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STATUTORY INSTRUMENTS

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**2014 No. 1610**

**The Criminal Procedure Rules 2014**

**PART 1**

**THE OVERRIDING OBJECTIVE**

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**The overriding objective**

- 1.1.**—(1) The overriding objective of this new code is that criminal cases be dealt with justly.
- (2) Dealing with a criminal case justly includes—
- (a) acquitting the innocent and convicting the guilty;
  - (b) dealing with the prosecution and the defence fairly;
  - (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
  - (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
  - (e) dealing with the case efficiently and expeditiously;
  - (f) ensuring that appropriate information is available to the court when bail and sentence are considered; and
  - (g) dealing with the case in ways that take into account—
    - (i) the gravity of the offence alleged,
    - (ii) the complexity of what is in issue,
    - (iii) the severity of the consequences for the defendant and others affected, and
    - (iv) the needs of other cases.

**The duty of the participants in a criminal case**

- 1.2.**—(1) Each participant, in the conduct of each case, must—
- (a) prepare and conduct the case in accordance with the overriding objective;
  - (b) comply with these Rules, practice directions and directions made by the court; and
  - (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these

Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

### **The application by the court of the overriding objective**

**1.3.** The court must further the overriding objective in particular when—

- (a) exercising any power given to it by legislation (including these Rules);
- (b) applying any practice direction; or
- (c) interpreting any rule or practice direction.

## PART 2

### UNDERSTANDING AND APPLYING THE RULES

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#### **When the Rules apply**

**2.1.—**(1) In general, Criminal Procedure Rules apply—

- (a) in all criminal cases in magistrates' courts and in the Crown Court;
- (b) in extradition cases in the High Court; and
- (c) in all cases in the criminal division of the Court of Appeal.

(2) If a rule applies only in one or some of those courts, the rule makes that clear.

(3) These Rules apply on and after 6<sup>th</sup> October, 2014, but—

- (a) unless the court otherwise directs, they do not affect a right or duty existing under the Criminal Procedure Rules 2013(1); and
- (b) unless the High Court otherwise directs, Section 3 of Part 17 (Extradition – appeal to the High Court) does not apply to a case in which notice of an appeal was given before that date.

(4) In a case in which a request for extradition was received by a relevant authority in the United Kingdom on or before 31<sup>st</sup> December, 2003—

- (a) the rules in Part 17 (Extradition) do not apply; and
- (b) the rules in Part 17 of the Criminal Procedure Rules 2012(2) continue to apply as if those rules had not been revoked.

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(1) S.I. 201/1554; amended by S.I. 2013/2525, 2013/3183.

(2) S.I. 2012/1726; amended by S.I. 2012/3089.

*[Note. The rules replaced by the first Criminal Procedure Rules (the Criminal Procedure Rules 2005(3)) were revoked when those Rules came into force by provisions of the Courts Act 2003, the Courts Act 2003 (Consequential Amendments) Order 2004(4) and the Courts Act 2003 (Commencement No. 6 and Savings) Order 2004(5). The first Criminal Procedure Rules reproduced the substance of all the rules they replaced.]*

*The rules in Part 17 of the Criminal Procedure Rules 2012 applied to extradition proceedings under the Backing of Warrants (Republic of Ireland) Act 1965(6) or under the Extradition Act 1989(7). By section 218 of the Extradition Act 2003, the 1965 and 1989 Acts ceased to have effect when the 2003 Act came into force. By article 2 of the Extradition Act 2003 (Commencement and Savings) Order 2003(8), the 2003 Act came into force on 1<sup>st</sup> January, 2004. However, article 3 of that Order(9) provided that the coming into force of the Act did not apply for the purposes of any request for extradition, whether made under any of the provisions of the Extradition Act 1989 or of the Backing of Warrants (Republic of Ireland) Act 1965 or otherwise, which was received by the relevant authority in the United Kingdom on or before 31<sup>st</sup> December, 2003.]*

## Definitions

2.2.—(1) In these Rules, unless the context makes it clear that something different is meant:

‘business day’ means any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday;

‘court’ means a tribunal with jurisdiction over criminal cases. It includes a judge, recorder, District Judge (Magistrates’ Court), lay justice and, when exercising their judicial powers, the Registrar of Criminal Appeals, a justices’ clerk or assistant clerk;

‘court officer’ means the appropriate member of the staff of a court;

‘justices’ legal adviser’ means a justices’ clerk or an assistant to a justices’ clerk;

‘live link’ means an arrangement by which a person can see and hear, and be seen and heard by, the court when that person is not in court;

‘Practice Direction’ means the Lord Chief Justice’s Criminal Practice Directions, as amended, and ‘Criminal Costs Practice Direction’ means the Lord Chief Justice’s Practice Direction (Costs in Criminal Proceedings), as amended;

‘public interest ruling’ means a ruling about whether it is in the public interest to disclose prosecution material under sections 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(10); and

‘Registrar’ means the Registrar of Criminal Appeals or a court officer acting with the Registrar’s authority.

(2) Definitions of some other expressions are in the rules in which they apply.

*[Note. The glossary at the end of the Rules is a guide to the meaning of certain legal expressions used in them.]*

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(3) S.I. 2005/384; amended by S.I. 2006/353, 2006/2636, 2007/699, 2007/2317, 2007/3662, 2008/2076, 2008/3269 and 2009/2087.

(4) S.I. 2004/2035.

(5) S.I. 2004/2066.

(6) 1965 c. 45; the Act was repealed by section 218(a) of, and Schedule 4 to, the Extradition Act 2003 (c. 41).

(7) 1989 c. 33; the Act was repealed by section 218(b) of, and Schedule 4 to, the Extradition Act 2003 (c. 41) with savings and territorial exceptions.

(8) S.I. 2003/3103.

(9) S.I. 2003/3103; article 3 was substituted by article 2 of S.I. 2003/3312.

(10) 1996 c. 25; section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

## References to Acts of Parliament and to Statutory Instruments

**2.3.** In these Rules, where a rule refers to an Act of Parliament or to subordinate legislation by title and year, subsequent references to that Act or to that legislation in the rule are shortened: so, for example, after a reference to the Criminal Procedure and Investigations Act 1996(11) that Act is called ‘the 1996 Act’; and after a reference to the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(12) those Regulations are called ‘the 2011 Regulations’.

## Representatives

**2.4.—**(1) Under these Rules, unless the context makes it clear that something different is meant, anything that a party may or must do may be done—

- (a) by a legal representative on that party’s behalf;
- (b) by a person with the corporation’s written authority, where that corporation is a defendant;
- (c) with the help of a parent, guardian or other suitable supporting adult where that party is a defendant—
  - (i) who is under 18, or
  - (ii) whose understanding of what the case involves is limited.

(2) A member, officer or employee of a prosecutor may, on the prosecutor’s behalf—

- (a) serve on the magistrates’ court officer, or present to a magistrates’ court, an information under section 1 of the Magistrates’ Courts Act 1980(13); or
- (b) issue a written charge and requisition under section 29 of the Criminal Justice Act 2003(14).

*[Note. See also section 122 of the Magistrates’ Courts Act 1980(15). A party’s legal representative must be entitled to act as such under section 13 of the Legal Services Act 2007(16).*

*Section 33(6) of the Criminal Justice Act 1925(17), section 46 of the Magistrates’ Courts Act 1980(18) and Schedule 3 to that Act(19) provide for the representation of a corporation.*

*Sections 3 and 6 of the Prosecution of Offences Act 1985(20) make provision about the institution of prosecutions.*

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(11) 1996 c. 25.

(12) S.I. 2011/209.

(13) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(14) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, S.I. 2008/1424 and S.I. 2009/2879). It 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).

(15) 1980 c. 43; section 122 was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41).

(16) 2007 c. 29.

(17) 1925 c. 86.

(18) 1980 c. 43.

(19) 1980 c. 43; Schedule 3 was amended by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), section 47 of, and paragraph 13 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) (in relation to proceedings begun on or after 1 April 1997) and paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(20) 1985 c. 23; section 3 was amended by section 15 of, and paragraph 13 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), section 134 of, and paragraph 48 of Schedule 9 to, the Police Act 1997 (c. 50), section 164 of the Immigration and Asylum Act 1999 (c. 33), paragraph 10 of Schedule 7 to the Police Reform Act 2002 (c. 30), sections 86 and 92 of, and Schedule 3 to, the Anti-social Behaviour Act 2003 (c. 38), section 190 of the Extradition Act 2003 (c. 41), section 7 of the Asylum and Immigration (Treatment of Claimants, etc)

*Section 223 of the Local Government Act 1972(21) allows a member or officer of a local authority on that authority's behalf to prosecute or defend a case before a magistrates' court, and to appear in and to conduct any proceedings before a magistrates' court.*

*Part 7 contains rules about starting a prosecution.]*

## PART 3

### CASE MANAGEMENT

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Act 2004 (c. 19), section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 59, 140 and 174 of, and paragraph 47 of Schedule 4 and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 7, 8 and 52 of, and paragraph 15 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38), section 74 of, and paragraph 149 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), paragraph 171 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13), section 15 of, and paragraph 30 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2014/834.

(21) 1972 c. 70; section 223 was amended by paragraph 9 of Schedule 3 to the Solicitors Act 1974 (c. 47), section 134 of, and Schedule 10 to, the Police Act 1977 (c. 50), section 84 of, and paragraph 21 of Schedule 14 to, the Local Government Act 1985 (c. 51), section 237 of, and Schedule 13 to, the Education Reform Act 1988 (c. 40), section 120 of, and paragraph 17 of Schedule 22 and Schedule 24 to, the Environment Act 1995 (c. 25), paragraph 1 of Schedule 7 to the Police Act 1996 (c. 16), paragraphs 1 and 13 of Schedule 13 to the Local Government and Public Involvement in Health Act 2007 (c. 28), section 208 of, and paragraph 28 of Schedule 21 to, the Legal Services Act 2007 (c. 29), paragraphs 10 and 24 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20), paragraphs 100 and 109 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and article 2 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2001/3719.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## GENERAL RULES

### When this Part applies

**3.1.**—(1) Rules 3.1 to 3.12 apply to the management of each case in a magistrates' court and in the Crown Court (including an appeal to the Crown Court) until the conclusion of that case.

(2) Rules 3.13 to 3.26 apply where—

- (a) the defendant is sent to the Crown Court for trial;
- (b) a High Court or Crown Court judge gives permission to serve a draft indictment; or
- (c) the Court of Appeal orders a retrial.

*[Note. Rules that apply to procedure in the Court of Appeal are in Parts 65 to 73 of these Rules.*

*A magistrates' court may send a defendant for trial in the Crown Court under section 51 or 51A of the Crime and Disorder Act 1998(22). See Part 9 for the procedure on allocation and sending for trial.*

*Under paragraph 2(1) of Schedule 17 to the Crime and Courts Act 2013(23) and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(24), the Crown Court may give permission to serve a draft indictment where it approves a deferred prosecution agreement. See Part 12 for the rules about that procedure and Part 14 for the rules about indictments.*

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(22) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(23) 2013 c. 22.

(24) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25) and paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).

*The procedure for applying for the permission of a High Court judge to serve a draft indictment is in rules 6 to 10 of the Indictments (Procedure) Rules 1971(25). See also the Practice Direction.*

*The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968(26) (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003(27) (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act, and rules 41.14 and 41.15, require the arraignment of a defendant within 2 months.]*

### **The duty of the court**

- 3.2.**—(1) The court must further the overriding objective by actively managing the case.
- (2) Active case management includes—
- (a) the early identification of the real issues;
  - (b) the early identification of the needs of witnesses;
  - (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
  - (d) monitoring the progress of the case and compliance with directions;
  - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
  - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
  - (g) encouraging the participants to co-operate in the progression of the case; and
  - (h) making use of technology.
- (3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

### **The duty of the parties**

- 3.3.** Each party must—
- (a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and
  - (b) apply for a direction if needed to further the overriding objective.

### **Case progression officers and their duties**

- 3.4.**—(1) At the beginning of the case each party must, unless the court otherwise directs—
- (a) nominate someone responsible for progressing that case; and
  - (b) tell other parties and the court who that is and how to contact that person.
- (2) In fulfilling its duty under rule 3.2, the court must where appropriate—
- (a) nominate a court officer responsible for progressing the case; and

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(25) S. I. 1971/2084; amended by S.I. 1997/711, 2000/3360.

(26) 1968 c. 19; section 8 was amended by Section 12 of, and paragraph 38 of Schedule 2 to, the Bail Act 1976 (c. 63), section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 65 of, and paragraph 36 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 43 of the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 19 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraph 43 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 32 of, and paragraph 2 of Schedule 4 to, the Mental Health Act 2007 (c. 12).

(27) 2003 c. 44.

- (b) make sure the parties know who that is and how to contact that court officer.
- (3) In this Part a person nominated under this rule is called a case progression officer.
- (4) A case progression officer must—
  - (a) monitor compliance with directions;
  - (b) make sure that the court is kept informed of events that may affect the progress of that case;
  - (c) make sure that he or she can be contacted promptly about the case during ordinary business hours;
  - (d) act promptly and reasonably in response to communications about the case; and
  - (e) if he or she will be unavailable, appoint a substitute to fulfil his or her duties and inform the other case progression officers.

### **The court's case management powers**

**3.5.—(1)** In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.

- (2) In particular, the court may—
  - (a) nominate a judge, magistrate or justices' legal adviser to manage the case;
  - (b) give a direction on its own initiative or on application by a party;
  - (c) ask or allow a party to propose a direction;
  - (d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
  - (e) give a direction—
    - (i) at a hearing, in public or in private, or
    - (ii) without a hearing;
  - (f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
  - (g) shorten or extend (even after it has expired) a time limit fixed by a direction;
  - (h) require that issues in the case should be—
    - (i) identified in writing,
    - (ii) determined separately, and decide in what order they will be determined; and
  - (i) specify the consequences of failing to comply with a direction.
- (3) A magistrates' court may give a direction that will apply in the Crown Court if the case is to continue there.
- (4) The Crown Court may give a direction that will apply in a magistrates' court if the case is to continue there.
- (5) Any power to give a direction under this Part includes a power to vary or revoke that direction.
- (6) If a party fails to comply with a rule or a direction, the court may—
  - (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
  - (b) exercise its powers to make a costs order; and
  - (c) impose such other sanction as may be appropriate.



*[Note. Depending upon the nature of a case and the stage that it has reached, its progress may be affected by other Criminal Procedure Rules and by other legislation. The note at the end of this Part lists other rules and legislation that may apply.*

*See also rule 3.9 (Case preparation and progression).*

*The court may make a costs order under—*

- (a) section 19 of the Prosecution of Offences Act 1985(28), where the court decides that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party;*
- (b) section 19A of that Act(29), where the court decides that a party has incurred costs as a result of an improper, unreasonable or negligent act or omission on the part of a legal representative;*
- (b) section 19B of that Act(30), where the court decides that there has been serious misconduct by a person who is not a party.*

*Under some other legislation, including Parts 33, 34 and 35 of these Rules, if a party fails to comply with a rule or a direction then in some circumstances—*

- (a) the court may refuse to allow that party to introduce evidence;*
- (b) evidence that that party wants to introduce may not be admissible;*
- (c) the court may draw adverse inferences from the late introduction of an issue or evidence.*

*See also—*

- (a) section 81(1) of the Police and Criminal Evidence Act 1984(31) and section 20(3) of the Criminal Procedure and Investigations Act 1996(32)(advance disclosure of expert evidence);*
- (b) section 11(5) of the Criminal Procedure and Investigations Act 1996(33)(faults in disclosure by accused);*
- (c) section 132(5) of the Criminal Justice Act 2003(34)(failure to give notice of hearsay evidence).]*

### **Application to vary a direction**

**3.6.—(1)** A party may apply to vary a direction if—

- (a) the court gave it without a hearing;
- (b) the court gave it at a hearing in that party's absence; or
- (c) circumstances have changed.

