
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 9

ALLOCATION AND SENDING FOR TRIAL

[^{F1}SENDING BACK, ETC. FOR MAGISTRATES' COURT TRIAL

F1 Rule 9.16 and cross-heading inserted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(e), **9(c)**

Sending back or referring case for magistrates' court trial

9.16.—(1) This rule applies where a magistrates' court sends the defendant to the Crown Court for trial and—

- (a) under section 46ZA of the Senior Courts Act 1981, the Crown Court can send the defendant back to a magistrates' court for trial for a summary offence or for an offence triable either way; or
 - (b) under paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998, where a summary offence remains outstanding the Crown Court must so inform the magistrates' court.
- (2) Where paragraph (1)(a) applies—
- (a) the Crown Court may exercise its power to send back—
 - (i) at a hearing, in public or in private, or without a hearing,
 - (ii) in the defendant's absence, but only if the defendant consents to being absent on its exercise, and
 - (iii) in the prosecutor's absence, but only if the prosecutor has had at least 5 business days in which to make representations; and
 - (b) if the defendant is under 18, the Crown Court must—
 - (i) consider sending the defendant back, and
 - (ii) explain why, if it does not do so.
- (3) Where paragraph (1)(a) applies and the Crown Court sends the defendant back—
- (a) the Crown Court must—
 - (i) specify the date on which the defendant must attend at or be taken to the magistrates' court, and
 - (ii) decide whether to grant or withhold bail;
 - (b) the Crown Court officer must make available to the magistrates' court officer a record of the Crown Court's order under paragraph (3)(a) and details of any—
 - (i) case management direction affecting the magistrates' court,

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- (ii) direction about reporting restrictions,
- (iii) period for which the defendant was in custody during proceedings in the Crown Court,
- (iv) decision about bail, for the purposes of section 5 of the Bail Act 1976,
- (v) recognizance given by a surety,
- (vi) representation order,
- (vii) interpreter, intermediary, or supporting adult, and
- (viii) information supplied by the parties for the purposes of case management by the court; and
- (c) the Crown Court officer must at the same time serve on each party notice of the sending back and of the Crown Court's order, unless that party was present when the order was made.
- (4) Where paragraph (1)(b) applies—
 - (a) the Crown Court must exercise its power at a hearing; and
 - (b) unless the defendant pleads guilty to the summary offence, the Crown Court officer must notify the magistrates' court officer of the outcome of the proceedings.

[Note. An offence may be classified as triable only on indictment; triable only summarily (a summary offence); or triable either way (on indictment or summarily). Offences classified either as triable only on indictment or as triable either way collectively are described as indictable offences.

Under section 46ZA(2) of the Senior Courts Act 1981 the Crown Court cannot send the defendant back to a magistrates' court for trial—

- (a) *where the defendant is 18 or over, or is a corporation, and the offence is triable only on indictment; or*
- (b) *where the defendant is under 18 and the offence is homicide or one of the other offences listed in section 51A(12) of the Crime and Disorder Act 1998.*

Under section 46ZA(3) of the 1981 Act the Crown Court cannot send an adult or corporate defendant back to a magistrates' court for trial for an offence triable either way unless the defendant consents.

Under section 46ZA(5) of the 1981 Act, in deciding whether to send a defendant back the Crown Court must take into account (a) any other related offence before the Crown Court (whether the same, or a different, person is accused or has been convicted of the other offence), and (b) any allocation guideline.

Under section 46ZA(6) of the 1981 Act, on sending a defendant back the Crown Court may give such directions as appear to be necessary with respect to the custody of the defendant or for the defendant's release on bail until the defendant can appear or be brought before the magistrates' court.

