



Judicial Review and Courts Bill

(Part 2 – Criminal Procedure)

House of Commons Committee Stage

Briefing

November 2021

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Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible, and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. JUSTICE has put together two separate briefings on different elements of the Judicial Review and Courts Bill (the "Bill"). This briefing addresses Part 2 of the Bill, which relates to the provisions concerning criminal procedure.
3. In 2017 the Government proposed the Prison and Courts Bill, which did not progress due to the general election that year, to make significant changes to the way the criminal courts operate through greater use of technology. At the time, JUSTICE briefed on its measures;¹ many of which have been revived in the current Bill and paves the way for a radical change to the criminal justice system. JUSTICE refers to three in particular:
 - a. **Clause 3:** the introduction of an Automatic Online Conviction and Standard Statutory Penalty ("AOCSSP") procedure, whereby an individual could plead guilty without the need for a hearing in the Magistrates' Court;
 - b. **Clause 4:** the Bill would extend the existing 'pleading guilty by post' scheme, by enabling it to apply to defendants aged 16 and above who have been charged with a summary offence at a police station. This would allow a Magistrates' Court to try the case as if the defendant had plead guilty in court, without the need for the defendant or the prosecution to be present;
 - c. **Clauses 6 and 8:** the Bill extends arrangements for defendants to provide information in writing, without the need for a physical hearing, including for an indication of plea. It also creates a New Pre-Trial Allocation Procedure (the "New Allocation Procedure") which enables matters such as mode of trial (allocation hearings) for either-way offences and sending cases to the Crown Court to be dealt with in writing; and
 - d. **Clause 9:** the magistrates are also empowered to proceed with the allocation process in a defendant's absence where they have not appeared for an

¹JUSTICE, '[Prisons and Courts Bill, House of Commons, Second Reading Briefing](#)', (March 2017).

“*acceptable reason*”, as well as allow the Magistrates’ Court to direct indictable only and triable either way cases to the Crown Court without the need for a hearing.

Clause 3 - Automatic Online Conviction and Standard Statutory Penalty

5. Clause 3 would create an Automatic Online Conviction and Standard Statutory Penalty (“AOCSSP”) procedure. This would establish the principle for all summary and non-imprisonable offences² to be automated through an online plea, conviction, and penalty website. This means that a defendant could opt to plead guilty online which would result in an automatic conviction without the need for a hearing. Upon introduction, the Government claims that the provision will only apply to offences involving “*travelling on a train or tram without a ticket and fishing with an unlicensed rod and line*”.³ The offences will be set out in secondary legislation (approved by the affirmative procedure). As such, further eligible offences could be set out at a later date.
6. The process will be optional for defendants, who could request a physical hearing instead. In order to use the procedure defendants must be aged 18 or over, and will be provided with all the “required documents”.
7. These measures represent an expansion of the Single Justice Procedure (“SJP”), which was created pursuant to the Criminal Justice and Courts Act 2015.⁴ Under the SJP, defendants receive a notice containing the charge by post, with a statement setting out the facts of the offence. The SJP then allows adult defendants to choose to enter a plea in writing or online for the same type of offences mentioned above (i.e., summary, and non-imprisonable). Those who plead guilty (and do not request a hearing) are convicted and sentenced by a single magistrate (aided by a legal advisor) ‘on the papers’, having had the opportunity to submit mitigating factors in writing. If a defendant fails to respond to the letter setting out the charge within the 21-day time limit, the single magistrate will hear the case without any input from the defendant or prosecutor.

² Examples include offences involving motor vehicles, minor criminal damage, and being drunk and disorderly in a public place.

³ Judicial Review and Courts Bill, ‘[Explanatory Notes](#)’, 21 July 2021, p.13.

⁴ The SJP is regularly used to prosecute so-called ‘minor’ offences, such as those involving the non-payment of TV licences, motoring offences, not having a valid ticket on public transport, and recently any breaches of the ‘lockdown’ restrictions imposed through the Coronavirus Act 2020.