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(28) 1985 c. 23; section 19 was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 45 of, and Schedule 6 to, the Legal Aid Act 1988 (c. 34), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 24 of, and paragraphs 27 and 28 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), sections 40 and 67 of, and paragraph 4 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 99 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52) and section 6 of, and paragraph 32 of Schedule 4 and paragraphs 1 and 5 of Schedule 27 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further amended by paragraphs 22 and 23 of Schedule 5, and paragraphs 1 and 5 and Part 4 of Schedule 7, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.

(29) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(30) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

(31) 1984 c. 60; section 81(1) was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c.39).

(32) 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).

(33) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).

(34) 2003 c. 44.

- (2) A party who applies to vary a direction must—
  - (a) apply as soon as practicable after becoming aware of the grounds for doing so; and
  - (b) give as much notice to the other parties as the nature and urgency of the application permits.

#### **Agreement to vary a time limit fixed by a direction**

- 3.7.**—(1) The parties may agree to vary a time limit fixed by a direction, but only if—
- (a) the variation will not—
    - (i) affect the date of any hearing that has been fixed, or
    - (ii) significantly affect the progress of the case in any other way;
  - (b) the court has not prohibited variation by agreement; and
  - (c) the court’s case progression officer is promptly informed.
- (2) The court’s case progression officer must refer the agreement to the court if in doubt that the condition in paragraph (1)(a) is satisfied.

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

- 3.8.**—(1) The court may—
- (a) shorten or extend (even after it has expired) a time limit set by this Part; and
  - (b) allow an application or representations to be made orally.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application or representations for which it is needed; and
  - (b) explain the delay.

#### **Case preparation and progression**

- 3.9.**—(1) At every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.
- (2) At every hearing the court must, where relevant—
- (a) if the defendant is absent, decide whether to proceed nonetheless;
  - (b) take the defendant’s plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;
  - (c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;
  - (d) in giving directions, ensure continuity in relation to the court and to the parties’ representatives where that is appropriate and practicable; and
  - (e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.
- (3) In order to prepare for the trial, the court must take every reasonable step—
- (a) to encourage and to facilitate the attendance of witnesses when they are needed; and
  - (b) to facilitate the participation of any person, including the defendant.
- (4) Facilitating the participation of the defendant includes finding out whether the defendant needs interpretation because—
- (a) the defendant does not speak or understand English; or
  - (b) the defendant has a hearing or speech impediment.

- (5) Where the defendant needs interpretation—
- (a) the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend;
  - (b) interpretation may be by an intermediary where the defendant has a speech impediment, without the need for a defendant’s evidence direction;
  - (c) on application or on its own initiative, the court may require a written translation to be provided for the defendant of any document or part of a document, unless—
    - (i) translation of that document, or part, is not needed to explain the case against the defendant, or
    - (ii) the defendant agrees to do without and the court is satisfied that the agreement is clear and voluntary and that the defendant has had legal advice or otherwise understands the consequences;
  - (d) on application by the defendant, the court must give any direction which the court thinks appropriate, including a direction for interpretation by a different interpreter, where—
    - (i) no interpretation is provided,
    - (ii) no translation is ordered or provided in response to a previous application by the defendant, or
    - (iii) the defendant complains about the quality of interpretation or of any translation.
- (6) Facilitating the participation of any person includes giving directions for the appropriate treatment and questioning of a witness or the defendant, especially where the court directs that such questioning is to be conducted through an intermediary.

*[Note. Part 29 (Measures to assist a witness or defendant to give evidence) contains rules about an application for a defendant’s evidence direction under (among other provisions) sections 33BA and 33BB of the Youth Justice and Criminal Evidence Act 1999(35).*

*See also Directive 2010/64/EU of the European Parliament and of the Council of 20<sup>th</sup> October, 2010, on the right to interpretation and translation in criminal proceedings(36).*

*Where a trial in the Crown Court will take place in Wales and a participant wishes to use the Welsh language, see rule 3.26. Where a trial in a magistrates’ court will take place in Wales, a participant may use the Welsh language: see rule 37.13.]*

### **Readiness for trial or appeal**

- 3.10.**—(1) This rule applies to a party’s preparation for trial or appeal, and in this rule and rule 3.11 ‘trial’ includes any hearing at which evidence will be introduced.
- (2) In fulfilling the duty under rule 3.3, each party must—
- (a) comply with directions given by the court;
  - (b) take every reasonable step to make sure that party’s witnesses will attend when they are needed;
  - (c) make appropriate arrangements to present any written or other material; and
  - (d) promptly inform the court and the other parties of anything that may—
    - (i) affect the date or duration of the trial or appeal, or
    - (ii) significantly affect the progress of the case in any other way.

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(35) 1999 c. 23; sections 33BA and 33BB are inserted by section 104 of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(36) OJ L 280, 26.10.2010, p.1.

- (3) The court may require a party to give a certificate of readiness.

### **Conduct of a trial or an appeal**

**3.11.** In order to manage a trial or an appeal, the court—

- (a) must establish, with the active assistance of the parties, what are the disputed issues;
- (b) must consider setting a timetable that—
  - (i) takes account of those issues and of any timetable proposed by a party, and
  - (ii) may limit the duration of any stage of the hearing;
- (c) may require a party to identify—
  - (i) which witnesses that party wants to give evidence in person,
  - (ii) the order in which that party wants those witnesses to give their evidence,
  - (iii) whether that party requires an order compelling the attendance of a witness,
  - (iv) what arrangements are desirable to facilitate the giving of evidence by a witness,
  - (v) what arrangements are desirable to facilitate the participation of any other person, including the defendant,
  - (vi) what written evidence that party intends to introduce,
  - (vii) what other material, if any, that person intends to make available to the court in the presentation of the case, and
  - (viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal; and
- (d) may limit—
  - (i) the examination, cross-examination or re-examination of a witness, and
  - (ii) the duration of any stage of the hearing.

*[Note. See also rules 3.5 (The court's case management powers) and 3.9 (Case preparation and progression).]*

### **Case management forms and records**

**3.12.—**(1) The case management forms set out in the Practice Direction must be used, and where there is no form then no specific formality is required.

- (2) The court must make available to the parties a record of directions given.

(3) Where a person is entitled or required to attend a hearing, the court officer must give as much notice as reasonably practicable to—

- (a) that person; and
- (b) that person's custodian (if any).

## *PREPARATION FOR TRIAL IN THE CROWN COURT*

### **Pre-trial hearings: general rules**

**3.13.—**(1) The Crown Court—

- (a) may, and in some cases must, conduct a preparatory hearing where rule 3.14 applies;
- (b) must conduct a plea and case management hearing unless the circumstances make that unnecessary;

- (c) may conduct any other pre-trial hearing where—
  - (i) the court anticipates a guilty plea, or
  - (ii) it is necessary to conduct such a hearing in order to give directions for an effective trial.
- (2) A pre-trial hearing—
  - (a) must be in public, as a general rule, but all or part of the hearing may be in private if the court so directs; and
  - (b) must be recorded, in accordance with rule 5.5 (Recording and transcription of proceedings in the Crown Court).
- (3) Where the court determines a pre-trial application in private, it must announce its decision in public.

*[Note. See also the general rules in the first section of this Part (rules 3.1 to 3.12) and the other rules in this section.]*

*The Practice Direction lists the circumstances in which the Crown Court should conduct a plea and case management hearing.*

*There are rules relevant to applications which may be made at a pre-trial hearing in Part 16 (Reporting, etc. restrictions), Part 19 (Bail and custody time limits), Part 22 (Disclosure), Part 28 (Witness summonses, warrants and orders), Part 29 (Measures to assist a witness or defendant to give evidence), Part 33 (Expert evidence), Part 34 (Hearsay evidence), Part 35 (Evidence of bad character) and Part 36 (Evidence of a complainant's previous sexual behaviour).*

*On an application to which Part 19 (Bail and custody time limits) applies, rule 19.2 (exercise of court's powers under that Part) may require the defendant's presence, which may be by live link. Where rule 19.10 applies (Consideration of bail in a murder case), the court officer must arrange for the Crown Court to consider bail within 2 business days of the first hearing in the magistrates' court.*

*Under section 40 of the Criminal Procedure and Investigations Act 1996(37), a pre-trial ruling about the admissibility of evidence or any other question of law is binding unless it later appears to the court in the interests of justice to discharge or vary that ruling.]*

### **Preparatory hearing**

- 3.14.—**(1) This rule applies where the Crown Court—
- (a) can order a preparatory hearing, under—
    - (i) section 7 of the Criminal Justice Act 1987(38) (cases of serious or complex fraud), or
    - (ii) section 29 of the Criminal Procedure and Investigations Act 1996(39) (other complex, serious or lengthy cases);
  - (b) must order such a hearing, to determine an application for a trial without a jury, under—
    - (i) section 44 of the Criminal Justice Act 2003(40) (danger of jury tampering), or

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(37) 1996 c. 25.

(38) 1987 c. 38; section 7 is amended by paragraph 30 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), sections 72 and 80 of, paragraph 2 of Schedule 3 to, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(39) 1996 c. 25; section 29 is amended by sections 45, 309 and 310 of, and paragraphs 65 and 66 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 16 of the Terrorism Act 2006 (c. 11).

(40) 2003 c. 44.

- (ii) section 17 of the Domestic Violence, Crime and Victims Act 2004<sup>(41)</sup> (trial of sample counts by jury, and others by judge alone);
  - (c) must order such a hearing, under section 29 of the 1996 Act, where section 29(1B) or (1C) applies (cases in which a terrorism offence is charged, or other serious cases with a terrorist connection).
- (2) The court may decide whether to order a preparatory hearing—
- (a) on an application or on its own initiative;
  - (b) at a hearing (in public or in private), or without a hearing;
  - (c) in a party's absence, if that party—
    - (i) applied for the order, or
    - (ii) has had at least 14 days in which to make representations.

*[Note. See also section 45(2) of the Criminal Justice Act 2003 and section 18(1) of the Domestic Violence, Crime and Victims Act 2004.*

*At a preparatory hearing, the court may—*

- (a) *require the prosecution to set out its case in a written statement, to arrange its evidence in a form that will be easiest for the jury (if there is one) to understand, to prepare a list of agreed facts, and to amend the case statement following representations from the defence (section 9(4) of the 1987 Act, section 31(4) of the 1996 Act); and*
- (b) *require the defence to give notice of any objection to the prosecution case statement, and to give notice stating the extent of agreement with the prosecution as to documents and other matters and the reason for any disagreement (section 9(5) of the 1987 Act, section 31(6), (7), (9) of the 1996 Act).*

*Under section 10 of the 1987 Act<sup>(42)</sup>, and under section 34 of the 1996 Act<sup>(43)</sup>, if either party later departs from the case or objections disclosed by that party, then the court, or another party, may comment on that, and the court may draw such inferences as appear proper.]*

### **Application for preparatory hearing**

- 3.15.—**(1) A party who wants the court to order a preparatory hearing must—
- (a) apply in writing—
    - (i) as soon as reasonably practicable, and in any event
    - (ii) not more than 14 days after the defendant pleads not guilty;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party.
- (2) The applicant must—
- (a) if relevant, explain what legislation requires the court to order a preparatory hearing;
  - (b) otherwise, explain—
    - (i) what makes the case complex or serious, or makes the trial likely to be long,
    - (ii) why a substantial benefit will accrue from a preparatory hearing, and

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<sup>(41)</sup> 2004 c. 28.

<sup>(42)</sup> 1987 c. 38; section 10 is amended by section 72 of, and paragraph 5 of Schedule 3 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 52 and 55 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

<sup>(43)</sup> 1996 c. 25; section 34 is amended by paragraphs 65 and 68 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

- (iii) why the court's ordinary powers of case management are not adequate.
- (3) A prosecutor who wants the court to order a trial without a jury must explain—
  - (a) where the prosecutor alleges a danger of jury tampering—
    - (i) what evidence there is of a real and present danger that jury tampering would take place,
    - (ii) what steps, if any, reasonably might be taken to prevent jury tampering, and
    - (iii) why, notwithstanding such steps, the likelihood of jury tampering is so substantial as to make it necessary in the interests of justice to order such a trial; or
  - (b) where the prosecutor proposes trial without a jury on some counts on the indictment—
    - (i) why a trial by jury involving all the counts would be impracticable,
    - (ii) how the counts proposed for jury trial can be regarded as samples of the others, and
    - (iii) why it would be in the interests of justice to order such a trial.

**Application for non-jury trial containing information withheld from a defendant**

- 3.16.**—(1) This rule applies where—
- (a) the prosecutor applies for an order for a trial without a jury because of a danger of jury tampering; and
  - (b) the application includes information that the prosecutor thinks ought not be revealed to a defendant.
- (2) The prosecutor must—
- (a) omit that information from the part of the application that is served on that defendant;
  - (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
  - (c) in that other part, explain why the prosecutor has withheld that information from that defendant.
- (3) The hearing of an application to which this rule applies—
- (a) must be in private, unless the court otherwise directs; and
  - (b) if the court so directs, may be, wholly or in part, in the absence of a defendant from whom information has been withheld.
- (4) At the hearing of an application to which this rule applies—
- (a) the general rule is that the court will receive, in the following sequence—
    - (i) representations first by the prosecutor and then by each defendant, in all the parties' presence, and then
    - (ii) further representations by the prosecutor, in the absence of a defendant from whom information has been withheld; but
  - (b) the court may direct other arrangements for the hearing.
- (5) Where, on an application to which this rule applies, the court orders a trial without a jury—
- (a) the general rule is that the trial will be before a judge other than the judge who made the order; but
  - (b) the court may direct other arrangements.

### **Representations in response to application for preparatory hearing**

- 3.17.**—(1) This rule applies where a party wants to make representations about—
- (a) an application for a preparatory hearing;
  - (b) an application for a trial without a jury.
- (2) Such a party must—
- (a) serve the representations on—
    - (i) the court officer, and
    - (ii) each other party;
  - (b) do so not more than 14 days after service of the application;
  - (c) ask for a hearing, if that party wants one, and explain why it is needed.
- (3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—
- (a) omit that information from the representations served on that other party;
  - (b) mark the information to show that, unless the court otherwise directs, it is only for the court; and
  - (c) with that information include an explanation of why it has been withheld from that other party.
- (4) Representations against an application for an order must explain why the conditions for making it are not met.

### **Commencement of preparatory hearing**

- 3.18.** At the beginning of a preparatory hearing, the court must—
- (a) announce that it is such a hearing; and
  - (b) take the defendant's plea under rule 3.24 (Arraigning the defendant on the indictment), unless already done.

*[Note. See section 8 of the Criminal Justice Act 1987(44) and section 30 of the Criminal Procedure and Investigations Act 1996(45).]*

### **Defence trial advocate**

- 3.19.**—(1) The defendant must notify the court officer of the identity of the intended defence trial advocate—
- (a) as soon as practicable, and in any event no later than the day of the plea and case management hearing;
  - (b) in writing, or orally at the plea and case management hearing.
- (2) The defendant must notify the court officer in writing of any change in the identity of the intended defence trial advocate as soon as practicable, and in any event not more than 5 business days after that change.

