



Home Office

Criminal investigations: court proceedings

Version 3.0

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About this guidance

This guidance tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about proceedings in the various courts in England, Wales, Scotland and Northern Ireland. It tells you about:

- starting a prosecution in England and Wales
- allocating a case to court, including the type of trial
- committal proceedings
- the indictment (notice of the charges the accused will face)
- commencing criminal procedures for Scotland and Northern Ireland

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: [Vulnerable people and children](#)

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the General Data Protection Regulation (GDPR) and the complementary Law Enforcement Directive (LED) domestic legislation via the Data Protection Act 2018 see: [Data protection changes \(GDPR and Data Protection Act 2018\)](#).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the CFI Operational Guidance Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **3.0**
- published for Home Office staff on **20 November 2019**

Changes from last version of this guidance

- Updated links
- Reworded some sentences
- Other minor amendments

Related content

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Starting a prosecution in England and Wales

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office how a criminal prosecution is started in England and Wales.

With the exception of voluntary bills of indictment (an exceptional procedure before a High Court judge who gives consent for a defendant to go to trial by judge and jury) which are dealt with in the High Court, and court of appeal re-trials, all criminal prosecutions in England and Wales begin in the magistrates' court where the defendant appears either:

- on a summons
- under a charge

This is as a result of an individual:

- attending court on a summons
- being produced:
 - from police custody
 - on bail after having been charged at a police station

Related content

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Related external links

[Magistrates Court Act 1980](#)

[Criminal Procedure Rules 2013 \(see Part 7\)](#)

Allocating a case to court

This section tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office how a case is allocated and which court the case can be sent to for trial in England and Wales.

In England and Wales, allocating a case and deciding the mode (type) of trial is governed by the following pieces of legislation:

- [Sections 17 to 29 of the Magistrates' Court Act 1980](#)
- [Sections 50 to 52 of the Crime and Disorder Act 1998](#)

Which court a case is allocated to is affected by:

- the classification of the offence - The general rule is an offence classified as triable:
 - on indictment (notice of the charges the accused will face) only - must be sent to the Crown court for trial
 - only summarily (offences that are triable without a jury) - must be tried in a magistrates' court
 - either way (on indictment or summarily) - must be allocated to one court or the other
- the defendant's age - an offence committed by a defendant under 18 is heard in the magistrates' court sitting as a youth court
- whether the defendant is awaiting trial at the Crown court for another connected offence
- whether another defendant, charged with the same or a similar offence(s) is awaiting trial at the Crown court for that offence
- in some cases, whether the value involved is more or less than £5,000

For more information on the mode (type) of trial, see: [Mode of Trial](#)

Summary offences

Summary offences are lesser offences that are heard at the magistrates' court only. Some summary offences may be tried in the Crown court under the following circumstances:

- committal for sentence ([Power of Criminal Courts \(sentencing\) Act 2000](#))
- alternative verdicts reached by a jury for a summary offence ([section 6\(3\) of the Criminal Law Act 1967](#))
- conviction of a summary offence on the indictment ([section 40 of the Criminal Justice Act 1988](#))
- a summary offence on the back of the indictment ([section 41 of the Criminal Justice Act 1988](#)) or ([section 51 and paragraph 6 of schedule 3 of the Crime and Disorder Act 1998](#))

Either way offences

These offences may be tried in the:

- magistrates' court for summary trial
- Crown court for trial on indictment

In accordance with section 22 of the Magistrates' Court Act 1980, some 'either way' offences must be tried in the magistrates' court if the value involved makes them liable to be triable as summary offences. See [Section 22 of the Magistrates Court Act 1980](#)

Indictable offences

Indictable only offences are more serious and only tried in the Crown court.

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Mode of trial hearing

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the mode (type) of trial hearings in England and Wales.

In England and Wales, a mode of trial hearing:

- decides if a case is heard at magistrates' court or Crown court
- is only held in cases where the defendant pleads not guilty or declines to state a plea

These hearings do not generally take place in relation to indictable only and summary only offences.

The first part of the hearing is called plea before venue, where the defendant is asked to indicate a plea of guilty or not guilty.

If the plea is guilty

The case is handled by the magistrates' court and proceeds to sentence:

- if the magistrates' court thinks the offence is too serious to deal with, it commits the defendant to the Crown court for sentence:
 - it might require a sentence of imprisonment of more than 6 months or, in relation to more than one offence, a total sentence of more than 12 months
- this might also apply if the summary or either way offence is related to an offence for which the defendant (or another defendant) has been sent for trial to the Crown court (so that all offences can be dealt with at the same time)

If the plea is not guilty

The magistrates:

- consider the:
 - prosecutor's and defence's recommendations
 - seriousness of the offence
 - defendant's previous convictions
- assess if their powers of punishment are adequate in case of a conviction when deciding on the mode of trial

If the magistrates' court decides that an either way offence is to be tried summarily and the defendant is found guilty, the case can still be committed to the Crown court for sentence if they consider their sentencing powers insufficient.

