

Prisons and Courts Bill

Changes to Criminal Court Case Management – Allocation and Sending Procedures

Introduction

1. Our reforms of the allocation and sending processes will contribute significantly to modernising the criminal courts and improving the experience of all who use them, including of victims and witnesses. The reforms will free up court-rooms and judges so that they can focus on the most important matters. They will also support the more effective resolution of cases, reducing unnecessary uncertainty and delay. In addition, the legislation will make a significant contribution to delivering the overall HMCTS Reform savings package in the criminal jurisdiction.
2. Criminal offences are currently categorised as summary-only (which are tried in a magistrates' court), indictable-only (which must be tried in the Crown Court) or either-way (which can be tried in the Crown Court or a magistrates' court depending on the seriousness and complexity of the case). 'Allocation' refers to the decision at the initial stage of an either-way case regarding which court will hear it since cases can be allocated to the Crown Court or the magistrates' courts. 'Sending' refers to the procedure whereby a case reaches the Crown Court when the allocation decision is that the case is to be tried there.
3. Our proposed legislation on allocation and sending will streamline criminal procedures by reducing the need for physical appearances in court and by eliminating unnecessary hearings. The legislation will make this possible by enabling defendants who wish to do so to engage with the court in writing (preferably online). So, for example, a defendant charged with an offence would have a choice as to whether to appear in court on the date to which he was remanded (as now), or to indicate a plea in writing (online). Indication of a guilty plea would lead to the defendant appearing in court to enter a plea and be sentenced. Indication of a not-guilty plea would result in the court preparing the case for trial. For either-way offences the court can (if the defendant agrees) also make the allocation decision as to where the case should be tried, outside of a court hearing. In addition, cases that are to be tried in the Crown Court can be sent to the Crown Court without a hearing.

What is the current position?

4. Aspects of the current law relating to the process of allocating and sending cases to the appropriate court are an obstacle to our proposals which can be removed only by legislation. These are:
 - that a written indication of plea can be given only in summary-only, non-imprisonable cases (under the single justice procedure) and in summary cases commenced by summons or written charge (under section 12 of the Magistrates' Courts Act 1980);
 - that a defendant must appear before a magistrates' court to indicate his or her plea in an either-way case (Plea Before Venue);
 - that a defendant must appear before a magistrates' court in order to consent to a summary trial, or elect Crown Court trial, in an either-way case;

- that a defendant must appear before a magistrates' court when his or her case is sent to Crown Court in an indictable-only case, or in an either-way case that is sent to Crown Court.
5. These requirements concerning appearance before a magistrates' court can sometimes be used by defendants to delay justice by their deliberately not appearing at hearings, leading to aborted hearings. A particular problem is where defendants who are already in custody refuse to leave their cell for a court hearing.
 6. In such circumstances not only is magistrates' courts' time wasted, but victims and witnesses can be distressed by the protracted delay in the case getting to trial.

What are the proposed changes?

7. We propose to make a number of changes to the procedure affecting adults before the criminal courts in England and Wales, including:
 - moving to a more digital model for service of proceedings and initial engagement with the court;
 - allowing defendants to indicate their plea in writing (preferably online) in all offences;
 - enabling magistrates' courts to deal with allocation of either-way offences (and where appropriate, sending to the Crown Court) either (i) online without a hearing, or (ii) at a hearing in the defendant's absence, where he or she fails either to engage in writing or to appear;
 - removing the requirement for defendants charged with indictable-only offences to make a first appearance in the magistrates' court, enabling magistrates' courts to send indictable-only cases to the Crown Court without a hearing; and
 - introducing a mechanism for cases to be returned to the magistrates' court where the Crown Court considers that magistrates have jurisdiction.
8. These measures will also apply to children and young people. When a youth or an adult defendant makes their first appearance in court after they have indicated a plea on the papers, the court will make sure that they have understood the charges and the implications of the plea before proceeding further. When dealing with under 18s, courts will, unless it is unreasonable to do so, make holders of parental responsibility aware of pre-trial matters being dealt with on the papers. Furthermore, where matters would currently be proceedings of the youth court, the youth courts' procedural safeguards will continue to apply.