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STATUTORY INSTRUMENTS

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**2008 No. 3269 (L.28)**

**SUPREME COURT OF ENGLAND  
AND WALES  
MAGISTRATES'  
COURTS, ENGLAND AND WALES**

**The Criminal Procedure (Amendment No. 2) Rules 2008**

*Made* - - - - *14th December 2008*  
*Laid before Parliament* *19th December 2008*  
*Coming into force* - - *6th April 2009*

The Criminal Procedure Rule Committee makes the following Rules under section 69 of the Courts Act 2003(1), after consulting in accordance with section 72(1)(a) of that Act:

**Citation, commencement and interpretation**

1. These Rules may be cited as The Criminal Procedure (Amendment No. 2) Rules 2008 and shall come into force on 6th April 2009.

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in The Criminal Procedure Rules 2005(2).

**Amendments to the Criminal Procedure Rules 2005**

3. After rule 2.1(12) (When the Rules apply), insert—

“(13) The rules in Part 21 apply unless the court otherwise directs under rule 21.1(2). If it does so, the rules replaced by those rules apply.

(14) The rules in Part 37 apply in cases in which on or after 6th April 2009—

- (a) the court tries a case; or
- (b) the defendant pleads guilty.

In other cases, the rules in Parts 37 and 38 apply as if The Criminal Procedure (Amendment No. 2) Rules 2008 had not been made.

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(1) 2003 c. 39; section 69 was amended by sections 15(1) and 146 of, and paragraphs 308 and 332 of Schedule 4 and Part 2 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4).  
(2) S.I. 2005/384; amended by S.I. 2006/353, 2006/2636, 2007/699, 2007/2317, 2007/3662 and 2008/2076.

(15) The rules in Part 44 apply in cases in which an application to which that Part applies is made on or after 6th April 2009. In other cases, the rules in Parts 38 and 44 apply as if The Criminal Procedure (Amendment No. 2) Rules 2008 had not been made.”.

4. In rule 2.2(1) (Definitions), after the definition of “court officer”, insert—

““justices' legal adviser” means a justices' clerk or an assistant to a justices' clerk;”.

5. In the note after rule 7.2 (Information and written charge), before “The Practice Direction”, insert “See also Part 44 (Breach, revocation and amendment of community and other orders in a magistrates' court). Rule 44.2(2) (Application by responsible officer) applies rules 7.2 to 7.4 to the procedure with which that rule deals.”.

6. For rule 7.4(1) (Summons, warrant and requisition), substitute—

“(1) The court may issue or withdraw a summons or warrant—

- (a) without giving the parties an opportunity to make representations; and
- (b) without a hearing, or at a hearing in public or in private.”.

7. In Part 19 (Bail in magistrates' courts and the Crown Court)—

(a) in the table of contents—

- (i) from the entry for rule 19.1, omit “police”,
- (ii) after the entry for rule 19.24, insert, in the first column, “Grant of bail subject to a condition of residence” and, in the second column, “rule 19.25”;

(b) from the heading to rule 19.1 (Application to a magistrates' court to vary conditions of police bail), omit “police”;

(c) in rule 19.1—

- (i) in rule 19.1(1), after “1984”, insert “, to vary conditions of police bail”,
- (ii) from the end of rule 19.1(1)(d), omit “and”,
- (iii) in rule 19.1(1)(e), after “custody”, insert “; and (f) specify the address at which the applicant would reside, if the court imposed a condition of residence”,
- (iv) in rule 19.1(3), after “shall serve”, insert “not less than 24 hours”,
- (v) after rule 19.1(4), insert—

“(5) A party who wants a magistrates' court to vary or to impose conditions of bail under section 3(8) of the Bail Act 1976(3), must—

- (a) serve notice, not less than 24 hours before the hearing at which that party intends to apply, on—
  - (i) the court officer, and
  - (ii) the other party; and
- (b) in that notice—
  - (i) specify the variation or conditions proposed, and
  - (ii) explain the reasons.”, and

(vi) for rule 19.1(7), substitute—

“(7) The court may—

- (a) vary or waive a time limit under paragraph (3) or (5) of this rule; and

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(3) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45). It was amended, in respect of cases sent for trial under section 51A(3)(d) of the Crime and Disorder Act 1998 (c. 37), by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). It is to be amended by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) for remaining purposes, from a date to be appointed.

- (b) allow a notice to be—
  - (i) in a different form to one set out in the Practice Direction, or
  - (ii) given orally.”;
- (d) at the end of the note after rule 19.1 (Application to a magistrates' court to vary conditions of bail), insert “The Practice Direction sets out a form for use in connection with this rule.”; and
- (e) after rule 19.24 (Forfeiture of recognizances in respect of person bailed to appear before the Crown Court), insert—

**“Grant of bail subject to a condition of residence—**

**19.25.—(1)** The defendant must notify the prosecutor of the address at which the defendant would reside if released on bail with a condition of residence—

- (a) as soon as practicable after the institution of proceedings, unless already done; and
- (b) as soon as practicable after any change of that address.

(2) The prosecutor must help the court to assess the suitability of an address proposed as a condition of residence.

*[Note. Under section 4 of the Bail Act 1976(4), the general rule, subject to exceptions, is that a defendant must be granted bail. Schedule 1 to the Act sets out some of the exceptions. Paragraph 5 of that Schedule allows a court to withhold bail if satisfied that it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for it to take the decisions required by that Schedule.]”.*

- 8. For Part 21 (Advance information), substitute the Part as set out in Schedule 1 to these Rules.
- 9. For Part 37 (Summary trial), substitute the Part as set out in Schedule 2 to these Rules.
- 10. Omit Part 38 (Trial of children and young persons).
- 11. For Part 44 (Sentencing children and young persons), substitute the Part as set out in Schedule 3 to these Rules.
- 12. In the Arrangement of Rules contained in The Criminal Procedure Rules 2005—
  - (a) in the entry for Part 7, for “Commencing proceedings in a magistrates' court”, substitute “Starting a prosecution in a magistrates' court”;
  - (b) in the entry for Part 21, for “Advance information in magistrates' courts”, substitute “Initial details of the prosecution case”;
  - (c) in the entry for Part 37, for “Summary trial”, substitute “Trial and sentence in a magistrates' court”;
  - (d) omit the entry for Part 38;
  - (e) in the entry for Part 44, for “Sentencing children and young persons”, substitute “Breach, revocation and amendment of community and other orders in a magistrates' court”;

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(4) 1976 c. 63; section 4 was amended by section 154 of, and paragraph 145 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), section 168 of, and paragraphs 32 and 33 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 198 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 304 of, and paragraphs 20 and 22 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 42 of, and paragraph 34 of Schedule 13 to, the Police and Justice Act 2006 (c. 48). It is to be amended by sections 6 and 148 of, and paragraph 23 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

