



Judicial Review and Courts Act 2022

2022 CHAPTER 35

PART 2

COURTS, TRIBUNALS AND CORONERS

CHAPTER 1

CRIMINAL PROCEDURE

Offences triable either way: determining the mode of trial

PROSPECTIVE

6 Written procedure for indicating plea and determining mode of trial: adults

- (1) The Magistrates' Courts Act 1980 is amended as follows.
- (2) After section 17 insert—

“17ZA Option to indicate plea in writing

- (1) Subsection (3) has effect where a person is charged with an offence triable either way and—
 - (a) has attained the age of 18 years when charged, or
 - (b) attains the age of 18 years after being charged without first having—
 - (i) appeared in court to answer the charge, or
 - (ii) given, or failed to give, a written indication of plea within the meaning given by section 24ZA(11).
- (2) But Criminal Procedure Rules may make provision about circumstances in which subsection (3) does not have effect.

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- (3) A magistrates' court must, in writing—
 - (a) provide the accused with the information referred to in subsection (4), and
 - (b) ask the accused—
 - (i) whether the accused wishes to give a written indication of plea, and
 - (ii) if the accused wishes to do so, whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty.
- (4) The information is—
 - (a) a statement of the charge against the accused;
 - (b) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
 - (i) why the accused is being asked the questions set out in subsection (3)(b), and
 - (ii) the consequences of giving or failing to give a written indication of plea;
 - (c) an explanation of the way in which, and the period of time within which, the accused may give a written indication of plea;
 - (d) any other information that—
 - (i) Criminal Procedure Rules require to be provided, or
 - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (5) If the accused gives a written indication of a guilty plea, the court is to proceed in accordance with section 17ZB.
- (6) If the accused gives a written indication of a not guilty plea, the court is to proceed in accordance with section 17ZC or (if neither subsection (3) nor subsection (5) of that section has effect) section 18(1A).
- (7) If the accused fails to give a written indication of plea, the court is to proceed by way of a hearing for the purposes of section 17A.
- (8) The following shall not for any purpose be taken to constitute the taking of a plea—
 - (a) asking the accused under this section whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty; or
 - (b) giving a written indication of plea.
- (9) If in respect of the offence the court receives a notice under section 51B or 51C of the Crime and Disorder Act 1998 (which relate to serious or complex fraud cases and to certain cases involving children respectively), the preceding provisions of this section do not apply, and the court must proceed in relation to the offence in accordance with section 51 or, as the case may be, section 51A of that Act.
- (10) Subsection (11) applies if—
 - (a) the accused gives a written indication of plea, and
 - (b) at any time before—
 - (i) the taking of a plea in the summary trial,

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(ii) the hearing under section 18(1A), or
(iii) the sending of the accused to the Crown Court for trial,
the court receives an indication from the accused that the accused wishes to withdraw the written indication of plea.

(11) If this subsection applies—

- (a) the designated officer for the court must inform the prosecutor of the withdrawal,
- (b) the court is to cease to proceed in accordance with any of sections 17ZB, 17ZC and 18(1A) and (4A), and
- (c) the court is to proceed by way of a hearing for the purposes of section 17A.

(12) The reference in subsection (1) to a person charged with an offence is a reference to—

- (a) a person in respect of whom a summons or warrant has been issued under section 1,
- (b) a person who has been charged with an offence under Part 4 of the Police and Criminal Evidence Act 1984, or
- (c) a person against whom a written charge and requisition have been issued under section 29 of the Criminal Justice Act 2003.

(13) In this section and sections 17ZB to 18—

- (a) “written indication of plea” means a written indication given—
 - (i) by a person who has been provided with the information and asked the questions required by subsection (3), and
 - (ii) in accordance with the explanation provided under subsection (4)(c),of whether (if the offence were to proceed to trial) that person would plead guilty or not guilty;
- (b) “written indication of a guilty plea” and “written indication of a not guilty plea” are to be read accordingly;
- (c) references to a person’s failing to give a written indication of plea are to a person’s—
 - (i) having been provided with the information and asked the questions required by subsection (3), and
 - (ii) not having given a written indication of plea within the period indicated under subsection (4)(c).

