
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 9

ALLOCATION AND SENDING FOR TRIAL

ALLOCATION FOR MAGISTRATES' COURT OR CROWN COURT TRIAL

Adult defendant: request for plea

9.8.—(1) This rule applies where—

- (a) the defendant is 18 or over; and
 - (b) the court must decide whether a case is more suitable for trial in a magistrates' court or in the Crown Court.
- (2) The court must read the allegation of the offence to the defendant.
- (3) The court must explain, in terms the defendant can understand (with help, if necessary)—
- (a) the allegation, unless it is self-explanatory;
 - (b) that the offence is one which can be tried in a magistrates' court or in the Crown Court;
 - (c) that the court is about to ask whether the defendant intends to plead guilty;
 - (d) that if the answer is 'yes', then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;
 - (e) that if the defendant does not answer, or the answer is 'no', then—
 - (i) the court must decide whether to allocate the case to a magistrates' court or to the Crown Court for trial,
 - (ii) the value involved may require the court to order trial in a magistrates' court (where the offence is one to which section 22 of the Magistrates' Courts Act 1980(1) applies), and
 - (iii) if the court allocates the case to a magistrates' court for trial, the defendant can nonetheless require trial in the Crown Court (unless the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies and the value involved requires magistrates' court trial); and
 - (f) that reporting restrictions apply, which the defendant may ask the court to vary or remove.
- (4) The court must then ask whether the defendant intends to plead guilty.

(1) 1980 c. 43; section 22 was amended by sections 38 and 170(2) of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 2(2) of the Aggravated Vehicle Taking Act 1992 (c. 11) and sections 46 and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33).

[Note. See section 17A of the Magistrates' Courts Act 1980(2).

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant to the Crown Court for sentence after that defendant has indicated an intention to plead guilty where this rule applies, see sections 4 and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(3).

See also Part 6 (Reporting, etc. restrictions).]

Adult defendant: guilty plea

9.9.—(1) This rule applies where—

- (a) rule 9.8 applies; and
 - (b) the defendant indicates an intention to plead guilty.
- (2) The court must exercise its power to deal with the case—
- (a) as if the defendant had just pleaded guilty at a trial in a magistrates' court; and
 - (b) in accordance with rule 24.11 (Procedure if the court convicts).

[Note. See section 17A of the Magistrates' Courts Act 1980.]

Adult defendant: not guilty plea

9.10.—(1) This rule applies where—

- (a) rule 9.8 applies; and
 - (b) the defendant—
 - (i) indicates an intention to plead not guilty, or
 - (ii) gives no indication of intended plea.
- (2) In the following sequence, the court must then—
- (a) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies, explain in terms the defendant can understand (with help, if necessary) that—
 - (i) if the court decides that the value involved clearly is less than £5,000, the court must order trial in a magistrates' court,
 - (ii) if the court decides that it is not clear whether that value is more or less than £5,000, then the court will ask whether the defendant agrees to be tried in a magistrates' court, and
 - (iii) if the answer to that question is 'yes', then the court must order such a trial and if the defendant is convicted then the maximum sentence is limited;
 - (b) invite the prosecutor to—
 - (i) identify any previous convictions of which it can take account, and
 - (ii) make representations about how the court should allocate the case for trial, including representations about the value involved, if relevant;
 - (c) invite the defendant to make such representations;
 - (d) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies—

(2) 1980 c. 43; section 17A was inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25) and 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).

(3) 2000 c. 6; section 4 was amended by paragraphs 21 and 24 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

- (i) if it is not clear whether the value involved is more or less than £5,000, ask whether the defendant agrees to be tried in a magistrates' court,
 - (ii) if the defendant's answer to that question is 'yes', or if that value clearly is less than £5,000, order a trial in a magistrates' court,
 - (iii) if the defendant does not answer that question, or the answer is 'no', or if that value clearly is more than £5,000, apply paragraph (2)(e); and
- (e) exercise its power to allocate the case for trial, taking into account—
- (i) the adequacy of a magistrates' court's sentencing powers,
 - (ii) any representations by the parties, and
 - (iii) any allocation guidelines issued by the Sentencing Council.

