

1988 No. 1701 (L.23)

**MAGISTRATES' COURTS**

**PROCEDURE**

**The Magistrates' Courts (Notices of Transfer) Rules 1988**

<i>Made</i> - - - -	<i>3rd October 1988</i>
<i>Laid before Parliament</i>	<i>7th October 1988</i>
<i>Coming into force</i>	<i>31st October 1988</i>

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The Lord Chancellor, in exercise of the power conferred on him by section 144 of the Magistrates' Courts Act 1980(a), as extended by section 145 of that Act, after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

**Citation and Commencement**

1. These Rules may be cited as the Magistrates' Courts (Notices of Transfer) Rules 1988 and shall come into force on 31st October 1988.

**Interpretation**

2. In these Rules—  
“the Act” means the Criminal Justice Act 1987(b);

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(a) 1980 c. 43.

(b) 1987 c. 38, amended by the Criminal Justice Act 1988 (c. 33), sections 144, Scheds. 15 and 16.

“designated authority” means an authority referred to in section 4(2) of the Act;  
“notice of transfer” means a notice referred to in section 4(1)(c) of the Act.

#### **Transfer on bail**

3.—(1) Where a person in respect of whom notice of transfer has been given is granted bail under section 5(3) or (7A) of the Act by the magistrates’ court to which notice of transfer was given, the clerk of the court shall give notice thereof in writing to the governor of the prison or remand centre to which the said person would have been committed by that court if he had been committed in custody for trial.

(2) Where notice of transfer is given in respect of a corporation the clerk of the court to which notice of transfer was given shall give notice thereof to the governor of the prison to which would be committed a male over 21 committed by that court in custody for trial.

#### **Notice where person removed to hospital**

4. Where a transfer direction has been given by the Secretary of State under section 47 or 48 of the Mental Health Act 1983(a) in respect of a person remanded in custody by a magistrates’ court and, before the direction ceases to have effect, notice of transfer is given in respect of that person, the clerk of the court to which notice of transfer was given shall give notice thereof in writing—

- (a) to the governor of the prison to which that person would have been committed by that court if he had been committed in custody for trial; and
- (b) to the managers of the hospital where he is detained.

#### **Variation of arrangements for bail**

5.—(1) A person who intends to make an application to a magistrates’ court under section 3(8) of the Bail Act 1976(b) as that subsection has effect under section 3(8A) of that Act shall give notice thereof in writing to the clerk of the court to which the application is to be made, and to the designated authority or the defendant, as the case may be, and to any sureties concerned.

(2) Where, on an application referred to in paragraph (1) above, a magistrates’ court varies or imposes any conditions of bail the clerk of the court shall send to the appropriate officer of the Crown Court a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such variation or imposition of conditions.

#### **Making of witness orders where person charged is not required to appear**

6. Where by virtue of section 5(6) of the Act, a person charged is no longer required to appear before a magistrates’ court to which notice of transfer in respect of him has been given, that court shall fix a date on which it will exercise its functions under section 5(8) of the Act and shall cause notice thereof to be given to the said person and to the designated authority concerned.

#### **Documents etc to be sent to Crown Court**

7. As soon as practicable after a magistrates’ court to which notice of transfer has been given has discharged the functions reserved to it under section 4(1) of the Act, the clerk of the magistrates’ court shall send to the appropriate officer of the Crown Court—

- (a) a list of the names, addresses and occupations of the witnesses in respect of whom witness orders have been made;
- (b) a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to the grant or withholding of bail in respect of the accused;
- (c) any recognizance entered into by any person as surety for the accused together with a statement of any enlargement thereof;
- (d) a copy of any legal aid order previously made in the case;

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(a) 1983 c. 20.

(b) 1976 c. 63; section 3(8A) was inserted by section 15 of and Sched. 2 to the Criminal Justice Act 1987.

- (e) a copy of any contribution order previously made in the case under section 7 of the Legal Aid Act 1982(a);
- (f) a copy of any legal aid application previously made in the case which has been refused;
- (g) any statement of means already submitted.

**Forms**

8. The forms set out in the Schedule to these Rules or forms to the like effect may be used in connection with proceedings in a magistrates' court to which a notice of transfer has been given.

Dated 3rd October 1988

*Mackay of Clashfern, C.*

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(a) 1982 c. 44.

SCHEDULE

Rule 8

FORM 1

Warrant of commitment: transfer to Crown Court for trial (Bail Act 1976, ss. 3, 4; Criminal Justice Act 1987, s. 5; MC Rules 1981 rr. 94, 95, 97; MC (Notices of Transfer) Rules 1988, r. 8).

..... Magistrates' Court (Code)

Date: .....

Accused: ..... Age: ..... years

Address: .....  
.....

Alleged offence: (particulars and statute)

The proceedings against the accused in respect of the above offence have been transferred to the Crown Court at .....

Direction: [You, [the constables of ..... Police Force] [AB], are hereby required to convey the accused to ..... [prison] [remand centre] and there deliver the accused to the Governor thereof, together with this warrant; and you the Governor, to receive into your custody and, unless the accused is released on bail in the meantime, to keep the accused until the accused is delivered in due course of law.]

[You, the Governor of ..... [prison] [remand centre] are hereby required to keep the accused in your custody and, unless the accused is released on bail in the meantime, to keep the accused until the accused is delivered in due course of law.]

\* Bail: After complying with the condition(s) specified in Schedule I hereto, the accused shall be released on bail subject to the condition(s) specified in Schedule II hereto, and with a duty to surrender to the custody of the Crown Court at the time and place for the time being appointed by that court.

Justice of the Peace  
[or By order of the Court  
Clerk of the Court]

SCHEDULE I

*Conditions to be complied with before release on bail*

To provide ..... suret[y][ies] in the sum of £..... [each] to secure the accused's surrender to custody at the time and place appointed.

