



# Administration of Justice (Miscellaneous Provisions) Act 1933

1933 CHAPTER 36 23 and 24 Geo 5

## 2 Procedure for indictment of offenders.

- (1) Subject to the provisions of this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before a court in which the person charged may lawfully be indicted for that offence <sup>F1</sup>... and it shall thereupon become an indictment and be proceeded with accordingly:  
<sup>F2</sup>  
...
- (2) Subject as hereinafter provided no bill of indictment charging any person with an indictable offence shall be preferred unless either—
- (a) the person charged has been [<sup>F3</sup>sent] for trial for the offence; or
  - [<sup>F4</sup>(aa) the offence is specified in a notice of transfer under section 4 of the Criminal Justice Act 1987 (serious and complex fraud); or]
  - [<sup>F4</sup>(ab) the offence is specified in a notice of transfer under section 53 of the Criminal Justice Act 1991 (violent or sexual offences against children); or]
  - [<sup>F4</sup>(ac) the person charged has been sent for trial for the offence under section 51 (no committal proceedings for indictable-only offences) of the Crime and Disorder Act 1998 (“the 1998 Act”); or ]
  - (b) the bill is preferred [<sup>F5</sup>by the direction of the [<sup>F6</sup>criminal division of the Court of Appeal] or] by the direction or with the consent of a judge of the High Court <sup>F7</sup>...: [<sup>F8</sup>or
  - (c) the bill is preferred under section 22B(3)(a) of the <sup>M1</sup> Prosecution of Offences Act 1985. ]

Provided that—

- [<sup>F9</sup>(i) where the person charged has been sent for trial, the bill of indictment against him may include, either in substitution for or in addition to any count charging an offence specified in the notice under section 57D(1) of the Crime and Disorder Act 1998, any counts founded on material which, in pursuance of regulations made under paragraph 1 of Schedule 3 to that Act, was served on the person

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charged, being counts which may lawfully be joined in the same indictment;]

[<sup>F10</sup>(iA) in a case to which paragraph (aa) [<sup>F11</sup>or (ab)] above applies, the bill of indictment may include, either in substitution for or in addition to any count charging an offence specified in the notice of transfer, any counts founded on material that accompanied the copy of that notice which, in pursuance of [<sup>F12</sup>regulations under the relevant provision], was given to the person charged, being counts which may lawfully be joined in the same indictment;]

[<sup>F10</sup>(iB) in a case to which paragraph (ac) above applies, the bill of indictment may include, either in substitution for or in addition to any count charging an offence specified in the notice under section 51(7) of the 1998 Act, any counts founded on material which, in pursuance of regulations made under paragraph 1 of Schedule 3 to that Act, was served on the person charged, being counts which may be lawfully joined in the same indictment;]

(ii) a charge of a previous conviction of an offence <sup>F13</sup>... may, notwithstanding that it was not included in [<sup>F14</sup>such notice] or in any such direction or consent as aforesaid, be included in any bill of indictment

[<sup>F15</sup>[<sup>F16</sup>and in paragraph (iA) above “the relevant provision” means section 5(9) of the Criminal Justice Act 1987 in a case to which paragraph (aa) above applies, and paragraph 4 of Schedule 6 to the Criminal Justice Act 1991 in a case to which paragraph (ab) above applies]].

(3) If a bill of indictment preferred otherwise than in accordance with the provisions of the last foregoing subsection has been signed by the proper officer of the court, the indictment shall be liable to be quashed:

Provided that—

(a) If a bill of indictment [<sup>F17</sup>has been] preferred otherwise than in accordance with the provisions of the last foregoing subsection <sup>F18</sup>..., the indictment shall be liable to be quashed:

<sup>F19</sup>(b) where a person who has been [<sup>F19</sup>sent] for trial is convicted on any indictment or any count of an indictment, that indictment or count shall not be quashed under this subsection in any proceedings on appeal, unless application was made at the trial that it should be so quashed.

<sup>F20</sup>(4) .....

(6) [<sup>F21</sup>Rules may make provision] for carrying this section into effect and [<sup>F22</sup>, in particular,] provision as to the manner in which and the time at which bills of indictment are to be preferred before any court and the manner in which application is to be made for the consent of a judge of the High Court <sup>F23</sup>... for the preferment of a bill of indictment.

[<sup>F24</sup>(6ZA) Where a bill of indictment is preferred in accordance with subsections (1) and (2), no objection to the indictment may be taken after the commencement of the trial by reason of any failure to observe any rules under subsection (6).