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Committal proceedings

This section tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about how cases reach the Crown court in England and Wales.

Sending a defendant charged with an either way offence to the Crown court

Proceedings are needed to send either way cases to the Crown court in situations where:

- there is no indictable (notice of the charges the accused will face) only offence to which the either way offences are related
- following a not guilty indication (or no response), at the mode of trial considerations:
 - the court does not allow summary trial and decides the case is committed to the Crown court
 - having been offered a summary trial, the defendant chooses a trial in the Crown court
 - the defendant is a youth charged with an offence that section 24 of the Magistrates' Courts Act 1980 applies to and the court decides the case is tried in the Crown court

Either way offences are sent to the Crown court under section 51 of the Crime and Disorder Act 1998. See [Section 51 Crime and Disorder Act 1998](#)

For more information about section 24 of the Magistrates' Courts Act 1980, see [Section 24 Magistrates Court Act 1980](#).

Sending a defendant charged with an indictable only offence to the Crown court

Sections 51, 52 and schedule 3 of the Crime and Disorder Act 1998 say that:

- committal proceedings for indictable only offences are abolished
- defendants charged with an indictable only offence, appearing before a magistrates' court for the first time, must be sent immediately to the Crown court

For more information about this legislation, see:

- [Section 51 Crime and Disorder Act 1998](#)
- [Section 52 Crime and Disorder Act 1998](#)
- [Schedule 3 Crime and Disorder Act 1998](#)

Currently, there is no provision for sending defendants to the Crown court in their absence.

At the hearing the magistrate will consider:

- whether to grant bail to the defendant
- either way or summary only offences charged against the defendant and will only send cases to the Crown court, provided they meet the following conditions, the:
 - either way offence is related to an indictable only offence
 - summary offence is punishable with imprisonment or involves compulsory or flexible disqualification from driving and come from circumstances which are the same as or connected with those leading to the indictable only offence ([section 51 Crime and Disorder Act 1998](#))

If the court decides not to send the defendant to the Crown court, the plea before venue (where the defendant is asked to indicate a plea of guilty or not guilty) and mode (type) of trial hearing must follow as normal.

For more information, see [Mode of Trial](#)

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The indictment: England and Wales

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what an indictment is in England and Wales.

The indictment is the document showing the offences for which the defendant is on trial in the Crown court.

Who drafts the indictment?

The reviewing lawyer is responsible for preparing the draft indictment, however, in serious or complex cases counsel for the prosecution is asked to draft the indictment.

What does the indictment contain?

The form, content, and serving of an indictment are governed by [rule 14 of the Criminal Procedure Rules 2013](#).

An indictment must be in one of the forms set out in the consolidated criminal practice direction and must contain:

- one or more 'counts' (a statement of the offence) that:
 - describes the offence in ordinary language
 - identifies the legislation it comes under
- the particulars of the alleged conduct and must make it clear what the prosecutor alleges against the defendant
 - consecutive numbered counts

An indictment may contain:

- any count charging substantially the same offence as one:
 - that the defendant was sent for trial (in indictable only cases)
 - that the defendant was committed for trial (where the offence is either way)
 - specified in a notice of transfer given by the prosecutor
 - based on the prosecution evidence already served before the case reached the Crown court
 - more than one count if all the offences charged:
 - are based on the same facts
 - form, or are part of, a series of offences of the same or similar character

For more information see:

- [Part 14 Criminal Procedure Rules 2014](#)
- [Criminal Practice Directions 2015](#)

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Serving an indictment

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about serving an indictment (notice of the charges the accused will face) in England and Wales.

The prosecution must serve a draft indictment on the Crown court no more than 28 days after either:

- the evidence is presented in a case where the defendant is sent for trial
- the committal or transfer of the defendant for trial
- a High Court judge gives permission to serve a draft indictment
- the Court of Appeal orders a re-trial

The Crown court may extend the time limit even after it has expired.

To make changes after the indictment has been served you need to 'seek leave to amend the indictment'. It must be done at:

- the plea and trial preparation hearing (PTPH)
- any other hearing where an application is made to the court

For more information see: [Section 14.1 Criminal procedure Rules 2013](#)

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Plea and Trial Preparation Hearings (PTPH)

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the Plea and Trial Preparation Hearing (PTPH) process.

