
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 24

TRIAL AND SENTENCE IN A MAGISTRATES' COURT

Procedure where a party is absent

- 24.12.**—(1) This rule—
- (a) applies where a party is absent; but
 - (b) does not apply where—
 - (i) the defendant has served a notice of guilty plea under rule 24.8 (Written guilty plea: special rules), or
 - (ii) the court tries a case under rule 24.9 (Single justice procedure: special rules).
- (2) Where the prosecutor is absent, the court may—
- (a) if it has received evidence, deal with the case as if the prosecutor were present; and
 - (b) in any other case—
 - (i) enquire into the reasons for the prosecutor's absence, and
 - (ii) if satisfied there is no good reason, exercise its power to dismiss the allegation.
- (3) Where the defendant is absent the general rule is that the court must proceed as if the defendant were present and had pleaded not guilty (unless a plea already has been taken), but the general rule—
- (a) does not apply if the defendant is under 18;
 - (b) is subject to the court being satisfied that—
 - (i) any summons or requisition was served on the defendant a reasonable time before the hearing, or
 - (ii) in a case in which the hearing has been adjourned, the defendant had reasonable notice of where and when it would resume; and
 - (c) is subject to rule 24.11(10)(a) (restrictions on passing sentence in the defendant's absence).
- (4) Where the defendant is absent, the court—
- (a) must exercise its power to issue a warrant for the defendant's arrest and detention in the terms required by rule 13.3(3) (Terms of a warrant for detention or imprisonment), if it passes a custodial sentence; and
 - (b) may exercise its power to issue a warrant for the defendant's arrest in any other case, if it does not apply the general rule in paragraph (3) of this rule about proceeding in the defendant's absence.

[Note. See sections 11, 15 and 16 of the Magistrates' Courts Act 1980(1).

Under section 27 of the 1980 Act, where a magistrates' court dismisses an allegation of 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 dismissal has the same effect as an acquittal in the Crown Court.

Under section 11 of the 1980 Act, the court may pass a custodial sentence in the defendant's absence if the case started with the defendant's arrest and charge (and not with a summons or requisition). Section 11(3A) requires that, in that event, the defendant must be brought before the court before being taken to a prison or other institution to begin serving that sentence: see also rule 13.3. Under section 7(1) of the Bail Act 1976(2), the court has power to issue a warrant for the arrest of a defendant released on bail who has failed to attend court when due to do so.

Under section 13 of the 1980 Act(3), the court has power to issue a warrant for the arrest of an absent defendant, instead of proceeding, where—

- (1) the case started with—*
 - (a) the defendant's arrest and charge, or*
 - (b) a summons or requisition, if—*
 - (i) the court is satisfied that that summons or requisition was served on the defendant a reasonable time before the hearing, or*
 - (ii) the defendant was present when the hearing was arranged; and*
- (2) the offence is punishable with imprisonment; or*
- (3) the defendant has been convicted and the court considers imposing a disqualification.]*

(2) 1976 c. 63.

(3) 1980 c. 43; section 13 was amended by section 45 of, and paragraph 3 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 48 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 3 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), sections 31 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and sections 54 and 149 of, and Part 4 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).