Under paragraph 6(7) of Schedule 3 to the Crime and Disorder Act 1998, the Crown Court must inform the magistrates' court of the outcome of the proceedings in the Crown Court where—

- (a) *the offences for which the defendant was sent for trial include a summary offence;*
- (b) *that summary offence is not tried in the Crown Court under a power to do so;*
- (c) *in the Crown Court the defendant is convicted of an indictable offence;*
- (d) *the Crown Court considers that the summary offence is related to any indictable offence for which the defendant was sent for trial;*

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- (e) *under paragraph 6(4), the defendant does not plead guilty in the Crown Court to the summary offence; and*
- (f) *under paragraph 6(6), the prosecutor does not wish to withdraw the prosecution for that offence.*

Under paragraph 6(5) of Schedule 3 to the 1998 Act, the Crown Court then has no other powers, for example to send the defendant back to the magistrates' court on bail or in custody.

See also rule 28.10 (Committal or remission, etc. for sentence), which applies to the exercise of the Crown Court's powers under sections 25, 25A and 26 of the Sentencing Act 2020 to remit a convicted defendant to a magistrates' court for sentence.]]

Changes to legislation:

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- rule 2.8(4)(g)-(j) rule 2.8(4)(f)-(i) renumbered as rule 2.8(4)(g)-(j) by [S.I. 2024/62 rule 3\(b\)\(i\)](#)
- rule 3.35(4)(h) rule 3.35(4)(g) renumbered as rule 3.35(4)(h) by [S.I. 2024/62 rule 4\(e\)\(iii\)](#)
- rule 3.8(7)(8) inserted by [S.I. 2024/62 rule 4\(c\)\(iii\)](#)
- rule 3.35(8) rule 3.35(7) renumbered as rule 3.35(8) by [S.I. 2024/62 rule 4\(e\)\(v\)](#)
- rule 3.8(9) rule 3.8(7) renumbered as rule 3.8(9) by [S.I. 2024/62 rule 4\(c\)\(ii\)](#)
- rule 5.4(4)(5) inserted by [S.I. 2024/62 rule 5\(a\)](#)
- rule 15.9(a) words substituted by [S.I. 2024/62 rule 7\(f\)\(i\)](#)
- rule 15.9(b) inserted by [S.I. 2024/62 rule 7\(f\)\(iii\)](#)
- rule 15.9(c)-(e) rule 15.9(b)-(d) renumbered as rule 15.9(c)-(e) by [S.I. 2024/62 rule 7\(f\)\(ii\)](#)
- rule 18.8(2)(d)(e) inserted by [S.I. 2024/62 rule 8\(c\)\(ii\)](#)
- rule 33.53(5) inserted by [S.I. 2024/62 rule 9\(n\)](#)
- rule 44.3(1)(c) inserted by [S.I. 2024/62 rule 10\(c\)](#)
- rule 45.7(1)(a)(vi) inserted by [S.I. 2024/62 rule 11\(c\)\(iii\)](#)
- rule 45.7(6) inserted by [S.I. 2024/62 rule 11\(c\)\(vi\)](#)
- rule 47.24(c) word omitted by [S.I. 2024/62 rule 12\(l\)\(iii\)](#)
- rule 47.24(d)(e) substituted for rule 47.24(d) by [S.I. 2024/62 rule 12\(l\)\(iv\)](#)
- rule 47.4(f) word omitted by [S.I. 2024/62 rule 12\(a\)\(ii\)](#)
- rule 47.4(f) word substituted by [S.I. 2024/62 rule 12\(a\)\(i\)](#)
- rule 47.4(g) word substituted by [S.I. 2024/62 rule 12\(a\)\(iii\)](#)
- rule 47.4(h)(i) inserted by [S.I. 2024/62 rule 12\(a\)\(iv\)](#)
- rule 47.24(iii)(iv) inserted by [S.I. 2024/62 rule 12\(l\)\(ii\)](#)
- rule 47.9(1)(h)(i) inserted by [S.I. 2024/62 rule 12\(c\)\(ii\)](#)
- rule 47.20(2)(g) renumbered as rule 47.20(2)(f) by [S.I. 2024/62 rule 12\(k\)\(iiii\)](#)
- rule 47.13(2)(g) rule 47.13(2)(f) renumbered as rule 47.13(2)(g) by [S.I. 2024/62 rule 12\(g\)\(iv\)](#)