The Plea and Trial Preparation Hearing (PTPH) and related procedures was introduced to provide a single national process to be used in all Crown Courts (see [Plea and Trial Preparation Hearings](#)).

All cases sent after 5 January 2016 are sent to a PTPH hearing.

The PTPH takes place a little later in the process than Preliminary Hearings, generally 28 days after sending unless, in individual cases, the Resident Judge orders otherwise.

It occurs after the prosecution will have provided available information about the case and obtained details of the availability of likely prosecution witnesses. In all but complex cases this should be sufficient to enable the court to case manage effectively without the need for a Further Case Management Hearing (FCMH) before trial.

As part of this process the Crown Prosecution Service (CPS) need to serve a disclosure management document (DMD) on the court and the defence in advance of the PTPH to clarify the prosecution's approach to disclosure (for example, which search terms have been used and why) and to identify and narrow the issues in dispute. IE criminal investigators need to provide the detail so that the CPS can populate the DMD with the relevant information.

The PTPH presumes that the parties will have communicated with each other prior to the PTPH in accordance with the duty of engagement (see [Criminal Procedure Rules Part 3](#)) and will continue to do so thereafter.

Sending a case to the Crown Court for a PTPH

When a case is to be sent for PTPH to the Crown Court the Magistrates should expect the parties to provide information on any relevant communications between them in accordance with the duty of engagement, see [MOJ Rules and Practice Directions](#):

- where guilty pleas are indicated, the Magistrates should consider ordering a Pre-sentence Report (PSR)
- where not-guilty pleas are indicated the magistrates should explore with the parties
- Magistrates should consider whether the defendant is prepared to plead to other offences

In brief terms what are the issues in the case, what evidence and issues are agreed and what is likely to be disputed?

What information, or other material, is required by either of the parties to facilitate an effective PTPH?

The role of the Crown Court at a Plea and Trial Preparation Hearing (PTPH)

At an effective PTPH the defendant will be arraigned (the calling or bringing of a person before a court to answer a criminal charge) unless there is good reason not to. In the event of a guilty plea the defendant should, if possible, be sentenced on that day.

In the event of a not guilty plea the court will:

- set the trial date
- identify, so far as can be determined at that stage, the issues for trial
- consider with the parties the witness requirements that can be determined at that stage
- provide a timetable for the necessary pre-trial preparation and give appropriate directions for an effective trial
- make provision for any Further Case Management hearing that is required to take place at the time when it can be of maximum effectiveness

A Further Case Management Hearing (FCMH) will only be needed in complex cases. Engagement between the parties and with the court should ensure that these elements can be achieved. If the parties indicate that there is an issue that prevents arraignment (such as a prospective application to dismiss or doubt as to fitness to plead) the court will then give directions to a trial date if it is needed. This should be managed by way of a FCMH for the resolution of the issue – usually timed at around Stage 2. .

What is the timing of the Pre and Trial Preparation Hearing (PTPH)?

Cases sent to the Crown Court should be listed for PTPH within 28 days.

Saturdays, Bank holidays and court closure days are considered by the courts when deciding upon listing dates.

When cases must be listed on these days they should be adjourned beyond 28 days as opposed to being listed earlier than 28 days. This will give the prosecution maximum opportunity to ensure the case is properly prepared and the PTPH effective.

Digital Case System (DCS)

Parallel with the introduction of the PTPH is the provision of the Digital Case System (DCS) to all Crown Courts before the end of March 2016 (see [Crown Court Digital Case System \(DCS\) Guidance](#)).

The documents relied on in criminal cases such as the indictment, statements, paper exhibits, defence statement, applications and written orders will be uploaded onto the DCS and will be accessible on computers, tablets and even smartphones. Paper copies will continue to be required for unrepresented parties and jurors. Documents will be 'served' when they are uploaded onto the system and a notification is sent, by e-mail, to the other party or parties.

Any paperwork handed over during a hearing will only be deemed to have been 'filed' when it is uploaded onto the DCS. These elements of the new approach are reflected in the Criminal Procedure Rules, see:

- [MOJ Rules and Practice Directions](#)
- [Crown Court Digital Case System Guidance](#)

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Starting criminal procedures: Scotland

This section tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about starting (commencing) criminal procedures in Scotland.

In Scotland, the main piece of legislation covering criminal procedure is [the Criminal Procedure \(Scotland\) Act 1995](#).

Scotland has 3 criminal courts:

- justice of the peace court (hears summary cases only)
- sheriff court (hears both summary and solemn cases)
- High Court of Justiciary (hears solemn cases only)

Summary procedure

Offences are brought before the justice of the peace or the sheriff court by summary complaint and a judge sitting alone considers them.