- (f) in the entry for Part 50, for “Supplementary orders made on conviction”, substitute “Civil behaviour orders after verdict or finding”;
- (g) in the entry for Part 58, for “Proceeds of Crime Act 2002—rules for confiscation proceedings”, substitute “Proceeds of Crime Act 2002—rules applicable only to confiscation proceedings”;
- (h) in the entry for Part 60, for “Proceeds of Crime Act 2002—rules for receivership proceedings”, substitute “Proceeds of Crime Act 2002—rules applicable only to receivership proceedings”;
- (i) in the entry for Part 61, for “Proceeds of Crime Act 2002—rules for both restraint and receivership proceedings”, substitute “Proceeds of Crime Act 2002—rules applicable to restraint and receivership proceedings”;
- (j) in the entry for Part 62, for “Proceeds of Crime Act 2002—rules for investigations”, substitute “Proceeds of Crime Act 2002—rules applicable to investigations”;
- (k) in the entry for Part 63, for “Appeal to the Crown Court against conviction or sentence”, substitute “Appeal to the Crown Court”;
- (l) in the entry for Part 64, “Appeal to the High Court by case stated”, substitute “Appeal to the High Court by way of case stated”;
- (m) in the entry for Part 65, for “Appeal to the Court of Appeal against ruling in preparatory hearing”, substitute “Appeal to the Court of Appeal: general rules”;
- (n) in the entry for Part 66, for “Appeal to the Court of Appeal against ruling adverse to prosecution”, substitute “Appeal to the Court of Appeal against ruling at preparatory hearing”;
- (o) in the entry for Part 67, for “Appeal to the Court of Appeal regarding reporting or public access”, substitute “Appeal to the Court of Appeal against ruling adverse to prosecution”;
- (p) in the entry for Part 68, for “Appeal to the Court of Appeal against conviction or sentence”, substitute “Appeal to the Court of Appeal about conviction or sentence”;
- (q) in the entry for Part 69, for “Reference to the Court of Appeal on point of law”, substitute “Appeal to the Court of Appeal regarding reporting or public access restriction”;
- (r) in the entry for Part 70, for “Reference to the Court of Appeal of unduly lenient sentence”, substitute “Reference to the Court of Appeal of point of law or unduly lenient sentence”; and
- (s) in the entry for Part 74, for “Appeal to the House of Lords”, substitute “Appeal or reference to the House of Lords”.

*Judge, C.J.  
Hooper, L.J.  
Thomas, L.J. O  
Openshaw, J.  
Charles Wide  
Roderick Denyer  
Stephen Dawson  
Nicholas Moss  
Tessa Szagun  
Keir Starmer  
Patrick Gibbs  
Tom Little  
Michael Caplan  
Derek French  
Martin Baker  
James Riches  
Jeremy Corbett*

I allow these Rules which shall come into force on 6th April 2009.

14th December 2008

*Jack Straw*  
Lord Chancellor

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## SCHEDULE 1

Rule 8

“Part 21

Initial details of the  
prosecution case**Contents of this Part**

When this Part applies	rule 21.1
Providing initial details of the prosecution case	rule 21.2
Content of initial details	rule 21.3

*[Note. The rules in this Part derive from rules formerly in The Magistrates' Courts (Advance Information) Rules 1985(5). See also section 48 of the Criminal Law Act 1977(6).]*

**When this Part applies**

**21.1.**—(1) This Part applies in a magistrates' court, where the offence is one that can be tried in a magistrates' court.

(2) The court may direct that, for a specified period, this Part will not apply—

- (a) to any case in that court; or
- (b) to any specified category of case.

*[Note. An offence may be classified as—*

- (a) *one that can be tried only in a magistrates' court (in other legislation, described as triable only summarily);*
- (b) *one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way); or*
- (c) *one that can be tried only in the Crown Court (in other legislation, described as triable only on indictment).*

*See the definitions contained in Schedule 1 to the Interpretation Act 1978(7). In some circumstances, the Crown Court can try an offence that usually can be tried only in a magistrates' court.*

*This Part does not apply where an offence can be tried only in the Crown Court. In such a case, details are served on the defendant after the case is sent for trial. Part 12 contains relevant rules.]*

**Providing initial details of the prosecution case**

**21.2.** The prosecutor must provide initial details of the prosecution case by—

- (a) serving those details on the court officer; and

(5) S.I. 1985/601.

(6) 1977 c. 45; section 48 has been amended by section 109 of, and paragraph 190 of Schedule 8 to, the Courts Act 2003 (c. 39).

(7) 1978 c. 30; Schedule 1 was amended by section 170 of, and paragraph 59 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33) and section 154 of, and Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43). Other amendments to Schedule 1 are not relevant to procedure in magistrates' courts.

- (b) making those details available to the defendant, at, or before, the beginning of the day of the first hearing.

**Content of initial details**

**21.3.** Initial details of the prosecution case must include—

- (a) a summary of the evidence on which that case will be based; or
- (b) any statement, document or extract setting out facts or other matters on which that case will be based; or
- (c) any combination of such a summary, statement, document or extract; and
- (d) the defendant’s previous convictions.”

SCHEDULE 2

Rule 9

“Part 37

Trial and sentence in  
a magistrates' court

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**Contents of this Part**

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When this Part applies	rule 37.1
General rules	rule 37.2
Procedure on plea of not guilty	rule 37.3
Evidence of a witness in person	rule 37.4
Evidence by written statement	rule 37.5
Evidence by admission	rule 37.6
Procedure on plea of guilty	rule 37.7
Written guilty plea: special rules	rule 37.8
Application to withdraw a guilty plea	rule 37.9
Procedure if the court convicts	rule 37.10
Procedure where a party is absent	rule 37.11
Provision of documents for the court	rule 37.12
Place of trial	rule 37.13
Duty of justices' legal adviser	rule 37.14
Duty of court officer	rule 37.15

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*[Note. Part 3 contains rules about case management that apply at trial as well as during preparation for trial. The rules in this Part must be read in conjunction with those rules.]*

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## When this Part applies

- 37.1.**—(1) This Part applies in a magistrates' court where—
- (a) the court tries a case; or
  - (b) the defendant pleads guilty.
- (2) Where the defendant is under 18, in this Part—
- (a) a reference to convicting the defendant includes a reference to finding the defendant guilty of an offence; and
  - (b) a reference to sentence includes a reference to an order made on a finding of guilt.

*[Note. A magistrates' court's powers to try an allegation of an offence are contained in section 2 of the Magistrates' Courts Act 1980(8) and, in relation to a defendant under 18, sections 45(9), 46(10) and 48(11) of the Children and Young Persons Act 1933, section 18 of the Children and Young Persons Act 1963(12), section 47 of the Crime and Disorder Act 1998(13) and section 9 of the Powers of Criminal Courts (Sentencing) Act 2000(14).*

*The exercise of the court's powers is affected by—*

- (a) *the classification of the offence (and the general rule, subject to exceptions, is that a magistrates' court must try—*
  - (i) *an offence classified as one that can be tried only in a magistrates' court (in other legislation, described as triable only summarily), and*
  - (ii) *an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way) that has been allocated for trial in a magistrates' court); and*
- (b) *the defendant's age (and the general rule, subject to exceptions, is that an allegation of an offence against a defendant under 18 must be tried in a magistrates' court sitting as a youth court, irrespective of the classification of the offence and without allocation for trial there).*

*Under sections 10(15), 14(16), 27A(17), 121(18) and 148 (19) of the Magistrates' Courts Act 1980 and The Justices of the Peace (Size and Chairmanship of Bench) Rules 2005(20), the court—*

