

PART 9

ALLOCATION AND SENDING FOR TRIAL

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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(a); and
- (b) sections 50A to 52 of the Crime and Disorder Act 1998(b).

(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.

(4) Rules 9.15 and 9.16 apply in the Crown Court, where a defendant is sent for trial there.

[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(c).]

(a) 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).

(b) 1998 c. 37; sections 50A to 52 were inserted or amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(c) 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).

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(a) and section 19 of the Magistrates' Courts Act 1980(b);*
- (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(c);*
- (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(d).]

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;

(a) 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).

(b) 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).

(c) 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 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).

(d) 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).

- (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—
 - (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 justice

even 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(a) and sections 17A, 17B, 17C, 18, 23, 24A, 24B and 24C of the Magistrates' Courts Act 1980(b).]

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

Under sections 57A to 57E of the 1998 Act(a), 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(b).

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

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(d).]

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;
- (c) make any announcement required by the rules in this Part, other than an announcement of—

(a) 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).

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

(c) 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).

(d) 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).

- (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;
 - (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.

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

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 indication of intended guilty plea given by the defendant under rule 9.7 (Sending for Crown Court trial),
 - (iii) any decision by the defendant to decline magistrates’ court trial under rule 9.11 (Adult defendant: allocation to magistrates’ court for trial), and
 - (iv) 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**(b)**,
 - (iv) recognizance given by a surety, or
 - (v) representation order; and
 - (c) if relevant, any available details of any—
 - (i) interpreter,
 - (ii) intermediary, or

(a) 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).

(b) 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).

- (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(a), and section 20A of the Magistrates' Courts Act 1980(b).]

SENDING WITHOUT ALLOCATION FOR CROWN COURT TRIAL

Prosecutor's notice requiring Crown Court trial

9.6.—(1) This rule applies where a prosecutor with power to do so requires a magistrates' court to send for trial in the Crown Court—

- (a) a case of serious or complex fraud; or
 - (b) a case which will involve a child witness.
- (2) The prosecutor must serve notice of that requirement—
- (a) on the magistrates' court officer and on the defendant; and
 - (b) before trial in a magistrates' court begins under Part 24 (Trial and sentence in a magistrates' court).
- (3) The notice must identify—
- (a) the power on which the prosecutor relies; and
 - (b) the Crown Court centre at which the prosecutor wants the trial to take place.
- (4) The prosecutor—
- (a) must, when choosing a Crown Court centre, take into account the matters listed in rule 9.3(3) (court deciding to which Crown Court centre to send a case); and
 - (b) may change the centre identified before the case is sent for trial.

[Note. Under section 51B of the Crime and Disorder Act 1998(c), the Director of Public Prosecutions or a Secretary of State may require the court to send a case for trial in the Crown Court if, in that prosecutor's opinion, the evidence of the offence charged—

- (a) is sufficient for the person charged to be put on trial for the offence; and*
- (b) reveals a case of fraud of such seriousness or complexity that it is appropriate that the management of the case should without delay be taken over by the Crown Court.*

Under section 51C of the Crime and Disorder Act 1998(d), the Director of Public Prosecutions may require the court to send for trial in the Crown Court a case involving one of certain specified violent or sexual offences if, in the Director's opinion—

- (a) the evidence of the offence would be sufficient for the person charged to be put on trial for that offence;*
- (b) a child would be called as a witness at the trial; and*
- (c) for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Crown Court.*

'Child' for these purposes is defined by section 51C(7) of the 1998 Act.]

(a) 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).

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

(c) 1998 c. 37; section 51B was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and paragraphs 46 and 48 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(d) 1998 c. 37; section 51C was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and modified by section 63 of, and paragraph 36 of Schedule 6 to, the Serious Crime Act 2007 (c. 27).

Sending for Crown Court trial

9.7.—(1) This rule applies where a magistrates’ court must, or can, send a defendant to the Crown Court for trial without first allocating the case for trial there.

