
STATUTORY INSTRUMENTS

2022 No. 815

The Criminal Procedure (Amendment No. 2) Rules 2022

Amendments to the Criminal Procedure Rules

- 9.** In Part 9 (Allocation and sending for trial)—
- (a) in rule 9.1 (When this Part applies)—
- (i) for paragraph (1) substitute—
- “(1) This Part applies to—
- (a) the allocation and sending of cases to the Crown Court for trial under—
- (i) sections 17A to 26 of the Magistrates’ Courts Act 1980(1), and
- (ii) sections 50A to 52 of the Crime and Disorder Act 1998(2); and
- (b) the sending back or referring of cases to a magistrates’ court for trial under—
- (i) section 46ZA of the Senior Courts Act 1981(3), and
- (ii) paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998(4).”,
- (ii) after paragraph (4) insert—
- “(5) Rule 9.16 applies in the Crown Court where the court can send back or refer a defendant to a magistrates’ court for trial.”,
- (iii) in the second paragraph of the note to the rule, for “The court’s powers” substitute “A magistrates’ court’s powers”, and
- (iv) at the end of the note to the rule insert—

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- (1) 1980 c. 43; sections 17A to 17C were inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25). Sections 17A, 17D, 17E, 18 to 21 and 23 to 26 were amended or inserted by Schedule 3 to the Criminal Justice Act 2003 (c. 44). Sections 17A, 17D, 20, 20A, 24 and 24A were further amended by paragraphs 44, 45, 46, 47, 48 and 49 respectively of Schedule 24 to the Sentencing Act 2020 (c. 17). Section 19 was further amended by section 378 of, and paragraph 88 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Schedule 23 to, the Coroners and Justice Act 2009 (c. 25) and S.I. 2019/780. Section 22 was amended by sections 38 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 2 of the Aggravated Vehicle-Taking Act 1992 (c. 11) and sections 46 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33). Section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).
- (2) 1998 c. 37; sections 50A to 52 were inserted or amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51 was further amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2). Section 51A was further amended by sections 49 and 65 of, and paragraph 5 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 156 of Schedule 24 to the Sentencing Act 2020 (c. 17). Section 51B was further amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 39 of, and paragraphs 46 and 48 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and S.I. 2014/834. Section 51C was further amended by S.I. 2006/244. Section 52 was further amended by section 177 of, and paragraph 78 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).
- (3) 1981 c. 54; section 46ZA was inserted by section 11 of the Judicial Review and Courts Act 2022 (c. 35).
- (4) 1998 c. 37; paragraph 6 of Schedule 3 was amended by sections 90 and 106 of, and paragraph 179 of Schedule 13 and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 of, and paragraphs 15 and 20 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), S.I. 2005/886 and paragraphs 20 and 23 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

“The circumstances in which the Crown Court can send back or refer a case for magistrates’ court trial are summarised in the note to rule 9.16.”;

- (b) in rule 9.2 (Exercise of magistrates’ court’s powers), for paragraph (1) substitute—
 “(1) This rule applies to the exercise of a magistrates’ court’s powers to which this Part applies.”;
- (c) after rule 9.15 (Committal for sentence for offence related to an offence sent for trial) insert—

“SENDING BACK, ETC. FOR MAGISTRATES’ COURT TRIAL

Sending back or referring case for magistrates’ court trial

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

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

(5) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33),

- (v) recognizance given by a surety,
 - (vi) representation order,
 - (vii) interpreter, intermediary, or supporting adult, and
 - (viii) information supplied by the parties for the purposes of case management by the court; and
- (c) the Crown Court officer must at the same time serve on each party notice of the sending back and of the Crown Court's order, unless that party was present when the order was made.
- (4) Where paragraph (1)(b) applies—
- (a) the Crown Court must exercise its power at a hearing; and
 - (b) unless the defendant pleads guilty to the summary offence, the Crown Court officer must notify the magistrates' court officer of the outcome of the proceedings.

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

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

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

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

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

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

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

- (a) *the offences for which the defendant was sent for trial include a summary offence;*
- (b) *that summary offence is not tried in the Crown Court under a power to do so;*
- (c) *in the Crown Court the defendant is convicted of an indictable offence;*

paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

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- (d) *the Crown Court considers that the summary offence is related to any indictable offence for which the defendant was sent for trial;*
- (e) *under paragraph 6(4), the defendant does not plead guilty in the Crown Court to the summary offence; and*
- (f) *under paragraph 6(6), the prosecutor does not wish to withdraw the prosecution for that offence.*

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

See also rule 28.10 (Committal or remission, etc. for sentence), which applies to the exercise of the Crown Court's powers under sections 25, 25A and 26 of the Sentencing Act 2020(6) to remit a convicted defendant to a magistrates' court for sentence.]"; and

- (d) amend the table of contents correspondingly.

(6) 2020 c. 17; section 25 was amended and section 25A was inserted by section 11 of the Judicial Review and Courts Act 2022 (c. 35). Section 26 was amended by paragraph 14 of Schedule 2 to that 2022 Act.