(6ZB) For the purposes of subsection (6ZA) the trial commences at the time when a jury is sworn to consider the issue of guilt or whether the accused did the act or made the omission charged, or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted.

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(6ZC) The references in subsection (6ZB) to the time when a jury is sworn include the time when that jury would be sworn but for the making of an order under Part 7 of the Criminal Justice Act 2003.]

[<sup>F25</sup>(6A) In subsection (6) above “rules” —

- (a) in relation to the preferment of a bill of indictment by the direction or with the consent of a judge of the High Court, means rules made [<sup>F26</sup>in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005], and
  - (b) in any other case, means Criminal Procedure Rules.]
- (7) <sup>F27</sup>... Nothing in this section shall affect any enactment restricting the right to prosecute in particular classes of case.
- (8) The provisions of any enactment passed before the commencement of this Act shall have effect subject to the adaptations and modifications specified in the Second Schedule to this Act.

#### Textual Amendments

- F1** Words in s. 2(1) repealed (12.11.2009 with retrospective effect in accordance with Sch. 22 para. 26 of the amending Act) by Coroners and Justice Act 2009 (c. 25), ss. 116(1)(a)(i), 182(1)(b), Sch. 23 Pt. 3
- F2** Words in s. 2(1) repealed (12.11.2009 with retrospective effect in accordance with Sch. 22 para. 26 of the amending Act) by Coroners and Justice Act 2009 (c. 25), ss. 116(1)(a)(ii), 182(1)(b), Sch. 23 Pt. 3
- F3** Word in s. 2(2)(a) substituted (9.5.2005 for specified purposes; 18.6.2012 for specified purposes; 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 3 para. 34(2)(a); S.I. 2005/1267, art. 2(1)(2)(b), Sch. Pt. 2; S.I. 2012/1320, art. 4(1)(c)(2)(3) (with art. 5); S.I. 2012/2574, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4); S.I. 2013/1103, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4)
- F4** S. 2(2)(aa)-(ac) repealed (18.6.2012 for specified purposes; 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 3 para. 34(2)(b), Sch. 37 Pt. 4; S.I. 2012/1320, art. 4(1)(c)(d)(2)(3) (with art. 5); S.I. 2012/2574, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4); S.I. 2013/1103, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4)
- F5** Words inserted by Criminal Appeal Act 1964 (c. 43), s. 5, Sch. 2
- F6** Words substituted by virtue of Criminal Appeal Act 1966 (c. 31), s. 1(6)(a)
- F7** Words repealed by Prosecution of Offences Act 1985 (c. 23), s. 31(6), Sch. 2
- F8** S. 2(2)(c) and preceding word inserted (1.6.1999) by 1998 c. 37, s. 119, Sch. 8 para. 5(1)(b); S.I. 1999/1279, art. 2.
- F9** S. 2(2)(i) substituted (9.5.2005 for specified purposes; 18.6.2012 for specified purposes; 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 3 para. 34(2)(c); S.I. 2005/1267, art. 2(1)(2)(b), Sch. Pt. 2; S.I. 2012/1320, art. 4(1)(c)(2)(3) (with art. 5); S.I. 2012/2574, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4); S.I. 2013/1103, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4)
- F10** S. 2(2)(iA)(iB) repealed (18.6.2012 for specified purposes; 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 3 para. 34(2)(d), Sch. 37 Pt. 4; S.I. 2012/1320, art. 4(1)(c)(d)(2)(3) (with art. 5); S.I. 2012/1320, art. 4(1)(c)(d)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4); S.I. 2013/1103, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4)
- F11** Words in para. (iA) of the proviso to s. 2(2) inserted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 53(5), Sch. 6 para. 8(2)(a); S.I. 1992/333, art. 2(2), Sch. 2
- F12** Words in para. (iA) of the proviso to s. 2(2) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 53(5), Sch. 6 para. 8(2)(b); S.I. 1992/333, art. 2(2), Sch. 2
- F13** Words in s. 2(2)(ii) repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. III.

