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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**

*ALLOCATION FOR MAGISTRATES' COURT OR CROWN COURT TRIAL*

**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—
  - (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(1).*

*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(2). The definitive allocation guideline which took effect on 1<sup>st</sup> 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.*

*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.]*

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(1) 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).

(2) 2009 c. 25.