[Note. See sections 17A, 18, 19, 22 and 24A of the Magistrates' Courts Act 1980(4).

Under section 22 of the 1980 Act, some offences, which otherwise could be tried in a magistrates' court or in the Crown Court, must be tried in a magistrates' court in the circumstances described in this rule.

The convictions of which the court may take account are those specified by section 19 of the 1980 Act.

The Sentencing Council may issue allocation guidelines under section 122 of the Coroners and Justice Act 2009(5). The definitive allocation guideline which took effect on 1st March, 2016 provides:

- (1) *In general, either way offences should be tried summarily unless—*
 - (a) *the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or*
 - (b) *for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.*
- (2) *In cases with no factual or legal complications the court should bear in mind its power to commit for sentence after a trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers.*
- (3) *Cases may be tried summarily even where the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.*
- (4) *All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence, including any personal mitigation to which the defence wish to refer.*

(4) 1980 c. 43; 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 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).

(5) 2009 c. 25.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, if the defendant consents to summary trial and is convicted by the court or pleads guilty, the defendant may be committed to the Crown Court for sentence.]

Adult defendant: allocation for magistrates' court trial

9.11.—(1) This rule applies where—

- (a) rule 9.10 applies; and
 - (b) the court allocates the case to a magistrates' court for trial.
- (2) The court must explain, in terms the defendant can understand (with help, if necessary) that—
- (a) the court considers the case more suitable for trial in a magistrates' court than in the Crown Court;
 - (b) if the defendant is convicted at a magistrates' court trial, then in some circumstances the court may commit the defendant to the Crown Court for sentence;
 - (c) if the defendant does not agree to a magistrates' court trial, then the court must send the defendant to the Crown Court for trial; and
 - (d) before deciding whether to accept magistrates' court trial, the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea at such a trial, but the court need not give such an indication.
- (3) If the defendant asks for such an indication of sentence and the court gives such an indication—
- (a) the court must then ask again whether the defendant intends to plead guilty;
 - (b) if, in answer to that question, the defendant indicates an intention to plead guilty, then the court must exercise its power to deal with the case—
 - (i) as if the defendant had just pleaded guilty to an offence that can be tried only in a magistrates' court, and
 - (ii) in accordance with rule 24.11 (Procedure if the court convicts); and
 - (c) if, in answer to that question, the defendant indicates an intention to plead not guilty, or gives no indication of intended plea, in the following sequence the court must then—
 - (i) ask whether the defendant agrees to trial in a magistrates' court,
 - (ii) if the defendant's answer to that question is 'yes', order such a trial, and
 - (iii) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.
- (4) If the defendant asks for an indication of sentence but the court gives none, or if the defendant does not ask for such an indication, in the following sequence the court must then—
- (a) ask whether the defendant agrees to trial in a magistrates' court;
 - (b) if the defendant's answer to that question is 'yes', order such a trial; and
 - (c) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.

[Note. See section 20 of the Magistrates' Courts Act 1980(6).

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant to the Crown Court for sentence after that defendant has been convicted at a

(6) 1980 c. 43; section 20 was amended by section 100 of, and paragraph 25 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraph 63 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

magistrates' court trial, see sections 3, 3A, 3C, and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(7).

For the circumstances in which an indication of sentence to which this rule applies restricts the sentencing powers of a court, see section 20A of the 1980 Act(8).]

Adult defendant: prosecutor's application for Crown Court trial

9.12.—(1) This rule applies where—

- (a) rule 9.11 applies;
- (b) the defendant agrees to trial in a magistrates' court; but
- (c) the prosecutor wants the court to exercise its power to send the defendant to the Crown Court for trial instead.

(2) The prosecutor must—

- (a) apply before trial in a magistrates' court begins under Part 24 (Trial and sentence in a magistrates' court); and
- (b) notify—
 - (i) the defendant, and
 - (ii) the magistrates' court officer.

(3) The court must determine an application to which this rule applies before it deals with any other pre-trial application.

[Note. See sections 8A and 25 of the Magistrates' Courts Act 1980(9). Under section 25(2B), the court may grant an application to which this rule applies only if it is satisfied that the sentence which a magistrates' court would have power to impose would be inadequate.]