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- (8) 1980 c. 43; section 2 was substituted by section 44 of the Courts Act 2003 (c. 39) and amended by section 41 of, and paragraph 51 of Schedule 3 to, the Criminal Justice 2003 (c. 44).
  - (9) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
  - (10) 1933 c. 12; section 46 was amended by section 46 of, and Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), section 72 of, and paragraph 4 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 154 of, and paragraph 6 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 109 of, and paragraph 74 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (11) 1933 c. 12; section 48 was amended by section 79 of, and Schedule 9 to, the Criminal Justice Act 1948 (c. 58), section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55), section 64 of, and paragraph 12 of Schedule 3 and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 72, 79 and 83 of, and Schedules 6, 9 and 10 to, the Children and Young Persons Act 1969 (c. 54), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 75 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (12) 1963 c. 37, section 18 was amended by section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 168 of, and paragraph 5 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).
  - (13) 1998 c. 37; section 47 was amended by section 165 of, and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).
  - (14) 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to, The Courts Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/886).
  - (15) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37).
  - (16) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (17) 1980 c. 43; section 27A was inserted by section 46 of the Courts Act 2003 (c. 39).



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- (a) *must comprise at least two but not more than three justices, or a District Judge (Magistrates' Courts) (but a single member can adjourn the hearing);*
- (b) *must not include any member who adjudicated at a hearing to which rule 37.11(3)(e) applies (defendant's declaration of no knowledge of hearing);*
- (c) *when reaching a verdict, must not include any member who was absent from any part of the hearing;*
- (d) *when passing sentence, need not include any of the members who reached the verdict (but may do so).*

*Under The Youth Courts (Constitution of Committees and Right to Preside) Rules 2007(21), where the court is a youth court comprising justices—*

- (a) *each member must be qualified to sit as a member of that youth court; and*
- (b) *the members must include at least one man and one woman, unless—*
  - (i) *either is unavailable, and*
  - (ii) *the members present decide that the hearing will be delayed unreasonably if they do not proceed.*

*Under section 150 of the Magistrates' Courts Act 1980(22), where two or more justices are present one may act on behalf of all.*

*Section 59 of the Children and Young Persons Act 1933(23) requires that—*

- (a) *the expressions 'conviction' and 'sentence' must not be used by a magistrates' court dealing with a defendant under 18; and*
- (b) *a reference in legislation to a defendant who is convicted, to a conviction, or to a sentence, must be read as including a reference to a defendant who is found guilty of an offence, a finding of guilt, or an order made on a finding of guilt, respectively.*

*See also Part 44 (Breach, revocation and amendment of community and other orders in a magistrates' court). Rule 44.4 (Procedure on application by responsible officer) applies rules in this Part to the procedure with which that rule deals.]*

## **General rules**

**37.2.—(1)** Where this Part applies—

- (a) the general rule is that the hearing must be in public; but
- (b) the court may exercise any power it has to—
  - (i) impose reporting restrictions,
  - (ii) withhold information from the public, or
  - (iii) order a hearing in private; and
- (c) unless the court otherwise directs, only the following may attend a hearing in a youth court—
  - (i) the parties and their legal representatives,

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(18) 1980 c. 43; section 121 was amended by section 61 of the Criminal Justice Act 1988 (c. 33), section 92 of, and paragraph 8 of Schedule 11 to, the Children Act 1989 (c. 41), section 109 of, and paragraph 237 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).

(19) 1980 c. 43; section 148 was amended by section 109 of, and paragraph 248 of Schedule 8 to, the Courts Act 2003 (c. 39).

(20) S.I. 2005/553.

(21) S.I. 2007/1611.

(22) 1980 c. 43; section 150 has been amended but none is relevant to the note to rule 37.1.

(23) 1933 c. 12; section 59 was amended by sections 79 and 83 of, and Schedules 9 and 10 to, the Criminal Justice Act 1948 (c. 58) and section 18 of the Costs in Criminal Cases Act 1952 (c. 48).

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- (ii) a defendant's parents, guardian or other supporting adult,
  - (iii) a witness,
  - (iv) anyone else directly concerned in the case, and
  - (v) a representative of a news-gathering or reporting organisation.
- (2) Unless already done, the justices' legal adviser or the court must—
- (a) read the allegation of the offence to the defendant;
  - (b) explain, in terms the defendant can understand (with help, if necessary)—
    - (i) the allegation, and
    - (ii) what the procedure at the hearing will be;
  - (c) ask whether the defendant has been advised about the potential effect on sentence of a guilty plea;
  - (d) ask whether the defendant pleads guilty or not guilty; and
  - (e) take the defendant's plea.
- (3) The court may adjourn the hearing—
- (a) at any stage, to the same or to another magistrates' court; or
  - (b) to a youth court, where the court is not itself a youth court and the defendant is under 18.

*[Note. See sections 10, 27A, 29 and 121 of the Magistrates' Courts Act 1980(24) and sections 46 and 47 of the Children and Young Persons Act 1933.*

*Where the case has been allocated for trial in a magistrates' court, part of the procedure under rule 37.2(2) will have taken place.*

*The court's powers to impose reporting restrictions include those under—*

- (a) *section 39 of the Children and Young Persons Act 1933(25) (identification of any defendant or witness under 18);*
- (b) *section 4(2) of the Contempt of Court Act 1981(26) (information that may prejudice the administration of justice);*
- (c) *section 11 of the 1981 Act(27) (information about a matter withheld from the public); and*
- (d) *section 46 of the Youth Justice and Criminal Evidence Act 1999(28) (identification of an adult witness).*

*Reporting restrictions that apply in all cases include those under—*

- (a) *section 49 of the Children and Young Persons Act 1933(29) (identification of any defendant or witness under 18 involved in proceedings in a youth court);*

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(24) 1980 c. 43; section 29 was amended by sections 68 and 100 of, and paragraph 6 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 168 of, and paragraph 41 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 41 of, and paragraph 51 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).

(25) 1933 c. 12; section 39 was amended by sections 57 and 64 of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48) and it is to be amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), from a date to be appointed.

(26) 1981 c. 49.

(27) 1981 c. 49.

(28) 1999 c. 23.

(29) 1933 c. 12; section 49 was amended by section 49 of the Criminal Justice and Public Order Act 1994 (c. 33), section 45 of the Crime (Sentences) Act 1997 (c. 43), section 119 of, and paragraph 1 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 2 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 304 of, and paragraph 2 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and sections 208 and 210 of, and paragraphs 15 and 19 of Schedule 21, and Schedule 23 to, the Legal Services Act 2007 (c. 29). It is to be amended by section 48 of, and paragraphs 1 and 3 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 74 of, and paragraph

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- (b) *section 1 of the Sexual Offences (Amendment) Act 1992***(30)**(*identification of the complainant of a sexual offence*); and
- (c) *section 47 of the Youth Justice and Criminal Evidence Act 1999***(31)**(*special measures direction or application for such a direction*).

