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STATUTORY INSTRUMENTS

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**2011 No. 1709**

The Criminal Procedure Rules 2011

PART 34

HEARSAY EVIDENCE

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**Contents of this Part**

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When this Part applies	rule 34.1
Notice to introduce hearsay evidence	rule 34.2
Opposing the introduction of hearsay evidence	rule 34.3
Unopposed hearsay evidence	rule 34.4
Court's power to vary requirements under this Part	rule 34.5

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**When this Part applies**

**34.1.** This Part applies—

- (a) in a magistrates' court and in the Crown Court;
- (b) where a party wants to introduce hearsay evidence, within the meaning of section 114 of the Criminal Justice Act 2003<sup>(1)</sup>.

*[Note. Under section 114 of the Criminal Justice Act 2003, a statement not made in oral evidence is admissible as evidence of any matter stated if—*

- (a) a statutory provision makes it admissible;*
- (b) a rule of law preserved by section 118 makes it admissible;*
- (c) the parties agree to it being admissible; or*
- (d) it is in the interests of justice for it to be admissible.*

*Under section 115 of the Act—*

- (a) a "statement" means any representation of fact or opinion, by any means, and includes a representation in pictorial form; and*
- (b) a "matter stated" is something stated by someone with the apparent purpose of—*
  - (i) causing another person to believe it, or*
  - (ii) causing another person, or a machine, to act or operate on the basis that the matter is as stated.]*

**Notice to introduce hearsay evidence**

**34.2.**—(1) This rule applies where a party wants to introduce hearsay evidence for admission under any of the following sections of the Criminal Justice Act 2003—

- (a) section 114(1)(d) (evidence admissible in the interests of justice);
- (b) section 116 (evidence where a witness is unavailable);
- (c) section 121 (multiple hearsay).

(2) That party must—

- (a) serve notice on—
  - (i) the court officer, and
  - (ii) each other party;
- (b) in the notice—
  - (i) identify the evidence that is hearsay,
  - (ii) set out any facts on which that party relies to make the evidence admissible,
  - (iii) explain how that party will prove those facts if another party disputes them, and
  - (iv) explain why the evidence is admissible; and
- (c) attach to the notice any statement or other document containing the evidence that has not already been served.

(3) A prosecutor who wants to introduce such evidence must serve the notice not more than—

- (a) 28 days after the defendant pleads not guilty, in a magistrates' court; or
- (b) 14 days after the defendant pleads not guilty, in the Crown Court.

(4) A defendant who wants to introduce such evidence must serve the notice as soon as reasonably practicable.

(5) A party entitled to receive a notice under this rule may waive that entitlement by so informing—

- (a) the party who would have served it; and
- (b) the court.

*[Note. The Practice Direction sets out a form of notice for use in connection with this rule.*

*The sections of the Criminal Justice Act 2003 listed in this rule set out the conditions on which hearsay evidence may be admitted under them.*

*If notice is not given as this rule requires, then under section 132(5) of the 2003 Act—*

- (a) *the evidence is not admissible without the court's permission;*
- (b) *if the court gives permission, it may draw such inferences as appear proper from the failure to give notice; and*
- (c) *the court may take the failure into account in exercising its powers to order costs.*

*This rule does not require notice of hearsay evidence that is admissible under any of the following sections of the 2003 Act—*

- (a) *section 117 (business and other documents);*
- (b) *section 118 (preservation of certain common law categories of admissibility);*
- (c) *section 119 (inconsistent statements);*
- (d) *section 120 (other previous statements of witness); or*

- (e) *section 127(2) (expert evidence: preparatory work): but see Part 33 for the procedure where a party wants to introduce such evidence.]*

### **Opposing the introduction of hearsay evidence**

- 34.3.**—(1) This rule applies where a party objects to the introduction of hearsay evidence.
- (2) That party must—
- (a) apply to the court to determine the objection;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party;
  - (c) serve the application as soon as reasonably practicable, and in any event not more than 14 days after—
    - (i) service of notice to introduce the evidence under rule 34.2,
    - (ii) service of the evidence to which that party objects, if no notice is required by that rule, or
    - (iii) the defendant pleads not guiltywhichever of those events happens last; and
  - (d) in the application, explain—
    - (i) which, if any, facts set out in a notice under rule 34.2 that party disputes,
    - (ii) why the evidence is not admissible,
    - (iii) any other objection to the application.
- (3) The court—
- (a) may determine an application—
    - (i) at a hearing, in public or in private, or
    - (ii) without a hearing;
  - (b) must not determine the application unless the party who served the notice—
    - (i) is present, or
    - (ii) has had a reasonable opportunity to respond;
  - (c) may adjourn the application; and
  - (d) may discharge or vary a determination where it can do so under—
    - (i) section 8B of the Magistrates’ Courts Act 1980(3) (ruling at pre-trial hearing in a magistrates’ court), or
    - (ii) section 9 of the Criminal Justice Act 1987(4), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(5) (ruling at preparatory or other pre-trial hearing in the Crown Court).

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(2) [2003 c. 44](#); section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, [S.I. 2004/2035](#).

(3) [1980 c. 43](#); section 8B was inserted by section 45(1) of, and Schedule 3 to, the Courts Act 2003 ([c. 39](#)) and is amended by sections 41 and 332 of, and paragraph 51 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 ([c. 44](#)), with effect from a date to be appointed.

(4) [1987 c. 38](#); section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 ([c. 33](#)), section 6 of the Criminal Justice Act 1993 ([c. 36](#)), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 ([c. 25](#)), sections 45, 310 and 331 of, and paragraphs 18, 52 and 54 of Schedule 36, and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 ([c. 44](#)), article 3 of, and paragraphs 21 and 23 of [S.I. 2004/2035](#) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 ([c. 4](#)). The amendment made by

### **Unopposed hearsay evidence**

**34.4.**—(1) This rule applies where—

- (a) a party has served notice to introduce hearsay evidence under rule 34.2; and
- (b) no other party has applied to the court to determine an objection to the introduction of the evidence.

(2) The court will treat the evidence as if it were admissible by agreement.

*[Note. Under section 132(4) of the Criminal Justice Act 2003, rules may provide that evidence is to be treated as admissible by agreement of the parties if notice to introduce that evidence has not been opposed.]*

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

**34.5.**—(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow an application or notice to be in a different form to one set out in the Practice Direction, or to be made or given orally;
- (c) dispense with the requirement for notice to introduce hearsay evidence.

(2) A party who wants an extension of time must—

- (a) apply when serving the application or notice for which it is needed; and
- (b) explain the delay.

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section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(5) 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).