8. An important difference is that under the new AOCSSP procedure, cases could take place “*entirely online and without the involvement of a magistrate*”.⁵ Currently under the SJP, the magistrate can decide that it is not appropriate to convict the case under the SJP.⁶ Removing the involvement of magistrates entirely removes this safeguard, as there will be no independent judicial (or indeed, human) oversight whatsoever. Moreover, defendants who use the AOCSSP procedure will face a binary choice, with no opportunity to submit mitigating factors if they plead guilty, unless they choose to decline the AOCSSP procedure (and go through the SJP or ordinary court procedure instead)..

Removal of the AOCSSP procedure

9. While the Bill would limit the procedure to summary and non-imprisonable offences, the consequences of conviction are still serious. Punishments that do not result in a custodial sentence can have significant consequences for an individual – not least a criminal record, consequences with travel, insurance, loss of employment or educational opportunities, and potential social stigma. It is concerning that those charged with a criminal offence may choose to take the ‘easy option’ of using the AOCSSP without fully understanding the consequences of doing so.
10. Further, levels of engagement with the SJP is poor, with approximately 71% of people in 2020 not responding to the charge letter notifying them that they are being prosecuted (i.e., entering no plea).⁷ Recently, in the case of offences prosecuted under the Coronavirus Act 2020, this rises to almost 90%.⁸ Under the SJP, this results in defendants being sentenced by a magistrate ‘on the papers’ without ever having agreed to give up their right to a hearing. Defendants receive the judgement by post. However, if they were unaware of the original charge (which is sent by post), they may also be unaware of the subsequent postal judgement. This means they could be unaware that they have been found guilty and/or are required to pay a fine, putting them at risk of imprisonment.⁹

⁵ Judicial Review and Courts Bill, ‘[Explanatory Notes](#)’, 21 July 2021, p.13

⁶ Magistrates’ Courts Act 1980, s. 16B(1).

⁷ House of Commons, Question for Ministry of Justice, [UIN 143756](#), tabled on 26 January 2021. It is important to note that no regular statistics are published with respect to the SJP. Any data that does exist is principally through parliamentary questions. JUSTICE is equally concerned that the AOCSSP procedure would suffer from a similar lack of transparency.

⁸ *Ibid.*

⁹ Magistrates’ Courts Act 1980, s. 82.

11. The Government has failed to explain how this issue with levels of engagement will not simply translate over to the new AOCSSP procedure. Although the new AOCSSP is optional (unlike the SJP, the defendant will not be convicted and sentenced if they do not respond to the electronic notification), it is unclear what will happen if they do not respond to the notification. Presumably they will be filtered back into the SJP where non-engagement will result in conviction.

12. In addition, the AOCSSP procedure may incur negative consequences for:

- i. **Women:** the existing SJP regime disproportionately targets women. As APPEAL and the Women’s Justice Initiative note, “*the vast majority of those being prosecuted and convicted of TV licence evasion are women.*”¹⁰ Their research and case studies exemplify what happens in the absence of sufficient safeguards, with women facing criminal records despite not having received a letter, or where the letter was sent to the wrong address. While these concerns apply to the SJP in general, the fact that women are more likely to commit certain so-called ‘low-level’ offences means they are impacted to a greater extent. The Government must ensure such disparities are not replicated for the AOCSSP procedure.
- ii. **Ethnic minorities:** racial disparities permeate the criminal justice system. The Equalities Statement to the 2017 Prisons and Courts Bill (within which many of the current measures were first mooted) notes that “*such changes have the potential to have adverse effects on the basis of age, disability, and ethnicity (linked to socio-economic disadvantage) to the extent that some groups are less internet or digitally enabled than others.*”¹¹ The Government at the time appeared to accept, rather than seek to mitigate, these adverse outcomes. This is unacceptable. The new measures must not be introduced without addressing how the new procedures would avoid further entrenching discrimination into the criminal justice system. Moreover, we are concerned that there does not seem to be a fresh assessment of the potential equalities impact of the current Bill’s measures. It is clear that further research must be done so as to ensure disproportionate numbers of ethnic minority individuals are not unduly criminalised through procedures that contain weaker safeguards than are presently provisioned under the SJP.

