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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 9**

**ALLOCATION AND SENDING FOR TRIAL**

*GENERAL RULES*

**When this Part applies**

**9.1.**—(1) This Part applies to the allocation and sending of cases for trial under—

- (a) sections 17A to 26 of the Magistrates' Courts Act 1980(1); and
- (b) sections 50A to 52 of the Crime and Disorder Act 1998(2).

(2) Rules 9.6 and 9.7 apply in a magistrates' court where the court must, or can, send a defendant to the Crown Court for trial, without allocating the case for trial there.

(3) Rules 9.8 to 9.14 apply in a magistrates' court where the court must allocate the case to a magistrates' court or to the Crown Court for trial.

*[Note. A magistrates' court's powers to send a defendant to the Crown Court for trial are contained in section 51 of the Crime and Disorder Act 1998(3).*

*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 an offence classified as triable on indictment exclusively must be sent for Crown Court trial; an offence classified as triable only summarily must be tried in a magistrates' court; and an offence classified as triable either on indictment or summarily must be allocated to one or the other court for trial: see in particular sections 50A, 51 and 51A of the 1998 Act(4) and section 19 of the Magistrates' Courts Act 1980(5);*
- (b) *the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act(6);*

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- (1) 1980 c. 43; sections 17A, 17D, 17E, 18 to 21 and 23 to 26 were inserted or amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44).
  - (2) 1998 c. 37; sections 50A to 52 were inserted or amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44).
  - (3) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
  - (4) 1998 c. 37; section 50A was inserted by paragraphs 15 and 17 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
  - (5) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).
  - (6) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph

- (c) *whether the defendant is awaiting Crown Court trial for another offence;*
- (d) *whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence; and*
- (e) *in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000.*

*The court's powers of sending and allocation, including its powers (i) to receive a defendant's indication of an intention to plead guilty (see rules 9.7, 9.8 and 9.13) and (ii) to give an indication of likely sentence (see rule 9.11), may be exercised by a single justice: see sections 51 and 51A(11) of the 1998 Act, and sections 17E, 18(5) and 24D of the 1980 Act(7).]*

### **Exercise of magistrates' court's powers**

**9.2.**—(1) This rule applies to the exercise of the powers to which rules 9.6 to 9.14 apply.

(2) The general rule is that the court must exercise its powers at a hearing in public, but it may exercise any power it has to—

- (a) withhold information from the public; or
- (b) order a hearing in private.

(3) The general rule is that the court must exercise its powers in the defendant's presence, but it may exercise the powers to which the following rules apply in the defendant's absence on the conditions specified—

- (a) where rule 9.8 (Adult defendant: request for plea), rule 9.9 (Adult defendant: guilty plea) or rule 9.13 (Young defendant) applies, if—
  - (i) the defendant is represented, and
  - (ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable; and
- (b) where rule 9.10 (Adult defendant: not guilty plea) or rule 9.11 (Adult defendant: allocation for magistrates' court trial) applies, if—
  - (i) the defendant is represented and waives the right to be present, or
  - (ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable.

(4) The court may exercise its power to adjourn—

- (a) if either party asks; or
- (b) on its own initiative.

(5) Where the court on the same occasion deals with two or more offences alleged against the same defendant, the court must deal with those offences in the following sequence—

- (a) any to which rule 9.6 applies (Prosecutor's notice requiring Crown Court trial);
- (b) any to which rule 9.7 applies (sending for Crown Court trial, without allocation there), in this sequence—

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40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). Section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(7) 1980 c. 43; section 17E was inserted by paragraphs 1 and 3 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 18 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), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 24D was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

- (i) any the court must send for trial, then
  - (ii) any the court can send for trial; and
  - (c) any to which rule 9.14 applies (Allocation and sending for Crown Court trial).
- (6) Where the court on the same occasion deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court then in the following sequence—
- (a) the court must explain, in terms each defendant can understand (with help, if necessary), that if the court sends one of them to the Crown Court for trial then the court must send for trial in the Crown Court, too, any other of them—
    - (i) who is charged with the same offence as the defendant sent for trial, or with an offence which the court decides is related to that offence,
    - (ii) who does not wish to plead guilty to each offence with which he or she is charged, and
    - (iii) (if that other defendant is under 18, and the court would not otherwise have sent him or her for Crown Court trial) where the court decides that sending is necessary in the interests of justiceeven if the court by then has decided to allocate that other defendant for magistrates' court trial; and
  - (b) the court may ask the defendants questions to help it decide in what order to deal with them.
- (7) After following paragraph (5), if it applies, where the court on the same occasion—
- (a) deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court;
  - (b) allocates any of them to a magistrates' court for trial; and
  - (c) then sends another one of them to the Crown Court for trial,
- the court must deal again with each one whom, on that occasion, it has allocated for magistrates' court trial.