### **Application to stay case for abuse of process**

- 3.20.**—(1) This rule applies where a defendant wants the Crown Court to stay the case on the grounds that the proceedings are an abuse of the court, or otherwise unfair.

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(44) 1987 c. 38.

(45) 1996 c. 25.



- (2) Such a defendant must—
- (a) apply in writing—
    - (i) as soon as practicable after becoming aware of the grounds for doing so,
    - (ii) at a pre-trial hearing, unless the grounds for the application do not arise until trial, and
    - (iii) in any event, before the defendant pleads guilty or the jury (if there is one) retires to consider its verdict at trial;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (c) in the application—
    - (i) explain the grounds on which it is made,
    - (ii) include, attach or identify all supporting material,
    - (iii) specify relevant events, dates and propositions of law, and
    - (iv) identify any witness the applicant wants to call to give evidence in person.
- (3) A party who wants to make representations in response to the application must serve the representations on—
- (a) the court officer; and
  - (b) each other party,
- not more than 14 days after service of the application.

**Application for joint or separate trials, etc.**

- 3.21.—**(1) This rule applies where a party wants the Crown Court to order—
- (a) the joint trial of—
    - (i) offences charged by separate indictments, or
    - (ii) defendants charged in separate indictments;
  - (b) separate trials of offences charged by the same indictment;
  - (c) separate trials of defendants charged in the same indictment; or
  - (d) the deletion of a count from an indictment.
- (2) Such a party must—
- (a) apply in writing—
    - (i) as soon as practicable after becoming aware of the grounds for doing so, and
    - (ii) before the trial begins, unless the grounds for the application do not arise until trial;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (c) in the application—
    - (i) specify the order proposed, and
    - (ii) explain why it should be made.
- (3) A party who wants to make representations in response to the application must serve the representations on—
- (a) the court officer; and

(b) each other party,  
not more than 14 days after service of the application.

*[Note. See section 5 of the Indictments Act 1915. Rule 14.2 governs the form and content of an indictment.]*

### **Order for joint or separate trials, or amendment of the indictment**

**3.22.**—(1) This rule applies where the Crown Court makes an order—

- (a) on an application under rule 3.21 applies (Application for joint or separate trials, etc.); or
- (b) amending an indictment in any other respect.

(2) Unless the court otherwise directs, the court officer must endorse any paper copy of each affected indictment made for the court with—

- (a) a note of the court’s order; and
- (b) the date of that order.

### **Application for indication of sentence**

**3.23.**—(1) This rule applies where a defendant wants the Crown Court to give an indication of the maximum sentence that would be passed if a guilty plea were entered when the indication is sought.

(2) Such a defendant must—

- (a) apply in writing as soon as practicable; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the prosecutor.

(3) The application must—

- (a) specify—
  - (i) the offence or offences to which it would be a guilty plea, and
  - (ii) the facts on the basis of which that plea would be entered; and
- (b) include the prosecutor’s agreement to, or representations on, that proposed basis of plea.

(4) The prosecutor must—

- (a) provide information relevant to sentence, including—
  - (i) any previous conviction of the defendant, and the circumstances where relevant,
  - (ii) any statement of the effect of the offence on the victim, the victim’s family or others; and
- (b) identify any other matter relevant to sentence, including—
  - (i) the legislation applicable,
  - (ii) any sentencing guidelines, or guideline cases, and
  - (iii) aggravating and mitigating factors.

(5) The hearing of the application—

- (a) may take place in the absence of any other defendant;
- (b) must be attended by—
  - (i) the applicant defendant’s legal representatives (if any), and
  - (ii) the prosecution advocate.

### **Arraigning the defendant on the indictment**

- 3.24.**—(1) In order to take the defendant’s plea, the Crown Court must—
- (a) ensure that the defendant is correctly identified by the indictment;
  - (b) in respect of each count in the indictment—
    - (i) read the count aloud to the defendant, or arrange for it to be read aloud or placed before the defendant in writing,
    - (ii) ask whether the defendant pleads guilty or not guilty to the offence charged by that count, and
    - (iii) take the defendant’s plea.
- (2) Where a count is read which is substantially the same as one already read aloud, then only the materially different details need be read aloud.
- (3) Where a count is placed before the defendant in writing, the court must summarise its gist aloud.
- (4) In respect of each count in the indictment—
- (a) if the defendant declines to enter a plea, the court must treat that as a not guilty plea unless rule 38.11 applies (defendant unfit to plead);
  - (b) if the defendant pleads not guilty to the offence charged by that count but guilty to another offence of which the court could convict on that count—
    - (i) if the prosecutor and the court accept that plea, the court must treat the plea as one of guilty of that other offence, but
    - (ii) otherwise, the court must treat the plea as one of not guilty;
  - (c) if the defendant pleads a previous acquittal or conviction of the offence charged by that count—
    - (i) the defendant must identify that acquittal or conviction in writing, explaining the basis of that plea, and
    - (ii) the court must exercise its power to decide whether that plea disposes of that count.

*[Note. See section 6 of the Criminal Law Act 1967(46) and section 122 of the Criminal Justice Act 1988(47).*

*Under section 6(2) of the 1967 Act, on an indictment for murder a defendant may instead be convicted of manslaughter or another offence specified by that provision. Under section 6(3) of that Act, on an indictment for an offence other than murder or treason a defendant may instead be convicted of another offence if—*

- (a) *the allegation in the indictment amounts to or includes an allegation of that other offence; and*
- (b) *the Crown Court has power to convict and sentence for that other offence.]*

### **Place of trial**

- 3.25.**—(1) Unless the court otherwise directs, the court officer must arrange for the trial to take place in a courtroom provided by the Lord Chancellor.
- (2) The court officer must arrange for the court and the jury (if there is one) to view any place required by the court.

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(46) 1967 c. 58; section 6 was amended by paragraph 41 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 11 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(47) 1988 c. 33.

[Note. See section 3 of the Courts Act 2003(48) and section 14 of the Juries Act 1974(49).  
In some circumstances the court may conduct all or part of the hearing outside a courtroom.]

### **Use of Welsh language at trial**

**3.26.** Where the trial will take place in Wales and a participant wishes to use the Welsh language—

- (a) that participant must serve notice on the court officer, or arrange for such a notice to be served on that participant’s behalf—
  - (i) at or before the plea and case management hearing (if there is one), or
  - (ii) if there is no such hearing, then in accordance with any direction given by the court; and
- (b) if such a notice is served, the court officer must arrange for an interpreter to attend the hearing.

[Note. See section 22 of the Welsh Language Act 1993(50).]

### **Other provisions affecting case management**

*Case management may be affected by the following other rules and legislation:*

#### **Criminal Procedure Rules**

*Part 9: allocation and sending for trial*

*Part 10: initial details of the prosecution case*

*Part 14: the indictment*

*Part 22: disclosure*

*Parts 27 – 36: the rules that deal with evidence*

*Part 37: trial and sentence in a magistrates’ court*

*Part 38: trial and sentence in the Crown Court*

#### **Regulations**

*The Prosecution of Offences (Custody Time Limits) Regulations 1987(51)*

*The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(52)*

*The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(53)*

#### **Acts of Parliament**

*Sections 10 and 18, Magistrates’ Courts Act 1980(54): powers to adjourn hearings*

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(48) 2003 c. 39.

(49) 1974 c. 23; section 14 was amended by paragraph 173 of Schedule 8 to the Courts Act 2003 (c. 39).

(50) 1993 c. 38.

(51) S.I. 1987/299; amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1995/555, 1999/2744, 2000/3284, 2012/1344.

(52) S.I. 2005/902; amended by S.I. 2012/1345.

(53) S.I. 2011/209.

(54) 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 18 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), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

*Sections 128 and 129, Magistrates' Courts Act 1980(55): remand in custody by magistrates' courts*

*Sections 19 and 24A, Magistrates' Courts Act 1980(56) and sections 51 and 51A, Crime and Disorder Act 1998(57): allocation and sending for trial*

*Section 2, Administration of Justice (Miscellaneous Provisions) Act 1933(58): procedural conditions for trial in the Crown Court*

*Sections 8A and 8B, Magistrates' Courts Act 1980(59): pre-trial hearings in magistrates' courts*

*Section 7, Criminal Justice Act 1987(60); Parts III and IV, Criminal Procedure and Investigations Act 1996: pre-trial and preparatory hearings in the Crown Court*

*Section 9, Criminal Justice Act 1967(61): proof by written witness statement*

*Part 1, Criminal Procedure and Investigations Act 1996(62): disclosure.]*

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- (55) 1980 c. 43; section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). section 129 was amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
- (56) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).
- (57) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (58) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25) and paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).
- (59) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
- (60) 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), section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). The amendment made by 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.
- (61) 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 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.
- (62) 1996 c. 25.

## PART 4

### SERVICE OF DOCUMENTS

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Date of service	rule 4.10
Proof of service	rule 4.11
Court's power to give directions about service	rule 4.12

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#### When this Part applies

**4.1.**—(1) The rules in this Part apply—

- (a) to the service of every document in a case to which these Rules apply; and
- (b) for the purposes of section 12 of the Road Traffic Offenders Act 1988(**63**), to the service of a requirement to which that section applies.

(2) The rules apply subject to any special rules in other legislation (including other Parts of these Rules) or in the Practice Direction.

*[Note. Section 12 of the Road Traffic Offenders Act 1988 allows the court to accept the documents to which it refers as evidence of a driver's identity where a requirement to state that identity has been served under section 172 of the Road Traffic Act 1988(**64**) or under section 112 of the Road Traffic Regulation Act 1984(**65**).]*

#### Methods of service

**4.2.**—(1) A document may be served by any of the methods described in rules 4.3 to 4.6 (subject to rule 4.7), or in rule 4.8.

(2) Where a document may be served by electronic means under rule 4.6, the general rule is that the person serving it must use that method.

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(63) 1988 c. 53; section 12 was amended by article 3 of, and paragraphs 29 and 30 of the Schedule to, S.I. 2004/2035.

(64) 1988 c. 52; section 172 was substituted by section 21 of the Road Traffic Act 1991 (c. 40) and amended by paragraph 24 of Schedule 3 to the Vehicle Excise and Registration Act 1994 (c. 22) and the Statute Law (Repeals) Act 2004 (c. 14).

(65) 1984 c. 27; section 112 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 4 of, and paragraph 6 of the Schedule to, the Parking Act 1989 (c. 16).

### **Service by handing over a document**

- 4.3.**—(1) A document may be served on—
- (a) an individual by handing it to him or her;
  - (b) a corporation by handing it to a person holding a senior position in that corporation;
  - (c) an individual or corporation who is legally represented in the case by handing it to that representative;
  - (d) the prosecution by handing it to the prosecutor or to the prosecution representative;
  - (e) the court officer by handing it to a court officer with authority to accept it at the relevant court office; and
  - (f) the Registrar of Criminal Appeals by handing it to a court officer with authority to accept it at the Criminal Appeal Office.
- (2) If an individual is under 18, a copy of a document served under paragraph (1)(a) must be handed to his or her parent, or another appropriate adult, unless no such person is readily available.
- (3) In this rule, ‘the relevant court office’ means—
- (a) in relation to a case in a magistrates’ court or in the Crown Court, the office at which that court’s business is administered by court staff;
  - (b) in relation to an extradition appeal case in the High Court, the Administrative Court Office of the Queen’s Bench Division of the High Court.

*[Note. Some legislation treats a body that is not a corporation as if it were one for the purposes of rules about service of documents. See for example section 143 of the Adoption and Children Act 2002(66).]*

### **Service by leaving or posting a document**

- 4.4.**—(1) A document may be served by addressing it to the person to be served and leaving it at the appropriate address for service under this rule, or by sending it to that address by first class post or by the equivalent of first class post.
- (2) The address for service under this rule on—
- (a) an individual is an address where it is reasonably believed that he or she will receive it;
  - (b) a corporation is its principal office, and if there is no readily identifiable principal office then any place where it carries on its activities or business;
  - (c) an individual or corporation who is legally represented in the case is that representative’s office;
  - (d) the prosecution is the prosecutor’s office;
  - (e) the court officer is the relevant court office; and
  - (f) the Registrar of Criminal Appeals is the Criminal Appeal Office, Royal Courts of Justice, Strand, London, WC2A 2LL.
- (3) In this rule, ‘the relevant court office’ means—
- (a) in relation to a case in a magistrates’ court or in the Crown Court, the office at which that court’s business is administered by court staff;
  - (b) in relation to an extradition appeal case in the High Court, the Administrative Court Office, Royal Courts of Justice, Strand, London WC2A 2LL.

*[Note. In addition to service in England and Wales for which these rules provide, service outside England and Wales may be allowed under other legislation. See—*

- (a) *section 39 of the Criminal Law Act 1977(67)(service of summons, etc. in Scotland and Northern Ireland);*
- (b) *section 1139(4) of the Companies Act 2006(68)(service of copy summons, etc. on company's registered office in Scotland and Northern Ireland);*
- (c) *sections 3, 4, 4A and 4B of the Crime (International Co-operation) Act 2003(69)(service of summons, etc. outside the United Kingdom) and rules 32.1 and 32.2; and*
- (d) *section 1139(2) of the Companies Act 2006 (service on overseas company).]*

### **Service by document exchange**

**4.5.**—(1) This rule applies where—

- (a) the person to be served—
    - (i) has given a document exchange (DX) box number, and
    - (ii) has not refused to accept service by DX; or
  - (b) the person to be served is legally represented in the case and the representative has given a DX box number.
- (2) A document may be served by—
- (a) addressing it to that person or representative, as appropriate, at that DX box number; and
  - (b) leaving it at—
    - (i) the document exchange at which the addressee has that DX box number, or
    - (ii) a document exchange at which the person serving it has a DX box number.

### **Service by electronic means**

**4.6.**—(1) This rule applies where—

- (a) the person to be served—
    - (i) has given an electronic address, and
    - (ii) has not refused to accept service by electronic means; or
  - (b) the person to be served is legally represented in the case and the representative has given an electronic address.
- (2) A document may be served by transmitting it by electronic means to that person or representative, as appropriate, at that address.
- (3) Where a document is served under this rule the person serving it need not provide a paper copy as well.

### **Documents that must be served by specified methods**

**4.7.**—(1) The documents listed in paragraph (2) may be served—

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(67) 1977 c. 45; sub-section (1) was substituted by section 331 of, and paragraph 6 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Sub-section (3) was amended by section 83 of, and paragraph 79 of Schedule 7 to, the Criminal Justice (Scotland) Act 1980 (c. 62).

(68) 2006 c. 46.

(69) 2003 c. 32; sections 4A and 4B were inserted by section 331 of, and paragraph 16 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).