¹⁰ T Casey and N Sakande, APPEAL and the Women’s Justice Initiative, ‘[Decriminalising TV Licence Non Payment Consultation Response](#)’, (March 2020), p.5.

¹¹ Prisons and Courts Bill, ‘[Equalities Statement: Automatic online convictions and standard statutory penalty](#)’, (2017), p.2.

iii. **Neurodivergent individuals and/or those with mental health or other conditions:** in our report '*Mental Health and Fair Trial*',¹² we note that criminal justice processes too often do not account for an individual's particular needs which may hamper their ability to understand what is happening.¹³ This is a particular issue with the SJP where there is a lack of opportunity to screen for health conditions or vulnerabilities and assess whether the process is suitable. The issue will only be exacerbated by the AOCSSP, with the removal of any form of human involvement.

13. Equally, there are palpable concerns with the potential for IT problems, as seen most recently this summer where the Information Commissioners' Office uncovered a glitch in HMCTS' systems which resulted in over 5000 defendants incorrectly entering a 'guilty' plea.¹⁴

14. We are not convinced that sufficient safeguards exist to mitigate against these issues. For this reason, we recommend that Parliament vote in favour of the amendment below, which would remove this provision from the Bill.

Amendment

Page 4, line 28, leave out Clause 3.

Member's Explanatory Statement

This amendment would remove the automatic online conviction and standard statutory penalty provision from the Bill.

Restricting the types of offences

15. If the AOCSSP procedure remains in the Bill, it is important that greater safeguards exist for its use. The Government has stated that the AOCSSP will initially apply only to the offences of "*travelling on a train or tram without a ticket and fishing with an unlicensed rod and line*", both of which are non-recordable.¹⁵ However, additional offences can be added to the procedure by the Government by way of statutory instrument. While the Bill would limit the procedure to summary and non-imprisonable offences, the consequences of

¹² JUSTICE, '[Mental Health and Fair Trial](#)', (November 2017).

¹³ See also, for example, Criminal Justice Joint Inspection, '[Neurodiversity in the criminal justice system: A review of evidence](#)', 15 July 2021.

¹⁴ T Kirk, Evening Standard, '[More than 5,000 handed criminal convictions in error after IT flaw goes unnoticed](#)', 26 July 2021.

¹⁵ Non-recordable offences are generally held on local police records although, depending on local arrangements, some non-recordable offences may also be uploaded to the Police National Computer. See also National Police Records (Recordable Offences) Regulations 2000/1139.

conviction are still serious. It is vital that the Government proceed with caution before expanding the measures to other offences. Indeed, the inclusion of additional offences warrants careful scrutiny and assessment to ensure that such processes are appropriate and not conducive to unforeseen detrimental consequences.

16. Moreover, it is likely that the AOCSSP procedure, as it currently stands, would act to incentivise individuals to plead guilty out of convenience, regardless of whether they have an arguable case. Without legal advice, this risk is all the more profound. As explained above, many will not fully appreciate the impact that a conviction could have on their lives and future prospects.

17. For this reason, we recommend that Parliament vote in favour of the amendment 49 below, which would ensure that the procedure would only apply to non-recordable offences. Examples of recordable offences, to which the AOCSSP could currently apply, include a range of scenarios, which would impact parents,¹⁶ pub-goers and owners,¹⁷ and those taking part in processions and assemblies, which would include activities such as vigils, community events, and demonstrations.¹⁸

Amendment 49

Page 5, line 34, leave out subsection (4), and insert

“(4) An offence may not be specified in regulations under subsection (3)(a) unless it is:

- (a) a summary offence that is not punishable with imprisonment;
and
- (b) a non-recordable offence, which excludes any offence set out in the Schedule to the National Police Records

¹⁶ For example, section 12 of the Children and Young Persons Act 1933 (offence of failing to provide for safety of children at entertainments); section 11 of the Children and Young Persons Act 1933 (offence of exposing children under twelve to risk of burning).

