
STATUTORY INSTRUMENTS

1997 No. 1051 (L.19)

SUPREME COURT OF ENGLAND AND WALES

**The Criminal Justice Act 1987
(Preparatory Hearings) Rules 1997**

<i>Made</i>	- - - -	<i>24th March 1997</i>
<i>Laid before Parliament</i>		<i>24th March 1997</i>
<i>Coming into force</i>	- -	<i>15th April 1997</i>

We the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 84(1) and 86 of the Supreme Court Act 1981(1), and section 9(6) of the Criminal Justice Act 1987(2), hereby make the following Rules:

Citation and interpretation

1.—(1) These Rules may be cited as the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997.

(2) In these Rules, “the Act” means the Criminal Justice Act 1987.

(3) In reckoning any period of time for the purposes of these Rules, where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or bank holiday, Christmas Day or Good Friday, that day shall be excluded, and “bank holiday” means a day which is, or is to be observed as, a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(3), in England and Wales, or which is a holiday under section 2 of that Act(3), in England and Wales.

Commencement

2. These Rules shall come into force on 15th April 1997 and shall apply, without prejudice to rule 12(2) and (3), in relation to an offence where:

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- (1) 1981 c. 54; section 86 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 36(2).
(2) 1987 c. 38; section 9(6) was amended by section 74(4) of the Criminal Procedure and Investigations Act 1996 (c. 25) in relation to alleged offences into which no criminal investigation, within the meaning given by section 1(4) of that Act of 1996, has begun before the day appointed under section 1(5) of that Act of 1996.
(3) 1971 c. 80; section 2 was amended by the Finance Act 1981 (c. 35), sections 136(2) and 139(6) and Schedule 19, Part XI; section 2 was further amended by the Building Societies Act 1986 (c. 53), Schedule 18, Part I, paragraph 8, and by the Finance Act 1987 (c. 16), section 69; there are other amendments to section 2 not relevant to these Rules.
(3) 1971 c. 80; section 2 was amended by the Finance Act 1981 (c. 35), sections 136(2) and 139(6) and Schedule 19, Part XI; section 2 was further amended by the Building Societies Act 1986 (c. 53), Schedule 18, Part I, paragraph 8, and by the Finance Act 1987 (c. 16), section 69; there are other amendments to section 2 not relevant to these Rules.

- (a) the accused is committed for trial for the offence on or after that day;
- (b) proceedings for the trial on the charge concerned are transferred to the Crown Court on or after that day; or
- (c) a bill of indictment relating to the offence is preferred on or after that day under the authority of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933(4) (bill preferred by direction of Court of Appeal, or by direction or with consent of a judge).

Application for a preparatory hearing

3.—(1) An application under section 7(2) of the Act shall be made in writing in Form 5305, shall be served on the appropriate officer of the Crown Court, and shall include a concise statement of the grounds, having regard to the matters specified in subsection (1) of that section, for the making of the application.

(2) The person making the application shall, at the same time as he serves the application on the appropriate officer of the Crown Court, as referred to in paragraph (1) above, serve a copy of the application on the other party or, if there is more than one, each of the other parties in the case.

Time for making application

4.—(1) Subject to paragraphs (2) and (3) below, an application under section 7(2) of the Act (for an order that a preparatory hearing be held) shall be made within 28 days of—

- (a) committal for trial, where these Rules apply by virtue of rule 2(a);
- (b) transfer of proceedings for trial, where these Rules apply by virtue of rule 2(b); or
- (c) preferment of the bill of indictment, where these rules apply by virtue of rule 2(c).

(2) Where these Rules apply by virtue of rule 2(b) and an application for dismissal of the offence charged is made within 28 days of the transfer of proceedings for trial, then an application under section 7(2) of the Act shall be made—

- (a) within 28 days of the transfer of proceedings for trial, or
- (b) no later than 7 days after the said application for dismissal is determined or withdrawn, if the last mentioned period expires later than the period referred to in sub-paragraph (a) above.

(3) The time for making an application under section 7(2) of the Act may be extended by the Crown Court, either before or after it expires, on an application made in accordance with paragraph (4) below.

(4) An application for an extension of time under paragraph (3) above shall be made in writing in Form 5305, specifying the grounds of the application and shall be served on the appropriate officer of the Crown Court, and a copy of the application shall at the same time as it is served on that officer be served on the other party, or if there is more than one, each of the other parties in the case.

(5) An application for an extension of time under paragraph (3) above shall be determined by a judge of the Crown Court without a hearing unless the judge otherwise directs, and the appropriate officer of the Crown Court shall serve notice on the parties in the case of the time and place of any such hearing.

