

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Courts and Tribunals

Trial by single justice on the papers

Section 46: Instituting proceedings by written charge

419. **Section 46** amends section 29 of the Criminal Justice Act 2003. At present, section 29 provides for criminal proceedings to be commenced by way of “written charge and requisition”. Section 46 amends section 29 so that criminal proceedings can also be initiated by way of written charge and single justice procedure notice. A single justice procedure notice is a document that requires the person to respond to it stating whether they plead guilty or not guilty to the charge, and if they plead guilty whether they are content for the case to be dealt with by the single justice procedure.
420. This new single justice procedure is contained in new section 16A to 16F of the Magistrates’ Courts Act 1980, inserted by section 48. The single justice procedure provides that cases may be dealt with by a single magistrate, and there is no obligation to hold a trial in open court. The defendant would therefore not have to attend court. The procedure allows cases to be tried at the earliest opportunity by any available magistrates’ court (regardless of the area in which they originated).
421. This procedure only applies to summary-only, non-imprisonable offences. Offences like failing to register a new vehicle keeper, driving without insurance, exceeding a 30mph speed limit and TV licence evasion make up the majority of the types of offences in scope of this procedure.
422. It will be for prosecutors to decide whether to initiate the single justice procedure. They will be expected to filter out cases involving offences which are technically in scope of the legislation but which might not be suitable for the new procedure. However whether a case is conducted under the new procedure will ultimately be a decision for the magistrate dealing with the case.
423. Initiation by way of written charge and single justice procedure notice must be by a “relevant prosecutor”. These documents will be served on the defendant along with other documents referred to in new section 29(3B) of the 2003 Act (inserted by *subsection (5)* of section 46). A relevant prosecutor might also serve such documents as are described in new section 16A(4)(a) of the 1980 Act (inserted by subsection (3) of section 48). These additional documents will comprise material the prosecutor relies upon in evidence to prove the case against the defendant. “Relevant prosecutors” are those named in section 29 or those named by order of the Secretary of State (including those named in existing orders). *Subsections (9) and (10)* of section 46 make provision relating to the order-making power that is contained in section 29(5)(h) of the 2003 Act. *Subsection (9)* provides that an order specifying a person as a relevant prosecutor must also specify whether they are authorised to issue both written charge and requisitions and single justice procedure notices, or only written charge and single justice procedure

notices. *Subsection (10)* makes transitional provision to ensure that persons who had been previously specified under the power to specify “public prosecutors” will continue to have the power to issue requisitions, and will also have the power to issue single justice procedure notices.

Section 47: Instituting proceedings: further provision

424. *Section 47* amends section 30 of the Criminal Justice Act 2003 to ensure that Criminal Procedure Rules can make provision relating to the single justice procedure notice where they can already make provision relating to requisitions.
425. *Subsection (4)(b)* inserts a new section 30(5)(c) into the 2003 Act. This provides that references to “a summons” under section 1 of the Magistrates’ Courts Act 1980 are to be read as including a reference to the single justice procedure notice so that legislation applying to “summons” under section 1 of the 1980 Act will apply as necessary to the single justice procedure notice.

Section 48: Trial by single justice on the papers

426. *Section 48* provides a single magistrate with the powers to deal with summary-only, non-imprisonable offences where the defendant is an adult and certain procedural requirements have been complied with. These procedural requirements are that the defendant has been served with a written charge and single justice procedure notice and any other documents that are prescribed by the Criminal Procedure Rules (see explanation of new section 29(3B) at paragraph 423 above), and that the defendant has not entered a plea of not guilty or specifically requested an oral hearing before a magistrates’ court in response to the single justice procedure notice. Where these criteria are met, the case can be dealt with in the absence of the parties and with no obligation to sit in open court, providing greater flexibility as to the date and time when these cases can be heard.
427. *Subsection (2)* disapplies certain sections of the Magistrates’ Courts Act 1980. These sections are superseded by the single justice procedure, but will apply to a case if the procedure ceases to apply.
428. *Subsection (3)* introduces new sections 16A to 16F into the 1980 Act. These new sections make provision for a single justice to exercise the jurisdiction of a magistrates’ court in certain cases (new section 16A(11)), although they do not require this.
429. New section 16A sets out when and how a case may be tried under the single justice procedure.
430. Subsection (1) of new section 16A provides for the circumstances in which a single justice may try a written charge in accordance with this procedure. The conditions are that the offence charged is a summary-only offence that is not punishable by imprisonment and that the defendant is at least 18 years old on the date they are charged. The single magistrate must also be satisfied the relevant documents (see subsection (2)) have been served on the defendant at the same time and that the defendant has not indicated either that he or she wants to plead not guilty or that the defendant does not want to be tried under this procedure.
431. Subsections (3) to (12) describe how the new procedure will operate. They enable a single justice to constitute a magistrates’ court, and to try the case solely on the papers.
432. Subsection (3) of new section 16A specifies that a decision under this procedure must be made in reliance only on the documents sent to the defendant, along with any documents containing information to which subsection (4) applies and any written submission provided by the defendant that aims to mitigate the sentence imposed. Subsection (4) ensures that a single justice can consider a defendant’s driving record before sentencing. It enables a single justice to consider documents containing information described in a notice served on the defendant alongside the single justice procedure notice, as well