*Under section 34A of the Children and Young Persons Act 1933***(32)**, the court—

- (a) *may require the defendant's parents or guardian to attend court with the defendant, where the defendant is under 18; and*
- (b) *must do so, where the defendant is under 16,*

*unless satisfied that that would be unreasonable.*

*Part 7 contains rules about (among other things) the issue of a summons to a parent or guardian.*

*Part 2 contains rules allowing a parent, guardian or other supporting adult to help a defendant under 18.]*

### **Procedure on plea of not guilty**

**37.3.**—(1) This rule applies—

- (a) if the defendant has—
  - (i) entered a plea of not guilty, or
  - (ii) not entered a plea; or
- (b) if, in either case, it appears to the court that there may be grounds for making a hospital order without convicting the defendant.

(2) If a not guilty plea was taken on a previous occasion, the justices' legal adviser or the court must ask the defendant to confirm that plea.

(3) In the following sequence—

- (a) the prosecutor may summarise the prosecution case, identifying the relevant law and facts;
- (b) the prosecutor must introduce the evidence on which the prosecution case relies;
- (c) at the conclusion of the prosecution case, on the defendant's application or on its own initiative, the court—
  - (i) may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but
  - (ii) must not do so unless the prosecutor has had an opportunity to make representations;
- (d) the justices' legal adviser or the court must explain, in terms the defendant can understand (with help, if necessary)—
  - (i) the right to give evidence, and
  - (ii) the potential effect of not doing so at all, or of refusing to answer a question while doing so;
- (e) the defendant may introduce evidence;

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5 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43) and sections 6 and 149 of, and paragraphs 1, 3 and 100 of Schedule 4 and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), from dates to be appointed.

**(30)** 1992 c. 34; section 1 was amended by section 48 of, and paragraphs 6 and 7 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23).

**(31)** 1999 c. 23; section 47 was amended by section 52 of, and paragraph 37 of Schedule 14 to, the Police and Justice Act 2006 (c. 48).

**(32)** 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22).

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- (f) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);
  - (g) the defendant may make representations about the case; and
  - (h) the prosecutor may make representations about the relevant law and the defendant may respond.
- (4) Where a party wants to introduce evidence or make representations after that party's opportunity to do so under paragraph (3), the court—
- (a) may refuse to receive any such evidence or representations; and
  - (b) must not receive any such evidence or representations after it has announced its verdict.
- (5) If the court—
- (a) convicts the defendant; or
  - (b) makes a hospital order instead of doing so,
- it must give sufficient reasons to explain its decision.
- (6) If the court acquits the defendant, it may—
- (a) give an explanation of its decision; and
  - (b) exercise any power it has to make—
    - (i) a civil behaviour order,
    - (ii) a costs order.

*[Note. See section 9 of the Magistrates' Courts Act 1980(33).*

*Under section 37(3) of the Mental Health Act 1983(34), if the court is satisfied that the defendant did the act or made the omission alleged, then it may make a hospital order without convicting the defendant.*

*Under section 35 of the Criminal Justice and Public Order Act 1994(35), the court may draw such inferences as appear proper from a defendant's failure to give evidence, or refusal without good cause to answer a question while doing so. The procedure set out in rule 37.3(3)(d) is prescribed by that section.*

*The admissibility of evidence that a party introduces is governed by rules of evidence.*

*See rule 37.10 for the procedure if the court convicts the defendant.*

*Part 50 contains rules about civil behaviour orders after verdict or finding.]*

### **Evidence of a witness in person**

**37.4.**—(1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.

- (2) Unless the court otherwise directs—
  - (a) a witness waiting to give evidence must not wait inside the courtroom, unless that witness is—
    - (i) a party, or
    - (ii) an expert witness;

(33) 1980 c. 43.

(34) 1983 c. 20; section 37(3) was amended by sections 1 and 55 of, and paragraphs 1 and 7 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c. 12).

(35) 1994 c. 33; section 35 was amended by sections 35 and 120 of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37). The Criminal Justice Act 2003 (c. 44) amendment to section 35 is not relevant to procedure in magistrates' courts.

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- (b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and
  - (c) a witness' address must not be announced unless it is relevant to an issue in the case.
- (3) Unless other legislation otherwise provides, before giving evidence a witness must take an oath or affirm.
- (4) In the following sequence—
- (a) the party who calls a witness must ask questions in examination-in-chief;
  - (b) every other party may ask questions in cross-examination;
  - (c) the party who called the witness may ask questions in re-examination;
  - (d) at any time while giving evidence, a witness may refer to a record of that witness' recollection of events, if other legislation so permits;
  - (e) the party who calls a witness, in examination-in-chief may ask that witness to adopt all or part of such a record as part of that witness' evidence, but only if—
    - (i) the parties agree, and
    - (ii) the court so permits;
  - (f) if the witness adopts any part of such a record—
    - (i) that part must be read aloud, or
    - (ii) with the court's permission, its contents may be summarised aloud.
- (5) The justices' legal adviser or the court may—
- (a) ask a witness questions; and in particular
  - (b) where the defendant is not represented, ask any question necessary in the defendant's interests.

*[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(36) provides that everyone is competent to give evidence in criminal proceedings unless unable to understand questions put or give intelligible answers. See also section 1 of the Criminal Evidence Act 1898(37).*

*Sections 1, 3, 5 and 6 of the Oaths Act 1978(38) provide for the taking of oaths and the making of affirmations, and for the words that must be used. Section 28 of the Children and Young Persons Act 1963(39) provides that in a youth court, and where a witness in any court is under 18, an oath must include the words 'I promise' in place of the words 'I swear'. Under sections 55 and 56 of the Youth Justice and Criminal Evidence Act 1999(40), a person may give evidence without taking an oath, or making an affirmation, where that person (i) is under 14 or (ii) has an insufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.*

*The questions that may be put to a witness—*

- (a) *by a party are governed by rules of evidence, for example—*
  - (i) *the rule that a question must be relevant to what is in issue,*

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(36) 1999 c. 23.

(37) 1898 c. 36; section 1 was amended by section 1 of the Criminal Evidence Act 1979 (c. 16), section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), sections 80(9) and 119(2) of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), sections 31 and 168 of, and paragraph 2 of Schedule 10, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 67 of, and paragraph 1 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and sections 331 and 332 of, and paragraph 80 of Schedule 36, and Part 5 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(38) 1978 c. 19.

(39) 1963 c. 37, section 28 was amended by section 2 of the Oaths Act 1978 (c. 19) and section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53).

(40) 1999 c. 23.

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- (ii) *the rule that the party who calls a witness must not ask that witness a leading question about what is in dispute, and*
- (iii) *the rule that a party who calls a witness may contradict that witness only in limited circumstances (see section 3 of the Criminal Procedure Act 1865)(41);*
- (b) *by the justices' legal adviser or the court are in their discretion, but that is subject to—*
  - (i) *rules of evidence, and*
  - (ii) *rule 1.3 (the application by the court of the overriding objective).*

*Under sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999(42), a defendant who is not represented may not cross-examine a witness where—*

- (a) *the defendant is charged with a sexual offence against the witness;*
- (b) *the defendant is charged with a sexual offence, or one of certain other offences, and the witness is a child; or*
- (c) *the court prohibits the defendant from cross-examining the witness.*

*Part 31 contains rules relevant to restrictions on cross-examination.*

*Under section 139 of the Criminal Justice Act 2003(43), a witness may refresh his or her memory by referring to a record made before the hearing, either contained in a document made or verified by the witness, or in the transcript of a sound recording, if—*

- (a) *the witness states that it records his or her recollection of events at that earlier time; and*
- (b) *that recollection is likely to have been significantly better when the record was made than at the time of the hearing.*

*In some circumstances, a witness may give evidence in accordance with special measures directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999(44), or by live link under section 32 of the Criminal Justice Act 1988(45) or section 51 of the Criminal Justice Act 2003(46). Parts 29 and 30 contain relevant rules.]*

## **Evidence by written statement**

### **37.5**

**37.5.—(1)** This rule applies where a party introduces in evidence the written statement of a witness.

(2) The party introducing the statement must read or summarise aloud those parts that are relevant to the issues in the case.