- (a) on an individual, only under rule 4.3(1)(a) (handing over) or rule 4.4(1) and (2)(a) (leaving or posting); and
  - (b) on a corporation, only under rule 4.3(1)(b) (handing over) or rule 4.4(1) and (2)(b) (leaving or posting).
- (2) Those documents are—
- (a) a summons, requisition or witness summons;
  - (b) notice of an order under section 25 of the Road Traffic Offenders Act 1988(70);
  - (c) a notice of registration under section 71(6) of that Act(71);
  - (d) notice of a hearing to review the postponement of the issue of a warrant of detention or imprisonment under section 77(6) of the Magistrates' Courts Act 1980(72);
  - (e) notice under section 86 of that Act(73) of a revised date to attend a means inquiry;
  - (f) any notice or document served under Part 19 (Bail and custody time limits);
  - (g) notice under rule 37.15(a) of when and where an adjourned hearing will resume;
  - (h) notice under rule 42.5(3) of an application to vary or discharge a compensation order;
  - (i) notice under rule 42.10(2)(c) of the location of the sentencing or enforcing court;
  - (j) a collection order, or notice requiring payment, served under rule 52.2(a).
- (3) An application or written statement, and notice, under rule 62.9 alleging contempt of court may be served—
- (a) on an individual, only under rule 4.3(1)(a) (by handing it to him or her);
  - (b) on a corporation, only under rule 4.3(1)(b) (by handing it to a person holding a senior position in that corporation).
- (4) For the purposes of section 12 of the Road Traffic Offenders Act 1988(74), a notice of a requirement under section 172 of the Road Traffic Act 1988(75) or under section 112 of the Road Traffic Regulation Act 1984(76) to identify the driver of a vehicle may be served—
- (a) on an individual, only by post under rule 4.4(1) and (2)(a);
  - (b) on a corporation, only by post under rule 4.4(1) and (2)(b).

### Service by person in custody

**4.8.—**(1) A person in custody may serve a document by handing it to the custodian addressed to the person to be served.

- (2) The custodian must—
- (a) endorse it with the time and date of receipt;
  - (b) record its receipt; and
  - (c) forward it promptly to the addressee.

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(70) 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).

(71) 1988 c. 53. Section 71(6) was amended by section 109 of, and paragraph 317 of Schedule 8 to, the Courts Act 2003 (c. 39).

(72) 1980 c. 43; section 77(6) was substituted by section 109 of, and paragraph 218 of Schedule 8 to, the Courts Act 2003 (c. 39).

(73) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

(74) 1988 c. 53; section 12 was amended by article 3 of, and paragraphs 29 and 30 of the Schedule to, S.I. 2004/2035.

(75) 1988 c. 52; section 172 was substituted by section 21 of the Road Traffic Act 1991 (c. 40) and amended by paragraph 24 of Schedule 3 to the Vehicle Excise and Registration Act 1994 (c. 22) and the Statute Law (Repeals) Act 2004 (c. 14).

(76) 1984 c. 27; section 112 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 4 of, and paragraph 6 of the Schedule to, the Parking Act 1989 (c. 16).

### **Service by another method**

- 4.9.**—(1) The court may allow service of a document by a method—
- (a) other than those described in rules 4.3 to 4.6 and in rule 4.8;
  - (b) other than one specified by rule 4.7, where that rule applies.
- (2) An order allowing service by another method must specify—
- (a) the method to be used; and
  - (b) the date on which the document will be served.

### **Date of service**

- 4.10.**—(1) A document served under rule 4.3 or rule 4.8 is served on the day it is handed over.
- (2) Unless something different is shown, a document served on a person by any other method is served—
- (a) in the case of a document left at an address, on the next business day after the day on which it was left;
  - (b) in the case of a document sent by first class post or by the equivalent of first class post, on the second business day after the day on which it was posted or despatched;
  - (c) in the case of a document served by document exchange, on the second business day after the day on which it was left at a document exchange allowed by rule 4.5;
  - (d) in the case of a document transmitted by electronic means, on the next business day after it was transmitted; and
  - (e) in any case, on the day on which the addressee responds to it, if that is earlier.
- (3) Unless something different is shown, a document produced by a computer system for dispatch by post is to be taken as having been sent by first class post, or by the equivalent of first class post, to the addressee on the business day after the day on which it was produced.
- (4) Where a document is served on or by the court officer, ‘business day’ does not include a day on which the court office is closed.

### **Proof of service**

**4.11.** The person who serves a document may prove that by signing a certificate explaining how and when it was served.

### **Court’s power to give directions about service**

- 4.12.**—(1) The court may specify the time as well as the date by which a document must be—
- (a) served under rule 4.3 or rule 4.8; or
  - (b) transmitted by electronic means, if it is served under rule 4.6.
- (2) The court may treat a document as served if the addressee responds to it even if it was not served in accordance with the rules in this Part.

## PART 5

### FORMS AND COURT RECORDS

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#### Contents of this Part

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#### *SECTION 1: FORMS*

##### Forms

**5.1.** The forms set out in the Practice Direction and in the Criminal Costs Practice Direction must be used in connection with the rules to which they apply, in accordance with those Directions.

##### Forms in Welsh

**5.2.—**(1) Any Welsh language form set out in the Practice Direction, or in the Criminal Costs Practice Direction, is for use in connection with proceedings in courts in Wales.

(2) Both a Welsh form and an English form may be contained in the same document.

(3) Where only a Welsh form, or only the corresponding English form, is served—

(a) the following words in Welsh and English must be added:

“Darperir y ddogfen hon yn Gymraeg / Saesneg os bydd arnoch ei heisiau. Dylech wneud cais yn ddi-oed i (swyddog y llys) (rhodder yma’r cyfeiriad)

This document will be provided in Welsh / English if you require it. You should apply immediately to (the court officer) (address)”; and

(b) the court officer, or the person who served the form, must, on request, supply the corresponding form in the other language to the person served.

##### Signature of forms

**5.3.—**(1) This rule applies where a form provides for its signature.

(2) Unless other legislation otherwise requires, or the court otherwise directs, signature may be by any written or electronic authentication of the form by, or with the authority of, the signatory.

*[Note. Section 7 of the Electronic Communications Act 2000(77) provides for the use of an electronic signature in an electronic communication.]*

## SECTION 2: COURT RECORDS

### Duty to make records

**5.4.**—(1) For each case, as appropriate, the court officer must record, by such means as the Lord Chancellor directs—

- (a) each charge or indictment against the defendant;
- (b) the defendant’s plea to each charge or count;
- (c) each acquittal, conviction, sentence, determination, direction or order;
- (d) each decision about bail;
- (e) the power exercised where the court commits or adjourns the case to another court—
  - (i) for sentence, or
  - (ii) for the defendant to be dealt with for breach of a community order, a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by that other court;
- (f) the court’s reasons for a decision, where legislation requires those reasons to be recorded;
- (g) any appeal;
- (h) each party’s presence or absence at each hearing;
- (i) any consent that legislation requires before the court can proceed with the case, or proceed to a decision;
- (j) in a magistrates’ court—
  - (i) any indication of sentence given in connection with the allocation of a case for trial, and
  - (ii) the registration of a fixed penalty notice for enforcement as a fine, and any related endorsement on a driving licence;
- (k) in the Crown Court, any request for assistance or other communication about the case received from a juror;
- (l) the identity of—
  - (i) the prosecutor,
  - (ii) the defendant,
  - (iii) any other applicant to whom these Rules apply,
  - (iv) any interpreter or intermediary,
  - (v) the parties’ legal representatives, if any, and
  - (vi) the judge, magistrate or magistrates, justices’ legal adviser or other person who made each recorded decision;
- (m) where a defendant is entitled to attend a hearing, any agreement by the defendant to waive that right; and

- (n) where interpretation is required for a defendant, any agreement by that defendant to do without the written translation of a document.
- (2) Such records must include—
- (a) each party's and representative's address, including any electronic address and telephone number available;
  - (b) the defendant's date of birth, if available; and
  - (c) the date of each event and decision recorded.

*[Note. For the duty to keep court records, see sections 5 and 8 of the Public Records Act 1958(78).*

*Requirements to record the court's reasons for its decision are contained in: section 5 of the Bail Act 1976(79); section 47(1) of the Road Traffic Offenders Act 1988(80); sections 20, 33A and 33BB of the Youth Justice and Criminal Evidence Act 1999(81); section 174 of the Criminal Justice Act 2003(82); and rule 16.8.*

*The prosecution of some offences requires the consent of a specified authority. Requirements for the defendant's consent to proceedings in his or her absence are contained in sections 23 and 128 of the Magistrates' Courts Act 1980(83).*

*In the circumstances for which it provides, section 20 of the Magistrates' Courts Act 1980(84) allows the court to give an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea at trial in that court.*

*Requirements to register fixed penalty notices and to record any related endorsement of a driving licence are contained in sections 57, 57A and 71 of the Road Traffic Offenders Act 1988(85).*

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- (78) 1958 c. 51; section 5 was amended by sections 67 and 86 of, and paragraph 2 of Schedule 5 to, the Freedom of Information Act 2000 (c. 36); and section 8 was amended by sections 27 and 35 of, and Schedule 2 to, the Administration of Justice Act 1969 (c. 58), section 1 of, and paragraph 19 of Schedule 2 to, the Administration of Justice Act 1970 (c. 31), section 56 of, and Schedule 11 to, the Courts Act 1971 (c. 23), section 152 of, and Schedule 7 to, the Senior Courts Act 1981 (c. 54) and sections 56 and 59 of, and Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
- (79) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).
- (80) 1988 c. 53.
- (81) 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39); section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48); and section 33BB is inserted by section 104(1) of the Coroners and Justice Act 2009, with effect from a date to be appointed.
- (82) 2003 c. 44; section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (83) 1980 c. 43; section 23 was amended by section 125 of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41) and paragraphs 1 and 8 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (84) 1980 c. 43; section 20 was amended by section 100 of, and paragraph 25 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraph 63 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
- (85) 1988 c. 53; section 57(3) and (4) was amended by regulation 2(2) and (3) of, and paragraph 17 of Schedule 2 to, S.I. 1990/144 and section 5 of, and paragraphs 1 and 5 of Schedule 1 to, the Road Safety Act 2006 (c. 49); section 57A was added by section 9 of the Road Safety Act 2006 (c. 49), and is amended by section 10 of that Act with effect from a date to be appointed; and section 71 was amended by section 63 of, and paragraph 25(1) of Schedule 3 to, the Vehicle Excise and Registration Act 1994 (c. 22), sections 90(1) and 106 of, and paragraphs 140 and 150(1) and (2) of Schedule 13, and table 7 of Schedule 15 to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 317(1) and (2) of Schedule 8 to, the Courts Act 2003 (c. 39) and section 9(6) of, and paragraphs 2 and 22 of Schedule 2 to, the Road Safety Act 2006 (c. 49).

*For agreement to do without a written translation in a case in which the defendant requires interpretation, see rule 3.9(5).]*

### **Recording and transcription of proceedings in the Crown Court**

- 5.5.**—(1) Where someone may appeal to the Court of Appeal, the court officer must—
- (a) arrange for the recording of the proceedings in the Crown Court, unless the court otherwise directs; and
  - (b) arrange for the transcription of such a recording if—
    - (i) the Registrar wants such a transcript, or
    - (ii) anyone else wants such a transcript (but that is subject to the restrictions in paragraph (2)).
- (2) Unless the court otherwise directs, a person who transcribes a recording of proceedings under such arrangements—
- (a) must not supply anyone other than the Registrar with a transcript of a recording of—
    - (i) a hearing in private, or
    - (ii) information to which reporting restrictions apply;
  - (b) subject to that, must supply any person with any transcript for which that person asks—
    - (i) in accordance with the transcription arrangements made by the court officer, and
    - (ii) on payment by that person of any fee prescribed.
- (3) A party who wants to hear a recording of proceedings must—
- (a) apply—
    - (i) in writing to the Registrar, if an appeal notice has been served where Part 65 applies (Appeal to the Court of Appeal: general rules), or
    - (ii) orally or in writing to the Crown Court officer;
  - (b) explain the reasons for the request; and
  - (c) pay any fee prescribed.
- (4) If the Crown Court or the Registrar so directs, the Crown Court officer must allow that party to hear a recording of—
- (a) a hearing in public;
  - (b) a hearing in private, if the applicant was present at that hearing.

*[Note. See also section 32 of the Criminal Appeal Act 1968(86).]*

### **Custody of case materials**

- 5.6.** Unless the court otherwise directs, in respect of each case the court officer may—
- (a) keep any evidence, application, representation or other material served by the parties; or
  - (b) arrange for the whole or any part to be kept by some other appropriate person, subject to—
    - (i) any condition imposed by the court, and
    - (ii) the rules in Part 63 (Appeal to the Crown Court) and Part 65 (Appeal to the Court of Appeal: general rules) about keeping exhibits pending any appeal.

## **Supply to a party of information or documents from records or case materials**

- 5.7.—**(1) This rule applies where—
- (a) a party wants information, or a copy of a document, from records or case materials kept by the court officer (for example, in case of loss, or to establish what is retained); or
  - (b) a person affected by an order made, or warrant issued, by the court wants such information or such a copy.
- (2) Such a party or person must—
- (a) apply to the court officer;
  - (b) specify the information or document required; and
  - (c) pay any fee prescribed.
- (3) The application—
- (a) may be made orally, giving no reasons, if paragraph (4) requires the court officer to supply the information or document requested;
  - (b) must be in writing, unless the court otherwise permits, and must explain for what purpose the information is required, in any other case.
- (4) The court officer must supply to the applicant party or person—
- (a) a copy of any document served by, or on, that party or person (but not of any document not so served);
  - (b) by word of mouth, or in writing, as requested—
    - (i) information that was received from that party or person in the first place,
    - (ii) information about the terms of any direction or order directed to that party or person, or made on an application by that party or person, or at a hearing in public,
    - (iii) information about the outcome of the case.
- (5) If the court so directs, the court officer must supply to the applicant party or person, by word of mouth or in writing, as requested, information that paragraph (4) does not require the court officer to supply.
- (6) Where the information requested is about the grounds on which an order was made, or a warrant was issued, in the absence of the party or person applying for that information—
- (a) that party or person must also serve the request on the person who applied for the order or warrant;
  - (b) if the person who applied for the order or warrant objects to the supply of the information requested, that objector must—
    - (i) give notice of the objection not more than 14 days after service of the request (or within any longer period allowed by the court),
    - (ii) serve that notice on the court officer and on the party or person requesting the information, and
    - (iii) if the objector wants a hearing, explain why one is needed;
  - (c) the court may determine the application for information at a hearing (which must be in private unless the court otherwise directs), or without a hearing;
  - (d) the court must not permit the information requested to be supplied unless the person who applied for the order or warrant has had at least 14 days (or any longer period allowed by the court) in which to make representations.
- (7) A notice of objection under paragraph (6) must explain—

- (a) whether the objection is to the supply of any part of the information requested, or only to the supply of a specified part, or parts, of it;
  - (b) whether the objection is to the supply of the information at any time, or only to its supply before a date or event specified by the objector; and
  - (c) the grounds of the objection.
- (8) Where a notice of objection under paragraph (6) includes material that the objector thinks ought not be revealed to the party or person applying for information, the objector must—
- (a) omit that material from the notice served on that party or person;
  - (b) mark the material to show that it is only for the court; and
  - (c) with that material include an explanation of why it has been withheld.
- (9) Where paragraph (8) applies—
- (a) a hearing of the application may take place, wholly or in part, in the absence of the party or person applying for information;
  - (b) at any such hearing, the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the party or person applying for information and then by the objector, in the presence of both, and then
    - (ii) further representations by the objector, in the absence of that party or person but the court may direct other arrangements for the hearing.

