



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 4

OTHER CRIMINAL JUSTICE PROVISIONS

Proceedings in magistrates' courts

53 Allocation of offences triable either way etc.

Schedule 13 amends Schedule 3 to the Criminal Justice Act 2003 (c. 44) (which makes provision in relation to the allocation and other treatment of offences triable either way, and the sending of cases to the Crown Court).

54 Trial or sentencing in absence of accused in magistrates' courts

(1) Section 11 of the Magistrates' Courts Act 1980 (non-appearance of accused) is amended as follows.

- (2) In subsection (1), for "the court may proceed in his absence" substitute "—
- (a) if the accused is under 18 years of age, the court may proceed in his absence; and
 - (b) if the accused has attained the age of 18 years, the court shall proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so.

This is subject to subsections (2), (2A), (3) and (4)."

(3) After subsection (2) insert—

"(2A) The court shall not proceed in the absence of the accused if it considers that there is an acceptable reason for his failure to appear."

Status: This is the original version (as it was originally enacted).

- (4) In each of subsections (3) and (4), for “A magistrates' court” substitute “In proceedings to which this subsection applies, the court.”
- (5) After subsection (3) insert—
- “(3A) But where a sentence or order of a kind mentioned in subsection (3) is imposed or given in the absence of the offender, the offender must be brought before the court before being taken to a prison or other institution to begin serving his sentence (and the sentence or order is not to be regarded as taking effect until he is brought before the court).”
- (6) After subsection (4) insert—
- “(5) Subsections (3) and (4) apply to—
- (a) proceedings instituted by an information, where a summons has been issued; and
- (b) proceedings instituted by a written charge.
- (6) Nothing in this section requires the court to enquire into the reasons for the accused's failure to appear before deciding whether to proceed in his absence.
- (7) The court shall state in open court its reasons for not proceeding under this section in the absence of an accused who has attained the age of 18 years; and the court shall cause those reasons to be entered in its register of proceedings.”
- (7) Section 13(5) of that Act (non-appearance of accused: issue of warrant) ceases to have effect.

55 Extension of powers of non-legal staff

- (1) Section 7A of the Prosecution of Offences Act 1985 (c. 23) (powers of non-legal staff) is amended as follows.
- (2) In subsection (2) (powers of designated non-legal staff)—
- (a) in paragraph (a)(ii), after “trials” insert “of offences triable either way or offences which are punishable with imprisonment in the case of persons aged 21 or over”;
- (b) after paragraph (a)(ii) insert—
- “(iii) the conduct of applications or other proceedings relating to preventative civil orders;
- (iv) the conduct of proceedings (other than criminal proceedings) in, or in connection with, the discharge of functions assigned to the Director under section 3(2)(g) above.”;
- (c) for paragraph (b) substitute—
- “(b) any powers of a Crown Prosecutor that do not involve the exercise of such rights of audience as are mentioned in paragraph (a) above but are exercisable in relation to the conduct of—
- (i) criminal proceedings in magistrates' courts, or
- (ii) applications or proceedings falling within paragraph (a)(iii) or (iv).”

(3) For subsection (5) (interpretation) substitute—

“(5) In this section—

“bail in criminal proceedings” has the same meaning as in the Bail Act 1976 (see section 1 of that Act);

“preventative civil orders” means—

- (a) orders within section 3(2)(fa) to (fe) above;
- (b) orders under section 5 or 5A of the Protection from Harassment Act 1997 (restraining orders); or
- (c) orders under section 8 of the Crime and Disorder Act 1998 (parenting orders).

(5A) For the purposes of this section a trial begins with the opening of the prosecution case after the entry of a plea of not guilty and ends with the conviction or acquittal of the accused.”

(4) Omit subsection (6) (powers not applicable to offences triable only on indictment etc.).

(5) After subsection (7) insert—

“(8) As from 1 May 2011 nothing in this section confers on persons designated under this section—

- (a) any rights of audience, or
- (b) any right to conduct litigation,

for the purposes of Part 3 of the Legal Services Act 2007 (reserved legal activities).

(9) As from that date the following provisions of that Act accordingly do not apply to persons designated under this section—

- (a) paragraph 1(3) of Schedule 3 (exemption for persons with statutory rights of audience), and
- (b) paragraph 2(3) of that Schedule (exemption for persons with statutory right to conduct litigation).

(10) The Attorney General may by order make such modifications in the application of any enactment (including this section) in relation to persons designated under this section as the Attorney General considers appropriate in consequence of, or in connection with, the matters provided for by subsections (8) and (9).

(11) The Attorney General may also by order amend subsection (2)(a)(ii) so as to omit the words “or offences which are punishable with imprisonment in the case of persons aged 21 or over”.

(12) The power to make an order under subsection (10) or (11) is exercisable by statutory instrument, but a statutory instrument containing such an order may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

(6) In section 15 of that Act (interpretation of Part 1) in subsection (4) (provisions for the purposes of which binding over proceedings are to be taken to be criminal proceedings) for “and 7(1)” substitute “, 7(1) and 7A”.