup>Criminal Law Act 1977 or in any Act passed before, or in the same Session as, that Act.

#### Textual Amendments

**F97** S. 32(1)(c) repealed by [Criminal Attempts Act 1981 \(c. 47, SIF 39:1\)](#), s. 10, **Sch. Pt. I**

**F98** S. 32(7) repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 123(6), 170(2), **Sch. 8 para. 16, Sch. 16**

**F99** Word in s. 32(9) substituted (*1.10.1992*) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), ss. 17(2)(c), 101(1), **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**

#### Modifications etc. (not altering text)

**C26** S. 32 amended by [S.I. 1984/703 \(N.I. 3\)](#), **art. 4(7)**

**C27** S. 32 extended with modifications (Isle of Man) (1.12.1992) by [S.I. 1992/2670](#), **art. 2(b)**

**C28** S. 32 extended with modifications (Guernsey) (1.2.1993) by [S.I. 1992/3202](#), art. 2(b), **Sch. para. 2**

**C29** S. 32 extended (N.I.) by [Finance Act 1983 \(c. 28, SIF 40:2\)](#), s. 47, **Sch. 9 para. 1(1)(2)**, [Copyright \(Amendment\) Act 1983 \(c. 42, SIF 32\)](#), **s. 1**, [Car Tax Act 1983 \(c. 53, SIF 40:2\)](#), s. 1(4), **Sch. 1 para. 8(6)(a)**, [Value Added Tax Act 1983 \(c. 55, SIF 40:2\)](#), **s. 48(2)(a)**

S. 32 extended (N.I.) by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), **s. 106(2)(a)**

**C30** S. 32(9) extended (N.I.) by [Wireless Telegraphy Act 1949 \(c. 54, SIF 96\)](#), **s. 14(9)** (as added by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 75(2), **Sch. 3 para. 2**)

#### Marginal Citations

**M11** 1971 c. 38.

**M12** 1971 c. 38.

**M13** 1977 c. 45.

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### 33 Maximum penalties on summary conviction in pursuance of section 22. **E+W**

- (1) Where in pursuance of subsection (2) of section 22 above a magistrates' court proceeds to the summary trial of an information, then, if the accused is summarily convicted of the offence—
- (a) [<sup>F100</sup>subject to subsection (3) below] the court shall not have power to impose on him in respect of that offence imprisonment for more than 3 months or a fine greater than [<sup>F101</sup>level 4 on the standard scale]; and
  - (b) section 38 below shall not apply as regards that offence.
- (2) In subsection (1) above “fine” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.
- [<sup>F102</sup>(3) Paragraph (a) of subsection (1) above does not apply to an offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking).]

#### Textual Amendments

- F100** Words in s. 33(1)(a) inserted (1.4.1992) by Aggravated Vehicle-Taking Act 1992 (c. 11), s. 2(3)(a); S.I. 1992/764, art. 2
- F101** Words in s. 33(1)(a) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(3)(b), 101(1), Sch. 4 Pt. II, Sch. 12 para. 6 (with s. 28); S.I. 1992/333, art. 2(2), Sch. 2
- F102** S. 33(3) inserted (1.4.1992) by Aggravated Vehicle-Taking Act 1992 (c. 11), s. 2(3)(b); S.I. 1992/764, art. 2

### 34 Mitigation of penalties, etc. **E+W**

- (1) Where under any enactment whether passed before or after the commencement of this Act a magistrates' court has power to sentence an offender to imprisonment for a period specified by the enactment, or to a fine of an amount specified by the enactment, then, except where an Act passed after 31st December 1879 expressly provides to the contrary, the court may sentence him to imprisonment for less than that period or, as the case may be, to a fine of less than that amount.
- (2) Where under any such enactment an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognizance with or without sureties to keep the peace or observe any other condition, the court convicting him may dispense with or modify the requirement.
- (3) Where under any such enactment a magistrates' court has power to sentence an offender to imprisonment or other detention but not to a fine, then, except where an Act passed after 31st December 1879 expressly provides to the contrary, the court may, instead of sentencing him to imprisonment or other detention, impose a fine which—
- (a) for an offence triable either way, shall not exceed the prescribed sum within the meaning of section 32 above; and
  - (b) for a summary offence, shall—
    - (i) not exceed [<sup>F103</sup>level 3 on the standard scale]; and
    - (ii) not be of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence.