17ZB Proceedings following written indication of guilty plea

- (1) This section has effect (subject to section 17ZA(11)) in relation to a case where a person has given a written indication of a guilty plea (see section 17ZA(13)).
- (2) But Criminal Procedure Rules may make provision about circumstances in which subsections (3) to (8) do not have effect.
- (3) A magistrates’ court may consider whether the condition set out in subsection (4) is met.
- (4) The condition is that the court can, on the material before it (without any hearing or representations), be satisfied that it is highly likely that, were the

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accused to plead guilty at a summary trial of the offence in question and be convicted, the court would commit the accused to the Crown Court for sentence under Chapter 2 of Part 2 of the Sentencing Code.

- (5) If the court decides that that condition is met, the court may, in writing—
 - (a) provide the accused with the information referred to in subsection (6), and
 - (b) ask the accused whether the accused objects to being sent to the Crown Court for trial for the offence.
- (6) The information is—
 - (a) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
 - (i) why the accused is being asked the question set out in subsection (5)(b), and
 - (ii) the consequences of objecting or failing to object to being sent to the Crown Court for trial;
 - (b) an explanation of the way in which, and the period of time within which, the accused may object to being so sent;
 - (c) any other information that—
 - (i) Criminal Procedure Rules require to be provided, or
 - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (7) If the court exercises the power in subsection (5) it must also, in writing—
 - (a) inform the prosecutor that the court has—
 - (i) decided that the condition set out in subsection (4) is met, and
 - (ii) exercised the power in subsection (5) in relation to the accused;
 - (b) explain the way in which, and the period of time within which, the prosecutor may object to the accused's being sent to the Crown Court for trial for the offence; and
 - (c) ask the prosecutor whether the prosecutor objects to the accused's being sent to the Crown Court for trial for the offence.
- (8) If—
 - (a) the court has exercised the power in subsection (5),
 - (b) subsection (7) has been complied with,
 - (c) the accused has not objected, in accordance with the explanation provided under subsection (6)(b), to being sent to the Crown Court for trial for the offence, and
 - (d) the prosecutor has not objected, in accordance with the explanation provided under subsection (7)(b), to the accused's being sent to the Crown Court for trial for the offence,

the court is to proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998.
- (9) If subsection (8) does not apply, the court is to proceed to try the offence summarily under section 9.
- (10) If, at a summary trial held in accordance with subsection (9), the accused pleads not guilty—

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- (a) the trial and the plea are void, and
- (b) the court is to proceed as if the hearing were for the purposes of section 17A and the accused had indicated that the accused would (if the offence were to proceed to trial) plead not guilty.

17ZC Option to decline summary trial, or for mode of trial to be decided on papers, following written indication of not guilty plea

- (1) Subsection (3) or (5) has effect (subject to section 17ZA(11)) in relation to a case where a person has given a written indication of a not guilty plea (see section 17ZA(13)).
- (2) But Criminal Procedure Rules may make provision about circumstances in which neither subsection (3) nor subsection (5) has effect.
- (3) If the offence in question is not a scheduled offence (as defined in section 22(1)), a magistrates' court must, in writing—
 - (a) provide the accused with the information referred to in subsection (4), and
 - (b) ask the accused—
 - (i) whether the accused wishes to give a written indication of non-consent to summary trial, and
 - (ii) if the accused does not wish to give that indication, whether the accused wishes to make an election for written allocation proceedings.
- (4) The information is—
 - (a) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
 - (i) why the accused is being asked the questions set out in subsection (3)(b), and
 - (ii) the consequences of doing or failing to do the things referred to in subsection (3)(b);
 - (b) an explanation of the way in which, and the period of time within which, the accused may give a written indication of non-consent to summary trial or make an election for written allocation proceedings;
 - (c) any other information that—
 - (i) Criminal Procedure Rules require to be provided, or
 - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (5) If the offence in question is a scheduled offence (as defined in section 22(1)), a magistrates' court must, in writing—
 - (a) provide the accused with the information referred to in subsection (6), and
 - (b) ask the accused—
 - (i) whether the accused wishes to make an election for written allocation proceedings and give a written indication of non-consent to summary trial, and

