MINISTRY OF JUSTICE
Tāhū o te Ture

Criminal Procedure Act 2011

Pleas and elections

THIS INFORMATION SHEET PROVIDES AN OVERVIEW OF PLEAS AND ELECTIONS UNDER THE CRIMINAL PROCEDURE ACT 2011

The Criminal Procedure Act 2011 ("the Act"), which fully commences on 1 July 2013, introduces a requirement for defendants to enter pleas at an early stage of proceedings for categories of offence. The Act also links the timing of election for jury trials with the entry of a not guilty plea.

The Criminal Procedure Rules 2012 ("the Rules") made under the Act, set out a new process by which the defendant is asked to plead at the commencement of a jury trial.

Plea entry

Requirement to enter a plea

If the defendant has not already done so, the court may require the defendant to enter a plea if the defendant has had initial disclosure under section 12(1) of the Criminal Disclosure Act 2008[1] and the opportunity for legal advice (section 39).

If the defendant does not enter a plea when required to do so, the defendant is deemed to have pleaded not guilty and the proceedings continue accordingly (section 41).

A Registrar can exercise the power of the court to require a plea from a defendant charged with a category 1, 2, or 3 offence. A not guilty plea to a category 4 offence can only be entered in the High Court (section 40); a proceeding for a category 4 offence will be transferred to the High Court after the defendant's first appearance in a District Court (section 36(2)).

Entering a plea by notice

A defendant charged with a category 1 offence may enter a plea to that charge by filing a notice in court (section 38). If the defendant enters a guilty plea by notice, the defendant may indicate in the notice whether he or she wishes to appear for sentencing. The defendant may also include any written submissions to be taken into account at sentencing.

A defendant charged with a category 2, 3 or 4 offence may enter a not guilty plea by notice but may only do so if represented by a lawyer (section 37(4)). If a defendant charged with a category 3 offence is entering a not guilty plea by notice, and the defendant wishes to elect jury trial, the notice must record that election and the charge to which it relates (rule 4.4(4)).

Special pleas

The types of plea available to a defendant are guilty, not guilty, or a special plea. The special pleas are previous conviction, previous acquittal, and pardon (section 45). If the defendant enters a special plea, the availability of that plea must be determined by a Judge[2] (section 49).

Changing a plea to guilty

A defendant may at any time ask to be brought back before the court to change a plea of not guilty to a plea of guilty (section 42(1)). A change of plea could be indicated on the case management memorandum (CMM) so that at case review, the defendant can enter the guilty plea (section 56(1)(a)).

If a defendant indicates that he or she intends to plead guilty, but does not, the defendant must be treated as if the indication was never made (section 43).

Withdrawing a plea of guilty

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[1] A copy of the charging document, a summary of facts, a summary of the right to apply for further initial disclosure, maximum penalty (and minimum penalty, if any), a list of previous convictions (including previous offences known to have been committed and of a kind to which section 284(1)(g) of the Children, Young Persons, and Their Families Act 1989 applies).

[2] If the special plea is entered to a category 4 offence, only a High Court Judge can determine its availability.

The court may grant leave to withdraw a plea of guilty at any time before the defendant has been sentenced or otherwise dealt with (section 115(1)). The court must grant leave, if the court had given a sentence indication which the defendant accepted, if a different type, or greater quantum, of sentence to that indicated is to be imposed (section 115(2)).

Requirement to plead at beginning of jury trial

At the beginning of a jury trial and after the jury has been sworn, the defendant will be asked to plead to each charge on the charge list (rule 5.9). The charge list, prepared by the Crown prosecutor, sequentially sets out each charge against the defendant (rule 5.9(4)).

Elections

Defendant charged with category 3 offence may elect trial by jury

A defendant who is charged with a category 3 offence may elect to be tried by a jury (section 50).

Timing of election

An election of jury trial must be made at the time of entering a not guilty plea to a category 3 offence (section 51).

However, a defendant may seek leave of the court to make a later election as long as the defendant's Judge-alone trial has not commenced (section 51(3)). The court may only grant leave for a late election if satisfied that there has been a change in circumstances that might reasonably affect the defendant's decision whether to elect a trial by jury (section 51(2)).

Withdrawal of election

An election may be withdrawn by the defendant if his or her jury trial has not commenced but only if the court grants leave (section 53). The court will only grant leave if satisfied that there has been a change in circumstances that might reasonably affect the defendant's decision to elect a jury trial, or that the withdrawal of the election is unlikely to delay the defendant's trial being concluded.

Charges against more than one defendant being heard together

Unless there are exceptional circumstances that make separate trials necessary in the interests of justice, if the charges against one defendant are being heard together with charges against one or more other defendants, and one defendant elects jury trial, all charges against all defendants must be tried by a jury (section 139(2)(a)).

However, if a jointly charged defendant is to be tried by a jury and a co-defendant is no longer to have a jury trial, the defendant may seek leave, before the trial commences, to withdraw his or her election (section 53(2)(c)).