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#### Textual Amendments

**F103** Words in s. 34(3)(b) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(3)(b), 101(1), Sch. 4, Pt.II, **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**

<sup>F104</sup>**35** ..... **E+W**

#### Textual Amendments

**F104** S. 35 repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch.13**; S.I. 1992/333, art. 2(2), **Sch.2**

### **36**      **Restriction on fines in respect of young persons.** **E+W**

- (1) Where a person under [<sup>F105</sup>18 years of age] is found guilty by a magistrates' court of an offence for which, apart from this section, the court would have power to impose a fine of an amount exceeding [<sup>F106</sup>£1000], the amount of any fine imposed by the court shall not exceed [<sup>F106</sup>£1000].
- (2) In relation to a person under the age of 14 subsection (1) above shall have effect as if for the words "<sup>F107</sup>£1000]", in both the places where they occur, there were substituted the words "<sup>F108</sup>£250]"; <sup>F109</sup> . . .

#### Textual Amendments

**F105** Words in s. 36(1) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68(d), 101(1), Sch. 8 para. 6(1)(c), **Sch. 12 para. 22(1)**; S.I. 1992/333, art. 2(2), **Sch.2**

**F106** Words in s. 36(1) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(2)(a), 101(1), **Sch. 12**, para. 6 (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**

**F107** Word in s. 36(2) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(2)(a), 101(1), **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**

**F108** Word in s. 36(2) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(2), 101(1), **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**

**F109** Words in s. 36(2) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(2), **Sch.13**; S.I. 1992/333, art. 2(2), **Sch.2**

### <sup>F110</sup>**36A** **Alterations of names of petty sessions areas in inner London area.** **E+W**

- (1) The committee of magistrates may at any time submit to the Secretary of State a draft order altering the name of any petty sessions area in the inner London area.
- (2) Where the committee submit a draft order to the Secretary of State under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit.
- (3) Any order under this section may contain transitional and other consequential provisions.]

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### Textual Amendments

**F110** S. 36A inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123(6), 164(3), **Sch. 8 para. 16**

**F111** 37 ..... **E+W**

### Textual Amendments

**F111** S. 37 repealed (1.4.2000) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 41, **Sch.10**; S.I. 1999/3426, **art. 3(b)**

**F112** 38 **Committal for sentence on summary trial of offence triable either way.** **E+W**

(1) This section applies where on the summary trial of an offence triable either way (not being an offence as regards which this section is excluded by section 33 above) a person who is not less than 18 years old is convicted of the offence.

(2) If the court is of opinion—

- (a) that the offence or the combination of the offence and <sup>F113</sup>one or more offences associated with it was so serious that greater punishment should be inflicted for the offence than the court has power to impose; or
- (b) in the case of a violent or sexual offence <sup>F114</sup>... , that a <sup>F115</sup>custodial sentence for a term longer than the court has power to impose is necessary to protect the public from serious harm from him,

the court may, <sup>F116</sup>... commit the offender in custody or on bail to the Crown Court for sentence in accordance with the provisions of section 42 of the Powers of Criminal Courts Act 1973.

<sup>F117</sup>(2A) <sup>M14</sup>[ Where the court commits a person under subsection (2) above, section 56 of the Criminal Justice Act 1967 (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.]

(3) Paragraphs (a) and (b) of subsection (2) above shall be construed as if they were contained in Part I of the Criminal Justice Act 1991.

(4) The preceding provisions of this section shall apply in relation to a corporation as if—

- (a) the corporation were an individual who is not less than 18 years old; and
- (b) in subsection (2) above, paragraph (b) and the words "in custody or on bail" were omitted.]

### Textual Amendments

**F112** S.38 substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 25(1)** (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**

**F113** Words in s. 38(2)(a) substituted (16.8.1993) by 1993 c. 36, **s. 66(8)**; S.I. 1993/1968, art. 2(1), **Sch. 1**

**F114** Words in s. 38(2)(b) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 15(a), **Sch. 11**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendices A, C

**F115** Words in s. 38(2)(b) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 15(b)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A



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**F116** Words in s. 38(2) repealed (30.9.1998) by 1998 c. 37, ss. 106, 120(2), Sch. 7 para. 29(1), **Sch.10**; S.I. 1998/2327, **art. 2(1)(w)(aa)(3)(o)**

**F117** S. 38(2A) inserted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 29(2)**; S.I. 1998/2327, **art. 2(1)(w)**

