



# Criminal Law Act 1977

## 1977 CHAPTER 45

### PART III

#### CRIMINAL PROCEDURE, PENALTIES, ETC.

##### *Procedure for determining mode of trial of offences triable either way*

#### **19 Initial procedure on information for offence triable either way**

- (1) Sections 20 to 24 below shall have effect where a person who has attained the age of seventeen appears or is brought before a magistrates' court on an information charging him with an offence triable either way.
- (2) Without prejudice to section 15 of the Magistrates' Courts Act 1952 (non-appearance of accused for trial), everything that the court is required to do under sections 20 to 23 below must be done before any evidence is called and, subject to the following subsection and section 24 below, with the accused present in court.
- (3) The court may proceed in the absence of the accused in accordance with such of the provisions of sections 20 to 23 below as are applicable in the circumstances if they consider that by reason of his disorderly conduct before them it is not practicable for the proceedings to be conducted in his presence; and subsections (3) to (5) of section 24 below, so far as applicable, shall have effect in relation to proceedings conducted in the absence of the accused by virtue of this subsection (references in those subsections to the person representing the accused being for this purpose read as references to the person, if any, representing him).
- (4) A magistrates' court proceeding under sections 20 to 24 below may adjourn the proceedings at any time, and on doing so on any occasion when the accused is present may remand the accused, and shall remand him if—
  - (a) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or

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(b) if he has been remanded at any time in the course of proceedings on the information ;

and where the court remands the accused, the time fixed for the resumption of the proceedings shall be that at which he is required to appear or be brought before the court in pursuance of the remand.

(5) The functions of a magistrates' court under sections 20 to 24 below may be discharged by a single justice, but the foregoing provision shall not be taken to authorise the summary trial of an information by a magistrates' court composed of less than two justices.

## **20 Court to begin by considering which mode of trial appears more suitable**

(1) The court shall consider whether, having regard to the matters mentioned in subsection (3) below and any representations made by the prosecutor or the accused, the offence appears to the court more suitable for summary trial or for trial on indictment.

(2) Before so considering, the court—

(a) shall cause the charge to be written down, if this has not already been done, and read to the accused ; and

(b) shall afford first the prosecutor and then the accused an opportunity to make representations as to which mode of trial would be more suitable.

(3) The matters to which the court is to have regard under subsection (1) above are the nature of the case; whether the circumstances make the offence one of serious character; whether the punishment which a magistrates' court would have power to inflict for it would be adequate ; and any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other.

(4) If the prosecution is being carried on by the Attorney General, the Solicitor General or the Director of Public Prosecutions and he applies for the offence to be tried on indictment, the preceding provisions of this section and sections 21 and 22 below shall not apply, and the court shall proceed to inquire into the information as examining justices.

## **21 Procedure where summary trial appears more suitable**

(1) If, where the court has considered as required by section 20(1) above, it appears to the court that the offence is more suitable for summary trial, the following provisions of this section shall apply (unless excluded by section 24 below).

(2) The court shall explain to the accused in ordinary language—

(a) that it appears to the court more suitable for him to be tried summarily for the offence, and that he can either consent to be so tried or, if he wishes, be tried by a jury; and

(b) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court under section 29 of the Magistrates' Courts Act 1952 if the convicting court, on obtaining information about his character and antecedents, is of opinion that they are such that greater punishment should be inflicted than the convicting court has power to inflict for the offence.

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- (3) After explaining to the accused as provided by the preceding subsection the court shall ask him whether he consents to be tried summarily or wishes to be tried by a jury, and—
- (a) if he consents to be tried summarily, shall proceed to the summary trial of the information ;
  - (b) if he does not so consent, shall proceed to inquire into the information as examining justices.

## **22 Procedure where trial on indictment appears more suitable**

If, where the court has considered as required by section 20(1) above, it appears to the court that the offence is more suitable for trial on indictment, the court shall tell the accused that the court has decided that it is more suitable for him to be tried for the offence by a jury, and shall proceed to inquire into the information as examining justices.

## **23 Certain offences triable either way to be tried summarily if value involved is small**

- (1) If the offence charged by the information is one of those mentioned in the first column of Schedule 4 to this Act (in this section referred to as " scheduled offences ") then, subject to subsection (7) below, the court shall, before proceeding in accordance with section 20 above, consider whether, having regard to any representations made by the prosecutor or the accused, the value involved (as defined in subsection (10) below) appears to the court to exceed the relevant sum.

For the purposes of this section the relevant sum is £200.

- (2) If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value involved does not exceed the relevant sum, the court shall proceed as if the offence were triable only summarily, and sections 20 to 22 above shall not apply.
- (3) If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value involved exceeds the relevant sum, the court shall thereupon proceed in accordance with section 20 above in the ordinary way without further regard to the provisions of this section.
- (4) If, where subsection (1) above applies, it appears to the court for any reason not clear whether, for the offence charged, the value involved does or does not exceed the relevant sum, the provisions of subsections (5) and (6) below shall apply.
- (5) The court shall cause the charge to be written down, if this has not already been done, and read to the accused, and shall explain to him in ordinary language—
- (a) that he can, if he wishes, consent to be tried summarily for the offence and that if he consents to be so tried, he will definitely be tried in that way; and
  - (b) that if he is tried summarily and is convicted by the court, his liability to imprisonment or a fine will be limited as provided in section 29 below.
- (6) After explaining to the accused as provided by the preceding subsection the court shall ask him whether he consents to be tried summarily and—
- (a) if he so consents, shall proceed in accordance with subsection (2) above as if that subsection applied;

