

# CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### *Schedule 9: Alternatives to prosecution for offenders under 18*

#### **New section 66H of the 1998 Act: Interpretation**

#### *Section 53 and Schedule 13: Allocation of offences triable either way etc.*

384. *Section 53* introduces Schedule 13, which amends Schedule 3 to the 2003 Act.
385. Schedule 3 to the 2003 Act amends a number of Acts so as to provide a new scheme for determining the appropriate venue for either way cases together with a common mechanism, based on section 51 of the 1998 Act, for moving appropriate cases from the magistrates' court to the Crown Court.
386. The amendments made by Schedule 3 to the 2003 Act achieve this through, firstly, a revised procedure (called allocation) for deciding whether a case that is triable either way should be heard in the magistrates' court or in the Crown Court; secondly, abolition of committal and transfer proceedings and the substitution of a sending procedure like that already used to get indictable-only cases to the Crown Court; and, thirdly, abolition of the general power, contained in section 3 of the 2000 Act, to commit for sentence, except on a guilty plea "before venue" or where an indefinite or extended sentence is required. Under the scheme, the general power of committal for sentence is abolished for cases that magistrates decide to hear.
387. Most of the provisions of Schedule 3 to the 2003 Act are not yet in force.
388. The principal amendment in Schedule 13, which is made by *paragraph 7*, is to preserve the general power of a magistrates' court to commit to the Crown Court for sentence an offender whom it has convicted after a summary trial, if it considers that a Crown Court sentence should be available. Paragraph 22 of Schedule 3 to the 2003 Act provided for this general power under section 3 of the 2000 Act to be replaced with a more limited power. As set out above, this limited the power to commit for sentence to cases where a defendant enters a guilty plea "before venue" (that is, before the court has made an allocation decision) to a serious either way offence which is beyond the magistrates' powers of punishment. Paragraph 22 has not been brought into force and *paragraph 7* of Schedule 13 to the Act removes it from Schedule 3 (so that the general power in section 3 of the 2000 Act will be preserved).
389. Although the general power to commit for sentence is preserved, *paragraph 8* of Schedule 13 amends Schedule 3 to the 2003 Act to make amendments of section 3 of the 2000 Act. The most important of these is the repeal of subsection (2)(b). This subsection refers to the longer than commensurate sentence for violent and sexual offences in

*These notes refer to the Criminal Justice and Immigration  
Act 2008 (c.4) which received Royal Assent on 8 May 2008*

section 80 of the 2000 Act. As that section has now been repealed (subject to savings) and replaced by the dangerousness provisions in Chapter 5 of Part 12 of the 2003 Act, it is appropriate to repeal section 3(2)(b).

390. *Paragraph 3* modifies the warning about the possibility of committal for sentence that is to be given to a defendant offered summary trial under section 20(2) of the Magistrates' Courts Act 1980. Under that section, as substituted by paragraph 6 of Schedule 3 to the 2003 Act, the court must explain to the defendant that the case appears suitable for summary trial, that he can consent to be tried summarily or choose to be tried on indictment; and, in the case of a specified offence, if he consents to be tried summarily and is convicted, he may be committed to the Crown Court for sentence if he qualifies for a sentence of imprisonment for public protection or an extended sentence. The modified warning makes clear that the possibility of committal to the Crown Court for sentence also exists if the magistrates' court considers that a Crown Court sentence should be available (because the magistrates' sentencing powers are inadequate). The amendment made by paragraph 3 is in consequence of the restoration of the general power to commit for sentence (as discussed in the preceding paragraphs).
391. The remaining paragraphs make minor amendments to Schedule 3 to the 2003 Act.