Solemn procedure

Indictable offences are brought before the sheriff court or the High Court of Justiciary and a judge sitting with a jury considers them.

Allocating a case to court

The procurator fiscal decides which court a case is tried in based on the severity of the offence and sentences a court can give out.

The High Court hears the most serious criminal cases, using solemn procedure (judge and jury) on indictment (notice of the charges the accused will face) when there are no limits on the:

- length of prison sentence
- amount of the fine that can be imposed.

The sheriff court hears all other criminal cases, using solemn procedure (judge and jury) or summary procedure (judge only):

- solemn procedure - the court can sentence an accused person to a maximum period of up to 5 years in prison or impose a fine of any amount
- summary procedure - the court can sentence an accused person to a maximum period of 12 months in prison and a maximum fine of £10,000

The justice of the peace court hears minor summary cases, and:

- can sentence an accused person to a period of up to 60 days in prison

- impose a fine of up to £2,500

When a justice of the peace court is made up by a stipendiary magistrate, the court can:

- sentence an accused person to a maximum period of 12 months in prison
- a maximum fine of £10,000

Considering the case

If the procurator fiscal believes there is enough evidence in a case to continue with a prosecution, they either:

- arrange for the accused to appear at court on a petition (a document for solemn prosecutions containing the charges facing the accused), when the circumstances are sufficiently serious to merit solemn procedure
- decide that a summary prosecution is raised against an accused person and arrange for the complaint (a document starting summary (minor) criminal proceedings in a sheriff court) before the court

For more information, see: [The Scottish Criminal Justice System](#)

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Related external links

[Crown Office and Procurator Fiscal Service](#)
[Judiciary of Scotland](#)

Process for solemn prosecutions: Scotland

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the process for solemn prosecutions in Scotland for the more serious offences.

Petition hearing

Solemn cases start with the presentation of a petition (a document containing the charges facing the accused) to the sheriff to grant a warrant to arrest and commit the accused (the panel) for trial. See [Solemn cases \(Scotland\)](#)

The petition hearing takes place in the sheriff court, even if it is likely the case will ultimately be prosecuted at the High Court.

At the first petition hearing, the accused:

- has the opportunity to make any plea or declaration concerning the charges contained in the petition
- is committed for further examination (investigation of the case) and bail is considered. If the accused is:
 - granted bail, they next appear in court if the case is to be indicted for trial, or
 - remanded in custody, they appear before the court again within 8 days for full committal for trial

At the second petition hearing:

- the accused appears with their solicitor
- the procurator fiscal moves to fully commit the accused for trial
- bail issues are discussed. If the accused is:
 - committed for trial and remanded in custody, they generally remain in custody until their trial has finished
 - granted bail
 - they are indicted for trial

The accused can plead guilty to the charges at any stage in the proceedings.

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The indictment: Scotland

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the indictment for solemn prosecutions.

If the procurator fiscal decides to proceed with the prosecution by solemn procedure (sheriff and jury) the charges are framed (set out) in an indictment (a document setting out the charge(s) of crimes or offences against an accused in more serious cases).

The format, content and serving of the indictment are covered by the:

- [Criminal Procedure \(Scotland\) Act 1995](#)
- [Act of Adjournal \(Criminal Procedure Rules\) 1996](#)

An indictment is served on the accused, and notified they must appear at the sheriff court on 2 specific dates:

- first diet (called a preliminary hearing if proceedings have been raised in the High Court of Justiciary)
- trial sitting (diet)

Who drafts the indictment?

If proceedings are raised in the sheriff court the procurator fiscal will draft and sign an indictment.

If solemn proceedings are raised in the High Court of Justiciary, the Crown Office prepare the indictment, but it is signed by:

- the Lord Advocate
- an Advocate Depute

Who can serve an indictment?

An indictment can be served by:

- a macer (an officer of the court), messenger in arms, sheriff officer or other person having the authority of the courts
- a police constable
- a police custody or security officer
- a person who is appointed under [section 26](#) of the Police and Fire (Scotland) Act 2012 with the authority of the chief constable.
- an immigration officer (acting with the authority of the Secretary of State) but only if the indictment relates to:
 - immigration offences within the meaning of [Section 307 \(1AA\) and \(1AB\) Criminal Procedure \(Scotland\) Act 1995](#)

- nationality offences within the meaning of [Section 307 \(1AA\) and \(1AB\) Criminal Procedure \(Scotland\) Act 1995](#)
 - an officer of Revenue and Customs (acting with the authority of the Commissioners for Her Majesty's Revenue and Customs)
 - in certain circumstances, a prison officer if the accused is in prison
 - other individuals who are authorised by the Lord Advocate or Scottish ministers

The indictment in both sheriff and jury trials and High Court trials must be served at least 29 clear days before the first diet (in sheriff and jury cases) or preliminary hearing (in High Court cases). If the accused is remanded in custody the indictment must be served within 80 days of full committal for trial.