¹⁷ For example, section 91 of the Criminal Justice Act 1967 (offence of drunkenness in a public place); section 141(1) of the Licensing Act 2003 (offence of selling alcohol to a person who is drunk).

¹⁸ For example, section 12(5) of the Public Order Act 1986 (offence of failing to comply with conditions imposed on a public procession); section 14(5) of the Public Order Act 1986 (offence of failing to comply with conditions imposed on a public assembly). The threshold for committing these offences would become significant upon the introduction of Part 3 of the Police, Crime, Sentencing and Courts Bill, where individuals could inadvertently commit an offence by causing ‘serious unease’ or ‘noise’. For more information, see our briefing on the Police, Crime, Sentencing and Courts Bill [here](#).

(Recordable Offences) Regulations 2000/1139 (as amended).”

Members’ Explanatory Statement

This amendment would exclude any offences which are recordable from the automatic online conviction option.

Ensuring the AOCSSP procedure is well evidenced

18. The Government refers to three reviews – Sir Robin Auld’s ‘Review of the Criminal Courts’ (2001);¹⁹ Sir Brian Leveson’s ‘Review of Efficiency in Criminal Proceedings’ (2015),²⁰ and the Government’s consultation ‘Transforming our Justice System’ (2016). In the last of these, the Government mooted making “*the processing of summary non-imprisonable offences where there is no clear identifiable victim – such as rail ticket and TV licence evasion, speeding, insurance and fly-tipping – even more efficient by allowing defendants to plead online, saving valuable court time*”.²¹
19. JUSTICE agrees that it is important to explore better ways of deploying technology in the criminal justice system. However, the evidence base of the AOCSSP procedure is poor, and none of these reports explore the real-world consequences and risks inherent to the AOCSSP procedure. Indeed, the SJP (upon which the AOCSSP procedure builds) was barely a year old at the time of the Government consultation. Since then, the Government has not undertaken or published any comprehensive analysis of the problems with the SJP (as noted above). Moreover, the Government has not explained how the issues that exist with the SJP would not simply translate across to the AOCSSP procedure. This risk is all the more palpable where this new process would remove any judicial oversight in the form of a magistrate. Furthermore, we are not aware of any similar system deployed in other jurisdictions from which any advantages or disadvantages could be studied.
20. For this reason, we recommend Parliament vote for amendment 45, which would mandate a review of the AOCSSP procedure before it is introduced. Amendment 46 would also assist in establishing an evidence base for the proposal and ensure that any potential negative consequences for vulnerable individuals and those with a protected characteristic

¹⁹ Sir Robin Auld, ‘[Review of the Criminal Courts of England and Wales](#)’, (2001).

²⁰ Sir Brian Leveson, ‘[Review of Efficiency in Criminal Proceedings](#)’, (2015).

²¹ Ministry of Justice, ‘[Transforming our Justice System](#)’, (September 2016), p.9.

are fully understood and mitigated against before the Government is able to implement the AOCSSP procedure.

Amendment 45

Page 4, line 28, at the end insert-

- “(3) Before this Clause may be commenced, the Secretary of State must
- (a) commission an independent review of the potential impact, efficacy, and operational issues on defendants and the criminal justice system of the automatic online conviction and penalty for certain summary offences as set out in Clause 3 to this Act;
 - (b) lay before Parliament the report and findings of such independent review; and
 - (c) provide a response explaining whether and how such issues which have been identified would be mitigated.”