#### Marginal Citations

**M14** 1967 c.80.

### [<sup>F118</sup>38A Committal for sentence on indication of guilty plea to offence triable either way. **E+W**

- (1) This section applies where—
  - (a) a person who is 18 or over appears or is brought before a magistrates' court ("the court") on an information charging him with an offence triable either way ("the offence");
  - (b) he or his representative indicates that he would plead guilty if the offence were to proceed to trial; and
  - (c) proceeding as if section 9(1) above was complied with and he pleaded guilty under it, the court convicts him of the offence.
- (2) If the court has committed the offender to the Crown Court for trial for one or more related offences, that is to say, one or more offences which, in its opinion, are related to the offence, it may, <sup>F119</sup> . . . commit him in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with the provisions of section 42 of the Powers of Criminal Courts Act 1973.
- (3) If the power conferred by subsection (2) above is not exercisable but the court is still to inquire, as examining justices, into one or more related offences—
  - (a) it shall adjourn the proceedings relating to the offence until after the conclusion of its inquiries; and
  - (b) if it commits the offender to the Crown Court for trial for one or more related offences, it may then exercise that power.
- (4) Where the court—
  - (a) commits the offender to the Crown Court to be dealt with in respect of the offence; and
  - (b) does not state that, in its opinion, it also has power so to commit him under section 38(2) above,the provisions of section 42 of the Powers of Criminal Courts Act 1973 shall not apply unless he is convicted before the Crown Court of one or more of the related offences.
- (5) Where those provisions of that section do not apply, the Crown Court shall have power to deal with the offender in respect of the offence in any manner in which [<sup>F120</sup>the magistrates' court could deal with him if it had just convicted him of the offence].

[ Where the court commits a person under subsection (2) above, section 56 of the <sup>F121</sup>(5A) <sup>M15</sup>Criminal Justice Act 1967 (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.]

- (6) For the purposes of this section one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.]

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#### Textual Amendments

- F118** S. 38A inserted (1.10.1997) by 1997 c. 43, s. 51; S.I. 1997/2200, art.2(1)(k)
- F119** Words in s. 38A(2) repealed (30.9.1998) by 1998 c. 37, ss. 106, 120(2), Sch. 7 para. 30(1), Sch.10; S.I. 1998/2327, art. 2(1)(w)(aa)(3)(o)
- F120** Words in s. 38A(5) substituted (30.9.1998) by 1998 c. 37, s. 106, Sch. 7 para. 30(2); S.I. 1998/2327, art. 2(1)(w)
- F121** S. 38A(5A) inserted (30.9.1998) by 1998 c. 37, s. 106, Sch. 7 para. 30(3); S.I. 1998/2327, art. 2(1)(w)

#### Marginal Citations

- M15** 1967 c.80.

### 39 Cases where magistrates' court may remit offender to another such court for sentence. **E+W**

- (1) Where a person who has attained [<sup>F122</sup>the age of 18 years] ("the offender") has been convicted by a magistrates' court ("the convicting court") of an offence to which this section applies ("the instant offence") and—
- (a) it appears to the convicting court that some other magistrates' court ("the other court") has convicted him of another such offence in respect of which the other court has neither passed sentence on him nor committed him to the Crown Court for sentence nor dealt with him in any other way; and
  - (b) the other court consents to his being remitted under this section to the other court,
- the convicting court may remit him to the other court to be dealt with in respect of the instant offence by the other court instead of by the convicting court.
- (2) The offender, if remitted under this section, shall have no right of appeal against the order of remission.
- (3) Where the convicting court remits the offender to the other court under this section, it shall adjourn the trial of the information charging him with the instant offence, and—
- (a) section 128 below and all other enactments (whenever passed) relating to remand or the granting of bail in criminal proceedings shall have effect in relation to the convicting court's power or duty to remand the offender on that adjournment as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the court to which he is being remitted; and
  - (b) subject to subsection (4) below, the other court may deal with the case in any way in which it would have power to deal with it (including, where applicable, the remission of the offender under this section to another magistrates' court in respect of the instant offence) if all proceedings relating to that offence which took place before the convicting court had taken place before the other court.
- (4) Nothing in this section shall preclude the convicting court from making any order which it has power to make under section 28 of the <sup>M16</sup>Theft Act 1968 (orders for restitution) by virtue of the offender's conviction of the instant offence.
- (5) Where the convicting court has remitted the offender under this section to the other court, the other court may remit him back to the convicting court; and the provisions of

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subsection (3) above (so far as applicable) shall apply with the necessary modifications in relation to any remission under this subsection.