- (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 for which the court, as appropriate—
 - (i) must send the defendant to the Crown Court for trial because the offence is one which can only be tried there or because the court for some other reason is required to send that offence for trial,
 - (ii) may send the defendant to the Crown Court for trial if the magistrates’ court decides that the offence is related to one already sent for trial there, or
 - (iii) (where the offence is low-value shoplifting and the defendant is 18 or over) must send the defendant to the Crown Court for trial if the defendant wants to be tried there;
 - (c) that reporting restrictions apply, which the defendant may ask the court to vary or remove.
- (4) In the following sequence, the court must then—
 - (a) invite the prosecutor to—
 - (i) identify the court’s power to send the defendant to the Crown Court for trial for the offence, and
 - (ii) 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 representations about—
 - (i) the court’s power to send the defendant to the Crown Court, and
 - (ii) any ancillary matters;
 - (c) (where the offence is low-value shoplifting and the defendant is 18 or over) offer the defendant the opportunity to require trial in the Crown Court; and
 - (d) decide whether or not to send the defendant to the Crown Court for trial.
- (5) If the court sends the defendant to the Crown Court for trial, it must—
 - (a) ask whether the defendant intends to plead guilty in the Crown Court and—
 - (i) if the answer is ‘yes’, make arrangements for the Crown Court to take the defendant’s plea as soon as possible, or
 - (ii) if the defendant does not answer, or the answer is ‘no’, make arrangements for a case management hearing in the Crown Court; and
 - (b) give any other ancillary directions.

[Note. See sections 51, 51A and 51E of the Crime and Disorder Act 1998(a), and sections 22A and 24A of the Magistrates’ Courts Act 1980(b).

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

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

(b) 1980 c. 43; section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

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(a) 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.

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

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(c).

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) 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).

(b) 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).

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

- (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—
 - (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);
- (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(a).]

(a) 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).

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(a). 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.*

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.

(a) 2009 c. 25.

(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);
- (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,
 - (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;
- (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(a).

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

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(c).]

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.

(a) 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).

(b) 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).

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

(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(a). 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;
- (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;
- (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(b).

(a) 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).

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

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(a).]

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—
 - (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(b) and section 51 of the Crime and Disorder 1998(c). See also rule 9.3 (matters to be specified on sending for trial).]

CROWN COURT INITIAL PROCEDURE AFTER SENDING FOR TRIAL

Service of prosecution evidence

9.15.—(1) This rule applies where—

- (a) a magistrates' court sends the defendant to the Crown Court for trial; and
- (b) the prosecutor serves on the defendant copies of the documents containing the evidence on which the prosecution case relies.

(2) The prosecutor must at the same time serve copies of those documents on the Crown Court officer.

[Note. See the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(d). The time for service of the prosecution evidence is prescribed by regulation 2. It is—

- (a) not more than 50 days after sending for trial, where the defendant is in custody; and*
- (b) not more than 70 days after sending for trial, where the defendant is on bail.]*

Application to dismiss offence sent for Crown Court trial

9.16.—(1) This rule applies where a defendant wants the Crown Court to dismiss an offence sent for trial there.

(2) The defendant must—

(a) 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).

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

(c) 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).

(d) S.I. 2005/902; amended by S.I. 2012/1345.

- (a) apply in writing—
 - (i) not more than 28 days after service of the prosecution evidence, and
 - (ii) before the defendant’s arraignment;
- (b) serve the application on—
 - (i) the Crown Court officer, and
 - (ii) each other party;
- (c) in the application—
 - (i) explain why the prosecution evidence would not be sufficient for the defendant to be properly convicted,
 - (ii) ask for a hearing, if the defendant wants one, and explain why it is needed,
 - (iii) identify any witness whom the defendant wants to call to give evidence in person, with an indication of what evidence the witness can give,
 - (iv) identify any material already served that the defendant thinks the court will need to determine the application, and
 - (v) include any material not already served on which the defendant relies.
- (3) A prosecutor who opposes the application must—
 - (a) serve notice of opposition, not more than 14 days after service of the defendant’s notice, on—
 - (i) the Crown Court officer, and
 - (ii) each other party;
 - (b) in the notice of opposition—
 - (i) explain the grounds of opposition,
 - (ii) ask for a hearing, if the prosecutor wants one, and explain why it is needed,
 - (iii) identify any witness whom the prosecutor wants to call to give evidence in person, with an indication of what evidence the witness can give,
 - (iv) identify any material already served that the prosecutor thinks the court will need to determine the application, and
 - (v) include any material not already served on which the prosecutor relies.
- (4) The court may determine an application under this rule—
 - (a) at a hearing, in public or in private, or without a hearing;
 - (b) in the absence of—
 - (i) the defendant who made the application,
 - (ii) the prosecutor, if the prosecutor has had at least 14 days in which to serve notice opposing the application.
- (5) The court may—
 - (a) shorten or extend (even after it has expired) a time limit under this rule;
 - (b) allow a witness to give evidence in person even if that witness was not identified in the defendant’s application or in the prosecutor’s notice.

[Note. Under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998(a), on an application by the defendant the Crown Court must dismiss an offence charged if it appears to the court that the evidence would not be sufficient for the applicant to be properly convicted.]

(a) 1998 c. 37; paragraph 2 of Schedule 3 was amended by paragraphs 15 and 20 of Schedule 3, paragraph 73 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and SI 2004/2035.