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(c.2) which received Royal Assent on 12 February 2015*

as documents served on the defendant at that time. Subsection (5) makes clear that the court does not have to consider a written submission if it is not served on the designated officer identified in the single justice procedure notice or where the submission is received late.

433. Subsection (6) of new section 16A provides that a single justice acting under this section does not have to sit in open court.
434. Subsection (7) of new section 16A allows the court to try the charge in the absence of the parties, and makes clear that even if a party appears then the court must proceed as if that party was absent.
435. Subsection (8) provides that, where a defendant has indicated a wish to plead guilty in response to the single justice procedure notice, the court can try the case as if the defendant had pleaded guilty. It converts a defendant's indication of a guilty plea into an actual guilty plea before the court.
436. Subsection (9) of new section 16A provides that a single justice cannot remand the defendant.
437. Subsection (10) of new section 16A makes provision for the situation where a single justice trying a case under this procedure adjourns the case, and consideration of the case under this procedure is resumed at a later time. This subsection provides that no notice of the resumption of the trial is required in these circumstances.
438. Subsection (12) allows a magistrates' court to try a written charge using the single justice procedure irrespective of whether its designated officer is specified in the single justice procedure notice. This enables a case to be tried by a court that has spare capacity, and not just by the court named in the documents sent to the defendant.
439. New section 16B makes provision for cases that are not to be tried under the single justice procedure set out in new section 16A.
440. A case cannot be tried under the single justice procedure where a single justice decides, before the defendant is convicted, that it would be inappropriate to do so (subsection (1) of new section 16B).
441. Similarly, where at any time before a trial the defendant or his or her legal representative gives notice to the relevant designated officer that the defendant does not wish the case to be tried under the single justice procedure, the case cannot be tried under the single justice procedure notice (subsection (2) of new section 16B).
442. In either of these situations, or where the criteria set out in new section 16A(1) are not satisfied, the magistrates' court dealing with the case is required to adjourn the trial if it has begun and issue a summons requiring the defendant to appear before a magistrates' court for trial of the written charge (subsection (3) of new section 16B). Such a summons may be issued by a single justice (new section 16B(4)).
443. Section 16C makes provision for the situation where a magistrates' court convicts a person using the single justice procedure, but then decides that it is not appropriate to try the written charge using the single justice procedure. Subsection (1) of this section provides that the single justice may not continue to try the charge.
444. Subsection (2) of new section 16C applies where a single justice proposes to order a driver disqualification under section 34 or 35 of the Road Traffic Offences Act 1988. In this situation, the defendant must be given the opportunity to make representations about the proposed disqualification. Where the defendant does wish to make such representations, the case can no longer be considered by a single justice.
445. In either of these situations, the single justice must adjourn the trial and issue a summons requiring the defendant to appear at a magistrates' court (subsection (3) of new section 16C).

