

AUTUMN 2022

The Police, Crime, Sentencing and Courts Act 2022 and Judicial Review and Courts Act (Part II)

Implications for Practice in the Magistrates' Court

The Police, Crime, Sentencing and Courts Act 2022 (the 'PCSCA 2022') and the Judicial Review and Courts Act 2022 (the 'JRCA 2022') contain various provisions with implications for those practising in the magistrates' courts.

This article does not provide a summary of every provision that may be relevant to magistrates' court practitioners. Rather, the following are bite-sized signposts to some of the most significant changes resulting from these two pieces of legislation. These changes can be broadly grouped into the following categories:

- The introduction and abolition of offences
- Changes to procedure
- Changes to sentencing and ancillary orders

[Introduction and abolition of offences](#)

Positions of trust

Provision: PCSCA 2022, s. 47

Commencement: In force

Summary of effect

Defines further positions of trust (e.g., sports coaches) in respect of certain sexual offences.

Voyeurism: breast-feeding

Provision: PCSCA 2022, s. 48

Commencement: In force

Summary of effect

Provides for offences where under certain circumstances a person either:

- Operates equipment with the intention of enabling the observation of another person breast-feeding a child; or
- Records an image of another person breast-feeding a child.

Intentionally or recklessly causing public nuisance

Provision: PCSCA, s. 78

Commencement: In force

Summary of effect

- Abolishes the common law offence of public nuisance.
- Creates an offence where a person:
 - Without reasonable excuse, does an act or omits to act (where required to do so by law); and
 - That act or omission either creates a risk of/causes serious harm to the public or obstructs the public in the enjoyment of a right; and
 - Intends that or is reckless as to whether that act or omission will have such a consequence.

Repeal of the Vagrancy Act 1824

Provision: PCSCA 2022, s. 81

Commencement: Not yet in force (day to be appointed)

Summary of effect

This section repeals those surviving parts of the Vagrancy Act 1824. This controversial legislation criminalises begging and has been the target of campaigning by charitable organisations.

Offence relating to residing on land without consent in or with a vehicle

Provision: PCSCA 2022, s. 83

Commencement: 28 June 2022

Summary of effect

Creates a new offence punishable on summary conviction to imprisonment for a term not exceeding three months and/or a fine not exceeding level 4 on the standard scale.

Changes to procedure

Time limit for prosecution of common assault or battery in domestic abuse cases

Provision: PCSCA 2022, s. 49

Commencement: In force

Summary of effect

- Provides that proceedings for an offence of common assault or battery, where the alleged behaviour amounts to domestic abuse and one of two conditions apply, can be commenced at any time which is both:
 - Within two years from the date of the offence; and
 - Within six months from the first date on which either of the conditions was met.
- The first condition is that:
 - The complainant has made a witness statement with a view to its possible admission as evidence in the proceedings; and
 - The complainant has provided the statement to a constable of a police force or a person authorised by a constable of a police force to receive the statement.
- The second condition is that:
 - The complainant has been interviewed by a constable of a police force or a person authorised by a constable of a police force to interview the complainant; and
 - A video recording of the interview has been made with a view to its possible admission as the complainant's evidence in chief in the proceedings.

Criminal damage to memorials: mode of trial

Provision: PCSCA 2022, s. 50

Commencement: In force

Summary of effect

Excludes any offence committed by destroying or damaging a memorial from the schedule of offences for which the value involved is relevant to the mode of trial.

Written procedure for indicating plea and determining mode of trial:
adults

Provision: Judicial Review and Courts Act 2022, s. 6

Commencement: Not yet in force (day to be appointed)

Summary of effect

Provides for a new option for an accused to give a written indication of their plea when charged with an either-way offence.

Initial option for adult accused to reject summary trial at hearing

Provision: JRCA 2022, s. 7

Commencement: Not yet in force (date to be appointed)

Summary of effect

- Allows a defendant to indicate, following an indication of a not guilty plea at a hearing, to indicate whether (if the offence were to proceed to trial) that they would not consent to summary trial.
- If the defendant gives such an indication, the court proceeds in relation to section 51 of the Crime and Disorder Act 1998.

Powers to proceed if accused absent from allocation hearing

Provision: JRCA 2022, s. 9

Commencement: Not yet in force (day to be appointed)

Summary of effect

- Widens the circumstances in which an allocation hearing may proceed in the absence of the accused.
- For example, one circumstance is where the defendant is represented at the hearing and the court does not consider there is an acceptable reason for the defendant's failure to attend.

Sending cases to the Crown Court for trial

Provision: JRCA Act 2022, s. 10

Commencement: Not yet in force (day to be appointed)

Summary of effect

Enables the Criminal Procedure Rules to make provisions in relation to sending a further alleged offence to the Crown Court for trial that is or appears to be related to an offence that must be sent under the Crime and Disorder Act 1998, s. 51(1) and (2).

Powers of Crown Court to remit cases to the Magistrates' court

Provision: JRCA 2022, s. 11

Commencement: In force

Summary of effect

Allows the Crown Court to remit a defendant back to the magistrates' court for trial (where the defendant consents) or for sentence in certain circumstances.

Changes to sentencing and ancillary orders

Arranging or facilitating commission of a child sex offence

Provision: PCSCA 2022, s. 46

Commencement: In force

Summary of effect

Provides that the offender is liable to the penalty that they would have received for the offence they intentionally arranged or facilitated.

Increases in maximum daily curfew hours and curfew requirement period

Provision: PCSCA 2022, s. 150

Commencement: In force

Summary of effect

Increases the maximum number of daily curfew hours from 16 to 20 where the offender is convicted on or after 28 June 2022.

Drug testing requirement

Provision: PCSCA 2022, s. 154

Commencement: In force

Summary of effect

Makes provision for a drug testing requirement in community orders and suspended sentence orders.

Assaults on those providing a public service etc.

Provision: PCSCA 2022, s. 156

Commencement: In force

Summary of effect

Where the court is considering the seriousness of certain offences (including common assault or battery) and the offence was committed against a person providing a public service, performing a public duty or providing services to the public, that fact must be treated as an aggravating factor.

Serious violence reduction orders

Provision: PCSCA 2022, s. 165

Commencement: Partially in force (but orders cannot be made until the 'first appointed day')

Summary of effect

Allows a court to make an order requiring an offender, where certain conditions are met, to require an offender to provide certain information to the police.

Such an order has similarities with the notification requirements applicable to sex offenders.

Sexual harm prevention orders: power to impose positive requirements

Provision: PCSCA 2022, s. 175

Commencement: In force

Summary of effect

A sexual harm prevention order may require the offender to do anything described in the order.

Sexual risk orders: power to impose positive requirements

Provision: PCSCA 2022, s. 176

Commencement: In force

Summary of effect

A sexual risk order may require the defendant to do anything described in the order.

Electronic monitoring requirements

Provision: PCSCA 2022, s. 178

Commencement: Not yet in force (day to be appointed)

Summary of effect

Provides that a sexual harm prevention order may require the offender to submit to electronic monitoring with the prohibitions and requirements imposed by the order.

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