### **Supply to the public, including reporters, of information about cases**

- 5.8.—**(1) This rule—
- (a) applies where a member of the public, including a reporter, wants information about a case from the court officer;
  - (b) requires the court officer to publish information about cases due to be heard.
- (2) A person who wants information about a case from the court officer must—
- (a) apply to the court officer;
  - (b) specify the information requested; and
  - (c) pay any fee prescribed.
- (3) The application—
- (a) may be made orally, giving no reasons, if paragraph (4) requires the court officer to supply the information requested;
  - (b) must be in writing, unless the court otherwise permits, and must explain for what purpose the information is required, in any other case.
- (4) The court officer must supply to the applicant—
- (a) any information listed in paragraph (6), if—
    - (i) the information is available to the court officer,
    - (ii) the supply of the information is not prohibited by a reporting restriction, and
    - (iii) the trial has not yet concluded, or the verdict was not more than 6 months ago; and
  - (b) details of any reporting or access restriction ordered by the court.
- (5) The court officer must supply that information—
- (a) by word of mouth; or



- (b) by such other arrangements as the Lord Chancellor directs.
- (6) The information that paragraph (4) requires the court officer to supply is—
  - (a) the date of any hearing in public, unless any party has yet to be notified of that date;
  - (b) each alleged offence and any plea entered;
  - (c) the court’s decision at any hearing in public, including any decision about—
    - (i) bail, or
    - (ii) the committal, sending or transfer of the case to another court;
  - (d) whether the case is under appeal;
  - (e) the outcome of any trial and any appeal; and
  - (f) the identity of—
    - (i) the prosecutor,
    - (ii) the defendant,
    - (iii) the parties’ representatives, including their addresses, and
    - (iv) the judge, magistrate or magistrates, or justices’ legal adviser by whom a decision at a hearing in public was made.
- (7) If the court so directs, the court officer must—
  - (a) supply to the applicant, by word of mouth, other information about the case; or
  - (b) allow the applicant to inspect or copy a document, or part of a document, containing information about the case.
- (8) The court may determine an application to which paragraph (7) applies—
  - (a) at a hearing, in public or in private; or
  - (b) without a hearing.
- (9) The court officer must publish the information listed in paragraph (11) if—
  - (a) the information is available to the court officer;
  - (b) the hearing to which the information relates is due to take place in public; and
  - (c) the publication of the information is not prohibited by a reporting restriction.
- (10) The court officer must publish that information—
  - (a) by notice displayed somewhere prominent in the vicinity of the court room in which the hearing is due to take place;
  - (b) by such other arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means; and
  - (c) for no longer than 2 business days.
- (11) The information that paragraph (9) requires the court officer to publish is—
  - (a) the date, time and place of the hearing;
  - (b) the identity of the defendant; and
  - (c) such other information as it may be practicable to publish concerning—
    - (i) the type of hearing,
    - (ii) the identity of the court,
    - (iii) the offence or offences alleged, and
    - (iv) whether any reporting restriction applies.

*[Note. Rule 5.8(4) requires the court officer to supply on request the information to which that paragraph refers. On an application for other information about a case, rule 5.8(3)(b), (7) and (8) apply and the court's decision on such an application may be affected by—*

- (a) *any reporting restriction imposed by legislation or by the court (Part 16 lists the reporting restrictions that might apply);*
- (b) *Articles 6, 8 and 10 of the European Convention on Human Rights, and the court's duty to have regard to the importance of—*
  - (i) *dealing with criminal cases in public, and*
  - (ii) *allowing a public hearing to be reported to the public;*
- (c) *the Rehabilitation of Offenders Act 1974(87)(section 5 of the Act(88)lists sentences and rehabilitation periods);*
- (d) *section 18 of the Criminal Procedure and Investigations Act 1996(89), which affects the supply of information about material, other than evidence, disclosed by the prosecutor;*
- (e) *the Data Protection Act 1998(90)(sections 34 and 35 of the Act contain relevant exemptions from prohibitions against disclosure that usually apply); and*
- (f) *sections 33, 34 and 35 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(91), which affect the supply of information about applications for legal aid.]*

### **Supply of written certificate or extract from records**

**5.9.—(1)** This rule applies where legislation—

- (a) allows a certificate of conviction or acquittal, or an extract from records kept by the court officer, to be introduced in evidence in criminal proceedings; or
- (b) requires such a certificate or extract to be supplied by the court officer to a specified person for a specified purpose.

(2) A person who wants such a certificate or extract must—

- (a) apply in writing to the court officer;
- (b) specify the certificate or extract required;
- (c) explain under what legislation and for what purpose it is required; and
- (d) pay any fee prescribed.

(3) If the application satisfies the requirements of that legislation, the court officer must supply the certificate or extract requested—

- (a) to a party;
- (b) unless the court otherwise directs, to any other applicant.

*[Note. Under sections 73 to 75 of the Police and Criminal Evidence Act 1984(92), a certificate of conviction or acquittal, and certain other details from records to which this Part applies, may be admitted in evidence in criminal proceedings.*

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(87) 1974 c. 53.

(88) 1974 c. 53; section 5 was amended by section 15 of, and paragraphs 77 and 78 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and by sections 126 and 139 of, and paragraph 2 of Schedule 21 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(89) 1996 c. 25.

(90) 1998 c. 29.

(91) 2012 c. 10.

(92) 1984 c. 60; section 73 was amended by section 90(1) of, and paragraphs 125 and 128 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), paragraph 285 of Schedule 8 to the Courts Act 2003 (c. 39) and paragraph 13 of Schedule 17 to the Coroners and Justice Act 2009 (c. 25); and section 74 was amended by paragraph 85 of Schedule 36, and Part 5 of

Under section 115 of the Crime and Disorder Act 1998(93), information from records to which this Part applies may be obtained by specified authorities for the purposes of that Act.

A certificate of conviction or acquittal, and certain other information, required for other purposes, may be obtained from the Secretary of State under sections 112, 113A and 113B of the Police Act 1997(94).]

## PART 6

### INVESTIGATION ORDERS AND WARRANTS

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Schedule 37, to the Criminal Justice Act 2003 (c. 44) and paragraph 14 of Schedule 17 to the Coroners and Justice Act 2009 (c. 25).

- (93) 1998 c. 37; section 115 was amended by paragraphs 150 and 151 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), paragraph 35 of Schedule 1 to S.I. 2000/90, section 97 of the Police Reform Act 2002 (c. 30), paragraph 25 of Schedule 1 to S.I. 2002/2469, section 219 of the Housing Act 2004 (c. 34), section 22 of, and paragraphs 1 and 7 of Schedule 9 to, the Police and Justice Act 2006 (c. 48), paragraph 29 of the Schedule to S.I. 2007/961, section 29 of the Transport for London Act 2008 (c. i), paragraph 13 of Schedule 2 to S.I. 2008/912, paragraphs 109 and 111 of Schedule 2 to S.I. 2010/866 and paragraphs 83 and 90 of Schedule 5 to the Health and Social Care Act 2012 (c. 7).
- (94) 1997 c. 50; section 112 was amended by section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), sections 93, 97 and 112 of, and Part 8 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26) and sections 80 and 84 of the Protection of Freedoms Act 2012 (c. 9). Section 113A was added by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15), modified by regulation 4 of S.I. 2010/1146, and amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), sections 97 and 112 of, and Part 8 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 80 and 115 of, and paragraphs 35 and 36 of Schedule 9 and Part 5 of Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9), articles 2 and 3 of S.I. 2009/203 and articles 36 and 37 of S.I. 2012/3006. Section 113B was added by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15), modified by regulations 5 to 7 of S.I. 2010/1146, and amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c. 52), section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), sections 97 and 112 of, and Part 8 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 79, 80, 82 and 115 of, and paragraphs 35 and 37 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9), articles 2 and 4 of S.I. 2009/203, regulation 8 of S.I. 2010/1146 and articles 36, 37 and 39 of S.I. 2012/3006.

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## SECTION 1: UNDERSTANDING AND APPLYING THIS PART

### When this Part applies

**6.1.**—(1) Sections 2 and 3 of this Part apply where, for the purposes of a terrorist investigation—

(a) a Circuit judge can make, vary or discharge—

(i) an order for the production of, or for giving access to, material, or for a statement of its location, under paragraphs 5 and 10 of Schedule 5 to the Terrorism Act 2000(95),

(ii) an explanation order, under paragraphs 10 and 13 of Schedule 5 to the 2000 Act(96),

(iii) a customer information order, under paragraphs 1 and 4 of Schedule 6 to the 2000 Act(97);

(b) a Circuit judge can make, and the Crown Court can vary or discharge, an account monitoring order, under paragraphs 2 and 4 of Schedule 6A to the 2000 Act(98).

(2) Sections 2 and 4 of this Part apply where, for the purposes of an investigation for which Part 8 of the Proceeds of Crime Act 2002 provides, a Crown Court judge can make, and the Crown Court can vary or discharge—

(a) a production order, under sections 345 and 351 of the 2002 Act(99);

(b) an order to grant entry, under sections 347 and 351 of the 2002 Act;

(c) a disclosure order, under sections 357 and 362 of the 2002 Act(100);

(d) a customer information order, under sections 363 and 369 of the 2002 Act(101);

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(95) 2000 c. 11; paragraph 5 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed. Paragraph 10 of Schedule 5 was amended by section 109(1) of, and paragraph 389 of Schedule 8 to, the Courts Act 2003 (c. 39) and it is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(96) 2000 c. 11; paragraph 13 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(97) 2000 c. 11; paragraph 1 of Schedule 6 was amended by section 3 of, and paragraph 6 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24). Paragraph 4 of Schedule 6 was amended by section 109(1) of, and paragraph 390 of Schedule 8 to, the Courts Act 2003 (c. 39).

(98) 2000 c. 11; Schedule 6A was inserted by section 3 of, and paragraph 1(1) and (3) of Part 1 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24).

(99) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27). Section 351 was amended by sections 74 and 77 of, and paragraphs 103 and 104 of Schedule 8 and paragraphs 1 and 6 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

(100) 2002 c. 29; section 357 was amended by sections 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27). Section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(101) 2002 c. 29; section 363 was amended by section 77 of, and paragraphs 1 and 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27). Section 369 was amended by section 74 of, and paragraphs 103 and 111 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

- (e) an account monitoring order, under sections 370 and 375 of the 2002 Act<sup>(102)</sup>.
- (3) Rule 6.5 and Section 5 of this Part apply where—
  - (a) a justice of the peace can make or discharge an investigation anonymity order, under sections 76 and 80(1) of the Coroners and Justice Act 2009<sup>(103)</sup>;
  - (b) a Crown Court judge can determine an appeal against—
    - (i) a refusal of such an order, under section 79 of the 2009 Act,
    - (ii) a decision on an application to discharge such an order, under section 80(6) of the 2009 Act.
- (4) Sections 2 and 6 of this Part apply where a justice of the peace can make an order approving—
  - (a) the grant or renewal of an authorisation, or the giving or renewal of a notice, under section 23A of the Regulation of Investigatory Powers Act 2000<sup>(104)</sup>;
  - (b) the grant or renewal of an authorisation under section 32A of the 2000 Act<sup>(105)</sup>.
- (5) Rule 6.5 and Section 7 of this Part apply where a justice of the peace can issue a warrant under—
  - (a) section 8 of the Police and Criminal Evidence Act 1984<sup>(106)</sup>;
  - (b) section 2 of the Criminal Justice Act 1987<sup>(107)</sup>;
  - (c) other powers to which sections 15 and 16 of the Police and Criminal Evidence Act 1984<sup>(108)</sup> apply.
- (6) Rules 6.4 and 6.5 and Section 8 of this Part apply where—
  - (a) a District Judge (Magistrates' Court) can make an order under—
    - (i) section 63F(7) or 63R(6) of the Police and Criminal Evidence Act 1984<sup>(109)</sup>, or
    - (ii) paragraph 20B(5) or 20G(6) of Schedule 8 to the Terrorism Act 2000<sup>(110)</sup>;
  - (b) the Crown Court can determine an appeal under—
    - (i) section 63F(10) of the Police and Criminal Evidence Act 1984, or
    - (ii) paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000.

*[Note. In outline, the orders to which these rules apply are—*

- (a) *for the purposes of a terrorist investigation under the Terrorism Act 2000—*

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<sup>(102)</sup>2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27). Section 375 was amended by section 74 of, and paragraphs 103 and 112 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

<sup>(103)</sup>2009 c. 25.

<sup>(104)</sup>2000 c. 23; section 23A was inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

<sup>(105)</sup>2000 c. 23; section 32A was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

<sup>(106)</sup>1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

<sup>(107)</sup>1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

<sup>(108)</sup>1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496. Section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), article 8 of S.I. 2005/3496 and sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

<sup>(109)</sup>1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

<sup>(110)</sup>2000 c. 11; paragraphs 20B and 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

- (i) *an order requiring a person to produce, give access to, or state the location of material,*
- (ii) *an explanation order, requiring a person to explain material obtained under a production, etc. order,*
- (iii) *a customer information order, requiring a financial institution to provide information about an account holder,*
- (iv) *an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution;*
- (b) *for the purposes of an investigation under Part 8 of the Proceeds of Crime Act 2002—*
  - (i) *a production order, requiring a person to produce or give access to material,*
  - (ii) *an order to grant entry, requiring a person to allow entry to premises so that a production order can be enforced,*
  - (iii) *a disclosure order, requiring a person to provide information or documents, or to answer questions,*
  - (iv) *a customer information order, requiring a financial institution to provide information about an account holder,*
  - (v) *an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution;*
- (c) *under the Coroners and Justice Act 2009, an investigation anonymity order, prohibiting the disclosure of information that identifies, or might identify, a specified person as someone who is, or was, willing to assist the investigation of an offence of murder or manslaughter caused by a gun or knife;*
- (d) *under the Regulation of Investigatory Powers Act 2000, an order approving a local authority officer's authorisation for the obtaining of information about the use of postal or telecommunications services, or for the use of surveillance or of a 'covert human intelligence source';*
- (e) *under the Police and Criminal Evidence Act 1984, a warrant authorising entry to, and the search of, premises for material, articles or persons;*
- (f) *under the Criminal Justice Act 1987, a warrant authorising entry to, and the search of, premises for documents sought by the Director of the Serious Fraud Office;*
- (g) *under the Police and Criminal Evidence Act 1984 or under the Terrorism Act 2000, an order extending the period during which fingerprints, DNA profiles or samples may be retained by the police.*

*For all the relevant terms under which these orders can be made, see the provisions listed in rule 6.1.*

*By section 341 of the Proceeds of Crime Act 2002(111), an investigation under Part 8 of the Act may be—*

- (a) *an investigation into whether a person has benefited from criminal conduct, or the extent or whereabouts of such benefit ('a confiscation investigation');*
- (b) *an investigation into whether a person has committed a money laundering offence ('a money laundering investigation');*

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(111) 2002 c. 29; section 341 was amended by section 75 of the Serious Crime Act 2007 (c. 27) and section 169 of, and paragraphs 1 and 2 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 112 of, and paragraphs 99 and 110 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26) and section 49 of, and paragraphs 1, 2, 24 and 25 of Schedule 19 to, the Crime and Courts Act 2013 (c.22), with effect from dates to be appointed.

