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STATUTORY INSTRUMENTS

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**2011 No. 1709**

**The Criminal Procedure Rules 2011**

**PART 33**

**EXPERT EVIDENCE**

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*[Note. For the use of an expert report as evidence, see section 30 of the Criminal Justice Act 1988(1).]*

**Reference to expert**

**33.1.** A reference to an 'expert' in this Part is a reference to a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

*[Note. Expert medical evidence may be required to determine fitness to plead under section 4 of the Criminal Procedure (Insanity) Act 1964(2). It may be required also under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(3), under Part III of the Mental Health Act*

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- (1) 1988 c. 33; section 30(4A) was inserted by section 47 of, and paragraph 32 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and is repealed by section 41 to, and paragraph 60(1) and (6) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (2) 1964 c. 84; section 4 was substituted, together with section 4A, for section 4 as originally enacted, by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and amended by section 22 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).
- (3) 2000 c. 6.

1983(4) or under Part 12 of the Criminal Justice Act 2003(5). Those Acts contain requirements about the qualification of medical experts.]

### **Expert's duty to the court**

**33.2.**—(1) An expert must help the court to achieve the overriding objective by giving objective, unbiased opinion on matters within his expertise.

(2) This duty overrides any obligation to the person from whom he receives instructions or by whom he is paid.

(3) This duty includes an obligation to inform all parties and the court if the expert's opinion changes from that contained in a report served as evidence or given in a statement.

### **Content of expert's report**

**33.3.**—(1) An expert's report must—

- (a) give details of the expert's qualifications, relevant experience and accreditation;
- (b) give details of any literature or other information which the expert has relied on in making the report;
- (c) contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) say who carried out any examination, measurement, test or experiment which the expert has used for the report and—
  - (i) give the qualifications, relevant experience and accreditation of that person,
  - (ii) say whether or not the examination, measurement, test or experiment was carried out under the expert's supervision, and
  - (iii) summarise the findings on which the expert relies;
- (f) where there is a range of opinion on the matters dealt with in the report—
  - (i) summarise the range of opinion, and
  - (ii) give reasons for his own opinion;
- (g) if the expert is not able to give his opinion without qualification, state the qualification;
- (h) contain a summary of the conclusions reached;
- (i) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty; and
- (j) contain the same declaration of truth as a witness statement.

(2) Only sub-paragraphs (i) and (j) of rule 33.3(1) apply to a summary by an expert of his conclusions served in advance of that expert's report.

*[Note. Part 27 contains rules about witness statements. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(6) and section 5B of the Magistrates'*

(4) 1983 c. 20.

(5) 2003 c. 44.

(6) 1967 c. 80; section 9 was amended by section 56 of and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and regulation 9 of, and paragraph 4 of Schedule 5 to S.I. 2001/1090. It is amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 65, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39) and sections 41 and 332 of, and paragraph 43 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.

*Courts Act 1980(7). A party who accepts another party's expert's conclusions may admit them as facts under section 10 of the Criminal Justice Act 1967(8). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the Criminal Justice Act 2003(9).]*

### **Service of expert evidence**

- 33.4.**—(1) A party who wants to introduce expert evidence must—
- (a) serve it on—
    - (i) the court officer, and
    - (ii) each other party;
  - (b) serve it—
    - (i) as soon as practicable, and in any event
    - (ii) with any application in support of which that party relies on that evidence; and
  - (c) if another party so requires, give that party a copy of, or a reasonable opportunity to inspect—
    - (i) a record of any examination, measurement, test or experiment on which the expert's findings and opinion are based, or that were carried out in the course of reaching those findings and opinion, and
    - (ii) anything on which any such examination, measurement, test or experiment was carried out.
- (2) A party may not introduce expert evidence if that party has not complied with this rule, unless—
- (a) every other party agrees; or
  - (b) the court gives permission.

*[Note. Under section 81 of the Police and Criminal Evidence Act 1984(10), and under section 20(3) of the Criminal Procedure and Investigations Act 1996(11), rules may—*

- (a) *require the disclosure of expert evidence before it is introduced as part of a party's case; and*
- (b) *prohibit its introduction without the court's permission, if it was not disclosed as required.]*

### **Expert to be informed of service of report**

**33.5.** A party who serves on another party or on the court a report by an expert must, at once, inform that expert of that fact.

### **Pre-hearing discussion of expert evidence**

- 33.6.**—(1) This rule applies where more than one party wants to introduce expert evidence.
- (2) The court may direct the experts to—
- (a) discuss the expert issues in the proceedings; and

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(7) 1980 c. 43; section 5B was inserted by section 47 of, and paragraph 3 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is amended by section 72(3) of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), with effect from a date to be appointed. It is repealed by sections 41 and 332 of, and paragraph 51(1) and (3) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(8) 1967 c. 80.

(9) 2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.

(10) 1984 c. 60; section 81 was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c. 39).

(11) 1996 c. 25; section 20(3) was amended by section 109(1) of, and paragraph 378 of Schedule 8 to, the Courts Act 2003 (c. 39).

- (b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.
- (3) Except for that statement, the content of that discussion must not be referred to without the court's permission.
- (4) A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under this rule.

*[Note. At a pre-trial hearing, a court may make binding rulings about the admissibility of evidence and about questions of law under section 7 of the Criminal Justice Act 1987(12); sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(13); and section 45 of the Courts Act 2003(14).]*

### **Court's power to direct that evidence is to be given by a single joint expert**

- 33.7.**—(1) Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.
- (2) Where the co-defendants cannot agree who should be the expert, the court may—
    - (a) select the expert from a list prepared or identified by them; or
    - (b) direct that the expert be selected in another way.

### **Instructions to a single joint expert**

- 33.8.**—(1) Where the court gives a direction under rule 33.7 for a single joint expert to be used, each of the co-defendants may give instructions to the expert.
- (2) When a co-defendant gives instructions to the expert he must, at the same time, send a copy of the instructions to the other co-defendant(s).
  - (3) The court may give directions about—
    - (a) the payment of the expert's fees and expenses; and
    - (b) any examination, measurement, test or experiment which the expert wishes to carry out.
  - (4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.
  - (5) Unless the court otherwise directs, the instructing co-defendants are jointly and severally liable for the payment of the expert's fees and expenses.

### **Court's power to vary requirements under this Part**

- 33.9.**—(1) The court may—
- (a) extend (even after it has expired) a time limit under this Part;
  - (b) allow the introduction of expert evidence which omits a detail required by this Part.
- (2) A party who wants an extension of time must—
- (a) apply when serving the expert evidence for which it is required; and

(12) 1987 c. 38; section 7 was amended by section 168(1) of, and paragraph 30 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25). It has been further amended by sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), for certain purposes, with effect from 24 July 2006, and for remaining purposes from a date to be appointed).

(13) 1996 c. 25; section 31 was amended by sections 310, 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(14) 2003 c. 39.

(b) explain the delay.