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Preliminary sitting and trial hearing: Scotland

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the additional hearings that happen in solemn prosecutions in Scotland.

The first diet (called a preliminary hearing if proceedings are raised in the High Court of Justiciary)

This gives the sheriff (or judge) an opportunity to:

- find out if both parties (prosecution and defence) are ready to proceed to trial
- confirm the trial is ready to go ahead on the allocated date
- hear how the accused wants to plead to the charges in the indictment
- deal with any additional procedural matters

The first diet acts as a gateway to the trial sitting and must be at least 15 days after service of the indictment and at least 10 clear days before the trial diet in sheriff and jury trials.

In High Court trials, if the accused is remanded in custody, the preliminary hearing must be held within 110 days of full committal. In High Court trials if the accused is on bail, the preliminary hearing must be held within 11 months of full committal for trial.

The trial sitting (diet)

If the first diet identifies a case needs to proceed to trial it continues to a trial sitting. If the accused is remanded in custody the trial must start within 110 days of full committal in sheriff and jury trials. If the accused is on bail the trial must start within 12 months of their first appearance at court in sheriff and jury trials.

In High Court trials if the accused is remanded in custody the trial must start within 140 days of full committal for trial. If the accused is on bail the trial must start within 12 months of their first appearance at court in High Court trials.

Sittings may be scheduled to last one week, but often last over 2 weeks. A number of cases are assigned to call during that period and are called at some stage within the sitting.

At this stage there is nothing to prevent either the:

- Crown discontinuing proceedings
- accused pleading guilty to the charges before the evidence is heard

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Process for summary prosecutions: Scotland

This section tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the process for summary prosecutions in Scotland for the less serious offences.

The complaint

If the procurator fiscal decides to proceed with the prosecution by summary procedure (judge only), the charges are framed (set out) in a document called a complaint.

This document is served on the accused and notifies them they must appear at the court on the date fixed for the first calling of the case (or any other diet (hearing) which the court may fix).

Who drafts the complaint?

The complaint is in the name of the procurator fiscal, and they, or one of their deputies, draft and sign it.

Considering the complaint by the court

A complaint may be put before the court. The court has the power on the motion of the prosecutor to:

- make an order fixing the date of the trial
- grant any necessary arrest, search or other warrants

Who can serve a complaint?

A complaint can be served by:

- a macer (an officer of the court), messenger in arms, sheriff officer or other person having the authority of the courts
- a police constable
- a police custody or security officer
- a person who is appointed under section 26 of the Police and Fire (Scotland) Act 2012 (see [the Police and Fire Reform \(Scotland\) Act 2012](#)) with the authority of the chief constable
- an immigration officer (acting with the authority of the Secretary of State) but only if the indictment relates to:
 - immigration offences within the meaning of [Section 307 \(1AA\) and \(1AB\) Criminal Procedure \(Scotland\) Act 1995](#)
 - nationality offences within the meaning of [Section 307 \(1AA\) and \(1AB\) Criminal Procedure \(Scotland\) Act 1995](#)

- an officer of Revenue and Customs (acting with the authority of the Commissioners for Her Majesty's Revenue and Customs)
- in certain circumstances, a prison officer if the accused is in prison
- other individuals who are authorised by the Lord Advocate or Scottish ministers

The first calling (the pleading diet)

This is to allow the accused to respond to the charges in the complaint. The accused may appear personally or be represented.

If the accused pleads guilty to the charges in the complaint, the court:

- hear from prosecution and the accused
- move to sentence

If the accused pleads not guilty to the charges in the complaint the court fix a trial diet (hearing) and an intermediate diet. The Crown or the accused can apply for the court to dispense with (do without) an intermediate diet.

Where the accused pleads not guilty, they are given 2 dates to return to court for the:

- intermediate diet
- trial diet

Intermediate diet

The court will generally fix an intermediate diet when the date for the trial diet is fixed. The purpose of the intermediate diet is to:

- find out whether both parties (prosecution and defence) are ready to proceed to trial
- ask if the accused still wishes to plead guilty to the offence
- deal with any additional procedural matters

The trial diet

On the date fixed for trial the court call the case to make sure the:

- accused is present
- trial is proceeding

If the accused is not present and does not have a reasonable excuse for their absence, a warrant for their arrest can be issued.