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- (b) if he does not so consent, shall proceed in accordance with subsection (3) above as if that subsection applied.
- (7) Subsection (1) above shall not apply where the offence charged—
  - (a) is one of two or more offences with which the accused is charged on the same occasion and which appear to the court to constitute or form part of a series of two or more offences of the same or a similar character; or
  - (b) consists in the incitement to commit two or more scheduled offences.
- (8) Where a person is convicted by a magistrates' court of a scheduled offence, it shall not be open to him to appeal to the Crown Court against the conviction on the ground that the convicting court's decision as to the value involved was mistaken; and where a person is convicted before the Crown Court of such an offence, it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which committed him for trial as to the value involved was mistaken.
- (9) If, where subsection (1) above applies, the offence charged is one with which the accused is charged jointly with a person who has not attained the age of seventeen, the reference in that subsection to any representations made by the accused shall be read as including any representations made by the person under seventeen.
- (10) In this section " the value involved ", in relation to any scheduled offence, means the value indicated in the second column of Schedule 4 to this Act, measured as indicated in the third column of that Schedule; and in that Schedule " the material time " means the time of the alleged offence.

**24 Power of court, with consent of legally represented accused, to proceed in his absence**

- (1) Where—
  - (a) the accused is represented by counsel or a solicitor who in his absence signifies to the court the accused's consent to the proceedings for determining how he is to be tried for the offence being conducted in his absence; and
  - (b) the court is satisfied that there is good reason for proceeding in the absence of the accused,
 the following provisions of this section shall apply.
- (2) Subject to the following provisions of this section, the court may proceed in the absence of the accused in accordance with such of the provisions of sections 20 to 23 above as are applicable in the circumstances.
- (3) If, in a case where subsection (1) of section 23 above applies, it appears to the court as mentioned in subsection (4) of that section, subsections (5) and (6) of that section shall not apply and the court—
  - (a) if the accused's consent to be tried summarily has been or is signified by the person representing him, shall proceed in accordance with subsection (2) of that section as if that subsection applied ; or
  - (b) if that consent has not been and is not so signified, shall proceed in accordance with subsection (3) of that section as if that subsection applied.
- (4) If, where the court has considered as required by section 20(1) above, it appears to the court that the offence is more suitable for summary trial then—

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- (a) if the accused's consent to be tried summarily has been or is signified by the person representing him, section 21 above shall not apply, and the court shall proceed to the summary trial of the information; or
  - (b) if that consent has not been and is not so signified, section 21 above shall not apply and the court shall proceed to inquire into the information as examining justices and may adjourn the hearing without remanding the accused.
- (5) If, where the court has considered as required by section 20(1) above, it appears to the court that the offence is more suitable for trial on indictment, section 22 above shall not apply, and the court shall proceed to inquire into the information as examining justices and may adjourn the hearing without remanding the accused.

## **25 Power to change from summary trial to committal proceedings, and vice versa**

- (1) Subsections (2) to (4) below shall have effect where a person who has attained the age of seventeen appears or is brought before a magistrates' court on an information charging him with an offence triable either way.
- (2) Where the court has (otherwise than in pursuance of section 23(2) above) begun to try the information summarily, the court may, at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and proceed to inquire into the information as examining justices and, on doing so, may adjourn the hearing without remanding the accused.
- (3) Where the court has begun to inquire into the information as examining justices, then, if at any time during the inquiry it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the case, that the offence is after all more suitable for summary trial, the court may, after doing as provided in subsection (4) below, ask the accused whether he consents to be tried summarily and, if he so consents, may proceed to try the information summarily:
- Provided that, if the prosecution is being carried on by the Attorney General, the Solicitor General or the Director of Public Prosecutions, the court shall not act under this subsection without his consent.
- (4) Before asking the accused under subsection (3) above whether he consents to be tried summarily, the court shall in ordinary language—
- (a) explain to him that it appears to the court more suitable for him to be tried summarily for the offence, but that this can only be done if he consents to be so tried; and
  - (b) unless it has already done so, explain to him, as provided in section 21(2)(b) above, about the court's power to commit to the Crown Court for sentence.
- (5) Where a person under the age of seventeen appears or is brought before a magistrates' court on an information charging him with an indictable offence other than homicide, and the court—
- (a) has begun to try the information summarily on the footing that the case does not fall within paragraph (a) or (b) of section 6(1) of the Children and Young Persons Act 1969 and must therefore be tried summarily, as required by the said section 6(1); or
  - (b) has begun to inquire into the case as examining justices on the footing that the case does so fall,

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subsection (6) or (7) below, as the case may be, shall have effect.

- (6) If, in a case falling within subsection (5)(a) above, it appears to the court at any time before the conclusion of the evidence for the prosecution that the case is after all one which under the said section 6(1) ought not to be tried summarily, the court may discontinue the summary trial and proceed to inquire into the information as examining justices and, on doing so, may adjourn the hearing without remanding the accused.
- (7) If, in a case falling within subsection (5)(b) above, it appears to the court at any time during the inquiry that the case is after all one which under the said section 6(1) ought to be tried summarily, the court may proceed to try the information summarily.

## **26 Power to issue summons to accused in certain circumstances**

- (1) Where—
  - (a) in the circumstances mentioned in section 24(1)(a) above the court is not satisfied that there is good reason for proceeding in the absence of the accused; or
  - (b) subsection (4)(b) or (5) of section 24 or subsection (2) or (6) of section 25 above applies, and the court adjourns the hearing in pursuance of that subsection without remanding the accused,the justice or any of the justices of which the court is composed may issue a summons directed to the accused requiring his presence before the court.
- (2) If the accused is not present at the time and place appointed—
  - (a) in a case within subsection (1)(a) above, for the proceedings under section 20(1) or 23(1) above, as the case may be; or
  - (b) in a case within subsection (1)(b) above, for the resumption of the hearing, the court may issue a warrant for his arrest.