Member’s Explanatory Statement

This amendment would require a review of Clause 3 of this Bill before it is introduced.

Amendment 46

Page 4, line 28, at the end insert-

- “(3) Before this Clause may be commenced, the Secretary of State must publish
- (a) an equalities assessment concerning the impact the automatic online conviction and penalty process will have on individuals with protected characteristics, as defined in the Equality Act 2010: and
 - (b) an impact assessment on the effective participation for defendants with vulnerabilities, and must lay such assessment before Parliament.”

Member’s Explanatory Statement

This amendment would ensure that the Government produces assessments regarding the impact of Clause 3 on individuals with protected characteristics as defined in the Equality Act 2010 before its commencement, as well as those with vulnerabilities.

Introducing greater safeguards for vulnerable individuals

21. The Bill's only criterion with respect to which defendants are appropriate for the AOCSSP procedure is that they must be aged 18 or over when charged (See Clause 3, new Section 16H(3)(b)). Vulnerable individuals, especially those who may not understand the charge, any documents which are sent to them, or the consequences of pleading guilty, are placed at a disadvantage by this process.
22. The first amendment below would help to remedy this issue by making it incumbent on prosecutors to consider the appropriateness of the procedure for defendants, taking into account any potential vulnerabilities.
23. Amendment 50 would introduce an additional "required document", which sets out the consequences of agreeing to a guilty plea under the AOCSSP procedure, as well as signposting them to high quality legal advice and information to help ensure that defendants fully understand the process and appreciate the consequences of pleading guilty. Amendment 47 would require the Government to publish guidance for prosecutors on how they should provide and explain the information which they provide to defendants. The aim of this amendment is to ensure that the necessary information is provided in clear and accessible language and formats to defendants.

Amendment

Page 5, line 32, at the end insert-

"(e) the prosecutor is satisfied that the automatic online conviction option is appropriate for the defendant, taking into account any vulnerabilities, disabilities or health conditions they might have."

Members' Explanatory Statement

This amendment seeks to ensure that steps are taken at the earliest opportunity by the person notifying the defendant (the relevant prosecutor, which could be any law enforcement agency or the Crown Prosecution Service) to identify whether an automatic online penalty is suitable for the person, not just whether the offence or the case is.

Amendment 47

Page 4, line 28, at the end insert-

“(3) Before this Clause may be commenced, the Secretary of State must publish statutory guidance which sets out how prosecutors should provide and explain to defendants any information contained within the required documents in an accessible way.”

Member’s Explanatory Statement

This probing amendment is intended to clarify how prosecutors will ensure that defendants fully understand the information provided to them.

Amendment 50

Page 6, line 6, at the end insert-

“(d) a document in clear and accessible language which

- (i) explains the consequences of agreeing to an automatic online conviction and penalty; and
- (ii) directs the accused to legal advice and information.”

Member’s Explanatory Statement

This amendment would include further information about the consequences of engaging with the automatic online conviction process and a signpost to legal advice within the required documents that are sent to the defendant.

Clause 4 – Pleading guilty in writing

24. A defendant charged with a criminal offence must indicate their plea in court. However, there are two exceptions to this rule whereby the defendant can plea in writing. The first, under the SJP, which is available only for summary, non-imprisonable offences; and the second, by “pleading guilty by post”, which is available for summary only offences, away from a police station.²²

25. Under the current framework, cases are initiated against a defendant by way of a written charge, either a postal requisition or a summons, and away from a police station. The only requirement for prosecutors to consider cases for the “pleading guilty by post” scheme is that the defendant is aged 16 or over and is charged with a summary only offence.²³ If a defendant decides to opt for this procedure, they would indicate a guilty plea in writing, either by responding to the charge letter through post or via an online plea website, and

²² Section 12 of the Magistrates Courts Act 1980.