When the trial diet is called there is nothing to prevent either the:

- Crown discontinuing proceedings
- accused pleading guilty to the charges before the evidence is heard

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Starting criminal procedures: Northern Ireland

This section tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about starting (commencing) criminal procedures in Northern Ireland.

Northern Ireland has its own judicial system which is headed by the Lord Chief Justice of Northern Ireland.

Sections of the Justice (Northern Ireland) Act 2002	What it states or means
Section 29	States the head of the Public Prosecution Service for Northern Ireland (PPSNI) is the Director of Public Prosecutions (DPPNI)
Section 31	States the DPPNI may begin criminal proceedings in any case where it is appropriate to do so.
Section 36	Means the DPPNI can delegate authority to lawyers (solicitors or barristers) employed in the PPSNI as public prosecutors. They make decisions about whether to prosecute based on the evidence collected during the investigation.

Police and other criminal investigators must submit criminal investigation files to the Public Prosecution Service for Northern Ireland (PPSNI).

Each case is allocated to a public prosecutor who:

- provides pre-charge and prosecutorial advice in appropriate cases if the investigator requests it
- decides whether to pursue a prosecution when sufficient evidence and information have been provided

Starting proceedings

The main legislation governing criminal proceedings in the magistrates' courts in Northern Ireland, which have been amended several times, are:

- [The Magistrates Courts \(Northern Ireland\) Order 1981](#)
- [The Magistrates Courts Rules \(Northern Ireland\) 1984](#)
- [The Magistrates Courts \(Amendment\) Rules \(Northern Ireland\) 2016](#)

Criminal proceedings are usually commenced by either the:

- police charging the defendant

- PPSNI making a complaint to a lay magistrate under article 20 of the Magistrates' Courts (NI) Order 1981 (see [article 20 of the Magistrates' Courts \(NI\) Order 1981](#))

Proceedings commenced by way of charge

Where proceedings have been commenced by a charge, the:

- defendant may be brought before the next available court (overnight charge case)
- police may grant bail requiring the defendant to attend before a magistrates' court within 28 days from the date of charge

Before the defendant's first appearance in court, the public prosecutor:

- reviews the charges and may approve, amend, add or withdraw charges
- puts the reviewed charges before the court

If all the charges are withdrawn by the public prosecutor at review, then the defendant does not appear in court.

Proceedings commenced by way of complaint

Where proceedings have been commenced by a complaint, a summons containing the complaint is served on the defendant requiring them to attend a particular magistrates' court on a specified date.

After a decision to prosecute has been taken, the PPSNI prepares the summons and a lay magistrate must sign it.

Mode (type) of trial

In Northern Ireland defendants being prosecuted for criminal offences may be tried either:

- summarily (summary prosecution in the magistrates' court)
- on indictment (indictable prosecution in the Crown court)

The mode of trial depends on a number of factors including the exact offences that the defendant is being prosecuted for. Some serious offences must be tried on indictment (notice of the charges the accused will face) while some minor offences can only be prosecuted summarily.

Hybrid offences (offences punishable by summary conviction or as an indictable offence) may be tried either way (on indictment or summarily), where legislation has provided for penalties in respect of those offences for both summary and indictable convictions. If the defendant is being prosecuted for hybrid offences, then the public prosecutor decides on the mode of trial.

Under [article 45 of the Magistrates Courts \(NI\) Order 1981](#), an indictable offence listed in schedule 2 of that order may be tried summarily when:

- the court thinks it is practical
- the defendant:
 - agrees to a summary hearing
 - gives up their right to a trial by jury (having had at least 24 hours notice of this right in writing)
- the prosecutor agrees

Under [article 29 of the Magistrates Courts \(NI\) Order 1981](#) a defendant has the following rights to:

- claim trial by jury for certain summary offences, provided:
 - the offence is not one listed in article 29(1) of the order the defendant appears in person and claims the right before they plead
 - the defendant is over the age of 14
 - if found guilty of the offence, they could be imprisoned for more than 6 months
- have the court:
 - inform them of their right to claim trial by jury
 - ask them if they wish to claim that right

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Summary prosecutions: Northern Ireland

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the process for summary prosecutions in Northern Ireland for the less serious offences.

