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STATUTORY INSTRUMENTS

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**2005 No. 384**

**The Criminal Procedure Rules 2005**

**PART 38**

**TRIAL OF CHILDREN AND YOUNG PERSONS**

**Contents of this Part**

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Application of this Part	rule 38.1
Assistance in conducting case	rule 38.2
Duty of court to explain nature of proceedings	rule 38.3
Duty of court to take plea to charge	rule 38.4
Evidence in support of charge	rule 38.5
Evidence in reply	rule 38.6

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**Application of this Part**

**38.1.**—(1) This Part applies, subject to paragraph (3) of this rule, where proceedings to which paragraph (2) applies are brought in a magistrates' court in respect of a child or young person (“the relevant minor”).

(2) This paragraph applies to proceedings in which the relevant minor is charged with an offence, and, where he appears or is brought before the court, to proceedings under—

- (a) Paragraphs 1, 2, 5 and 6 of Schedule 7 to the Powers of Criminal Courts (Sentencing) Act 2000<sup>(1)</sup> (breach, revocation and amendment of supervision orders);
- (b) Part II, III or IV of Schedule 3 to the 2000 Act (breach, revocation and amendment of certain community orders)<sup>(2)</sup>;
- (c) Paragraphs 4, 5, 6 and 7 of Schedule 5 to the 2000 Act (breach, revocation and amendment of attendance centre orders); and
- (d) Schedule 8 to the 2000 Act (breach, revocation and amendment of action plan orders and reparation orders)<sup>(3)</sup>.

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(1) 2000 c. 6; relevant amendments to Schedule 7 were made by the Anti-Social Behaviour Act 2003 (c. 38), Schedule 2, paragraph 6 and Schedule 3. It is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 24, paragraph 3, with effect from a date to be appointed.

(2) Schedule 3 is amended by the Criminal Justice and Court Services Act 2000 (c. 43), sections 53, 54, 70(5), Schedule 7, Part 1, paragraphs 1(1), (2), 3(1), (2) and 4(1), (2), Schedule 7, Part 2, paragraph 199 and Schedule 8. Schedule 3 is substituted by the Criminal Justice Act 2003 (c. 44), Schedule 32, Part 1, paragraphs 90 and 125, with effect from a date to be appointed.

(3) Schedule 8 was amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part 2, paragraphs 160, 202 and Schedule 8. It is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, Part 1, paragraphs 90, 129 and Schedule 37, Part 7, with effect from a date to be appointed.

(3) Where the court is inquiring into an offence as examining justices, only rules 38.2, 38.3 and 38.5(3) apply, and where the proceedings are of a kind mentioned in paragraph (2)(a), (b) or (c) rule 38.4 does not apply.

*[Note. Formerly rule 4 of the Magistrates' Courts (Children and Young Persons) Rules 1992(4).]*

#### **Assistance in conducting case**

**38.2.**—(1) Except where the relevant minor is legally represented, the magistrates' court shall allow his parent or guardian to assist him in conducting his case.

(2) Where the parent or guardian cannot be found or cannot in the opinion of the court reasonably be required to attend, the court may allow any relative or other responsible person to take the place of the parent or guardian for the purposes of this Part.

*[Note. Formerly rule 5 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

#### **Duty of court to explain nature of proceedings etc**

**38.3.**—(1) The magistrates' court shall explain to the relevant minor the nature of the proceedings and, where he is charged with an offence, the substance of the charge.

(2) The explanation shall be given in simple language suitable to his age and understanding.

*[Note. Formerly rule 6 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

#### **Duty of court to take plea to charge**

**38.4.** Where the relevant minor is charged with an offence the magistrates' court shall, after giving the explanation required by rule 38.3, ask him whether he pleads guilty or not guilty to the charge.

*[Note. Formerly rule 7 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

#### **Evidence in support of charge**

**38.5.**—(1) Where—

- (a) the relevant minor is charged with an offence and does not plead guilty, or
- (b) the proceedings are of a kind mentioned in rule 38.1(2)(a), (b) or (c),

the magistrates' court shall hear the witnesses in support of the charge or, as the case may be, the application.

(2) Except where—

- (a) the proceedings are of a kind mentioned in rule 38.1(2)(a), (b) or (c), and
- (b) the relevant minor is the applicant,

each witness may at the close of his evidence-in-chief be cross-examined by or on behalf of the relevant minor.

(3) If in any case where the relevant minor is not legally represented or assisted as provided by rule 38.2, the relevant minor, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the relevant minor and may for this purpose question the relevant minor in order to bring out or clear up any point arising out of any such assertions.

*[Note. Formerly rule 8 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

### **Evidence in reply**

**38.6.** If it appears to the magistrates' court after hearing the evidence in support of the charge or application that a prima facie case is made out, the relevant minor shall, if he is not the applicant and is not legally represented, be told that he may give evidence or address the court, and the evidence of any witnesses shall be heard.

*[Note. Formerly rule 9 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*