²³ *Ibid.*

opt that a Magistrates' Court proceed to try, convict, and sentence him at a court hearing in their absence. While the defendant can submit a mitigating statement for the Magistrates consideration when sentencing, it removes the need for the defendant or other parties in the case to make a court appearance at any stage of the proceedings.

26. The Bill, at Clause 4, would expand the existing this procedure to now allow a defendant to plead guilty in cases where the defendant has been charged in person at a police station and bailed to appear at the Magistrates Court for a first hearing. Having been charged and bailed from a police station, the defendant would receive documents from the prosecutor by post, including a notice of the "pleading guilty by post" procedure and details of the charge. The defendant can then opt to proceed with the "pleading guilty by post" procedure, by pleading guilty in writing, and the court would proceed to deal with and dispose of the case without the need for the defendant to appear at court for the hearing.

Concerns

27. The Bill would allow children aged 16 and above to plead guilty by post, after they have been charged at a police station and bailed to appear at the Magistrates Court for a first hearing. This contrasts with both the existing SJP and the proposed AOCSSP procedure, which both require a defendant to be aged 18 and over. Children are inherently vulnerable nature and possess a well-evidenced propensity to plead guilty notwithstanding the evidence or potential defences.²⁴ It is right that the law recognises this and provides specific procedures within the framework of the youth justice system to ensure that their rights are appropriately safeguarded.

28. JUSTICE agrees with Sir Robert Neill MP, who in the second reading debates commented *"What is the logic in using the age of 18 in one provision and 16 in a provision that covers broadly similar grounds? We need particular safeguards for dealing with young offenders, to ensure that they do not enter a plea that is not fully informed, either through immaturity or a lack of good advice, as that could have permanent consequences for their future"*.²⁵ In sum, the Bill fails to recognise the increased vulnerability and additional requirements that children have and has not specified how their rights will be appropriately safeguarded.

²⁴ See R Helm, '[Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection](#)', *Journal of Law and Society*, Volume 48, Issue 2, pp.179-201.

²⁵ Sir Robert Neill MP, in [HC Deb \(26 October 2021\). Vol 702. Col 206](#).

29. We therefore recommend that Parliament vote in favour of the proposed amendment below, as well as amendment 51, which would raise removal children from the scope of the existing pleading guilty in writing procedure, as well as the new provision.

Amendment

Clause 4, page 9, line 29, after subsection (2) insert –

“2(A) In subsection (2) omit “16” and insert “18”.

Amendment 51

Clause 4, page 9, line 34, leave out “16” and insert “18”

Member’s explanatory statement

These amendments would raise the age of eligibility for written procedures for entering guilty pleas from 16 to 18.

Clauses 6 and 8 – the New Allocation Procedure

30. The Bill, at Clause 6 (for adults) and Clause 8 (for children), creates a new pre-trial allocation procedure (“New Allocation Procedure”), whereby an individual would be able to indicate a plea in writing for all summary-only, indictable only, and triable either way cases. This would remove the need for a defendant to attend an allocation hearing in person as is currently the case. However, the provisions are not mandatory, and a defendant could attend a physical hearing if they wished.

31. Deciding how to plea, and where a case should be tried, can have important consequences for a defendant. For example, choosing to proceed to the Crown Court in a triable either-way offence could result in a harsher penalty, than in the Magistrates’ Court, due to the Crown Court’s greater sentencing powers.

Legal Representation

32. JUSTICE considers that defendants must have the opportunity to receive legal advice and assistance prior to indicating a plea or trial venue. At present, allocation decisions can be taken at court with the assistance of the duty solicitor. As we explained in our 2016 response to the consultation ‘*Transforming Our Justice System*’,²⁶ a network of informal

²⁶ JUSTICE, ‘[Response to Consultation on Transforming our Justice System](#)’, (November 2016), pp.16-17.

assistance is available to people at court that explains the court procedure and guides defendants towards legal assistance where necessary - from the usher, to the justice's clerk, to the barrister waiting for their case to be called to the magistrate that the case appears before.