(6) This section applies to—

- (a) any offence punishable with imprisonment; and
- (b) any offence in respect of which the convicting court has a power or duty to order the offender to be disqualified under [<sup>F123</sup>section 34, 35 or 36] of the Road Traffic Offenders Act 1988](disqualification for certain motoring offences);

and in this section “conviction” includes a finding under section 30(1) above that the person in question did the act or made the omission charged, and “convicted” shall be construed accordingly.

#### Textual Amendments

**F122** Words in s. 39(1) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68(d), 101(1), Sch. 8 para. 6(1)(a), **Sch. 12 para. 22(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**.

**F123** Words substituted (15.5.1989) by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 4, 5, Sch. 3 para. 20, Sch. 4 paras. 1, 2

**F124** Words in s. 39(6)(b) substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para.31**; S.I. 1998/2327, **art. 2(1)(w)**

#### Marginal Citations

**M16** 1968 c. 60.

#### 40 Restriction on amount payable under compensation order of magistrates' court. **E+W**

(1) The compensation to be paid under a compensation order made by a magistrates' court in respect of any offence of which the court has convicted the offender shall not exceed [<sup>F125</sup>£5,000]; and the compensation or total compensation to be paid under a compensation order or compensation orders made by a magistrates' court in respect of any offence or offences taken into consideration in determining sentence shall not exceed the difference (if any) between the amount or total amount which under the preceding provisions of this subsection is the maximum for the offence or offences of which the offender has been convicted and the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

(2) In subsection (1) above “compensation order” has the meaning assigned to it by section 35(1) of the <sup>M17</sup>Powers of Criminal Courts Act 1973.

#### Textual Amendments

**F125** Word in s. 40(1) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 17(3)(a), 101(1), Sch. 4 Pt.I, **Sch. 12 para. 6** (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**

#### Marginal Citations

**M17** 1973 c. 62.

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### Miscellaneous

#### 41 Restriction on grant of bail in treason. **E+W**

A person charged with treason shall not be granted bail except by order of a judge of the High Court or the Secretary of State.

#### 42 Restriction on justices sitting after dealing with bail. **E+W**

- (1) A justice of the peace shall not take part in trying the issue of an accused's guilt on the summary trial of an information if in the course of the same proceedings the justice has been informed, for the purpose of determining whether the accused shall be granted bail, that he has one or more previous convictions.
- (2) For the purposes of this section any committal proceedings from which the proceedings on the summary trial arose shall be treated as part of the trial.

#### [<sup>F126</sup>43 Bail on arrest. **E+W**

- (1) Where a person has been granted bail under [<sup>F127</sup>Part IV of] the Police and Criminal Evidence Act 1984 subject to a duty to appear before a magistrates' court, the court before which he is to appear may appoint a later time as the time at which he is to appear and may enlarge the recognizances of any sureties for him at that time.
- (2) The recognizance of any surety for any person granted bail subject to a duty to attend at a police station may be enforced as if it were conditioned for his appearance before a magistrates' court for the petty sessions area in which the police station named in the recognizance is situated.]

#### Textual Amendments

**F126** S. 43 substituted by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), **ss. 47(8)(a)**, 51, 52

**F127** Words in s. 43(1) inserted (10.4.1995) by [1994 c. 33, s. 168\(2\)](#), **Sch. 10 para.43**; [S.I. 1995/721, art. 2](#), **Sch.** AppendixA

#### [<sup>F128</sup>43A Functions of magistrates' court where a person in custody is brought before it with a view to his appearance before the Crown Court. **E+W**

- (1) Where a person in custody in pursuance of a warrant issued by the Crown Court with a view to his appearance before the Crown Court is brought before a magistrates' court in pursuance of section 81(5) of the <sup>M18</sup>Supreme Court Act 1981—
  - (a) the magistrates' court shall commit him in custody or release him on bail until he can be brought or appear before the Crown Court at the time and place appointed by the Crown Court;
  - (b) if the warrant is endorsed for bail, but the person in custody is unable to satisfy the conditions endorsed, the magistrates' court may vary those conditions, if satisfied that it is proper to do so.
- (2) A magistrates' court shall have jurisdiction under subsection (1) whether or not the offence was committed, or the arrest was made, within the court's area.]