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*Status:* This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (c) *an investigation into whether property is recoverable property or associated property (as defined by section 316 of the 2002 Act(112)), or into who holds the property or its extent or whereabouts ('a civil recovery investigation');*
- (d) *an investigation into the derivation of cash detained under the 2002 Act, or into whether such cash is intended to be used in unlawful conduct ('a detained cash investigation');*
- (e) *an investigation for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs, etc.) into whether a person is a qualifying offender or has obtained exploitation proceeds from a relevant offence, or into the value of any benefits derived by such a person from such an offence or the amount available ('an exploitation proceeds investigation').*

*When the relevant provisions of the Courts Act 2003 come into force, a District Judge (Magistrates' Courts) will have the same powers as a Circuit judge under the Terrorism Act 2000.*

*Under section 8 of the Senior Courts Act 1981(113), a High Court judge, a Circuit judge, a Recorder, a qualifying judge advocate and a District Judge (Magistrates' Courts) each may act as a Crown Court judge.*

*Under section 343 of the Proceeds of Crime Act 2002(114)—*

- (a) *any Crown Court judge may make an order to which Section 4 of this Part applies for the purposes of a confiscation investigation or a money laundering investigation;*
- (b) *only a High Court judge may make such an order for the purposes of a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation (and these rules do not apply to an application to such a judge in such a case).*

*As well as governing procedure on an application to the Crown Court, under the following provisions rules may govern the procedure on an application to an individual judge—*

- (a) *paragraph 10 of Schedule 5, paragraph 4 of Schedule 6 and paragraph 5 of Schedule 6A to the Terrorism Act 2000; and*
- (b) *sections 351, 362, 369 and 375 of the Proceeds of Crime Act 2002.*

*Under the Terrorism Act 2000 and under the Proceeds of Crime Act 2002, in some circumstances an individual judge can issue a warrant to search for and seize material. Applications for such warrants are not subject to these rules.*

*Under section 66 of the Courts Act 2003(115), in criminal cases a High Court judge, a Circuit judge, a Recorder and a qualifying judge advocate each has the powers of a justice of the peace who is a District Judge (Magistrates' Courts).]*

## **Meaning of 'court', 'applicant' and 'respondent'**

**6.2.** In this Part—

- (a) a reference to the 'court' includes a reference to any justice of the peace or judge who can exercise a power to which this Part applies;

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(112) 2002 c. 29; section 316 was amended by paragraph 78 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 109 of, and paragraphs 4 and 22 of Schedule 6 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 74 of, and paragraphs 85 and 91 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and article 12 of, and paragraphs 47 and 65 of Schedule 14 to, S.I. 2010/976.

(113) 1981 c. 54; section 8 was amended by sections 65 and 109 of, and paragraph 259 of Schedule 8 to, the Courts Act 2003 (c. 39) and paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18). The 1981 Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(114) 2002 c. 29; section 343 was amended by section 77 of, and paragraphs 1 and 3 of Schedule 10 to, the Serious Crime Act 2007 (c. 27) and section 169 of, and paragraphs 1 and 4 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 66 of the Policing and Crime Act 2009 (c. 26), with effect from a date to be appointed.

(115) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18).



- (b) ‘applicant’ means a person who, or an authority which, can apply for an order or warrant to which this Part applies; and
- (c) ‘respondent’ means any person—
  - (i) against whom such an order is sought or made, or
  - (ii) on whom an application for such an order is served.

## SECTION 2: GENERAL RULES

### Exercise of court’s powers

**6.3.**—(1) Subject to paragraphs (2) and (3), the court may determine an application for an order, or to vary or discharge an order—

- (a) at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and
- (b) in the absence of—
  - (i) the applicant,
  - (ii) the respondent (if any),
  - (iii) any other person affected by the order.

(2) The court must not determine such an application in the applicant’s absence if—

- (a) the applicant asks for a hearing; or
- (b) it appears to the court that—
  - (i) the proposed order may infringe legal privilege, within the meaning of section 10 of the Police and Criminal Evidence Act 1984(**116**) or of section 348 or 361 of the Proceeds of Crime Act 2002(**117**),
  - (ii) the proposed order may require the production of excluded material, within the meaning of section 11 of the 1984 Act, or
  - (iii) for any other reason the application is so complex or serious as to require the court to hear the applicant.

(3) The court must not determine such an application in the absence of any respondent or other person affected, unless—

- (a) the absentee has had at least 2 business days in which to make representations; or
- (b) the court is satisfied that—
  - (i) the applicant cannot identify or contact the absentee,
  - (ii) it would prejudice the investigation if the absentee were present,
  - (iii) it would prejudice the investigation to adjourn or postpone the application so as to allow the absentee to attend, or
  - (iv) the absentee has waived the opportunity to attend.

(4) The court must not make, vary or discharge an order unless the applicant states, in writing or orally, that to the best of the applicant’s knowledge and belief—

- (a) the application discloses all the information that is material to what the court must decide; and

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**(116)** 1984 c. 60.

**(117)** 2002 c. 29; section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

- (b) the content of the application is true.
- (5) Where the statement required by paragraph (4) is made orally—
  - (a) the statement must be on oath or affirmation, unless the court otherwise directs; and
  - (b) the court must arrange for a record of the making of the statement.

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

- 6.4.**—(1) The court may—
- (a) shorten or extend (even after it has expired) a time limit under this Part;
  - (b) dispense with a requirement for service under this Part (even after service was required); and
  - (c) consider an application made orally instead of in writing.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application for which it is needed; and
  - (b) explain the delay.

### **Documents served on the court officer**

- 6.5.**—(1) Unless the court otherwise directs, the court officer may—
- (a) keep a written application; or
  - (b) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.
- (2) Where the court makes an order when the court office is closed, the applicant must, not more than 72 hours later, serve on the court officer—
- (a) a copy of the order; and
  - (b) any written material that was submitted to the court.
- (3) Where the court issues a warrant—
- (a) the applicant must return it to the court officer as soon as practicable after it has been executed, and in any event not more than 3 months after it was issued (unless other legislation otherwise provides); and
  - (b) the court officer must—
    - (i) keep the warrant for 12 months after its return, and
    - (ii) during that period, make it available for inspection by the occupier of the premises to which it relates, if that occupier asks to inspect it.

*[Note. See section 16(10) of the Police and Criminal Evidence Act 1984(118).]*

### **SECTION 3: ORDERS UNDER THE TERRORISM ACT 2000**

*[Note. The rules in Section 2 (general rules) also apply.]*

### **Application for an order under the Terrorism Act 2000**

- 6.6.**—(1) This rule applies where an applicant wants the court to make one of the orders listed in rule 6.1(1).

- (2) The applicant must—
- (a) apply in writing;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the respondent (unless the court otherwise directs);
  - (c) identify the respondent;
  - (d) give the information required by whichever of rules 6.7 to 6.10 applies; and
  - (e) serve any order made on the respondent.

*[Note. See also rules 6.3 and 6.4, under which the court may—*

- (a) exercise its powers in the parties' absence;*
- (b) dispense with a requirement for service; and*
- (c) consider an application made orally.*

*Under rule 6.12, an applicant may withhold information from material that is served on a respondent.]*

#### **Content of application for a production etc. order**

**6.7.** As well as complying with rule 6.6, an applicant who wants the court to make an order for the production of, or access to, material, or for a statement of its location, must—

- (a) describe that material;
- (b) explain why the applicant thinks the material is—
  - (i) in the respondent's possession, custody or power, or
  - (ii) likely to be so within 28 days of the order;
- (c) explain how the material constitutes or contains excluded material or special procedure material;
- (d) confirm that none of the material is expected to be subject to legal privilege;
- (e) explain why the material is likely to be of substantial value to the investigation;
- (f) explain why it is in the public interest for the material to be produced, or for the applicant to be given access to it, having regard to—
  - (i) the benefit likely to accrue to the investigation if it is obtained, and
  - (ii) the circumstances in which the respondent has the material, or is expected to have it; and
- (g) propose—
  - (i) the terms of the order, and
  - (ii) the period within which it should take effect.

*[Note. See paragraphs 5 to 9 of Schedule 5 to the Terrorism Act 2000. The applicant for a production, etc. order must be a constable.*

*Under paragraph 4 of Schedule 5 to the 2000 Act, 'legal privilege', 'excluded material' and 'special procedure material' mean the same as under sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984.*

*The period within which an order takes effect must be specified in the order and, unless the court otherwise directs, must be—*

- (a) *where the respondent already has the material, 7 days from the date of the order; or*
- (b) *where the respondent is likely to have the material within 28 days, 7 days from the date the respondent notifies the applicant of its receipt.]*

#### **Content of application for an explanation order**

**6.8.** As well as complying with rule 6.6, an applicant who wants the court to make an explanation order must—

- (a) identify the material that the applicant wants the respondent to explain;
- (b) confirm that the explanation is not expected to infringe legal privilege; and
- (c) propose—
  - (i) the terms of the order, and
  - (ii) the period within which it should take effect, if 7 days from the date of the order would not be appropriate.

*[Note. See paragraph 13 of Schedule 5 to the Terrorism Act 2000. The applicant for an explanation order must be a constable.*

*An explanation order can require a lawyer to provide a client's name and address.]*

#### **Content of application for a customer information order**

**6.9.** As well as complying with rule 6.6, an applicant who wants the court to make a customer information order must—

- (a) explain why it is desirable for the purposes of the investigation to trace property said to be terrorist property within the meaning of the Terrorism Act 2000;
- (b) explain why the order will enhance the effectiveness of the investigation; and
- (c) propose the terms of the order.

*[Note. See Schedule 6 to the Terrorism Act 2000. The applicant for a customer information order must be a police officer of at least the rank of superintendent.*

*'Customer information' is defined by paragraph 7 of Schedule 6 to the 2000 Act. 'Terrorist property' is defined by section 14 of the Act.]*

#### **Content of application for an account monitoring order**

**6.10.** As well as complying with rule 6.6, an applicant who wants the court to make an account monitoring order must—

- (a) specify—
  - (i) the information sought,
  - (ii) the period during which the applicant wants the respondent to provide that information (to a maximum of 90 days), and
  - (iii) where, when and in what manner the applicant wants the respondent to provide that information;
- (b) explain why it is desirable for the purposes of the investigation to trace property said to be terrorist property within the meaning of the Terrorism Act 2000;
- (c) explain why the order will enhance the effectiveness of the investigation; and
- (d) propose the terms of the order.

*[Note. See Schedule 6A to the Terrorism Act 2000. The applicant for an account monitoring order must be a police officer.*

*‘Terrorist property’ is defined by section 14 of the Act.]*

#### **Application to vary or discharge an order**

**6.11.**—(1) This rule applies where one of the following wants the court to vary or discharge an order listed in rule 6.1(1)—

- (a) an applicant;
  - (b) the respondent; or
  - (c) a person affected by the order.
- (2) That applicant, respondent or person affected must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the respondent, applicant, or any person known to be affected, as applicable;
  - (c) explain why it is appropriate for the order to be varied or discharged;
  - (d) propose the terms of any variation; and
  - (e) ask for a hearing, if one is wanted, and explain why it is needed.

#### **Application containing information withheld from a respondent or other person**

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

- (a) an applicant serves on a respondent or other person an application for one of the orders listed in rule 6.1(1), or for the variation or discharge of such an order; and
  - (b) the application includes information that the applicant thinks ought not be revealed to that recipient.
- (2) The applicant must—
- (a) omit that information from the part of the application that is served on the respondent or other person;
  - (b) mark the other part, to show that it is only for the court; and
  - (c) in that other part, explain why the applicant has withheld it.
- (3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of the respondent and any other person.
- (4) At a hearing of an application to which this rule applies—
- (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the applicant and then by the respondent and any other person, in the presence of them all, and then
    - (ii) further representations by the applicant, in the others’ absence; but
  - (b) the court may direct other arrangements for the hearing.

#### **Application to punish for contempt of court**

**6.13.**—(1) This rule applies where a person is accused of disobeying—

- (a) a production etc. order made under paragraph 5 of Schedule 5 to the Terrorism Act 2000;

- (b) an explanation order made under paragraph 13 of that Schedule; or
- (c) an account monitoring order made under paragraph 2 of Schedule 6A to that Act.

(2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

*[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See paragraphs 10(1) and 13(5) of Schedule 5, and paragraph 6(1) of Schedule 6A, to the Terrorism Act 2000, and section 45 of the Senior Courts Act 1981(119).*

*Disobedience to an explanation order or to a customer information order is an offence: see paragraph 14 of Schedule 5, and paragraph 1(3) of Schedule 6, to the 2000 Act.]*

#### SECTION 4: ORDERS UNDER THE PROCEEDS OF CRIME ACT 2002

*[Note. The rules in Section 2 (general rules) also apply.]*

#### **Application for an order under the Proceeds of Crime Act 2002**

**6.14.**—(1) This rule applies where an applicant wants the court to make one of the orders listed in rule 6.1(2).

- (2) The applicant must—
  - (a) apply in writing;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the respondent (unless the court otherwise directs);
  - (c) identify—
    - (i) the respondent, and
    - (ii) the person or property the subject of the investigation;
  - (d) explain why the applicant thinks the person under investigation has—
    - (i) benefited from criminal conduct, in the case of a confiscation investigation, or
    - (ii) committed a money laundering offence, in the case of a money laundering investigation;
  - (e) give the additional information required by whichever of rules 6.15 to 6.19 applies; and
  - (f) serve any order made on each respondent.

*[Note. See also rules 6.3 and 6.4, under which the court may—*

- (a) *exercise its powers in the parties' absence;*
- (b) *dispense with a requirement for service; and*
- (c) *consider an application made orally.*

*Under rule 6.21, an applicant may withhold information from material that is served on a respondent.*

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(119) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

*See also the code of practice for those exercising functions as officers and investigators issued under section 377 of the 2002 Act(120), and the code of practice for prosecutors and others issued under section 377A of that Act(121).]*

### **Content of application for a production order**

**6.15.** As well as complying with rule 6.14, an applicant who wants the court to make an order for the production of, or access to, material, must—

- (a) describe that material;
- (b) explain why the applicant thinks the material is in the respondent’s possession or control;
- (c) confirm that none of the material is—
  - (i) expected to be subject to legal privilege, or
  - (ii) excluded material;
- (d) explain why the material is likely to be of substantial value to the investigation;
- (e) explain why it is in the public interest for the material to be produced, or for the applicant to be given access to it, having regard to—
  - (i) the benefit likely to accrue to the investigation if it is obtained, and
  - (ii) the circumstances in which the respondent has the material; and
- (f) propose—
  - (i) the terms of the order, and
  - (ii) the period within which it should take effect, if 7 days from the date of the order would not be appropriate.

*[Note. See sections 345 to 350 of the Proceeds of Crime Act 2002(122). Under those provisions—*

- (a) ‘excluded material’ means the same as under section 11 of the Police and Criminal Evidence Act 1984; and
- (b) ‘legal privilege’ is defined by section 348 of the 2002 Act.

*A Crown Court judge may make a production order for the purposes of a confiscation investigation or a money laundering investigation.*

*The applicant for a production order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act(123).]*

### **Content of application for an order to grant entry**

**6.16.** An applicant who wants the court to make an order to grant entry in aid of a production order must—

- (a) specify the premises to which entry is sought;
- (b) explain why the order is needed; and
- (c) propose the terms of the order.