†

SCHEDULE II

*Conditions to be complied with after release on bail*

†

\* Delete if bail is not granted.

† Insert condition(s) as appropriate (including in Schedule I directions under MC Rules 1981, and 98 in respect of any pre-release conditions).

FORM 2

Notice to governor of prison of persons bailed to appear before Crown Court after notice of transfer (Criminal Justice Act 1987, s. 5(3), (7A), MC (Notices of Transfer) Rules 1988, r. 3).

..... Magistrates' Court (Code)

Notice of transfer given on .....

Persons bailed on ..... to appear before the

Crown Court at.....

Name and Age	Brief description of offence
.....	.....
.....	.....
.....	.....
.....	.....

Justices' Clerk

To the Governor HM Prison/Remand Centre .....

FORM 3

Notice on transfer of proceedings in respect of a person subject to transfer direction under section 47 or 48 of the Mental Health Act 1983 (MC (Notices of Transfer) Rules 1988, r. 4).

..... Magistrates' Court (Code)

Date: .....

To the Governor: [prison] .....

Address:.....  
.....

To the Managers: [hospital] .....

Address:.....  
.....

Notice: The proceedings in respect of the accused named below, who is subject to a transfer direction under section 47 or 48 of the Mental Health Act 1983 and is detained at the above hospital, have been transferred to the Crown Court at ..... and it was today ordered that he be safely kept in custody until delivered in due course of law.

Accused: ..... Age: ..... years

Address:.....  
.....

Alleged offence: (short particulars and statute)

Clerk of the Court

FORM 4

Witness order (CP(A of W) Act 1965, s. 1(1)  
(MC Rules 1981, r. 8; MC (Notices of Transfer) Rules 1988, r. 8).

..... Magistrates' Court (Code)

Date: .....

To: .....  
(Witness)

Address:.....  
.....

Order: That \* [if notice is later given to you to that effect] you attend and give evidence at the trial of ..... at the Crown Court at .....].

† [You are no longer required to attend at ..... Magistrates' Court on ..... in accordance with the summons dated .....].

Justice of the Peace.

[By order of the Court  
Justices' Clerk]

NOTE.—Failure to comply with this order may render you liable to imprisonment for 3 months or a fine. You will be notified of the date and time at which you are to attend by the appropriate officer of the Crown Court, to whom any enquiry should be addressed.

\* Delete unless the order is a conditional order.  
† Delete unless a summons has been issued under s. 97 MC Act 1980.

FORM 5

Record of decision to vary conditions of bail or impose conditions on bail granted unconditionally (criminal cases) (Bail Act 1976, s. 5; MC Rules 1981, rr. 66, 90; MC (Notices of Transfer) Rules 1988, r. 5).

..... Magistrates' Court (Code)

Date: .....

Accused: .....

Date of birth: .....

Alleged offence[s]: (short particulars and statute)

The accused having been granted bail by the above magistrates' court on ..... (date) and being under a duty under section 5(7) of the Criminal Justice Act 1987 to appear before the Crown Court at ..... at a time to be notified

[and the said bail being subject to conditions].

Application having been made by ..... under section 3(8) of the Bail Act 1976 for [variation] [imposition] of bail conditions.

Decision: The condition(s) to be complied with by the accused in respect of the said bail shall now be as specified in Schedules I and II hereto.

\* Reasons: The conditions of bail were [varied] [imposed] for the following reason(s):

Signature .....

Justice of the Peace.

[Clerk of the Court  
present during these proceedings]

#### SCHEDULE I

*Conditions to be complied with before release on bail*

To provide ..... suret{y}[ies] in the sum of £..... [each] to secure the defendant's surrender to custody at the time and place appointed.

†

#### SCHEDULE II

*Conditions to be complied with after release on bail*

†

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\* Delete if section 4 of the Bail Act 1976 does not apply.

† Insert condition(s) as appropriate (including in Schedule I directions under MC Rules 1981, r. 85 in respect of any pre-release conditions).

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules make provision for the procedure to be followed in magistrates' courts where a notice of transfer is given under section 4 of the Criminal Justice Act 1987, which comes into force on 31st October 1988 (S.I. 1988/397). Under section 4 of that Act, a prosecutor may give to a magistrates' court a notice of transfer in respect of a case proceeding in that court if the offence charged is an indictable offence and reveals a case of serious and complex fraud. The effect of a notice of transfer is to avoid committal proceedings in such cases, but the magistrates' court to which a notice of transfer is given under section 4 retains certain functions, set out in section 5, in respect of the grant or withholding of bail, legal aid and the making of witness orders pending the Crown Court trial.

Rule 3 of these Rules makes provision for notice to be given to the governor of the appropriate prison or remand centre where a person in respect of whom a notice of transfer has been given is granted bail.

Rule 4 makes provision for notice to be given to the governor of the appropriate prison and to the managers of the relevant hospital where notice of transfer is given in respect of a person subject to a transfer direction under section 47 or 48 of the Mental Health Act 1983.

Rule 5 provides for notice to be given of an application to a magistrates' court for variation of bail arrangements and for a record of any variation in bail conditions made by a magistrates' court after notice of transfer has been given to be sent to the Crown Court.

Rule 6 requires the magistrates' court to fix a date for the making of witness orders in a case where, by virtue of section 5(6) of the Criminal Justice Act 1987, the person charged is no longer required to appear before the court, and to notify the prosecutor and the person charged of the date so fixed.

Rule 7 provides for certain documents to be sent to the Crown Court by the magistrates' court to which a notice of transfer has been given, for the purposes of the Crown Court proceedings.

Rule 8 and the Schedule to the Rules provide Forms which may be used in proceedings in a magistrates' court to which a notice of transfer has been given.

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