*[Note. See section 9 of the Criminal Justice Act 1967(47). Part 27 contains rules about written statements. The admissibility of evidence that a party introduces is governed by rules of evidence.]*

(41) 1865 c. 18.

(42) 1999 c. 23; section 35 was amended by sections 139 and 140 of, and paragraph 41 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42) and section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(43) 2003 c. 44.

(44) 1999 c. 23.

(45) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to The Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035).

(46) 2003 c. 44.

(47) 1967 c. 80; section 9 was amended by 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, the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090). It is to be amended by section 72

### Evidence by admission

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

- (a) a party introduces in evidence a fact admitted by another party; or
- (b) parties jointly admit a fact.

(2) Unless the court otherwise directs, a written record must be made of the admission.

*[Note. See section 10 of the Criminal Justice Act 1967(48). The admissibility of evidence that a party introduces is governed by rules of evidence.]*

### Procedure on plea of guilty

**37.7.**—(1) This rule applies if—

- (a) the defendant pleads guilty; and
- (b) the court is satisfied that the plea represents a clear acknowledgement of guilt.

(2) The court may convict the defendant without receiving evidence.

*[Note. See section 9 of the Magistrates' Courts Act 1980(49).]*

### Written guilty plea: special rules

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

- (a) the offence alleged—
  - (i) can be tried only in a magistrates' court, and
  - (ii) is not one specified under section 12(1)(a) of the Magistrates' Courts Act 1980(50);
- (b) the defendant is at least 16 years old;
- (c) the prosecutor has served on the defendant—
  - (i) the summons or requisition,
  - (ii) the material on which the prosecutor relies to set out the facts of the offence and to provide information relevant to sentence,
  - (iii) a notice that the procedure set out in this rule applies, and
  - (iv) a notice for the defendant's use if the defendant wants to plead guilty without attending court; and
- (d) the prosecutor has served on the court officer—
  - (i) copies of those documents, and
  - (ii) a certificate of service of those documents on the defendant.

(2) A defendant who wants to plead guilty without attending court must, before the hearing date specified in the summons or requisition—

- (a) serve a notice of guilty plea on the court officer; and
- (b) include with that notice any representations that the defendant wants the court to consider on that date.

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of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) 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), from a date to be appointed.

(48) 1967 c. 80.

(49) 1980 c. 43.

(50) 1980 c. 43: section 12(1)(a) was amended by sections 308 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

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(3) A defendant who wants to withdraw such a notice must notify the court officer in writing before the hearing date.

(4) The court may accept such a guilty plea on the hearing date, and if it does so must take account only of—

- (a) the material served by the prosecutor on the defendant under this rule; and
- (b) any representations by the defendant.

(5) With the defendant's agreement, the court may deal with the case in the same way as under paragraph (4) where the defendant—

- (a) is present; and
- (b) has served a notice of guilty plea under paragraph (2); or
- (c) pleads guilty there and then.

*[Note. The procedure set out in this rule is prescribed by sections 12 and 12A of the Magistrates' Courts Act 1980(51). Under section 12(1)(a), the Secretary of State can specify offences to which the procedure will not apply. None has been specified.*

*Under section 1 of the Magistrates' Courts Act 1980(52) a justice of the peace may issue a summons requiring a defendant to attend court to answer an allegation of an offence.*

*Under section 29 of the Criminal Justice Act 2003(53) a public prosecutor listed in that section may issue a written charge alleging an offence and a requisition requiring a defendant to attend court. Part 7 contains relevant rules.*

*The Practice Direction sets out forms of notice for use in connection with this rule.]*

### **Application to withdraw a guilty plea**

**37.9.**—(1) This rule applies where the defendant wants to withdraw a guilty plea.

(2) The defendant must apply to do so—

- (a) as soon as practicable after becoming aware of the reasons for doing so; and
- (b) before sentence.

(3) Unless the court otherwise directs, the application must be in writing and the defendant must serve it on—

- (a) the court officer; and
- (b) the prosecutor.

(4) The application must—

- (a) explain why it would be unjust not to allow the defendant to withdraw the guilty plea;
- (b) identify—
  - (i) any witness that the defendant wants to call, and
  - (ii) any other proposed evidence; and

(51) 1980 c. 43; section 12 was amended by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 1 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), section 109 of, and paragraph 203 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 308 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). Section 12A was inserted by section 45 of, and paragraph 2 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 109 of, and paragraph 204 of Schedule 8 to, the Courts Act 2003 (c. 39).

(52) 1980 c. 43; section 1 was amended by section 43 of the Courts Act 2003 (c. 39).

(53) 2003 c. 44; section 29 was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15).



- (c) say whether the defendant waives legal professional privilege, giving any relevant name and date.

### **Procedure if the court convicts**

**37.10.**—(1) This rule applies if the court convicts the defendant.

(2) The court—

- (a) may exercise its power to require—
  - (i) a statement of the defendant’s financial circumstances,
  - (ii) a pre-sentence report; and
- (b) may (and in some circumstances must) remit the defendant to a youth court for sentence where—
  - (i) the defendant is under 18, and
  - (ii) the convicting court is not itself a youth court.

(3) The prosecutor must—

- (a) summarise the prosecution case, if the sentencing court has not heard evidence;
- (b) identify any offence to be taken into consideration in sentencing;
- (c) provide information relevant to sentence; and
- (d) where it is likely to assist the court, identify any other matter relevant to sentence, including—
  - (i) aggravating and mitigating factors,
  - (ii) the legislation applicable, and
  - (iii) any guidelines issued by the Sentencing Guidelines Council, or guideline cases.

(4) The defendant must provide information relevant to sentence, including details of financial circumstances.

(5) Where the defendant pleads guilty but wants to be sentenced on a different basis to that disclosed by the prosecution case—

- (a) the defendant must set out that basis in writing, identifying what is in dispute;
- (b) the court may invite the parties to make representations about whether the dispute is material to sentence; and
- (c) if the court decides that it is a material dispute, the court will—
  - (i) invite such further representations or evidence as it may require, and
  - (ii) decide the dispute.

(6) Where the court has power to order the endorsement of the defendant’s driving licence, or power to order the disqualification of the defendant from holding or obtaining one—

- (a) if other legislation so permits, a defendant who wants the court not to exercise that power must introduce the evidence or information on which the defendant relies;
- (b) the prosecutor may introduce evidence; and
- (c) the parties may make representations about that evidence or information.