33. We therefore welcome the Government's statement that defendants will "*not be able to access the online procedure for indication of plea or trial venue allocation decision directly*". This is because submissions would be made through the Common Platform,²⁷ for which defendants "*will need to instruct a legal representative to act on their behalf who will of course ensure they fully understand the process and will be able to identify any vulnerabilities*".²⁸ This is crucial for decisions concerning a plea before venue hearing and deciding where the case should be heard, either in a Magistrates' Court or the Crown court. However, the Bill itself does not provide any such guarantees of access to legal advice – this should be set out in primary legislation.

34. Amendment 53 would ensure that the Government's promise for individuals to benefit from legal advice when using the New Allocation Procedure is clear on the face of the Bill.

Amendment 53

Page 11, line 10, insert

"(2A) Subsection (3) only has effect where a Magistrates Court is satisfied that the accused has engaged a legal representative, who is responsible for responding to the charge and giving any written indication of plea."

Members' Explanatory Statement

This amendment would mean that defendants must be legally represented in order to indicate a plea in writing.

Children

35. The Bill, at Clause 8, would allow children to use the New Allocation Procedure. This is despite the fact that the law rightly affords children with additional protections and

²⁷ The Common Platform is HM Courts and Tribunal Service's digital case management system. It allows those involved in criminal proceedings (judges, barristers, prosecutors, and court staff) to access case information. It is currently in the process of being rolled out across England and Wales. For more information, see – UK Government, '[HMCTS services: Common Platform](#)', 14 May 2021.

²⁸ Judicial Review and Courts Bill, '[Fact Sheet \(Courts\)](#)', 21 July 2021, p.3.

safeguards to reflect their inherently vulnerable nature and well-evidenced propensity to plead guilty notwithstanding the evidence or potential defences, as explained above.²⁹

36. While the Bill provides that a parent or guardian should be aware of proceedings where they take place online, we are not convinced that this is sufficient to mitigate against the risks that are posed to children. It is not appropriate that the important safeguards that exist for children should be watered down through this provision. As such, we recommend the below amendments, which would remove children from the Bill's scope.

Amendment

Page 19, line 10, leave out Clause 8.

Member's Explanatory Statement

This amendment would remove the written procedure for children for indicating plea and determining mode of trial, from the Bill.

Amendment

Page 32, line 9, leave out Clause 13.

Member's Explanatory Statement

This amendment is consequential to the above amendment and would remove the involvement of a parent or guardian in proceedings conducted in writing, from the Bill.

Clause 9 – Powers to proceed in absence of accused

37. The Bill, at Clause 9, would introduce additional circumstances in which Magistrates' Court could proceed with the allocation proceedings in a defendant's absence in triable either way cases. This applies to adults, and it has similar provisions for children.³⁰

38. A Magistrates' Court would now be able to proceed and allocate the case without the defendant's input, in cases where the defendant does not engage in writing or appear at their hearing without an "acceptable reason", provided the court is satisfied that the defendant has been properly served. The allocation decision would be made on the basis of an assumed not guilty plea and the court would proceed to allocate the case to the

²⁹ See R Helm, '[Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection](#)', *Journal of Law and Society*, Volume 48, Issue 2, pp.179-201.

³⁰ Clause 9, new section 24BA.

Magistrates' Court or the Crown Court. Defendants, however, will continue to have an opportunity to elect a jury trial until the start of the summary trial.

39. This would represent a significant expansion of the status quo, which only permits allocation hearings in the absence of the defendant for reasons relating to the defendant's disorderly conduct, or where the defendant gives consent via their legal representative for proceedings to take place in their absence.³¹ JUSTICE considers clause 9 to be problematic for three reasons.

