

# COURTS ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS: PART 3

#### *Criminal jurisdiction and procedure*

#### *Section 43: Summons or warrant for suspected offender*

#### *Section 44: Trial of summary offences*

104. Sections 43 and 44 change the basic jurisdictional provisions on issuing process and dealing with charges, set out in sections 1 and 2 of the MCA 1980. Section 43 will allow any justice to issue a summons requiring a person to appear before a magistrates' court or a warrant to arrest a person and bring him before a magistrates' court. In the case of a summons, the summons will state which "court" the person is to appear before. The prosecutor will decide the court in accordance with the directions given by the Lord Chancellor with the concurrence of the Lord Chief Justice, issued under section 30. In the case of a warrant, the person may be brought to whichever court the person arresting the accused considers convenient. Under section 44 a magistrates' court will have jurisdiction to try any summary offence.
105. In addition to giving lay magistrates national jurisdiction in respect of the great majority of criminal cases, the policy of flexibility in the deployment of magistrates is to be implemented by removing many of the statutory provisions limiting their jurisdiction to the particular petty sessions area with which the case has a connection. Nevertheless, it is expected that the Lord Chancellor's directions will frequently retain the local link in practice. There will also be situations, notably in cases which have already begun, in which the local link will continue to be a requirement.

#### *Section 45: Power to make rulings at pre-trial hearings*

#### *Schedule 3: Pre-trial hearings in magistrates' courts*

106. This section provides the power for judges and lay magistrates to make binding rulings and directions at pre-trial hearings in criminal cases that are to be tried in the magistrates' courts, where it is in the interests of justice to do so. It will only be possible to make binding rulings in the magistrates' courts, once a not-guilty plea has been entered. This means that the primary disclosure provisions set out in Part 1 of the CPIA 1996 will apply.
107. Schedule 3 inserts a new section 8A, "Power to make rulings at pre-trial hearing" and section 8B, "Effect of rulings at pre-trial hearing" into the MCA 1980. The new sections largely follow sections 40 and 41 of Part 4 of the CPIA 1996, which sets out the Crown Court's power to make binding rulings in pre-trial hearings.
108. Before making a binding ruling, a magistrates' court must give the parties an opportunity to be heard and, when the accused is unrepresented but wishes to be represented, must consider whether to grant legal representation at public expense. A pre-trial ruling made by a magistrates' court will remain binding until the case is disposed of or is sent to the Crown Court.

109. There is no specific right of appeal against a pre-trial ruling. An accused may appeal to the Crown Court against a ruling (if convicted) once the case is concluded, in the normal manner. The magistrates' court may also discharge or vary a pre-trial ruling on application by a party to the case (where there has been a material change of circumstances) or, where it is in the interests of justice, of its own motion.
110. Provision is made for restrictions on reporting of pre-trial hearings in order to avoid prejudicing the right to a fair trial, should the case (or linked proceedings) ultimately be tried in the Crown Court. The publishing of anything other than basic factual matters is prohibited in England and Wales, unless the court orders that reporting restrictions should not apply, until such time as the case against the accused is disposed of. The definition includes electronic methods of communication and, where an offence is committed by a body corporate, liability to prosecution for contravention of reporting restrictions may also extend to the company's officers.

***Section 46: Power to transfer criminal cases***

111. **Section 46** gives magistrates' courts the power to transfer criminal cases to other magistrates' courts at any stage in the proceedings, whether on the application of a party or of their own motion. The parties would have a right to be heard in the latter case. There is to be no appeal from a decision on transfer. In deciding whether to transfer a case, the court or justices' clerk will be required to take account of the directions made by the Lord Chancellor under section 30.