
STATUTORY INSTRUMENTS

2011 No. 1709

The Criminal Procedure Rules 2011

PART 13

**DISMISSAL OF CHARGES TRANSFERRED
OR SENT TO THE CROWN COURT**

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Interpretation of this Part

13.1. In this Part—

‘notice of transfer’ means a notice referred to in section 4(1) of the Criminal Justice Act 1987(1) or section 53(1) of the Criminal Justice Act 1991(2); and

‘the prosecution’ means the authority by or on behalf of whom notice of transfer was given under the 1987 or 1991 Acts, or the authority by or on behalf of whom documents were served under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998(3).

[Note. See also section 6 of the Criminal Justice Act 1987, section 53 of, and Schedule 6 to, the Criminal Justice Act 1991 and sections 51 and 52 of, and Schedule 3 to, the Crime and Disorder Act 1998.]

Written notice of oral application for dismissal

13.2.—(1) Where notice of transfer has been given under the Criminal Justice Act 1987 or the Criminal Justice Act 1991, or a person has been sent for trial under the Crime and Disorder Act 1998, and the person concerned proposes to apply orally—

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- (1) 1987 c. 38; section 4(1) was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22). Section 4 is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (2) 1991 c. 53; section 53(1) was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (3) 1998 c. 37; paragraph 1 of Schedule 3 was amended by section 67 of, and paragraph 106 of Schedule 15 to, the Access to Justice Act 1999 (c. 22), and is further amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

- (a) under section 6(1) of the 1987 Act(4);
- (b) under paragraph 5(1) of Schedule 6 to the 1991 Act(5); or
- (c) under paragraph 2(1) of Schedule 3 to the 1998 Act(6)

for any charge in the case to be dismissed, he shall give notice of his intention in writing to the Crown Court officer at the place specified by the notice of transfer under the 1987 or 1991 Acts or the notice given under section 51(7) of the 1998 Act as the proposed place of trial. Notice of intention to make an application under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(2) Notice of intention to make an application shall be given—

- (a) in the case of an application to dismiss charges transferred under the 1987 Act, not later than 28 days after the day on which notice of transfer was given;
- (b) in the case of an application to dismiss charges transferred under the 1991 Act, not later than 14 days after the day on which notice of transfer was given; and
- (c) in the case of an application to dismiss charges sent under the 1998 Act, not later than 14 days after the day on which the documents were served under paragraph 1 of Schedule 3 to that Act,

and a copy of the notice shall be given at the same time to the prosecution and to any person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.

(3) The time for giving notice may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (4).

(4) An application for an extension of time for giving notice shall be made in writing to the Crown Court officer, and a copy thereof shall be given at the same time to the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such an application made in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(5) The Crown Court officer shall give notice in the form set out in the Practice Direction of the judge's decision on an application under paragraph (3)—

- (a) to the applicant for dismissal;
- (b) to the prosecution; and
- (c) to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.

(6) A notice of intention to make an application under section 6(1) of the 1987 Act, paragraph 5(1) of Schedule 6 to the 1991 Act or paragraph 2(1) of Schedule 3 to the 1998 Act shall be accompanied by a copy of any material on which the applicant relies and shall—

- (a) specify the charge or charges to which it relates;
- (b) state whether the leave of the judge is sought under section 6(3) of the 1987 Act, paragraph 5(4) of Schedule 6 to the 1991 Act or paragraph 2(4) of Schedule 3 to the 1998 Act(7) to adduce oral evidence on the application, indicating what witnesses it is proposed to call at the hearing; and
- (c) in the case of a transfer under the 1991 Act, confirm in relation to each such witness that he is not a child to whom paragraph 5(5) of Schedule 6 to that Act applies.

(4) 1987 c. 38; section 6 was substituted by section 144(5) of the Criminal Justice Act 1988 (c. 33) and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(5) 1991 c. 53; Schedule 6 is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(6) 1998 c. 37; paragraph 2(1) of Schedule 3 is amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(7) 1998 c. 37; paragraph 2(4) of Schedule 3 is repealed by paragraphs 15 and 20 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(7) Where leave is sought from the judge for oral evidence to be given on an application, notice of his decision, indicating what witnesses are to be called if leave is granted, shall be given in writing by the Crown Court officer to the applicant for dismissal, the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Notice of a decision in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(8) Where an application for dismissal under section 6(1) of the 1987 Act, paragraph 5(1) of Schedule 6 to the 1991 Act or paragraph 2(1) of Schedule 3 to the 1998 Act is to be made orally, the Crown Court officer shall list the application for hearing before a judge of the Crown Court and the prosecution shall be given the opportunity to be represented at the hearing.