Young defendant

9.13.—(1) This rule applies where—

- (a) the defendant is under 18; and
- (b) the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court.

(2) The court must read the allegation of the offence to the defendant.

(3) The court must explain, in terms the defendant can understand (with help, if necessary)—

- (a) the allegation, unless it is self-explanatory;
- (b) that the offence is one which can be tried in the Crown Court instead of in a youth court;
- (c) that the court is about to ask whether the defendant intends to plead guilty;

(7) 2000 c. 6; sections 3 and 6 were amended, and sections 3A and 3C inserted, by paragraphs 21, 22A, 23 and 28 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 3A was amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 7 and 8 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 3C was amended by paragraphs 7 and 9 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 6 was further amended by paragraphs 90 and 91 of Schedule 32, and Parts 7 and 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(8) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(9) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 25 was amended by section 31 of, and paragraph 3 of Schedule 1 and Schedule 2, to the Prosecution of Offences Act 1985 (c. 23), paragraph 6 of Schedule 8 to the Criminal Justice Act 1991 (c. 53), paragraphs 1 and 5 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 42 of the Criminal Justice Act 2003 (c. 44) and paragraphs 1 and 11 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

- (d) that if the answer is ‘yes’, then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;
 - (e) that if the defendant does not answer, or the answer is ‘no’, then the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court; and
 - (f) that reporting restrictions apply, which the defendant may ask the court to vary or remove.
- (4) The court must then ask whether the defendant intends to plead guilty.
- (5) If the defendant’s answer to that question is ‘yes’, the court must exercise its power to deal with the case—
- (a) as if the defendant had just pleaded guilty at a trial in a youth court; and
 - (b) in accordance with rule 24.11 (Procedure if the court convicts).
- (6) If the defendant does not answer that question, or the answer is ‘no’, in the following sequence the court must then—
- (a) invite the prosecutor to make representations about whether Crown Court or youth court trial is more appropriate;
 - (b) invite the defendant to make such representations; and
 - (c) exercise its power to allocate the case for trial, taking into account—
 - (i) the offence and the circumstances of the offence,
 - (ii) the suitability of a youth court’s sentencing powers,
 - (iii) where the defendant is jointly charged with an adult, whether it is necessary in the interests of justice for them to be tried together in the Crown Court, and
 - (iv) any representations by the parties.

[Note. See section 24A of the Magistrates’ Courts Act 1980(10).

For the circumstances in which a magistrates’ court may (and, in some cases, must) commit a defendant who is under 18 to the Crown Court for sentence after that defendant has indicated a guilty plea, see sections 3B, 3C, 4A and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(11).]

Allocation and sending for Crown Court trial

9.14.—(1) This rule applies where—

- (a) under rule 9.10 or rule 9.13, the court allocates the case to the Crown Court for trial;
 - (b) under rule 9.11, the defendant does not agree to trial in a magistrates’ court; or
 - (c) under rule 9.12, the court grants the prosecutor’s application for Crown Court trial.
- (2) In the following sequence, the court must—
- (a) invite the prosecutor to make representations about any ancillary matters, including bail and directions for the management of the case in the Crown Court;
 - (b) invite the defendant to make any such representations; and
 - (c) exercise its powers to—

(10) 1980 c. 43; section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(11) 2000 c. 6; sections 3B, 3C and 4A were inserted by paragraphs 21, 23 and 25 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 3B was amended by section 53 of the Criminal Justice and Courts Act 2015 (c. 2). Section 3C was amended by paragraphs 7 and 9 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 6 was amended by paragraphs 21 and 28 of Schedule 3, paragraphs 90 and 91 of Schedule 32 and Parts 7 and 9 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

- (i) send the defendant to the Crown Court for trial, and
- (ii) give any ancillary directions.

[Note. See sections 21 and 24A of the Magistrates' Courts Act 1980(12) and section 51 of the Crime and Disorder 1998(13). See also rule 9.3 (matters to be specified on sending for trial).]

(12) 1980 c. 43; section 21 was amended by paragraphs 1 and 7 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
(13) 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).