

Trial and sentence in
a magistrates' court

When this Part applies

- 37.1.**—(1) This Part applies in a magistrates' court where—
- (a) the court tries a case; or
 - (b) the defendant pleads guilty.
- (2) Where the defendant is under 18, in this Part—
- (a) a reference to convicting the defendant includes a reference to finding the defendant guilty of an offence; and
 - (b) a reference to sentence includes a reference to an order made on a finding of guilt.

[Note. A magistrates' court's powers to try an allegation of an offence are contained in section 2 of the Magistrates' Courts Act 1980(1) and, in relation to a defendant under 18, sections 45(2), 46(3) and 48(4) of the Children and Young Persons Act 1933, section 18 of the Children and Young Persons Act 1963(5), section 47 of the Crime and Disorder Act 1998(6) and section 9 of the Powers of Criminal Courts (Sentencing) Act 2000(7).

The exercise of the court's powers is affected by—

- (a) *the classification of the offence (and the general rule, subject to exceptions, is that a magistrates' court must try—*
 - (i) *an offence classified as one that can be tried only in a magistrates' court (in other legislation, described as triable only summarily), and*
 - (ii) *an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way) that has been allocated for trial in a magistrates' court); and*
- (b) *the defendant's age (and the general rule, subject to exceptions, is that an allegation of an offence against a defendant under 18 must be tried in a magistrates' court sitting as a youth court, irrespective of the classification of the offence and without allocation for trial there).*

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- (1) 1980 c. 43; section 2 was substituted by section 44 of the Courts Act 2003 (c. 39) and amended by section 41 of, and paragraph 51 of Schedule 3 to, the Criminal Justice 2003 (c. 44).
 - (2) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
 - (3) 1933 c. 12; section 46 was amended by section 46 of, and Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), section 72 of, and paragraph 4 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 154 of, and paragraph 6 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 109 of, and paragraph 74 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (4) 1933 c. 12; section 48 was amended by section 79 of, and Schedule 9 to, the Criminal Justice Act 1948 (c. 58), section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55), section 64 of, and paragraph 12 of Schedule 3 and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 72, 79 and 83 of, and Schedules 6, 9 and 10 to, the Children and Young Persons Act 1969 (c. 54), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 75 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (5) 1963 c. 37; section 18 was amended by section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 168 of, and paragraph 5 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).
 - (6) 1998 c. 37; section 47 was amended by section 165 of, and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).
 - (7) 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to, The Courts Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/886).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Under sections 10(8), 14(9), 27A(10), 121(11) and 148 (12) of the Magistrates' Courts Act 1980 and The Justices of the Peace (Size and Chairmanship of Bench) Rules 2005(13), the court—

- (a) must comprise at least two but not more than three justices, or a District Judge (Magistrates' Courts) (but a single member can adjourn the hearing);*
- (b) must not include any member who adjudicated at a hearing to which rule 37.11(3)(e) applies (defendant's declaration of no knowledge of hearing);*
- (c) when reaching a verdict, must not include any member who was absent from any part of the hearing;*
- (d) when passing sentence, need not include any of the members who reached the verdict (but may do so).*

Under The Youth Courts (Constitution of Committees and Right to Preside) Rules 2007(14), where the court is a youth court comprising justices—

- (a) each member must be qualified to sit as a member of that youth court; and*
- (b) the members must include at least one man and one woman, unless—*
 - (i) either is unavailable, and*
 - (ii) the members present decide that the hearing will be delayed unreasonably if they do not proceed.*

Under section 150 of the Magistrates' Courts Act 1980(15), where two or more justices are present one may act on behalf of all.

Section 59 of the Children and Young Persons Act 1933(16) requires that—

- (a) the expressions 'conviction' and 'sentence' must not be used by a magistrates' court dealing with a defendant under 18; and*
- (b) a reference in legislation to a defendant who is convicted, to a conviction, or to a sentence, must be read as including a reference to a defendant who is found guilty of an offence, a finding of guilt, or an order made on a finding of guilt, respectively.*

See also Part 44 (Breach, revocation and amendment of community and other orders in a magistrates' court). Rule 44.4 (Procedure on application by responsible officer) applies rules in this Part to the procedure with which that rule deals.]

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- (8)** 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37).
 - (9)** 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (10)** 1980 c. 43; section 27A was inserted by section 46 of the Courts Act 2003 (c. 39).
 - (11)** 1980 c. 43; section 121 was amended by section 61 of the Criminal Justice Act 1988 (c. 33), section 92 of, and paragraph 8 of Schedule 11 to, the Children Act 1989 (c. 41), section 109 of, and paragraph 237 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).
 - (12)** 1980 c. 43; section 148 was amended by section 109 of, and paragraph 248 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (13)** S.I. 2005/553.
 - (14)** S.I. 2007/1611.
 - (15)** 1980 c. 43; section 150 has been amended but none is relevant to the note to rule 37.1.
 - (16)** 1933 c. 12; section 59 was amended by sections 79 and 83 of, and Schedules 9 and 10 to, the Criminal Justice Act 1948 (c. 58) and section 18 of the Costs in Criminal Cases Act 1952 (c. 48).