Written application for dismissal

13.3.—(1) Application may be made for dismissal under section 6(1) of the Criminal Justice Act 1987, paragraph 5(1) of Schedule 6 to the Criminal Justice Act 1991 or paragraph 2(1) of Schedule 3 to the Crime and Disorder Act 1998 without an oral hearing. Such an application shall be in writing, and in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(2) The application shall be sent to the Crown Court officer and shall be accompanied by a copy of any statement or other document, and identify any article, on which the applicant for dismissal relies.

(3) A copy of the application and of any accompanying documents shall be given at the same time to the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.

(4) A written application for dismissal shall be made—

- (a) not later than 28 days after the day on which notice of transfer was given under the 1987 Act;
- (b) not later than 14 days after the day on which notice of transfer was given under the 1991 Act; or
- (c) not later than 14 days after the day on which documents required by paragraph 1 of Schedule 3 to the 1998 Act were served

unless the time for making the application is extended, either before or after it expires, by the Crown Court; and rule 13.2(4) and (5) shall apply for the purposes of this paragraph as if references therein to giving notice of intention to make an oral application were references to making a written application under this rule.

Prosecution reply

13.4.—(1) Not later than seven days from the date of service of notice of intention to apply orally for the dismissal of any charge contained in a notice of transfer or based on documents served under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998, the prosecution may apply to the Crown Court under section 6(3) of the Criminal Justice Act 1987, paragraph 5(4) of Schedule 6 to the Criminal Justice Act 1991 or paragraph 2(4) of Schedule 3 to the 1998 Act for leave to adduce oral evidence at the hearing of the application, indicating what witnesses it is proposed to call.

(2) Not later than seven days from the date of receiving a copy of an application for dismissal under rule 13.3, the prosecution may apply to the Crown Court for an oral hearing of the application.

(3) An application under paragraph (1) or (2) shall be served on the Crown Court officer in writing and, in the case of an application under paragraph (2), shall state whether the leave of the judge is sought to adduce oral evidence and, if so, shall indicate what witnesses it is proposed to call. Where leave is sought to adduce oral evidence under paragraph 5(4) of Schedule 6 to the 1991 Act, the application should confirm in relation to each such witness that he is not a child to whom

paragraph 5(5) of that Schedule applies. Such an application in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(4) Notice of the judge's determination upon an application under paragraph (1) or (2), indicating what witnesses (if any) are to be called shall be served in writing by the Crown Court officer on the prosecution, on the applicant for dismissal and on any other party to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such a notice in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(5) Where, having received the material specified in rule 13.2 or, as the case may be, rule 13.3, the prosecution proposes to adduce in reply thereto any written comments or any further evidence, the prosecution shall serve any such comments, copies of the statements or other documents outlining the evidence of any proposed witnesses, copies of any further documents and, in the case of an application to dismiss charges transferred under the 1991 Act, copies of any video recordings which it is proposed to tender in evidence, on the Crown Court officer not later than 14 days from the date of receiving the said material, and shall at the same time serve copies thereof on the applicant for dismissal and any other person to whom the notice of transfer relates or with whom the applicant is jointly charged. In the case of a defendant acting in person, copies of video recordings need not be served but shall be made available for viewing by him.

(6) The time for—

- (a) making an application under paragraph (1) or (2) above; or
- (b) serving any material on the Crown Court officer under paragraph (5) above

may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (7) below.

(7) An application for an extension of time under paragraph (6) above shall be made in writing and shall be served on the Crown Court officer, and a copy thereof shall be served at the same time on to the applicant for dismissal and on any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such an application in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

Determination of applications for dismissal

13.5.—(1) A judge may grant leave for a witness to give oral evidence on an application for dismissal notwithstanding that notice of intention to call the witness has not been given in accordance with the foregoing provisions of this Part.

(2) Where an application for dismissal is determined otherwise than at an oral hearing, the Crown Court officer shall as soon as practicable, send to all the parties to the case written notice of the outcome of the application. Such a notice in proceedings under the 1987 and 1991 Acts shall be in the form set out in the Practice Direction.