(7) Before the court passes sentence—

- (a) the court must—
  - (i) give the defendant an opportunity to make representations and introduce evidence relevant to sentence, and

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- (ii) where the defendant is under 18, give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well; and
  - (b) the justices' legal adviser or the court must elicit any further information relevant to sentence that the court may require.
- (8) If the court requires more information, it may exercise its power to adjourn the hearing for not more than—
- (a) 3 weeks at a time, if the defendant will be in custody; or
  - (b) 4 weeks at a time.
- (9) When the court has taken into account all the evidence, information and any report available, the general rule is that the court will—
- (a) pass sentence there and then;
  - (b) explain the sentence, the reasons for it, and its effect, in terms the defendant can understand (with help, if necessary); and
  - (c) consider exercising any power it has to make a costs or other order.
- (10) Despite the general rule—
- (a) the court must adjourn the hearing if—
    - (i) the case started with a summons or requisition, and the defendant is absent, and
    - (ii) the court considers passing a custodial sentence, or
    - (iii) the court considers imposing a disqualification (unless it has already adjourned the hearing to give the defendant an opportunity to attend);
  - (b) the court may exercise any power it has to—
    - (i) commit the defendant to the Crown Court for sentence (and in some cases it must do so), or
    - (ii) defer sentence for up to 6 months.

*[Note. See sections 9, 10 and 11 of the Magistrates' Courts Act 1980(54), and sections 143, 158, 164, 172 and 174 of the Criminal Justice Act 2003(55).*

*Under section 11(3A) of the 1980 Act, a custodial sentence passed in the defendant's absence does not take effect until the defendant is brought before the court.*

*Under sections 57D and 57E of the Crime and Disorder Act 1998(56), the court may require a defendant to attend a sentencing hearing by live link.*

*Under section 162 of the Criminal Justice Act 2003(57), the court may require a defendant who is an individual to provide a statement of financial circumstances if the defendant—*

- (a) *serves notice of guilty plea, where rule 37.8 applies; or*

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(54) 1980 c. 43; section 11 was amended by section 123 of, and paragraph 1 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 39 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 39 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 304 of, and paragraphs 25 and 26 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 54 of the Criminal Justice and Immigration Act 2008 (c. 4).

(55) 2003 c. 44; section 143 is to be amended by section 378 of, and paragraph 216 of Schedule 16 to the Armed Forces Act 2006 (c. 52), from a date to be appointed. Section 158 was amended by section 64 of, and Part 4 of Schedule 5 to, the Children Act 2004 (c. 31), article 3 of, and paragraph 19 of Schedule 1 to, The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912) and section 12 of the Criminal Justice and Immigration Act 2008 (c. 4). Section 164 was amended by section 14 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 174 was amended by section 49 of, and paragraph 9 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38). It is to be amended by section 6 of, and paragraphs 71, 80 and 81 of the Criminal Justice and Immigration Act 2008 (c. 4) from a date to be appointed.

(56) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted, by section 45 of the Police and Justice Act 2006 (c. 48).

(57) 2003 c. 44.

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(b) *is convicted.*

*Under section 20A of the Criminal Justice Act 1991(58), it is an offence for a defendant knowingly or recklessly to make a false or incomplete statement of financial circumstances, or to fail to provide such a statement, in response to a request by a court officer on behalf of the court.*

*Under section 156 of the Criminal Justice Act 2003(59), the general rule (subject to exceptions) is that the court must obtain and consider a pre-sentence report—*

(a) *where it is considering a custodial sentence or a community sentence;*

(b) *where it thinks the defendant may pose a significant risk of causing serious harm to the public by further offending.*

*Under section 159 of the Criminal Justice Act 2003(60), where the court obtains a written pre-sentence report about a defendant who is under 18, it may direct that information in it must be withheld if it would be likely to create a risk of significant harm to the defendant.*

*For the circumstances in which a magistrates' court may (and in some cases must) remit the defendant to a youth court for sentence, see section 8 of the Powers of Criminal Courts (Sentencing) Act 2000(61).*

*The Sentencing Guidelines Council may issue sentencing guidelines under section 170 of the Criminal Justice Act 2003(62).*

*For the circumstances in which a court may (and in some cases must) order the endorsement of a defendant's driving licence, or the disqualification of a defendant from holding or obtaining one, see sections 34, 35 and 44 of the Road Traffic Offenders Act 1988. Under that legislation, in some circumstances the court has discretion not to make such an order.*

*The evidence that may be introduced is subject to rules of evidence.*

*In addition to the specific powers to which this rule applies, the court has a general power to adjourn a trial: see rule 37.2.*

*For the circumstances in which a magistrates' court may (and in some cases must) commit a defendant to the Crown Court for sentence, see sections 3, 3A, 3B, 3C, 4, 4A and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(63).*

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(58) 1991 c. 53; section 20A was inserted by section 168 of, and paragraph 43 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by sections 95 and 109 of, and paragraph 350 of Schedule 8 to, the Courts Act 2003 (c. 39).

(59) 2003 c. 44; section 156 is to be amended by sections 6 and 149 of, and paragraphs 71 and 77 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(60) 2003 c. 44; section 159 is to be amended by section 208 of, and paragraphs 145 and 147 of Schedule 21 to, the Legal Services Act 2007 (c. 29), from a date to be appointed.

(61) 2000 c. 6; section 8 was amended by section 41 of, and paragraph 74 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 62 of the Schedule to The Courts Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/886).

(62) 2003 c. 44; section 170 was amended by article 8 of, and paragraph 9 of the Schedule to, The Secretary of State for Justice Order 2007 (S.I. 2007/2128).

(63) 2000 c. 6; section 3 is to be amended by section 41 of, and paragraphs 21 and 22 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) from a date to be appointed. Section 3A is to be inserted by section 41 of, and paragraphs 21 and 23 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) from a date to be appointed and has been amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4). Sections 3B and 3C are to be inserted by section 41 of, and paragraphs 21 and 23 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) from a date to be appointed. Section 4 was amended by section 51 of the Crime (Sentences) Act 1997 (c. 43) and amended by section 106 of, and paragraph 30 of Schedule 7 to, the Crime and Disorder Act 1998 (c. 37). Section 4A is to be inserted by section 41 of, and paragraphs 21 and 25 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) from a date to be appointed. Section 6 was amended by sections 41, 304 and 332 of, and paragraphs 21 and 28 of Schedule 3, paragraphs 90 and 91 of Schedule 32, and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and it is to be further amended by section 332 of, and Part 9 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) from a date to be appointed.