*[Note. See sections 50A, 51, 51A and 52 of the Crime and Disorder Act 1998(8) and sections 17A, 17B, 17C, 18, 23, 24A, 24B and 24C of the Magistrates' Courts Act 1980(9).*

*Under sections 57A to 57E of the 1998 Act(10), the court may require a defendant to attend by live link a hearing to which this Part applies.*

*Where a defendant waives the right to be present then the court may nonetheless require his or her attendance by summons or warrant: see section 26 of the 1980 Act(11).*

*Under section 52A of the 1998 Act(12), reporting restrictions apply to the proceedings to which rules 9.6 to 9.14 apply.*

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(8) 1998 c. 37; section 52 was amended by paragraphs 68 and 69 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(9) 1980 c. 43; sections 17A, 17B and 17C were inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25). Section 17A was amended by paragraph 62 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 23 was amended by section 125 of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41) and paragraphs 1 and 8 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Sections 24A, 24B and 24C were inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(10) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(11) 1980 c. 43; section 26 was amended by paragraphs 1 and 12 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(12) 1998 c. 37; section 52A was inserted by paragraphs 15 and 19 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by paragraphs 46 and 47 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

*Part 46 contains rules allowing a representative to act on a defendant's behalf for the purposes of these Rules.*

*Part 3 contains rules about the court's powers of case management.]*

### **Matters to be specified on sending for trial**

**9.3.**—(1) Where the court sends a defendant to the Crown Court for trial, it must specify—

- (a) each offence to be tried;
- (b) in respect of each, the power exercised to send the defendant for trial for that offence; and
- (c) the Crown Court centre at which the trial will take place.

(2) In a case in which the prosecutor serves a notice to which rule 9.6(1)(a) applies (notice requiring Crown Court trial in a case of serious or complex fraud), the court must specify the Crown Court centre identified by that notice.

(3) In any other case, in deciding the Crown Court centre at which the trial will take place, the court must take into account—

- (a) the convenience of the parties and witnesses;
- (b) how soon a suitable courtroom will be available; and
- (c) the directions on the allocation of Crown Court business contained in the Practice Direction.

*[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(13).]*

### **Duty of justices' legal adviser**

**9.4.**—(1) This rule applies—

- (a) only in a magistrates' court; and
- (b) unless the court—
  - (i) includes a District Judge (Magistrates' Courts), and
  - (ii) otherwise directs.

(2) On the court's behalf, a justices' legal adviser may—

- (a) read the allegation of the offence to the defendant;
- (b) give any explanation and ask any question required by the rules in this Part; and
- (c) make any announcement required by the rules in this Part, other than an announcement of—
  - (i) the court's decisions about allocation and sending,
  - (ii) any indication by the court of likely sentence, or
  - (iii) sentence.

(3) A justices' legal adviser must—

- (a) assist an unrepresented defendant;
- (b) give the court such advice as is required to enable it to exercise its powers; and
- (c) if required, attend the members of the court outside the courtroom to give such advice, but inform the parties of any advice so given.

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(13) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

*[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(14).]*

### **Duty of magistrates' court officer**

- 9.5.**—(1) The magistrates' court officer must—
- (a) serve notice of a sending for Crown Court trial on—
    - (i) the Crown Court officer, and
    - (ii) the parties;
  - (b) in that notice record—
    - (i) the matters specified by the court under rule 9.3 (Matters to be specified on sending for trial),
    - (ii) any decision by the defendant under rule 9.7 (Sending for Crown Court trial) to require Crown Court trial for low-level shoplifting,
    - (iii) any indication given by the defendant under rule 9.7 of intended guilty plea,
    - (iv) any decision by the defendant under rule 9.11 (Adult defendant: allocation to magistrates' court for trial) to decline magistrates' court trial, and
    - (v) the date on which any custody time limit will expire;
  - (c) record any indication of likely sentence to which rule 9.11 applies; and
  - (d) give the court such other assistance as it requires.
- (2) The magistrates' court officer must include with the notice served on the Crown Court officer—
- (a) the initial details of the prosecution case served by the prosecutor under rule 8.2;
  - (b) a record of any—
    - (i) listing or case management direction affecting the Crown Court,
    - (ii) direction about reporting restrictions,
    - (iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(15),
    - (iv) recognizance given by a surety, or
    - (v) representation order; and
  - (c) if relevant, any available details of any—
    - (i) interpreter,
    - (ii) intermediary, or
    - (iii) other supporting adult, where the defendant is assisted by such a person.

*[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(16), and section 20A of the Magistrates' Courts Act 1980(17).]*

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- (14) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
- (15) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).
- (16) 1998 c. 37; section 51 was substituted and section 51D inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). They were amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
- (17) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

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

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