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**(120)**2002 c. 29; section 377 was amended by section 74 of, and paragraphs 103 and 114 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

**(121)**2002 c. 29; section 377A was inserted by section 74 of, and paragraphs 103 and 115 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

**(122)**2002 c. 29; sections 345 and 346 were amended by section 75 of the Serious Crime Act 2007 (c. 27), and section 350 was amended by section 77 of, and paragraphs 1 and 5 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

**(123)**2002 c. 29; section 378 was amended by section 59 of, and paragraphs 168 and 175 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15) and sections 74, 77 and 80 of, and paragraphs 103 and 116 of Schedule 8, and paragraphs 1 and 13 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

*[Note. See section 347 of the Proceeds of Crime Act 2002. The applicant for an order to grant entry must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the Act.]*

### **Content of application for a disclosure order**

**6.17.** As well as complying with rule 6.14, an applicant who wants the court to make a disclosure order must—

- (a) describe in general terms the information that the applicant wants the respondent to provide;
- (b) confirm that none of the information is—
  - (i) expected to be subject to legal privilege, or
  - (ii) excluded material;
- (c) explain why the information is likely to be of substantial value to the investigation;
- (d) explain why it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if it is obtained; and
- (e) propose the terms of the order.

*[Note. See sections 357, 358 and 361 of the Proceeds of Crime Act 2002(124).*

*A Crown Court judge may make a disclosure order for the purposes of a confiscation investigation only.*

*The applicant for a disclosure order must be a ‘relevant authority’ as defined by section 357(7). In relation to a confiscation investigation, under section 357(2A) the applicant must have been asked to apply by an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act.*

*A disclosure order can require a lawyer to provide a client’s name and address.]*

### **Content of application for a customer information order**

**6.18.** As well as complying with rule 6.14, an applicant who wants the court to make a customer information order must—

- (a) explain why customer information about the person under investigation is likely to be of substantial value to that investigation;
- (b) explain why it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if it is obtained; and
- (c) propose the terms of the order.

*[Note. See sections 363, 364, 365 and 368 of the Proceeds of Crime Act 2002(125).*

*A Crown Court judge may make a customer information order for the purposes of a confiscation investigation or a money laundering investigation.*

*The applicant for a customer information order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the Act.*

*‘Customer information’ is defined by section 364 of the 2002 Act.]*

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(124) 2002 c. 29; section 357 was amended by section 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27) and section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(125) 2002 c. 29; section 363 was amended by section 77 of, and paragraphs 1 and 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27). Section 364 was amended by section 107 of the Serious Crime Act 2007 (c. 27) and article 2(1) of and paragraph 196 of Schedule 1 to, S.I. 2009/1941.



### **Content of application for an account monitoring order**

**6.19.** As well as complying with rule 6.14, an applicant who wants the court to make an account monitoring order for the provision of account information must—

- (a) specify—
  - (i) the information sought,
  - (ii) the period during which the applicant wants the respondent to provide that information (to a maximum of 90 days), and
  - (iii) when and in what manner the applicant wants the respondent to provide that information;
- (b) explain why the information is likely to be of substantial value to the investigation;
- (c) explain why it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if it is obtained; and
- (d) propose the terms of the order.

*[Note. See sections 370, 371 and 374 of the Proceeds of Crime Act 2002(126).*

*A Crown Court judge may make an account monitoring order for the purposes of a confiscation investigation or a money laundering investigation.*

*The applicant for an account monitoring order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the Act.*

*‘Account information’ is defined by section 370 of the 2002 Act.]*

### **Application to vary or discharge an order**

**6.20.**—(1) This rule applies where one of the following wants the court to vary or discharge an order listed in rule 6.1(2)—

- (a) an applicant;
  - (b) the respondent; or
  - (c) a person affected by the order.
- (2) That applicant, respondent or person affected must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the respondent, applicant, or any person known to be affected, as applicable;
  - (c) explain why it is appropriate for the order to be varied or discharged;
  - (d) propose the terms of any variation; and
  - (e) ask for a hearing, if one is wanted, and explain why it is needed.

### **Application containing information withheld from a respondent or other person**

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

- (a) an applicant serves on a respondent or other person an application for one of the orders listed in rule 6.1(2), or for the variation or discharge of such an order; and

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(126) 2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

- (b) the application includes information that the applicant thinks ought not be revealed to that recipient.
- (2) The applicant must—
  - (a) omit that information from the part of the application that is served on the respondent or other person;
  - (b) mark the other part, to show that it is only for the court; and
  - (c) in that other part, explain why the applicant has withheld it.
- (3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of the respondent and any other person.
- (4) At a hearing of an application to which this rule applies—
  - (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the applicant and then by the respondent and any other person, in the presence of them all, and then
    - (ii) further representations by the applicant, in the others' absence; but
  - (b) the court may direct other arrangements for the hearing.

#### **Application to punish for contempt of court**

**6.22.**—(1) This rule applies where a person is accused of disobeying—

- (a) a production order made under section 345 of the Proceeds of Crime Act 2002(127); or
- (b) an account monitoring order made under section 370 of that Act.

(2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

*[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See sections 351(7) and 375(6) of the Proceeds of Crime Act 2002, and section 45 of the Senior Courts Act 1981.*

*Disobedience to a disclosure order or to a customer information order is an offence: see sections 359 and 366 of the 2002 Act.*

*Under section 342 of the 2002 Act, subject to the exceptions for which that section provides it is an offence to make a disclosure likely to prejudice an investigation or to interfere with documents relevant to it.]*

#### **SECTION 5: ORDERS UNDER THE CORONERS AND JUSTICE ACT 2009**

*[Note. Rule 6.5 (custody of documents) also applies.]*

#### **Exercise of court's powers**

**6.23.**—(1) The court may determine an application for an investigation anonymity order, and any appeal against the refusal of such an order—

- (a) at a hearing (which must be in private unless the court otherwise directs); or
- (b) without a hearing.

(2) The court must determine an application to discharge an investigation anonymity order, and any appeal against the decision on such an application—

- (a) at a hearing (which must be in private unless the court otherwise directs); and
- (b) in the presence of the person specified in the order, unless—
  - (i) that person applied for the discharge of the order,
  - (ii) that person has had an opportunity to make representations, or
  - (iii) the court is satisfied that it is not reasonably practicable to communicate with that person.
- (3) The court may consider an application or an appeal made orally instead of in writing.

#### **Application for an investigation anonymity order**

**6.24.**—(1) This rule applies where an applicant wants a magistrates’ court to make an investigation anonymity order.

- (2) The applicant must—
  - (a) apply in writing;
  - (b) serve the application on the court officer;
  - (c) identify the person to be specified in the order, unless—
    - (i) the applicant wants the court to determine the application at a hearing, or
    - (ii) the court otherwise directs;
  - (d) explain how the proposed order meets the conditions prescribed by section 78 of the Coroners and Justice Act 2009(128);
  - (e) say if the applicant intends to appeal should the court refuse the order;
  - (f) attach any material on which the applicant relies; and
  - (g) propose the terms of the order.
- (3) At any hearing of the application, the applicant must—
  - (a) identify to the court the person to be specified in the order, unless—
    - (i) the applicant has done so already, or
    - (ii) the court otherwise directs; and
  - (b) unless the applicant has done so already, inform the court if the applicant intends to appeal should the court refuse the order.

*[Note. See section 77 of the Coroners and Justice Act 2009.]*

#### **Application to discharge an investigation anonymity order**

**6.25.**—(1) This rule applies where one of the following wants a magistrates’ court to discharge an investigation anonymity order—

- (a) an applicant; or
- (b) the person specified in the order.
- (2) That applicant or the specified person must—
  - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court officer, and as applicable
    - (ii) the applicant for the order, and

- (iii) the specified person;
  - (c) explain—
    - (i) what material circumstances have changed since the order was made, or since any previous application was made to discharge it, and
    - (ii) why it is appropriate for the order to be discharged; and
  - (d) attach—
    - (i) a copy of the order, and
    - (ii) any material on which the applicant relies.
- (3) A party must inform the court if that party intends to appeal should the court discharge the order.

*[Note. See section 80 of the Coroners and Justice Act 2009.]*

## Appeal

**6.26.**—(1) This rule applies where one of the following (‘the appellant’) wants to appeal to the Crown Court—

- (a) the applicant for an investigation anonymity order, where a magistrates’ court has refused to make the order;
  - (b) a party to an application to discharge such an order, where a magistrates’ court has decided that application.
- (2) The appellant must—
- (a) serve on the Crown Court officer a copy of the application to the magistrates’ court; and
  - (b) where the appeal concerns a discharge decision, notify each other party,
- not more than 21 days after the decision against which the appellant wants to appeal.
- (3) The Crown Court must hear the appeal without justices of the peace.

*[Note. See sections 79 and 80(6) of the Coroners and Justice Act 2009, and section 74 of the Senior Courts Act 1981(129).]*

## SECTION 6: ORDERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

*[Note. The rules in Section 2 (general rules) also apply.]*

### Application for approval for authorisation or notice

**6.27.**—(1) This rule applies where an applicant wants a magistrates’ court to make an order approving—

- (a) under sections 23A and 23B of the Regulation of Investigatory Powers Act 2000(130)—
  - (i) an authorisation to obtain or disclose communications data, under section 22(3) of the 2000 Act(131), or

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(129) 1981 c. 54; section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12 of the Schedule to S.I. 2004/2035 and section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). The Act’s title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(130) 2000 c. 23; sections 23A and 23B were inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(131) 2000 c. 23; section 22 was amended by section 112 of, and paragraphs 12 and 13 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26).

- (ii) a notice that requires a postal or telecommunications operator if need be to obtain, and in any case to disclose, communications data, under section 22(4) of the 2000 Act;
- (b) under sections 32A and 32B of the Regulation of Investigatory Powers Act 2000(**132**), an authorisation for—
  - (i) the carrying out of directed surveillance, under section 28 of the 2000 Act, or
  - (ii) the conduct or use of a covert human intelligence source, under section 29 of the 2000 Act(**133**).
- (2) The applicant must—
  - (a) apply in writing and serve the application on the court officer;
  - (b) attach the authorisation or notice which the applicant wants the court to approve;
  - (c) attach such other material (if any) on which the applicant relies to satisfy the court—
    - (i) as required by section 23A(3) and (4) of the 2000 Act, in relation to communications data,
    - (ii) as required by section 32A(3) and (4) of the 2000 Act, in relation to directed surveillance, or
    - (iii) as required by section 32A(5) and (6), and, if relevant, section 43(6A), of the 2000 Act(**134**), in relation to a covert human intelligence source; and
  - (d) propose the terms of the order.

*[Note. See also rules 6.3 and 6.4, under which the court may—*

- (a) *exercise its powers in the parties' absence; and*
- (b) *consider an application made orally.*

*Under section 23A(3) to (5) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation or notice concerning communications data (as defined in section 21 of the Act(**135**)), the court must be satisfied that—*

- (a) *the person who granted or renewed the authorisation, or who gave or renewed the notice, was entitled to do so;*
- (b) *the grant, giving or renewal met any prescribed restrictions or conditions;*
- (c) *at the time the authorisation or notice was granted, given or renewed, as the case may be, there were reasonable grounds for believing that to obtain or disclose the data described in the authorisation or notice was—*
  - (i) *necessary, for the purpose of preventing or detecting crime or preventing disorder, and*
  - (ii) *proportionate to what was sought to be achieved by doing so; and*
- (d) *there remain reasonable grounds for believing those things, at the time the court considers the application.*

*The Regulation of Investigatory Powers (Communications Data) Order 2010(**136**) specifies the persons who are entitled to grant, give or renew an authorisation or notice concerning such data, and for what purpose each may do so.*

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(132) 2000 c. 23; sections 32A and 32B were inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(133) 2000 c. 23; section 29 was amended by section 8 of the Policing and Crime Act 2009 (c. 26).

(134) 2000 c. 23; section 43(6A) was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(135) 2000 c. 23; section 21 was amended by section 88 of, and paragraphs 5 and 7 of Schedule 12 to, the Serious Crime Act 2007 (c. 27).

(136) S.I. 2010/480.

Under section 32A(3) and (4) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation concerning directed surveillance (as defined in section 26 of the Act(137)), the court must be satisfied that—

- (a) the person who granted the authorisation was entitled to do so;
- (b) the grant met any prescribed restrictions or conditions;
- (c) at the time the authorisation was granted there were reasonable grounds for believing that the surveillance described in the authorisation was—
  - (i) necessary, for the purpose of preventing or detecting crime or preventing disorder; and
  - (ii) proportionate to what was sought to be achieved by it; and
- (d) there remain reasonable grounds for believing those things, at the time the court considers the application.

Under section 32A(5) and (6) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation of the conduct or use of a covert human intelligence source (as defined in section 26 of the Act), the court must be satisfied that—

- (a) the person who granted the authorisation was entitled to do so;
- (b) the grant met any prescribed restrictions or conditions;
- (c) at the time the authorisation was granted there were reasonable grounds for believing that the conduct or use of a covert human intelligence source described in the authorisation was—
  - (i) necessary, for the purpose of preventing or detecting crime or preventing disorder; and
  - (ii) proportionate to what was sought to be achieved by it; and
- (d) there remain reasonable grounds for believing those things, at the time the court considers the application.

Under section 43(6A) of the 2000 Act, on an application to approve the renewal of such an authorisation the court in addition must—

- (a) be satisfied that, since the grant or latest renewal of the authorisation, a review has been carried out of the use made of the source, of the tasks given to him or her and of the information obtained; and
- (b) consider the results of that review.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(138) specifies the persons who are entitled to grant an authorisation concerning such surveillance or such a source, and for what purpose each may do so.

Under sections 23B(2) and 32B(2) of the 2000 Act, the applicant is not required to give notice of an application to any person to whom the authorisation or notice relates, or to such a person's legal representatives.]

### **Exercise of court's power to quash an authorisation or notice**

**6.28.**—(1) This rule applies where, under section 23A or 32A of the Regulation of Investigatory Powers Act 2000, a magistrates' court refuses to approve the grant, giving or renewal of an authorisation or notice.

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(137)2000 c. 23; section 26 was amended by section 406 of, and paragraph 161 of Schedule 17 to, the Communications Act 2003 (c. 21).  
 (138)S.I. 2010/521.

(2) The court must not exercise its power to quash that authorisation or notice unless the applicant has had at least 2 business days from the date of the refusal in which to make representations.

*[Note. See sections 23B(3) and 32B(3) of the Regulation of Investigatory Powers Act 2000.]*

#### SECTION 7: SEARCH WARRANTS

*[Note. Rule 6.5 (Documents served on the court officer) also applies.]*

#### Exercise of court's powers

**6.29.**—(1) The court must determine an application for a warrant—

- (a) at a hearing, which must be in private unless the court otherwise directs;
- (b) in the presence of the applicant; and
- (c) in the absence of any person affected by the warrant, including any person in occupation or control of premises which the applicant wants to search.

(2) If the court so directs, the applicant may attend the hearing by live link.

(3) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(4) The court must not determine an application unless the applicant confirms, on oath or affirmation, that to the best of the applicant's knowledge and belief—

- (a) the application discloses all the information that is material to what the court must decide, including any circumstances that might reasonably be considered capable of undermining any of the grounds of the application; and
- (b) the content of the application is true.

(5) If the court requires the applicant to answer a question about an application—

- (a) the applicant's answer must be on oath or affirmation;
- (b) the court must arrange for a record of the gist of the question and reply; and
- (c) if the applicant cannot answer to the court's satisfaction, the court may—
  - (i) specify the information the court requires, and
  - (ii) give directions for the presentation of any renewed application.