(6) The appropriate officer of the Crown Court shall serve notice of the judge's decision on an application under paragraph (3) above on the parties in the case.

(4) 1933 c. 36; section 2(2)(b) was amended by the Criminal Appeal Act 1964 (c. 43), Schedule 2, as read with the Criminal Appeal Act 1966 (c. 31), section 1(6)(a), and as continued by the Supreme Court Act 1981 (c. 54), Schedule 5, and was further amended by the Prosecution of Offences Act 1985 (c. 23), section 31(6) and Schedule 2.

Representations concerning an application

5. Where a party receives a copy of an application as referred to in rule 3(1) (made under section 7(2) of the Act) and proposes to make written representations to the Crown Court concerning the application, he shall serve any such representations on the appropriate officer of the Crown Court within 7 days of receipt of the copy application, and shall, at the same time as he serves the representations on the appropriate officer of the Crown Court, serve a copy thereof on the other party, or if there is more than one, each of the other parties in the case.

Determination of application and/or order for a preparatory hearing

6.—(1) An application under section 7(2) of the Act shall be determined without a hearing unless a judge of the Crown Court otherwise directs, and the appropriate officer of the Crown Court shall serve notice on the parties in the case of the time and place of any such hearing.

(2) The appropriate officer of the Crown Court shall serve notice of the determination of an application, or of an order for a preparatory hearing made of a judge's own motion, in Form 5306, on the parties in the case.

Disclosure of prosecution case

7. Where an order is made under section 9(4) of the Act for the prosecution to prepare and serve any documents, the order shall identify the documents to be served and require the prosecution to serve a copy of each such document on the other party, or if there is more than one, each of the other parties in the case, and the appropriate officer of the Crown Court shall serve notice of the order on the parties in the case.

Defence disclosure

8.—(1) Where an order is made under section 9(5) of the Act, the appropriate officer of the Crown Court shall serve notice of the order in Form 5307 on each party to whom the order applies and on the prosecution.

(2) Except to the extent that disclosure is required—

- (a) by section 5(7) of the Criminal Procedure and Investigations Act 1996⁽⁵⁾ (alibi); or
- (b) by rules under section 81 of the Police and Criminal Evidence Act 1984⁽⁶⁾ (expert evidence),

a statement required by virtue of an order under section 9(5)(i) of the Act, or a notice required by virtue of an order under section 9(5)(ii) or (iv) of the Act, need not disclose who will give evidence; and the notice referred to in paragraph (1) above shall include a statement to that effect.

(3) The notice referred to in paragraph (1) above shall include a warning that if any party departs from the case he disclosed in pursuance of an order made under section 9 of the Act or fails to comply with such an order—

- (a) the judge or, with the leave of the judge, any other party may make such comment as appears to him appropriate and the jury may draw such inference as appears proper; and
- (b) where the court is satisfied that any such departure or failure by a party constitutes an unnecessary or improper act or omission on his part, and that another party to the proceedings has incurred costs as a result thereof, the court may make an order as to the payment of those costs by the party concerned under the Costs in Criminal Cases (General) Regulations 1986⁽⁷⁾.

(5) 1996 c. 25.

(6) 1984 c. 60.

(7) S.I.1986/1335, to which there are amendments not relevant to these Rules.

Orders under section 9 of the Act—supplementary

9. Where a judge makes an order under section 9 of the Act, the order shall so far as practicable express the matters required to be done thereunder by reference to the relevant provisions of section 9(4) or, as the case may be, (5) of the Act.

Service of documents

10.—(1) Any notice or other document which is required by these Rules to be served on any person may be served personally on that person or sent to him by post in a letter addressed to him at his usual or last known residence or place of business in England or Wales; in the case of a company, such a letter may also be addressed to the company at its registered office in England or Wales (if it has such a registered office).

(2) If the person to be served is acting by a solicitor, the notice or other document may be served by delivering it, or sending it by post, to the solicitor’s address for service.

(3) Where there is inscribed on the writing paper of the person to be served with a notice or other document or on the writing paper of his solicitor (where the person to be served is acting by a solicitor) a document exchange box number, and that person or his solicitor (as the case may be) has not indicated in writing to the person serving the document that he is unwilling to accept service through a document exchange, service of the notice or document may be effected by leaving the notice or document addressed to the numbered box of that person or his solicitor at the document exchange in question or at a document exchange which transmits documents every business day to that document exchange; and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(4) In this rule—

