

Status: Point in time view as at 01/02/1991.

Changes to legislation: Criminal Justice Act 1982, SCHEDULE 9 is up to date with all changes known to be in force on or before 06 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 9

Section 59.

AMENDMENTS OF MAGISTRATES' ^{M1}COURTS ACT 1980 RELATING TO REMANDS IN CUSTODY

Marginal Citations

M1 1980 c. 43

- 1 The words “or would be required to be brought before the court but for section 128(3A) below” shall be added at the end—
 - (a) of subsection (2) of section 5 (adjournment of inquiry into offence);
 - (b) of subsection (4) of section 10 (adjournment of trial); and
 - (c) of subsection (4) of section 18 (initial procedure on information against adult for offence triable either way).
- 2 In paragraph (a) of subsection (1) of section 128 (remand in custody or on bail) after the word “court”, in the first place where it occurs, there shall be inserted the words “, subject to subsection (3A) below,”.
- 3 The following subsections shall be inserted after the said subsection (1)—

“(1A) Where—

 - (a) on adjourning a case under section 5, 10(1) or 18(4) above the court proposes to remand or further remand a person in custody; and
 - (b) he is before the court; and
 - (c) he has attained the age of 17; and
 - (d) he is legally represented in that court,

it shall be the duty of the court—

 - (i) to explain the effect of subsections (3A) and (3B) below to him in ordinary language; and
 - (ii) to inform him in ordinary language that, notwithstanding the procedure for a remand without his being brought before a court, he would be brought before a court for the hearing and determination of at least every fourth application for his remand, and of every application for his remand heard at a time when it appeared to the court that he had no solicitor acting for him in the case.

(1B) For the purposes of subsection (1A) above a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court.

(1C) After explaining to an accused as provided by sub-section (1A) above the court shall ask him whether he consents to the hearing and determination of such applications in his absence.”.
- 4 The following subsections shall be inserted after subsection (3) of that section—

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- “(3A) Subject to subsection (3B) below, where a person has been remanded in custody, the court may further remand him on an adjournment under section 5, 10(1) or 18(4) above without his being brought before it if it is satisfied—
- (a) that he gave his consent, either in response to a question under subsection (1C) above or otherwise, to the hearing and determination in his absence of any application for his remand on an adjournment of the case under any of those provisions; and
 - (b) that he has not by virtue of this subsection been remanded without being brought before the court on more than two such applications immediately preceeding the application which the court is hearing; and
 - (c) that he had attained the age of 17 years when he gave his consent to the hearing and determination of such applications in his absence; and
 - (d) that he has not withdrawn his consent to their being so heard and determined.
- (3B) The court may not exercise the power conferred by sub-section (3A) above if it appears to the court, on an application for a further remand being made to it, that the person to whom the application relates has no solicitor acting for him in the case (whether present in court or not).
- (3C) Where—
- (a) a person has been remanded in custody on an adjournment of a case under section 5, 10(1) or 18(4) above; and
 - (b) an application is subsequently made for his further remand on such an adjournment; and
 - (c) he is not brought before the court which hears and determines the application; and
 - (d) that court is not satisfied as mentioned in subsection (3A) above,
- the court shall adjourn the case and remand him in custody for the period for which it stands adjourned.
- (3D) An adjournment under subsection (3C) above shall be for the shortest period that appears to the court to make it possible for the accused to be brought before it.
- (3E) Where—
- (a) on an adjournment of a case under section 5, 10(1) or 18(4) above a person has been remanded; in custody without being brought before the court; and
 - (b) it subsequently appears—
 - (i) to the court which remanded him in custody; or
 - (ii) to an alternate magistrates' court to which he is remanded under section 130 below,
 that he ought not to have been remanded in custody in his absence, the court shall require him to be brought before it at the earliest time that appears to the court to be possible.”

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- 5 The following subsection shall be inserted after subsection (4) of section 130 (transfer of remand hearings)—
- “(4A) Where a magistrates’ court is satisfied as mentioned in section 128(3A) above—
- (a) subsection (1) above shall have effect as if for the words “he be brought up for any subsequent remands before” there were substituted the words “applications for any subsequent remands be made to”;
 - (b) subsection (2) above shall have effect as if for the words “the accused to be brought before” there were substituted the words “an application for a further remand to be made to”; and
 - (c) subsection (4) above shall have effect as if for the words “him to be brought before” there were substituted the words “an application for a further remand to be made to”.”.
- 6 Section 131(3) (by virtue of which so long as an accused person is detained under a custodial sentence an application for a further remand in custody may be made and determined without his appearance in court, provided that he is represented by counsel or a solicitor who signifies consent to the application being so heard) shall cease to have effect.
- 7 In paragraph 3 of Schedule 5 (transfer of remand hearings) for the words from “the court” onwards there shall be substituted the words “the terms of the order or remand to the court before which the accused is to be brought for the hearing on any application for a subsequent remand or, as the case may be, before which any such application is to be made without his being brought before it”.

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