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*Under section 1 of the 2000 Act(64), if (among other things) the defendant consents, the court may defer sentence for up to 6 months, for the purpose of allowing it to take account of the defendant's conduct after conviction, or any change in the defendant's circumstances.]*

### **Procedure where a party is absent**

**37.11.**—(1) This rule—

- (a) applies where a party is absent; but
  - (b) does not apply where the defendant has served a notice of guilty plea under rule 37.8 (written guilty plea: special rules).
- (2) Where the prosecutor is absent, the court may—
- (a) if it has received evidence, deal with the case as if the prosecutor were present; and
  - (b) in any other case—
    - (i) enquire into the reasons for the prosecutor's absence, and
    - (ii) if satisfied there is no good reason, exercise its power to dismiss the allegation.
- (3) Where the defendant is absent—
- (a) the general rule is that the court will proceed as if the defendant—
    - (i) were present, and
    - (ii) had pleaded not guilty (unless a plea already has been taken)
 and the court must give reasons if it does not do so; but
  - (b) the general rule does not apply if the defendant is under 18;
  - (c) the general rule is subject to the court being satisfied that—
    - (i) any summons or requisition was served on the defendant a reasonable time before the hearing, or
    - (ii) in a case in which the hearing has been adjourned, the defendant had reasonable notice of where and when it would resume;
  - (d) the general rule is subject also to rule 37.10(10)(a) (restrictions on passing sentence in the defendant's absence); and
  - (e) the hearing must be treated as if it had not taken place at all if—
    - (i) the case started with a summons or requisition,
    - (ii) the defendant makes a statutory declaration of not having found out about the case until after the hearing began, and
    - (iii) the defendant serves that declaration on the court officer not more than 21 days after the date of finding out about the case, unless the court extends that time limit.
- (4) Where the defendant is absent, the court—
- (a) must exercise its power to issue a warrant for the defendant's arrest, if it passes a custodial sentence; and
  - (b) may exercise its power to do so in any other case, if it does not apply the general rule in paragraph (3)(a) of this rule about proceeding in the defendant's absence.

*[Note. See sections 11, 14, 15 and 16 of the Magistrates' Courts Act 1980(65).*

(64) 2000 c. 6; section 1 was amended by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44) and article 3 of, and paragraph 14 of Schedule 1 to, The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912).

(65) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

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*Under section 27 of the 1980 Act(66), where a magistrates' court dismisses an allegation of an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way), that dismissal has the same effect as an acquittal in the Crown Court.*

*Under section 14(3) of the 1980 Act, a single justice of the peace may extend the time limit for serving a declaration to which rule 37.11(3)(e) applies.*

*Under section 11 of the 1980 Act, the court may pass a custodial sentence in the defendant's absence if the case started with the defendant's arrest and charge (and not with a summons or requisition). Section 11(3A) requires that, in that event, the defendant must be brought before the court before being taken to a prison or other institution to begin serving that sentence. Under section 7(1) of the Bail Act 1976(67), the court has power to issue a warrant for the arrest of a defendant released on bail who has failed to attend court when due to do so.*

*Under section 13 of the 1980 Act(68), the court has power to issue a warrant for the arrest of an absent defendant, instead of proceeding, where—*

- (1) the case started with—*
  - (a) the defendant's arrest and charge, or*
  - (b) a summons or requisition, if—*
    - (i) the court is satisfied that that summons or requisition was served on the defendant a reasonable time before the hearing, or*
    - (ii) the defendant was present when the hearing was arranged; and*
- (2) the offence is punishable with imprisonment; or*
- (3) the defendant has been convicted and the court considers imposing a disqualification.*

*The Practice Direction sets out a form of declaration for use in connection with rule 37.11(3)(e)(ii).]*

### **Provision of documents for the court**

- 37.12.**—(1) This rule applies where a party—
- (a) introduces in evidence any document; or
  - (b) relies on any other document in the presentation of that party's case.
- (2) Unless the court otherwise directs, that party must supply sufficient copies of such a document for—
- (a) each other party;
  - (b) the court; and
  - (c) the justices' legal adviser.

### **Place of trial**

- 37.13.**—(1) Unless the court otherwise directs, the hearing must take place in a courtroom provided by the Lord Chancellor.
- (2) Where the hearing takes place in Wales—

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(66) 1980 c. 43.

(67) 1976 c. 63.

(68) 1980 c. 43; section 13 was amended by section 45 of, and paragraph 3 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 48 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 3 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), sections 31 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and sections 54 and 149 of, and Part 4 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

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- (a) any party or witness may use the Welsh language; and
- (b) if practicable, at least one member of the court must be Welsh-speaking.

*[Note. See section 3 of the Courts Act 2003(69) and section 22 of the Welsh Language Act 1993(70). In some circumstances the court may conduct all or part of the hearing outside a courtroom. The members of the court may discuss the verdict and sentence outside the courtroom.]*

### **Duty of justices' legal adviser**

**37.14.**—(1) A justices' legal adviser must attend, unless the court—

- (a) includes a District Judge (Magistrates' Courts); and
- (b) otherwise directs.

(2) A justices' legal adviser must—

- (a) give the court legal advice; and
- (b) if necessary, attend the members of the court outside the courtroom to give such advice; but
- (c) inform the parties of any such advice given outside the courtroom.

(3) A justices' legal adviser must—

- (a) assist an unrepresented defendant;
- (b) assist the court by—
  - (i) making a note of the substance of any oral evidence or representations, to help the court recall that information,
  - (ii) if the court rules inadmissible part of a written statement introduced in evidence, marking that statement in such a way as to make that clear,
  - (iii) ensuring that an adequate record is kept of the court's decisions and the reasons for them, and
  - (iv) making any announcement, other than of the verdict or sentence.

(4) Where the defendant has served a notice of guilty plea to which rule 37.8 (written guilty plea: special rules) applies, a justices' legal adviser must read aloud to the court—

- (a) the material on which the prosecutor relies to set out the facts of the offence and to provide information relevant to sentence (or summarise any written statement included in that material, if the court so directs); and
- (b) any written representations by the defendant.

*[Note. Section 28 of the Courts Act 2003(71) provides for the functions of a justices' legal adviser. See also section 12 of the Magistrates' Courts Act 1980(72).]*

### **Duty of court officer**

**37.15.** The court officer must—

- (a) serve on each party notice of where and when an adjourned hearing will resume, unless—

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(69) 2003 c. 39.

(70) 1993 c. 38.

(71) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(72) 1980 c. 43; section 12 was amended by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 1 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), section 109 of, and paragraph 203 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 308 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

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- (i) the party was present when that was arranged, or
- (ii) the defendant has served a notice of guilty plea to which rule 37.8 applies, and the adjournment is for not more than 4 weeks;
- (b) if the reason for the adjournment was to postpone sentence, include that reason in any such notice to the defendant;
- (c) unless the court otherwise directs, make available to the parties any written report to which rule 37.10 applies;
- (d) where the court has ordered a defendant to provide information under section 25 of the Road Traffic Offenders Act 1988(73), serve on the defendant notice of that order unless the defendant was present when it was made;
- (e) serve on the prosecutor—
  - (i) any notice of guilty plea to which rule 37.8 applies, and
  - (ii) any declaration served under rule 37.11(3)(e) that the defendant did not know about the case;
- (f) record in the magistrates' court register the court's reasons for not proceeding in the defendant's absence where rule 37.11(3)(a) applies; and
- (g) give the court such other assistance as it requires.

[Note. See sections 10, 11 and 12 of the Magistrates' Courts Act 1980(74).

Under section 25 of the Road Traffic Offenders Act 1988, where the court does not know a defendant's sex or date of birth, then on convicting the defendant of an offence involving obligatory or discretionary disqualification, the court must order the defendant to provide that information.

Under Part 6, the magistrates' court officer must record in the court register details of a case and of the court's decisions.]”