- (a) “document exchange” means any document exchange for the time being approved by the Lord Chancellor for the purposes of the service of documents under Order 65 rule 5(1) of the Rules of the Supreme Court 1965(8);
- (b) “business day” means a day other than a day which is to be excluded for the purposes of reckoning a period of 7 days or less as referred to in rule 1(3); and
- (c) “solicitor” includes a body corporate which is recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985(9) (a “recognised body”) and, in the case of a recognised body, (notwithstanding anything in the Solicitors’ Incorporated Practices Order 1991(10)), the reference in paragraph (2) above to the solicitor’s address for service shall be construed as a reference to the address specified by the recognised body as its address for the purposes of the proceedings relating to the application for a preparatory hearing under section 7(2) of the Act and/or the order for such a hearing under section 7(1) of the Act(11) (including an address specified for the general purposes of the criminal proceedings in relation to which the application or order for a preparatory hearing is made), or, in the absence of such a specified address, to its registered office.

(8) S.I. 1965/1776; the relevant amending instruments are S.I. 1986/632 and S.I. 1990/2599.

(9) 1985 c. 61.

(10) S.I. 1991/2684; the Order modified rule 9(2) of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1988 which Rules are revoked and re-enacted by these Rules, rule 10(2) of these Rules being in the same terms as rule 9(2). By virtue of the Interpretation Act 1978 (c. 30), section 17(2)(a), article 4(n) of the Order (modifying references to the address etc. of a solicitor) would, apart from rule 10(4)(c) of these Rules, have applied to rule 10(2) of these Rules.

(11) Section 7(1) of the Act was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 30.

Forms

11.—(1) Any reference in these Rules to a form is a reference to a form set out in the Schedule to these Rules.

(2) The forms set out in the Schedule to these Rules or forms substantially to the like effect may be used with such variations as the circumstances may require.

Revocation and transitional provisions

12.—(1) Subject to paragraphs (2) and (3) below, the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1988(12) (referred to hereafter in this rule as “the 1988 Rules”), are hereby revoked.

(2) Subject to paragraph (3) below, the 1988 Rules shall continue to apply in relation to an offence where committal for trial, the giving of a notice of transfer or consent to the preferment of a bill of indictment, as referred to in rule 2 of those Rules, occurs prior to the day on which these Rules come into force.

(3) Where, in relation to an offence, consent to the preferment of a bill of indictment as referred to in rule 2(c) of the 1988 Rules is given prior to the day on which these Rules come into force and a bill of indictment is preferred pursuant to that consent on or after that day, then the 1988 Rules shall not apply in relation to that offence with effect from the day of such preferment save that the time limit for making application for a preparatory hearing, in place of that referred to in rule 4(1) of these Rules, shall be that referred to in rule 4(1) of the 1988 Rules.

(4) Where, in relation to an offence, section 5(7) of the Criminal Procedure and Investigations Act 1996 does not apply, by virtue of the criminal investigation into the offence having begun before the day appointed for the purposes of Part I of that Act, there shall be substituted for the words “section 5(7) of the Criminal Procedure and Investigations Act 1996” in rule 8(2)(a), the words “section 11 of the Criminal Justice Act 1967(13)”.

*Mackay of Clashfern, C.
Philip Otton, LJ
J W Kay, J
Geoffrey Rivlin
M McKenzie
J M Beloff
Joanna Kovner*

Dated 24th March 1997

(12) S.I. 1988/1699 (L.21).

(13) 1967 c. 80; section 11 was amended by the Magistrates’ Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 64; section 11 was further amended by the Criminal Justice Act 1987 (c. 38), Schedule 2, paragraph 2, and by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraphs 6(2) and (7); by the Criminal Procedure and Investigations Act 1996 (c. 25), section 74, section 11 shall cease to have effect in relation to alleged offences into which no criminal investigation, within the meaning of section 1(4) of that Act of 1996, has begun before the day appointed under section 1(5) of that Act of 1996.

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Schedule

Rule 11(1)

FORMS



Application for Preparatory Hearing under s.7(2) Criminal Justice Act 1987 or for extension of time within which to apply

An application for a preparatory hearing must be made within 28 days of the day on which the accused is committed for trial, proceedings for trial are transferred to the Crown Court or the bill of indictment is preferred by direction of the Court of Appeal or by direction or with the consent of a judge (or, where proceedings for trial on a charge are transferred to the Crown Court and an application for dismissal of the charge is made during the above 28 day period, no later than 7 days from determination or withdrawal of the application for dismissal, where that 7 day period expires later than the above 28 day period). A copy of this form shall at the same time be served on the other party or parties in the case.