Summary prosecutions take place:

- in the magistrates' court
- before a legally qualified district judge
- without a jury

Circumstances	What happens
If the defendant has been charged.	They are remanded to the next court, either: <ul style="list-style-type: none">• on bail (subject to conditions), or• in custody.
If the defendant has been summonsed to appear in court.	The case may be adjourned to the next court, and the defendant: <ul style="list-style-type: none">• is not be subject to bail conditions, or• is held in custody.
If the defendant fails to attend.	You can issue and execute an arrest warrant. Once arrested the defendant needs to apply for bail. Bail with conditions may be granted, or the district judge may remand them in custody.
If the defendant submits a plea of not guilty.	A date is set for their trial
If convicted of a summary offence.	Depending on the nature of the offence committed, a district judge can: <ul style="list-style-type: none">• impose:<ul style="list-style-type: none">○ a maximum sentence of not more than 12 months imprisonment○ a fine up to a maximum of £5,000• make other orders, such as:<ul style="list-style-type: none">○ conditional discharge○ binding over○ community service order○ compensation order

The district judge may also commit the accused to the Crown court for confiscation proceedings if the prosecution requests it. The prosecution must make the application before the defendant is sentenced.

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Indictment prosecutions: Northern Ireland

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the process for indictment prosecutions in Northern Ireland for the most serious offences.

Indictable prosecutions normally commence (start) in the magistrates' court with a preliminary investigation or inquiry.

But if the district judge decides there is enough evidence in the case for the defendant to answer, they commit the defendant to the Crown court for trial. There are some exceptions to this.

Trials in the Crown court are heard by a Crown court judge, usually with a jury. However, when certain conditions are met, the Director of Public Prosecutions (DPPNI) may issue a certificate under section 1 of the Justice and Security (NI) Act 2007 (see [Justice and Security \(Northern Ireland\) Act 2007](#)) that the case is not suitable for trial by jury. When this happens, the trial takes place before a Crown court judge sitting alone.

If the defendant is convicted, they are sentenced by the Crown court judge. The nature and length of the sentence depends on:

- the offences the defendant has been convicted of
- all the other circumstances of the case

The district judge may also impose a fine and/or make a number of additional orders.

Also, when the prosecution believes the defendant has benefited financially from the crime committed, the prosecutor can ask the court to make a confiscation order, confiscating the proceeds of crime and ask the defendant to pay a sum of money to the court.

The prosecutor must submit the request before the defendant is sentenced.

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Preliminary procedures: Northern Ireland

This section tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the preliminary processes in Northern Ireland prosecutions.

Preliminary procedures

Committal is a procedure used to decide if there is enough evidence to support putting a defendant on trial at the Crown court. Committal proceedings:

- are heard in open court
- must have the defendant present in the magistrates' court for it to take place

Proceedings take the form of either a:

- preliminary investigation
- preliminary inquiry

The relevant legislation that applies to this are:

- articles 30 to 37 of the [Magistrates' Courts \(NI\) Order 1981](#)
- rules 25 to 47 of the [The Magistrates' Courts Rules \(Northern Ireland\) 1984](#)

Preliminary investigation (PI)

A PI is held when the prosecution has:

- not requested a preliminary enquiry (PE) to take place
- requested a PE, but the defendant has objected

The PI procedure is rarely used.

Preliminary enquiry (PE)

These are the most common type of committal proceedings in Northern Ireland, and may be held instead of a PI, if the:

- prosecutor requests it
- the accused does not object

The prosecution must serve a number of formal documents on the defendant including:

- a statement of the complaint made against the defendant (the charges)
- copies of:

- statements from witnesses whose evidence the case is relying on
- relevant written exhibits or details of where these and other non-documentary exhibits can be inspected

During a PE:

- the charges are read to the defendant, they are asked if they understand them and whether they consent to the holding of a PE - if they do not consent then a PI must be held
- if the defendant consents, the court considers the written statements from witnesses rather than hearing oral evidence
- the prosecution and defence may request that the written statements are read aloud
- the court considers any submissions made by, or on behalf of, the prosecution or the defence
- after considering the prosecution's evidence, the court considers whether there is enough evidence in the case against the defendant
- if the court decides there is a prima facie case (enough evidence), the defendant is told:
 - they are not obliged to say anything in answer to the charges unless they wish to do so
 - if they do say anything it will be taken down in writing and given in evidence at their trial
- if the defendant makes any statement it is:
 - recorded
 - signed by the district judge (and the defendant if they wish to)
- the defendant is advised of their right to:
 - give evidence
 - call witnesses
 - submit any written statement of evidence
- if there are any defence witnesses their evidence is recorded as depositions (a witness's sworn out of court testimony) after:
 - examination in chief (giving evidence personally)
 - cross examination
 - re-examination
- if the defendant gives evidence themselves the defence lawyer may make submissions
- the court takes any defence evidence into consideration when deciding whether or not to commit the defendant to the Crown court for trial
- the prosecution applies for the defendant to be returned for trial (committed for trial)
- if the court believes there is enough evidence to put the defendant on trial by jury for any indictable offence, it commits them for trial
- if there is not enough evidence the defendant is discharged, provided they are not in custody for any other offence

In practice most PE hearings are not contested and proceed as a formality.