Concerns

40. First, the measure would significantly impair the ability of defendants to engage in their proceedings. At present, the defendant has a right to choose the trial venue in cases of triable either way offences. Clause 9, however, empowers the Magistrates to determine the trial venue in cases of triable either way offences in the defendant's absence, where the defendant does not engage in writing or appear at their hearing without an "acceptable reason", for which no definition is provided in the Bill or in the Explanatory Notes. It is therefore difficult to assess how this would operate in practice, where Magistrates would be given a wide discretion to proceed and allocate the case in the defendant's absence. Indeed, if a defendant has not appeared at the allocation hearing, and has not been able to instruct or inform their counsel as to the reasons for their non-appearance, it would be impossible for the Magistrates to know whether an "acceptable reason" exists or not.

41. Moreover, should the Magistrates allocate the case to a court which is different from the one the defendant wants, it could result in the case returning to the allocation stage. This is because they could make a statutory declaration under the Magistrates Courts Act 1980 stating that they did not know of the summons or the subsequent proceedings. This would result in both being void.³² This will cause delays and additional expenditure of resources, contrary to the aim of this provision, which is to "*provide the court with an important means of progressing cases which would otherwise stall creating uncertainty and lengthy waiting times*".³³

42. Second, the Bill could remove the potential for any credit, and/or reduction in sentence, to which the defendant would have been entitled for pleading guilty. This is because

³¹ Section 18 of the Magistrates Courts Act 1980.

³² Section 14 of the Magistrates Courts Act 1980.

³³ Judicial Review and Courts Bill, '[Explanatory Notes](#)', 21 July 2021, p.12.

Magistrates would be able to proceed to allocate the case on the basis of an assumption that the individual wishes to plead guilty plea.

43. Currently, courts have the power to reduce a sentence if a defendant pleads guilty. A defendant who pleads guilty at the ‘first stage of proceedings’, (defined as up to and including the allocation hearing), can benefit from a maximum reduction of one-third of the sentence, which would have been imposed if the case progressed to a trial. It is therefore beneficial to seek engagement from the defendant as to how they would like to plea rather than make it easier for Magistrates to assume based on the uncertain criterion of an “*unacceptable reason*”, since the measures may result in cases progressing whereas they otherwise may not have. This is counterproductive and may in fact result in cases being disposed of in a less efficient manner. This would therefore represent a significant disadvantage to both defendant and the criminal justice system.
44. Finally, Clause 9(4), would also introduce similar procedures for child defendants. It introduces a power for the court to proceed with allocation proceedings in their absence. Children are considered inherently vulnerable. While the Bill recognises the increased vulnerability and additional requirements that children have, it has not specified how their rights will be appropriately safeguarded. We therefore consider that existing youth justice provisions should apply, and as such children should be removed from the scope of this provision. In sum, we are not convinced that the supposed merits of clause 9 outweigh the manifest risks, disadvantages, and lack of safeguards detailed above. We therefore recommend that Parliament remove this measure in its entirety.
45. In the alternative, JUSTICE considers that amendment 58 would introduce an additional safeguard for the use of the new powers under clause 9. This is because defendants would have an additional opportunity to reopen the allocation process and elect for a jury trial where this provision is used. This would also save a summons or proceedings being declared void, should a defendant have to make statutory declaration under section 14 of the Magistrates Courts Act 1980.

Amendment 58

Clause 9, page 23, line 41, at end insert—

“(1G) In a case within subsection (1A)—

(a) the accused may, at any time before the taking of a plea in the summary trial, apply to the court for the question of the mode of trial to be reopened;

(b) the court may, if it considers it in the interests of justice to do so, accede to

the application and arrange a hearing under paragraph (c);
(c) if a hearing takes place under this paragraph and the accused appears at it, the court is not to proceed to summary trial by virtue of subsection (1A), but is to proceed in accordance with subsections (2) to (9) of section 20 above.”

Member’s explanatory statement

This amendment would allow defendants to reopen the allocation process and elect for jury trial up to the point of taking a plea in a summary trial if the court considers it in the interest of justice to do so.

JUSTICE

8th November 2021