Enter the case no. in a transfer case, enter the name of the court shown on the Notice of Transfer - delete as appropriate

Case Details

The Crown Court at

Crown Court Case Number

Date of "committal for trial" notice of transfer" preferment of bill of indictment" determination or withdrawal of application for dismissal"

State the name(s) of the defendant(s) to whom this application relates (if in custody give address where detained)

Defendant(s) Surname: Forename(s): Address:

Date of birth:

tick as appropriate

Application

- Defence Prosecution
- Application for a preparatory hearing, S.7(2) CJA 1987
- Application for extension of time within which to apply for a preparatory hearing

Specify all charges to which the application relates

Charges

State the grounds on which the application is being made

Grounds for applying

Signature of applicant

Details of any person applying on behalf of applicant Name

Solicitor/Counsel Address:

Date

Reference

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In the Crown Court at
Notification of the Court's Determination
of an Application and/or Order for a
Preparatory Hearing under s.7
Criminal Justice Act 1987



Crown Court
Case Number

Case Details

Defendant(s) Surname:
Forename(s):
(indicate to whom application relates)
(continue overleaf if necessary)

Date of Birth

Charges

(specify all relevant charges)

Determination of Application and/or Order for a Preparatory Hearing

Granted Refused Ordered by Judge

Reasons for refusal:

Date and time of hearing (if known):

Identify each document to be prepared and served on each party by the prosecution under s.9(4) Criminal Justice Act 1987, and any time limit (continue overleaf if necessary)

Signed
(an Officer of the Court)

Date

Form 5306 Notification of Judge's determination of application and/or Order for a preparatory hearing

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In the Crown Court at

Order for Defence Disclosure prior to Preparatory Hearing or at Preparatory Hearing under s.9(5) Criminal Justice Act 1987



Crown Court
Case Number

Case Details

Defendant (where there is more than one, a separate form to be completed for each)

Surname:

Forename(s):

Date of Birth

Charges

(specify all relevant charges)

Requirements

Date by which any of these specified requirements is to be complied with:

Note: A statement or notice required by virtue of s.9(5)(i), (ii), or (iv) Criminal Justice Act 1987 need not disclose who will give evidence except to the extent that disclosure is required by s.5(7) Criminal Procedure and Investigations Act 1996 (alibi) (where s.5(7) does not apply pursuant to s.1(3) CPIA 1996 the relevant provision is s.11 Criminal Justice Act 1967) or rules under s.81 Police and Criminal Evidence Act 1984 (expert witness).

Warning

If any party departs from the case which he disclosed in pursuance of a requirement imposed under s.9 CJA 1987 or fails to comply with such a requirement—

- (a) the judge or, with the leave of the judge, any other party may make such comment as appears to him appropriate, and the jury may draw such inference as appears proper; and*
- (b) where the court is satisfied that any such departure or failure by a party constitutes an unnecessary or improper act or omission on his part, and that another party to the proceedings has incurred costs as a result thereof, the court may make an order as to payment of those costs by the party concerned under the Costs in Criminal Cases (General) Regulations 1986.*

Signed
(an Officer of the Court)

Date

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules revoke and re-enact with amendments the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1988 in order to—

- (a) reflect amendments to the Criminal Justice Act 1987 made by the Criminal Procedure and Investigations Act 1996;
- (b) make minor amendments to the rules relating to the making of an application for an order for a preparatory hearing, and the making of orders for disclosure by the prosecution or the accused;
- (c) make drafting amendments.

By virtue of rule 2, these Rules come into force on 15th April 1997, and apply in relation to an offence where, on or after that day, the accused is committed for trial for the offence, proceedings for the trial on the charge concerned are transferred to the Crown Court, or a bill of indictment relating to the offence is preferred by direction of the Court of Appeal or by direction or with the consent of a judge.

Rules 3 and 4 regulate the making of applications for preparatory hearings. Rule 5 provides for a time limit for the making of representations to the Crown Court by a party served with a copy of another party's notice of application. Rule 6 provides that an application for a preparatory hearing shall be determined without a hearing unless a judge otherwise directs, and provides for notification of the determination, or of an order for a preparatory hearing made of a judge's own motion, to the parties in the case.

Rule 7 makes provision in relation to an order for disclosure of the prosecution case, and rule 8 makes provision in relation to an order for disclosure of the defence case where the prosecution have complied with their obligation to supply a case statement. Rules 9, 10 and 11 make supplementary provision including provision for the service of documents and for forms to be used in connection with preparatory hearings.

Rule 12 revokes the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1988, save with respect to their application to cases where committal for trial, the giving of notice of transfer of proceedings to the Crown Court under section 4 of the Criminal Justice Act 1987, or the giving of consent by a judge of the High Court to the preferment of a bill of indictment, as referred to in rule 2 of those Rules, occurs prior to the day on which these Rules come into force. It also contains a transitional provision with regard to particulars of alibi.