### SCHEDULE 3

Rule 11

“Part 44

#### Breach, revocation and amendment of community and other orders in a magistrates' court

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#### Contents of this Part

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When this Part applies	rule 44.1
Application by responsible officer	rule 44.2

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(73) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(74) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37), section 12A was inserted by section 45 of, and paragraph 2 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 109 of, and paragraph 204 of Schedule 8 to, the Courts Act 2003 (c. 39).

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## Contents of this Part

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Application by defendant or person affected	rule 44.3
Procedure on application by responsible officer	rule 44.4

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### When this Part applies

- 44.1.** This Part applies in a magistrates' court where—
- (a) the officer responsible for a defendant's compliance with an order to which applies—
    - (i) Schedule 3, 5, 7 or 8 to the Powers of Criminal Courts (Sentencing) Act 2000(75),
    - (ii) Schedule 8 to the Criminal Justice Act 2003(76), or
    - (iii) Schedule 2 to the Criminal Justice and Immigration Act 2008(77)
 wants the court to deal with that defendant for failure to comply;
  - (b) one of the following wants the court to exercise any power it has to revoke or amend such an order—
    - (i) the responsible officer,
    - (ii) the defendant, or
    - (iii) a person affected by the order; or
  - (c) the court considers exercising on its own initiative any power it has to revoke or amend such an order.

*[Note. In the Powers of Criminal Courts (Sentencing) Act 2000—*

- (a) *Schedule 3 deals with the breach, revocation and amendment of curfew orders and exclusion orders;*
- (b) *Schedule 5 deals with the breach, revocation and amendment of attendance centre orders;*
- (c) *Schedule 7 deals with the breach, revocation and amendment of supervision orders;*
- (d) *Schedule 8 deals with the breach, revocation and amendment of action plan orders and reparation orders; and*
- (e) *Schedule 5 will be repealed when the relevant provisions of the Criminal Justice Act 2003 come into force; Schedules 3 and 7 will be repealed when the relevant provisions of the Criminal Justice and Immigration Act 2008 come into force; and Schedule 8 no longer will refer to action plan orders when the relevant provisions of the 2008 Act come into force.*

*Schedule 8 to the Criminal Justice Act 2003 deals with the breach, revocation and amendment of community orders.*

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- (75) 2000 c. 6; Schedule 3 is to be substituted by section 304 of, and paragraphs 90 and 125 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) from 4 April 2009 and it is to be repealed by section 149 of, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) from a date to be appointed. Schedules 5 and 7 are to be repealed by section 149 of, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) from a date to be appointed. Paragraph 3(3) of Schedule 7 was amended by section 304 of, and paragraphs 90 and 128 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44); paragraph 6A is to be inserted into Schedule 8 by section 6 of, and paragraphs 106 and 108 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4) from a date to be appointed. Other amendments to these Schedules do not affect the procedure prescribed by these rules.
- (76) 2003 c. 44; paragraph 25A is to be inserted in Schedule 8 by section 6 of, and paragraph 109 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4) from a date to be appointed. Other amendments to Schedule 8 do not affect the procedure prescribed by these rules.
- (77) 2008 c. 4.



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*When it comes into force, Schedule 2 to the Criminal Justice and Immigration Act 2008 will deal with the breach, revocation and amendment of youth rehabilitation orders.*

*Under Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000, Schedule 8 to the Criminal Justice Act 2003 and Schedule 2 to the Criminal Justice and Immigration Act 2008, a single member of the court can adjourn a hearing to which this Part applies.]*

#### **Application by responsible officer**

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

- (a) the responsible officer wants the court to—
  - (i) deal with a defendant for failure to comply with an order to which this Part applies, or
  - (ii) revoke or amend such an order; or
- (b) the court considers exercising on its own initiative any power it has to—
  - (i) revoke or amend such an order, and
  - (ii) summon the defendant to attend for that purpose.

(2) Rules 7.2 to 7.4, which deal, among other things, with starting a prosecution in a magistrates' court by information and summons, apply—

- (a) as if—
  - (i) a reference in those rules to an allegation of an offence included a reference to an allegation of failure to comply with an order to which this Part applies, and
  - (ii) a reference to the prosecutor included a reference to the responsible officer; and
- (b) with the necessary consequential modifications.

#### **Application by defendant or person affected**

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

- (a) the defendant wants the court to exercise any power it has to revoke or amend an order to which this Part applies; or
- (b) a person affected by such an order wants the court to exercise any such power.

(2) That defendant, or person affected, must—

- (a) apply in writing, explaining why the order should be revoked or amended; and
- (b) serve the application on—
  - (i) the court officer,
  - (ii) the responsible officer, and
  - (iii) as appropriate, the defendant or the person affected.

#### **Procedure on application by responsible officer**

**44.4.**—(1) Except for rule 37.8, the rules in Part 37, which deal with the procedure at a trial in a magistrates' court, apply—

- (a) as if—
  - (i) a reference in those rules to an allegation of an offence included a reference to an allegation of failure to comply with an order to which this Part applies,

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- (ii) a reference to the court’s verdict included a reference to the court’s decision to revoke or amend such an order, or to exercise any other power it has to deal with the defendant, and
  - (iii) a reference to the court’s sentence included a reference to the exercise of any such power; and
- (b) with the necessary consequential modifications.
- (2) The court officer must serve on each party any order revoking or amending an order to which this Part applies.”

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules add the following new provisions to The Criminal Procedure Rules 2005:

- a new Part 21 (Initial details of prosecution case), in substitution for the existing Part 21 (Advance information in magistrates' courts), which revises and simplifies the rules about the early provision of details of the prosecution case. The new Part 21 applies unless the court otherwise directs, to allow for the gradual introduction of the arrangements with which it deals into all magistrates' courts and all categories of case. If the court disapplies the new rules, the rules in the old Part 21 will continue to apply.
- a new Part 37 (Trial and sentence in a magistrates' court), in substitution for the existing Part 37 (Summary trial) and Part 38 (Trial of children and young persons), which consolidates, revises and simplifies the rules about procedure at trial in magistrates' courts, including youth courts.
- a new Part 44 (Breach, revocation and amendment of community and other orders in a magistrates' court), in substitution for the existing Part 44 (Sentencing children and young persons). The rules about trial and sentence procedure in magistrates' courts now are all contained in the new Part 37. The new Part 44 rules therefore deal only with the procedures relating to community and other orders to which some of the old Part 38 and Part 44 rules applied.
- new rules in Part 2 (Understanding and applying the Rules) make transitional provision and explain when the new rules in Part 21, Part 37 and Part 44 will apply.

In addition, the following amendments are made:

- Part 2 (Understanding and applying the Rules) is amended to define the expression “justices' legal adviser”, used in the new Part 37 rules.
- Part 19 (Bail in magistrates' courts and the Crown Court) is amended to introduce into magistrates' courts a requirement for advance notice to be given of an application to vary the conditions of subsisting bail, including change of address: which is a requirement that applies already in the Crown Court. A new rule 19.25 is added, to introduce into magistrates' courts and the Crown Court a requirement for the defendant to give notice of the address at which he or she would reside if the court granted bail with a condition of residence, so as to help the court assess the suitability of the address proposed.
- The Arrangement of Rules is amended to accommodate the changes to Part titles made in this and previous amendments of The Criminal Procedure Rules 2005.

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The changes made by these Rules come into force on 6th April 2009.