

*Status: Point in time view as at 03/11/1994. This version of this schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Justice and Public Order Act 1994, SCHEDULE 5 is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 04/09/1995

SCHEDULE 5

Section 45.

MAGISTRATES’ COURTS: DEALING WITH CASES WHERE ACCUSED PLEADS GUILTY

*Non-appearance of accused: plea of guilty*

1 For section 12 of the <sup>M1</sup>Magistrates’ Courts Act 1980 (“the 1980 Act”) there shall be substituted the following section—

**“12 Non-appearance of accused: plea of guilty.**

- (1) This section shall apply where—
  - (a) a summons has been issued requiring a person to appear before a magistrates’ court, other than a youth court, to answer to an information for a summary offence, not being—
    - (i) an offence for which the accused is liable to be sentenced to be imprisoned for a term exceeding 3 months; or
    - (ii) an offence specified in an order made by the Secretary of State by statutory instrument; and
  - (b) the clerk of the court is notified by or on behalf of the prosecutor that the documents mentioned in subsection (3) below have been served upon the accused with the summons.
- (2) The reference in subsection (1)(a) above to the issue of a summons requiring a person to appear before a magistrates’ court other than a youth court includes a reference to the issue of a summons requiring a person who has attained the age of 16 at the time when it is issued to appear before a youth court.
- (3) The documents referred to in subsection (1)(b) above are—
  - (a) a notice containing such statement of the effect of this section as may be prescribed;
  - (b) a concise statement in the prescribed form of such facts relating to the charge as will be placed before the court by or on behalf of the prosecutor if the accused pleads guilty without appearing before the court; and
  - (c) if any information relating to the accused will or may, in those circumstances, be placed before the court by or on behalf of the prosecutor, a notice containing or describing that information.
- (4) Where the clerk of the court receives a notification in writing purporting to be given by the accused or by a legal representative acting on his behalf that the accused desires to plead guilty without appearing before the court—
  - (a) the clerk of the court shall inform the prosecutor of the receipt of the notification; and
  - (b) the following provisions of this section shall apply.

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- (5) If at the time and place appointed for the trial or adjourned trial of the information—
- (a) the accused does not appear; and
  - (b) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that the documents mentioned in subsection (3) above have been served upon the accused with the summons,
- the court may, subject to section 11(3) and (4) above and subsections (6) to (8) below, proceed to hear and dispose of the case in the absence of the accused, whether or not the prosecutor is also absent, in like manner as if both parties had appeared and the accused had pleaded guilty.
- (6) If at any time before the hearing the clerk of the court receives an indication in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification—
- (a) the clerk of the court shall inform the prosecutor of the withdrawal; and
  - (b) the court shall deal with the information as if the notification had not been given.
- (7) Before accepting the plea of guilty and convicting the accused under subsection (5) above, the court shall cause the following to be read out before the court by the clerk of the court, namely—
- (a) the statement of facts served upon the accused with the summons;
  - (b) any information contained in a notice so served, and any information described in such a notice and produced by or on behalf of the prosecutor;
  - (c) the notification under subsection (4) above; and
  - (d) any submission received with the notification which the accused wishes to be brought to the attention of the court with a view to mitigation of sentence.
- (8) If the court proceeds under subsection (5) above to hear and dispose of the case in the absence of the accused, the court shall not permit—
- (a) any other statement with respect to any facts relating to the offence charged; or
  - (b) any other information relating to the accused,
- to be made or placed before the court by or on behalf of the prosecutor except on a resumption of the trial after an adjournment under section 10(3) above.
- (9) If the court decides not to proceed under subsection (5) above to hear and dispose of the case in the absence of the accused, it shall adjourn or further adjourn the trial for the purpose of dealing with the information as if the notification under subsection (4) above had not been given.
- (10) In relation to an adjournment on the occasion of the accused’s conviction in his absence under subsection (5) above or to an adjournment required by subsection (9) above, the notice required by section 10(2) above shall include notice of the reason for the adjournment.

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- (11) No notice shall be required by section 10(2) above in relation to an adjournment—
  - (a) which is for not more than 4 weeks; and
  - (b) the purpose of which is to enable the court to proceed under subsection (5) above at a later time.
- (12) No order shall be made under subsection (1) above unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (13) Any such document as is mentioned in subsection (3) above may be served in Scotland with a summons which is so served under the Summary Jurisdiction (Process) Act 1881.”.

#### Marginal Citations

M1 1980 c. 43.

#### *Application of section 12 procedure where accused appears*

2 After section 12 of the 1980 Act there shall be inserted the following section—

#### **“12A Application of section 12 where accused appears.**

- (1) Where the clerk of the court has received such a notification as is mentioned in subsection (4) of section 12 above but the accused nevertheless appears before the court at the time and place appointed for the trial or adjourned trial, the court may, if he consents, proceed under subsection (5) of that section as if he were absent.
- (2) Where the clerk of the court has not received such a notification and the accused appears before the court at that time and place and informs the court that he desires to plead guilty, the court may, if he consents, proceed under section 12(5) above as if he were absent and the clerk had received such a notification.
- (3) For the purposes of subsections (1) and (2) above, subsections (6) to (11) of section 12 above shall apply with the modifications mentioned in subsection (4) or, as the case may be, subsection (5) below.
- (4) The modifications for the purposes of subsection (1) above are that—
  - (a) before accepting the plea of guilty and convicting the accused under subsection (5) of section 12 above, the court shall afford the accused an opportunity to make an oral submission with a view to mitigation of sentence; and
  - (b) where he makes such a submission, subsection (7)(d) of that section shall not apply.
- (5) The modifications for the purposes of subsection (2) above are that—
  - (a) subsection (6) of section 12 above shall apply as if any reference to the notification under subsection (4) of that section were a reference to the consent under subsection (2) above;

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- (b) subsection (7)(c) and (d) of that section shall not apply; and
- (c) before accepting the plea of guilty and convicting the accused under subsection (5) of that section, the court shall afford the accused an opportunity to make an oral submission with a view to mitigation of sentence.”.

*Consequential amendments*

- 3 (1) In consequence of the amendments made by paragraphs 1 and 2 above the <sup>M2</sup>Magistrates’ Courts Act 1980 shall be further amended as follows.
- (2) For section 13(4), there shall be substituted the following subsection—
- “(4) This section shall not apply to an adjournment on the occasion of the accused’s conviction in his absence under subsection (5) of section 12 above or to an adjournment required by subsection (9) of that section.”.
- (3) In section 13(5), for “12(2)” there shall be substituted “ 12(5) ”.
- (4) In section 155(2), for “12(8)” there shall be substituted “ 12(13) ”.

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