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#### Textual Amendments

**F128** S. 43A inserted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(1), [Sch. 5](#)

#### Marginal Citations

**M18** [1981 c. 54 \(37\)](#).

### [<sup>F129</sup>**43B Power to grant bail where police bail has been granted.** **E+W**]

- (1) Where a custody officer—
  - (a) grants bail to any person under Part IV of the Police and Criminal Evidence Act 1984 in criminal proceedings and imposes conditions, or
  - (b) varies, in relation to any person, conditions of bail in criminal proceedings under section 3(8) of the Bail Act 1976,a magistrates' court may, on application by or on behalf of that person, grant bail or vary the conditions.
- (2) On an application under subsection (1) the court, if it grants bail and imposes conditions or if it varies the conditions, may impose more onerous conditions.
- (3) On determining an application under subsection (1) the court shall remand the applicant, in custody or on bail in accordance with the determination, and, where the court withholds bail or grants bail the grant of bail made by the custody officer shall lapse.
- (4) In this section “bail in criminal proceedings” and “vary” have the same meanings as they have in the Bail Act 1976.]

#### Textual Amendments

**F129** S. 43B inserted (10.4.1995) by [1994 c. 33, s. 27\(4\)](#), [Sch. 3 para.3](#); [S.I. 1995/721](#), [art. 2](#),Sch.

#### Modifications etc. (not altering text)

**C31** S. 43B excluded (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 88\(1\)\(c\)](#), 336; [S.I. 2005/950](#), [art. 2](#), [Sch. 1 para. 5](#) (subject to [art. 2\(2\)](#) and with [Sch. 2](#))

### **44 Aiders and abettors.** **E+W**

- (1) A person who aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence and may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him.
- (2) Any offence consisting in aiding, abetting, counselling or procuring the commission of an offence triable either way (other than an offence listed in Schedule 1 to this Act) shall by virtue of this subsection be triable either way.

### **45 Incitement.** **E+W**

- (1) Any offence consisting in the incitement to commit a summary offence shall be triable only summarily.

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- (2) Subsection (1) above is without prejudice to any other enactment by virtue of which any offence is triable only summarily.
- (3) On conviction of an offence consisting in the incitement to commit a summary offence a person shall be liable to the same penalties as he would be liable to on conviction of the last-mentioned offence.

**Modifications etc. (not altering text)**

- C32** S. 45(3) excluded by [Public Order Act 1986 \(c. 64, SIF 39:2\)](#), **ss. 12(10)**, 13(13), 14(10)  
S. 45(3) excluded by [1986 c. 64, s. 14B\(7\)](#) (as inserted (3.11.1994) by [1994 c. 33, s.70](#))  
S. 45(3) excluded (1.8.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 136(4)**, 178;  
[S.I. 2005/1521](#) {art. 4(1)} (subject to art. 4(2))

**46 Corporations. E+W**

The provisions of Schedule 3 to this Act shall have effect where a corporation is charged with an offence before a magistrates' court.

**Modifications etc. (not altering text)**

- C33** S. 46 applied (1.5.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(b) (xiii), **118(4)(a)**

**47 Service of summons out of time after failure to prove service by post. E+W**

Where any enactment requires, expressly or by implication, that a summons in respect of an offence shall be issued or served within a specified period after the commission of the offence, and service of the summons may under the rules be effected by post, then, if under the rules service of the summons is not treated as proved, but it is shown that a letter containing the summons was posted at such time as to enable it to be delivered in the ordinary course of post within that period, a second summons may be issued on the same information; and the enactment shall have effect, in relation to that summons, as if the specified period were a period running from the return day of the original summons.

**48 Return of property taken from accused. E+W**

Where a summons or warrant has been issued requiring any person to appear or be brought before a magistrates' court to answer to an information, or where any person has been arrested without a warrant for an offence, and property has been taken from him after the issue of the summons or warrant or, as the case may be, on or after his arrest without a warrant, the police shall report the taking of the property, with particulars of the property, to the magistrates' court which deals with the case; and, if the court, being of opinion that the whole or any part of the property can be returned to the accused consistently with the interests of justice and the safe custody of the accused, so directs, the property, or such part of it as the court directs, shall be returned to the accused or to such other person as he may require.

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49 .....<sup>F130</sup> **E+W**

**Textual Amendments**  
**F130** S. 49 repealed by [Police and Criminal Evidence Act 1984 \(c. 64, SIF 95\)](#), s. 119(2), [Sch. 7 Pt. I](#)

50 **Construction of references to complaint in enactments dealing with offences.** **E+W**

In any enactment conferring power on a magistrates' court to deal with an offence, or to issue a summons or warrant against a person suspected of an offence, on the complaint of any person, for references to a complaint there shall be substituted references to an information.

**Status:**

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**Changes to legislation:**

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