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- F14** Words in s. 2(2)(ii) substituted (9.5.2005 for specified purposes; 18.6.2012 for specified purposes; 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by **Criminal Justice Act 2003** (c. 44), s. 336(3)(4), **Sch. 3 para. 34(2)(e)**; S.I. 2005/1267, art. 2(1)(2)(a), **Sch. Pt. 1**; S.I. 2012/1320, **art. 4(1)(c)(2)(3)** (with art. 5); S.I. 2012/2574, **art. 2(1)(c)(d)(2)(3)** (with arts. 3, 4); S.I. 2013/1103, **art. 2(1)(c)(d)(2)(3)** (with arts. 3, 4)
- F15** Words in s. 2(2) proviso inserted (1.10.1992) by **Criminal Justice Act 1991** (c. 53, SIF 39:1), s. 53(5), **Sch. 6 para. 8(3)**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F16** Words in s. 2(2) repealed (18.6.2012 for specified purposes; 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by **Criminal Justice Act 2003** (c. 44), s. 336(3)(4), **Sch. 3 para. 34(2)(f)**, **Sch. 37 Pt. 4**; S.I. 2012/1320, **art. 4(1)(c)(d)(2)(3)** (with art. 5); S.I. 2012/2574, **art. 2(1)(c)(d)(2)(3)** (with arts. 3, 4); S.I. 2013/1103, **art. 2(1)(c)(d)(2)(3)** (with arts. 3, 4)
- F17** Words in s. 2(3) inserted (12.11.2009 with retrospective effect in accordance with **Sch. 22 para. 26** of the amending Act) by **Coroners and Justice Act 2009** (c. 25), **ss. 116(1)(b)(i)**, 182(1)(b)
- F18** Words in s. 2(3) repealed (12.11.2009 with retrospective effect in accordance with **Sch. 22 para. 26** of the amending Act) by **Coroners and Justice Act 2009** (c. 25), **ss. 116(1)(b)(ii)**, 182(1)(b), **Sch. 23 Pt. 3**
- F19** Word in s. 2(3)(b) substituted (9.5.2005 for specified purposes; 18.6.2012 for specified purposes; 5.11.2012 for specified purposes; 28.5.2013 for specified purposes) by **Criminal Justice Act 2003** (c. 44), s. 336(3)(4), **Sch. 3 para. 34(3)**; S.I. 2005/1267, art. 2(1)(2)(a), **Sch. Pt. 1**; S.I. 2012/1320, **art. 4(1)(c)(2)(3)** (with art. 5); S.I. 2012/2574, **art. 2(1)(c)(d)(2)(3)** (with arts. 3, 4); S.I. 2013/1103, **art. 2(1)(c)(d)(2)(3)** (with arts. 3, 4)
- F20** S. 2(4)(5) repealed by **Courts Act 1971** (c. 23), s. 56(4), **Sch. 11 Pt. IV**
- F21** Words in s. 2(6) substituted (1.9.2004) by **Courts Act 2003 (Consequential Amendments) Order 2004** (S.I. 2004/2035), art. 2(1), **Sch. para. 1(2)(a)** (with art. 2(2))
- F22** Words in s. 2(6) substituted (1.9.2004) by **Courts Act 2003 (Consequential Amendments) Order 2004** (S.I. 2004/2035), art. 2(1), **Sch. para. 1(2)(b)** (with art. 2(2))
- F23** Words repealed by **Courts Act 1971** (c. 23), s. 56(4), **Sch. 11 Pt. IV**
- F24** S. 2(6ZA)-(6ZC) inserted (12.11.2009 with retrospective effect in accordance with **Sch. 22 para. 26** of the amending Act) by **Coroners and Justice Act 2009** (c. 25), **ss. 116(1)(c)**, 182(1)(b)
- F25** S. 2(6A) inserted (1.9.2004) by **Courts Act 2003 (Consequential Amendments) Order 2004** (S.I. 2004/2035), art. 2(1), **Sch. para. 1(3)** (with art. 2(2))
- F26** Words in s. 2(6A)(a) substituted (3.4.2006) by **Constitutional Reform Act 2005** (c. 4), s. 148(1), **Sch. 1 para. 7**; S.I. 2006/1014, art. 2(a), **Sch. 1 para. 7**
- F27** Words in s. 2(7) repealed (5.11.1993) by **1993 c. 50**, s. 1(1), **Sch. 1 Pt. III**.

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

- C1** S. 2 continued (as amended) by **Supreme Court Act, 1981** (c. 54), s. 152(1), **Sch. 5**
- C2** S. 2(2)(b): by the **Supreme Court Act 1981** (c.54), **Sch. 5**, it is provided that this section shall continue to have effect with the amendments made by the **Criminal Appeal Act 1964** and the **Criminal Appeal Act 1966** that is with the insertion after “preferred” of “by the direction of the criminal division of the Court of Appeal or”.
- C3** S. 2(2) proviso (i) amended by **Magistrates' Courts Act, 1980** (c. 43), s. 102(8)

#### Marginal Citations

- M1** 1985 c.23.

**Status:**

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**Changes to legislation:**

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