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446. New section 16D sets out further provisions relating to new sections 16B and 16C.
447. Subsection (1) applies where a single justice issues a summons in circumstances where the case cannot be decided by a single justice. It provides that where a summons has been issued requiring the defendant to appear before a magistrates' court, any reference to "summons" in sections 11 to 13 of the Magistrates' Courts Act 1980 should be read as including a summons so issued by a single justice.
448. Subsection (2) makes clear that, following the issue of a summons under section 16B or 16C, a single justice can, where necessary, issue a further summons.
449. Subsection (3) requires that, when a single justice issues a summons in these situations, the court that tries the written charge must be composed in the traditional way, that is, must be composed of at least two justices or a District Judge (Magistrates' Courts) sitting alone. Such a hearing would be in open court.
450. Subsection (4) applies where the defendant has been convicted under the single justice procedure, but then the case is adjourned because the single magistrate may no longer try the case. It provides that, for the purposes of section 142 of the Magistrates' Court Act 1980 (which enables a magistrates' court to vary or rescind an order it has made if it appears to the court to be in the interests of justice to do so), the court to which the case was transferred is the court that can exercise the power under section 142.
451. Section 16E introduces a new statutory declaration procedure. This provides that a defendant who did not know of the single justice procedure notice or proceedings is entitled to make a declaration to that effect and, if done in accordance with subsection (3), that declaration will have the effect of rendering the proceedings void.
452. Subsection (2) makes clear that this statutory declaration procedure will not apply to cases adjourned under section 16B(3)(a) or 16C(3)(a) and referred to a traditional magistrates' court. In such cases, the statutory declaration procedure set out in section 14 of the Magistrates' Court Act 1980 will apply.
453. Subsection (3) sets out the conditions that have to be satisfied in order that such a declaration will render the single justice proceedings void. The declaration has to be made within 21 days of the defendant finding out about the single justice procedure notice or the proceedings, and the defendant must also enter a response to the single justice procedure notice. This means that they have to enter a plea, and where they plead guilty they must indicate whether or not they wish to have the case dealt with by way of an oral hearing.
454. Subsection (4) provides that the making of a statutory declaration does not affect the validity of the written charge or the single justice procedure notice.
455. Subsection (5) allows a magistrates' court to accept a statutory declaration from the defendant after the 21 day deadline if it appears to the court that it was not reasonable to expect the defendant to serve the statutory declaration in that time. This may be done by a single justice (subsection (10)).
456. Subsections (6) and (7) are about securing that a statutory declaration that is served late and is accepted by a magistrates' court under subsection (5) attracts the same consequences as a statutory declaration that is served in time. Subsection (8) is about treating the single justice procedure notice as having required a response by the time the response was in fact served (or by the time the service of the response was treated as accepted), thus enabling the proceedings to re-start without further process. Subsection (9) prevents the re-started case being heard by the same justice who heard it before.
457. Section 16F(1) provides for the admissibility of evidence. It means that any documents served with, or containing information described in a notice served with, the single justice procedure notice can be taken as containing evidence of the facts stated. But

a single justice can consider the nature of that evidence when deciding whether it is appropriate to try a person using the single justice procedure (section 16F(2)).

Section 49: Trial by single justice on the papers: sentencing etc

458. **Section 49** amends the Magistrates' Courts Act 1980 to specify the range of sentencing powers available to a single justice acting under this procedure, and also provides for a single magistrate to have the power to make certain ancillary orders to enable them to effectively deal with all the cases in scope. These powers enable a single justice to deal with summary-only non-imprisonable offences in a similar way to a traditional bench of magistrates dealing with a prosecution instituted by a written charge and requisition. This includes the ability to: endorse a driving licence; disqualify a driver, and order compensation to be paid to a victim.
459. The new powers will also include the imposition of a fine (without regard to limit), for example to allow a single magistrate to impose the appropriate level of financial penalty for speeding, as guided by existing sentencing guidelines about taking into consideration an offender's financial means.

Section 50: Further amendments

460. **Section 50** introduces Schedule 11.

Schedule 11: Trial by single justice following a written charge: further amendments

461. **Schedule 11** sets out amendments required to other areas of legislation to reflect the availability of the new single justice procedure notice, and in particular the change to section 29 of the Criminal Justice Act 2003. In relevant places, it substitutes the term "public prosecutor" with "relevant prosecutor" and includes references to "single justice procedure notice" alongside references to "requisition".
462. Other amendments amend legislative provisions to ensure that they operate effectively under the new single justice procedure. In particular this includes amendments to the following:
- (i) section 11 of the Magistrates' Courts Act 1980 (to ensure that the requirements for adjourning prior to a hearing to consider imposing a driving disqualification take account of the new single justice procedure);
 - (ii) section 123(2) of the Magistrates' Courts Act 1980 (to modify the provisions for dealing with defects in summons so that a less stringent test applies to cases dealt with under the single justice procedure);
 - (iii) section 7 of the Road Traffic Offenders Act 1988 (to set out the arrangements which will apply in single justice procedure cases when a defendant is required to surrender their licence to the court).