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- (ii) if the accused does not wish to make that election and give that indication, whether the accused wishes to make an election for written allocation proceedings.
- (6) The information is—
 - (a) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
 - (i) why the accused is being asked the questions set out in subsection (5)(b), and
 - (ii) the consequences of doing or failing to do the things described in subsection (5)(b)(i) or (ii);
 - (b) an explanation of the way in which, and the period of time within which, the person may do the things described in subsection (5)(b)(i) or (ii);
 - (c) any other information that—
 - (i) Criminal Procedure Rules require to be provided, or
 - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
- (7) If, where subsection (3) has been complied with, the accused gives a written indication of non-consent to summary trial, the court is to proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998.
- (8) Otherwise, where subsection (3) or (5) has been complied with, the court is to proceed in accordance with section 18(1A) or (4A).
- (9) In this section and sections 18 and 22—
 - (a) “election for written allocation proceedings” means an election in writing made—
 - (i) by a person who has been provided with the information and asked the questions required by subsection (3) or (5), and
 - (ii) in accordance with the explanation provided under subsection (4)(b) or (6)(b),
 for the court to decide where the person’s trial should take place by written proceedings without the person (or the person’s legal representative) being present;
 - (b) “written indication of non-consent to summary trial” means a written indication given—
 - (i) by a person who has been provided with the information and asked the questions required by subsection (3) or (5), and
 - (ii) in accordance with the explanation provided under subsection (4)(b) or (6)(b),
 that the person would not (if the offence were to proceed to trial and, in the case of a scheduled offence (as defined in section 22(1)), if trial in the Crown Court were available) consent to be tried in a magistrates’ court for the offence;
 - (c) references to a person’s failing to make an election for written allocation proceedings, or failing to give a written indication of non-consent to summary trial, are to a person’s—

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- (i) having been provided with the information and asked the questions required by subsection (3) or (5), and
 - (ii) not having, within the period indicated under subsection (4)(b) or (6)(b), made an election for written allocation proceedings or (as the case may be) given a written indication of non-consent to summary trial.”
- (3) In section 22A (low-value shoplifting to be summary offence subject to right to elect Crown Court trial)—
 - (a) in subsection (1), at the end insert “, subject to subsections (1D) and (2)”;
 - (b) after subsection (1) insert—
 - “(1A) Where a person accused of low-value shoplifting is aged 18 or over (and has not appeared before the court to answer the charge before attaining that age), a magistrates’ court must, in writing—
 - (a) provide the accused with the information referred to in subsection (1B), and
 - (b) ask the accused whether the accused wishes to—
 - (i) elect to be tried by the Crown Court for the offence, or
 - (ii) confirm that the accused does not so elect.
 - (1B) The information is—
 - (a) a statement of the charge against the accused;
 - (b) an explanation, including such details as may be prescribed by Criminal Procedure Rules, of—
 - (i) why the accused is being asked the question set out in subsection (1A)(b), and
 - (ii) the consequences of electing to be tried by the Crown Court or confirming to the contrary;
 - (c) an explanation of the way in which, and the period of time within which, the accused would have to make that election or give that confirmation;
 - (d) any other information that—
 - (i) Criminal Procedure Rules require to be provided, or
 - (ii) Criminal Procedure Rules allow to be provided and the court decides to provide.
 - (1C) Criminal Procedure Rules may make provision about circumstances in which subsection (1A) does not apply.
 - (1D) If, having been provided with the information and asked the question required by subsection (1A), the accused elects, in accordance with the explanation provided under subsection (1B)(c), to be tried by the Crown Court for the offence, the court must proceed in relation to the offence in accordance with section 51 of the Crime and Disorder Act 1998 (and subsection (2) does not apply).
 - (1E) If, having been provided with the information and asked the question required by subsection (1A), the accused confirms, in accordance with the explanation provided under subsection (1B)(c), that the

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accused does not elect to be tried by the Crown Court for the offence, subsection (2) does not apply.”;

(c) in subsection (2)—

(i) for “But” substitute “Subject to subsections (1D) and (1E),”;

(ii) omit paragraph (a).

Commencement Information

II S. 6 not in force at Royal Assent, see [s. 51\(4\)](#)

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