In some circumstances, during the course of a PE, the court or any party may need a witness to attend and give oral evidence. If this happens the proceedings are known as a mixed committal (PI and PE).

Mixed committal

Article 34(2) of the [Magistrates Courts Order \(Northern Ireland\) 1981](#) states:

- in the course of a PE the court, or either party, may need any person to attend to give oral evidence
- the evidence is recorded in the form of a deposition and any witness may be:
 - examined in chief (questioned personally)
 - cross examined
 - re-examined
- the procedure is the same as for a PE

In all cases where the defendant is committed for trial, they are committed for trial either:

- on bail (subject to conditions) to attend the Crown court
- in custody

Notices of transfer

Notices of transfer are alternative procedures that can be used in the magistrates' court to bring a defendant before the Crown court and are rarely used. Provisions are made for them in the:

- [Criminal Justice \(Serious Fraud\) \(Northern Ireland\) Order 1988](#)
- [Children's Evidence \(Northern Ireland\) Order 1995](#)

They relate to either:

- offences involving serious fraud
- sexual offences or offences involving violence or cruelty against a child
- where a child is required to give evidence

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The indictment: Northern Ireland

This section tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about indictments in Northern Ireland.

The indictment (bill of indictment)

An indictment contains the offences which the defendant is to be prosecuted for in the Crown court.

The content and format of an indictment are governed by the:

- [Crown Court Rules \(Northern Ireland\) 1979](#)
- [Indictments Act \(Northern Ireland\) 1945](#)

The Indictments Act (Northern Ireland) 1945 says an indictment is sufficient if it contains:

- a statement of the specific offence or offences the accused is charged with
- any particulars necessary for giving reasonable information about the nature of the charge or charges

The layout of the indictment must comply with the framework set out in the 1979 rules, made in line with section 52 of the Judicature (Northern Ireland) Act 1978 (see [section 52 of the Judicature \(Northern Ireland\) Act 1978](#)).

The rules state the indictment must contain:

- an outline of the offence charged (the actual offence)
- if more than one offence is charged, an outline of each offence (the actual offence(s)) with the charges set out (counts) and numbered consecutively
- a statement of the offence:
 - briefly describing the offence using simple language
 - referring to the section of any statute creating the offence
- after the statement of the offence, particulars of the offence in simple language

The Grand Jury (Abolition) Act (Northern Ireland) 1969 (see [The Grand Jury \(Abolition\) Act \(Northern Ireland\) 1969](#)) sets out the circumstances when indictments may be presented to the Crown court, including when a:

- defendant has been committed for trial
- notice of transfer has been served

For more information on notices of transfer, see: [Preliminary procedures: Northern Ireland](#).

Offences that can be charged in the indictment are:

- those:
 - where the district judge returned the defendant for trial
 - specified in a notice of transfer
- any other offences which:
 - are founded on the facts or evidence disclosed in the papers served for the preliminary inquiry (PE)
 - are PE, PI or transfer procedure
 - were disclosed during the examination of witnesses in the magistrates' court

You can join charges for any of these offences in the one indictment, if the charges:

- are founded on the same facts
- form, or are part of, a series of offences of the same or a similar character

So it may be possible to join 2 or more cases against a defendant if those cases were committed for trial to the Crown court separately.

The Crown court sets a date for the arraignment (hearing) of the defendant. At the arraignment the:

- charges are put to the defendant
- the defendant is asked to state how they plead to the charges

The prosecution must lodge the indictment with the court office:

- one full day before the arraignment
- within 28 days of the notice of transfer being served if that procedure has started

The court office must provide a copy of the indictment to the defendant. Once it has been lodged with the court office, it can only be amended with the Crown court's permission.

If the defendant pleads not guilty at their arraignment it is likely that a date for trial will be set with a date for review, before the trial, for case management purposes.

Voluntary bill of indictment

[Section 2\(1\) of the Grand Jury \(Abolition\) Act \(Northern Ireland\) 1969](#) also allows the presentation of a voluntary bill of indictment.

This procedure brings a defendant directly before the Crown court without an appearance in the magistrates' court.

Before this indictment can be presented to the court the prosecution must have permission from a judge of the:

- High Court
- Crown court

- Court of Appeal

For more information see [The Grand Jury \(Abolition\) Act \(Northern Ireland\) 1969](#)

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