(6) Unless to do so would be inconsistent with other legislation, on an application the court may issue—

- (a) a warrant in respect of specified premises;
- (b) a warrant in respect of all premises occupied or controlled by a specified person;
- (c) a warrant in respect of all premises occupied or controlled by a specified person which specifies some of those premises; or
- (d) more than one warrant—
  - (i) each one in respect of premises specified in the warrant,
  - (ii) each one in respect of all premises occupied or controlled by a person specified in the warrant (whether or not such a warrant also specifies any of those premises), or
  - (iii) at least one in respect of specified premises and at least one in respect of all premises occupied or controlled by a specified person (whether or not such a warrant also specifies any of those premises).

[Note. See section 15 of the Police and Criminal Evidence Act 1984(139) and section 2(4) of the Criminal Justice Act 1987(140).]

### **Application for warrant under section 8 of the Police and Criminal Evidence Act 1984**

**6.30.**—(1) This rule applies where an applicant wants a magistrates' court to issue a warrant or warrants under section 8 of the Police and Criminal Evidence Act 1984.

(2) The applicant must—

- (a) apply in writing;
- (b) serve the application on—
  - (i) the court officer, or
  - (ii) if the court office is closed, the court;
- (c) give the court an estimate of how long the court should allow—
  - (i) to read and prepare for the application, and
  - (ii) for the hearing of the application; and
- (d) tell the court when the applicant expects any warrant issued to be executed.

(3) The application must—

- (a) specify the offence under investigation (and see paragraph (4));
- (b) so far as practicable, identify the material sought (and see paragraph (5));
- (c) specify the premises to be searched (and see paragraphs (6) and (7));
- (d) state whether the applicant wants the premises to be searched on more than one occasion (and see paragraph (8)); and
- (e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (9)).

(4) In relation to the offence under investigation, the application must—

- (a) state whether that offence is—
  - (i) an indictable offence, or
  - (ii) a relevant offence as defined in section 28D of the Immigration Act 1971(141); and
- (b) explain the grounds for believing that the offence has been committed.

(5) In relation to the material sought, the application must explain the grounds for believing that that material—

- (a) is likely to be of substantial value to the investigation (whether by itself, or together with other material);
- (b) is likely to be admissible evidence at trial for the offence under investigation; and
- (c) does not consist of or include items subject to legal privilege, excluded material or special procedure material.

(6) In relation to premises which the applicant wants to be searched and can specify, the application must—

- (a) specify each set of premises;

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(139) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496.

(140) 1987 c. 38.

(141) 1971 c. 77; section 28D was inserted by section 131 of the Immigration and Asylum Act 1999 (c. 33) and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c. 41).



- (b) in respect of each set of premises, explain the grounds for believing that material sought is on those premises; and
  - (c) in respect of each set of premises, explain the grounds for believing that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
    - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
    - (iii) entry to the premises will not be granted unless a warrant is produced, or
    - (iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (7) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—
- (a) explain the grounds for believing that—
    - (i) because of the particulars of the offence under investigation it is necessary to search any premises occupied or controlled by a specified person, and
    - (ii) it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched;
  - (b) specify as many sets of premises as is reasonably practicable;
  - (c) in respect of each set of premises, whether specified or not, explain the grounds for believing that material sought is on those premises; and
  - (d) in respect of each specified set of premises, explain the grounds for believing that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
    - (ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,
    - (iii) entry to the premises will not be granted unless a warrant is produced, or
    - (iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (8) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—
- (a) explain why it is necessary to search on more than one occasion in order to achieve the purpose for which the applicant wants the court to issue the warrant; and
  - (b) specify any proposed maximum number of occasions.
- (9) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—
- (a) identify those other persons, by function or description; and
  - (b) explain why those persons are required.
- (10) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.
- (11) Where the application includes information that the applicant thinks should be supplied only to the court, the applicant may—
- (a) set out that information in a separate document, marked accordingly; and
  - (b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.

(12) The application must include—

- (a) a declaration by the applicant that to the best of the applicant’s knowledge and belief—
  - (i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and
  - (ii) the content of the application is true; and
- (b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.

(13) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

*[Note. The Practice Direction sets out forms of application and warrant for use in connection with this rule.*

*Under section 8 of the Police and Criminal Evidence Act 1984(142), where there are reasonable grounds for believing that an indictable offence has been committed a constable may apply to a justice of the peace for a warrant authorising a search for evidence on specified premises, or on the premises of a specified person. Under section 8(6) of the 1984 Act, section 8 applies also in relation to relevant offences as defined in section 28D(4) of the Immigration Act 1971 (some of which are not indictable offences).*

*Under section 23 of the 1984 Act(143), ‘premises’ includes any place, and in particular any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation and any tent or moveable structure.*

*Under section 16(3) of the 1984 Act(144), entry and search under a warrant must be within 3 months from the date of its issue.*

*See also the code of practice for the search of premises issued under section 66 of the 1984 Act.]*

### **Application for warrant under section 2 of the Criminal Justice Act 1987**

**6.31.**—(1) This rule applies where an applicant wants a magistrates’ court to issue a warrant or warrants under section 2 of the Criminal Justice Act 1987.

(2) The applicant must—

- (a) apply in writing;
- (b) serve the application on—
  - (i) the court officer, or
  - (ii) if the court office is closed, the court;
- (c) give the court an estimate of how long the court should allow—
  - (i) to read and prepare for the application, and
  - (ii) for the hearing of the application; and
- (d) tell the court when the applicant expects any warrant issued to be executed.

(3) The application must—

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**(142)** 1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

**(143)** 1984 c. 60; section 23 was amended by sections 103 and 197 of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

**(144)** 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

- (a) describe the investigation being conducted by the Director of the Serious Fraud Office and include—
    - (i) an explanation of what is alleged and why, and
    - (ii) a chronology of relevant events;
  - (b) specify the document, documents or description of documents sought by the applicant (and see paragraphs (4) and (5)); and
  - (c) specify the premises which the applicant wants to be searched (and see paragraph (6)).
- (4) In relation to each document or description of documents sought, the application must—
- (a) explain the grounds for believing that each such document—
    - (i) relates to a matter relevant to the investigation, and
    - (ii) could not be withheld from disclosure or production on grounds of legal professional privilege; and
  - (b) explain the grounds for believing that—
    - (i) a person has failed to comply with a notice by the Director to produce the document or documents,
    - (ii) it is not practicable to serve such a notice, or
    - (iii) the service of such a notice might seriously impede the investigation.
- (5) In relation to any document or description of documents which the applicant wants to be preserved but not seized under a warrant, the application must—
- (a) specify the steps for which the applicant wants the court’s authority in order to preserve and prevent interference with the document or documents; and
  - (b) explain why such steps are necessary.
- (6) In respect of each set of premises which the applicant wants to be searched, the application must explain the grounds for believing that a document or description of documents sought by the applicant is on those premises.
- (7) If the court so directs, the applicant must make available to the court material on which is based the information given under paragraph (3).
- (8) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.
- (9) Where the application includes information that the applicant thinks should be supplied only to the court, the applicant may—
- (a) set out that information in a separate document, marked accordingly; and
  - (b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.
- (10) The application must include—
- (a) a declaration by the applicant that to the best of the applicant’s knowledge and belief—
    - (i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and
    - (ii) the content of the application is true; and
  - (b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.
- (11) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

*[Note. The Practice Direction sets out forms of application and warrant for use in connection with this rule.*

*Under section 2 of the Criminal Justice Act 1987(145), where the Director of the Serious Fraud Office is investigating a case of serious or complex fraud a member of that Office may apply to a justice of the peace for a warrant authorising a search of specified premises for documents relating to any matter relevant to the investigation.*

*Under section 16(3) of the Police and Criminal Evidence Act 1984, entry and search under a warrant must be within 3 months from the date of its issue.]*

### **Application for warrant under another power to which sections 15 and 16 of the Police and Criminal Evidence Act 1984 apply**

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

- (a) an applicant wants a magistrates’ court to issue a warrant or warrants under a power to which sections 15 and 16 of the Police and Criminal Evidence Act 1984 apply; and
- (b) neither rule 6.30 nor rule 6.31 applies.

(2) The applicant must—

- (a) apply in writing;
- (b) serve the application on—
  - (i) the court officer, or
  - (ii) if the court office is closed, the court;
- (c) give the court an estimate of how long the court should allow—
  - (i) to read and prepare for the application, and
  - (ii) for the hearing of the application; and
- (d) tell the court when the applicant expects any warrant issued to be executed.

(3) The application must—

- (a) state the legislation which allows the court to issue the warrant (in this rule, described as ‘the main search power’; and see paragraph (4));
- (b) so far as practicable, identify the articles or persons sought (and see paragraph (5));
- (c) specify the premises to be searched (and see paragraphs (6) and (7));
- (d) state whether the applicant wants the premises to be searched on more than one occasion (and see paragraph (8)); and
- (e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (9)).

(4) The application must—

- (a) include or attach the terms of the main search power; and
- (b) explain how the circumstances satisfy any criteria prescribed by the main search power for making the application.

(5) In relation to the articles or persons sought, the application must explain how they satisfy any criteria prescribed by the main search power about such articles or persons.

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**(145)** 1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

(6) In relation to premises which the applicant wants to be searched and can specify, the application must—

- (a) specify each set of premises; and
- (b) in respect of each, explain how the circumstances satisfy any criteria prescribed by the main search power—
  - (i) for thinking that the articles or persons sought are on those premises, and
  - (ii) for asserting that the court can exercise its power to authorise the search of those premises.

(7) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—

- (a) explain how the main search power allows the court to authorise such searching;
- (b) specify the person who occupies or controls such premises;
- (c) specify as many sets of such premises as is reasonably practicable;
- (d) explain why—
  - (i) it is necessary to search more premises than those specified, and
  - (ii) it is not reasonably practicable to specify all the premises which the applicant wants to be searched;
- (e) in respect of each set of premises, whether specified or not, explain how the circumstances satisfy any criteria prescribed by the main search power for thinking that the articles or persons sought are on those premises; and
- (f) in respect of each specified set of premises, explain how the circumstances satisfy any criteria prescribed by the main search power for asserting that the court can exercise its power to authorise the search of those premises.

(8) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—

- (a) explain how the main search power allows the court to authorise such searching;
- (b) explain why the applicant wants the premises to be searched more than once; and
- (c) specify any proposed maximum number of occasions.

(9) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—

- (a) identify those other persons, by function or description; and
- (b) explain why those persons are required.

(10) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.

(11) Where the application includes information that the applicant thinks should be supplied only to the court, the applicant may—

- (a) set out that information in a separate document, marked accordingly; and
- (b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.

(12) The application must include—

- (a) a declaration by the applicant that to the best of the applicant's knowledge and belief—
  - (i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and

- (ii) the content of the application is true; and
  - (b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.
- (13) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

*[Note. The Practice Direction sets out forms of application and warrant for use in connection with this rule.*

*Sections 15 and 16 of the Police and Criminal Evidence Act 1984(146) apply to the issue to a constable under any Act of a warrant authorising the search of specified premises, or the search of premises of a specified person.*

*Unless other legislation otherwise provides, under section 16(3) of the 1984 Act, entry and search under a warrant must be within 3 months from the date of its issue.]*

### **Information to be included in a warrant**

#### **6.33.—(1) A warrant must identify—**

- (a) the person or description of persons by whom it may be executed;
- (b) any person who may accompany a person executing the warrant;
- (c) so far as practicable, the material, documents, articles or persons to be sought;
- (d) the legislation under which it was issued;
- (e) the name of the applicant;
- (f) the court that issued it, unless that is otherwise recorded by the court officer;
- (g) the court office for the court that issued it; and
- (h) the date on which it was issued.

#### **(2) A warrant must specify—**

- (a) the premises to be searched, where the application specified premises;
- (b) the person in occupation or control of premises to be searched, where the application specified such a person; and
- (c) the number of occasions on which specified premises may be searched, if more than one.

(3) A warrant must include, by signature, initial, or otherwise, an indication that it has been approved by the court that issued it.

(4) Where a warrant comprises more than a single page, each page must include such an indication.

(5) A copy of a warrant must include a prominent certificate that it is such a copy.

*[Note. See section 16 of the Police and Criminal Evidence Act 1984.]*

### **SECTION 8: ORDERS FOR THE RETENTION OF FINGERPRINTS, ETC.**

*[Note. Rule 6.4 (Court's power to vary requirements under this Part) and rule 6.5 (Documents served on the court officer) also apply.]*

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**(146)** 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496. Section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), article 8 of S.I. 2005/3496 and sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

### Exercise of court's powers

**6.34.**—(1) The court must determine an application under rule 6.35, and an appeal under rule 6.36—

- (a) at a hearing, which must be in private unless the court otherwise directs; and
- (b) in the presence of the applicant or appellant.

(2) The court must not determine such an application or appeal unless any person served under those rules—

- (a) is present; or
- (b) has had an opportunity—
  - (i) to attend, or
  - (ii) to make representations.

### Application to extend retention period

**6.35.**—(1) This rule applies where a magistrates' court can make an order extending the period for which there may be retained material consisting of—

- (a) fingerprints taken from a person—
  - (i) under a power conferred by Part V of the Police and Criminal Evidence Act 1984(**147**),
  - (ii) with that person's consent, in connection with the investigation of an offence by the police, or
  - (iii) under a power conferred by Schedule 8 to the Terrorism Act 2000(**148**) in relation to a person detained under section 41 of that Act;
- (b) a DNA profile derived from a DNA sample so taken; or
- (c) a sample so taken.

(2) A chief officer of police who wants the court to make such an order must—

- (a) apply in writing—
  - (i) within the period of 3 months ending on the last day of the retention period, where the application relates to fingerprints or a DNA profile, or
  - (ii) before the expiry of the retention period, where the application relates to a sample;
- (b) in the application—
  - (i) identify the material,
  - (ii) state when the retention period expires,
  - (iii) give details of any previous such application relating to the material, and
  - (iv) outline the circumstances in which the material was acquired;
- (c) serve the application on the court officer, in every case; and
- (d) serve the application on the person from whom the material was taken, where—
  - (i) the application relates to fingerprints or a DNA profile, or
  - (ii) the application is for the renewal of an order extending the retention period for a sample.

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(147) 1984 c. 60.

(148) 2000 c. 11.

(3) An application to extend the retention period for fingerprints or a DNA profile must explain why that period should be extended.

(4) An application to extend the retention period for a sample must explain why, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—

- (a) disclosure to, or use by, a defendant; or
- (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

(5) On an application to extend the retention period for fingerprints or a DNA profile, the applicant must serve notice of the court's decision on any respondent where—

- (a) the court makes the order sought; and
- (b) the respondent was absent when it was made.

*[Note. See rule 6.1(6)(a). The powers to which rule 6.35 applies may be exercised only by a District Judge (Magistrates' Courts).*

*The time limits for making an application under this rule are prescribed by sections 63F(8) and 63R(8) of the Police and Criminal Evidence Act 1984(149), and by paragraphs 20B(6) and 20G(8) of Schedule 8 to the Terrorism Act 2000(150). They may be neither extended nor shortened.*

*Sections 63D and 63R of the 1984 Act(151), and paragraphs 20A and 20G of Schedule 8 to the 2000 Act(152), provide for the circumstances in which there must be destroyed the material to which this rule applies.*

*Section 63F of the 1984 Act, and paragraph 20B of Schedule 8 to the 2000 Act, provide for the circumstances in which fingerprints and DNA profiles may be retained instead of being destroyed. Under section 63F(7) and paragraph 20B(5), a chief officer of police to whom those provisions apply may apply for an order extending the statutory retention period of 3 years by up to another 2 years.*

*Section 63R of the 1984 Act and paragraph 20G of Schedule 8 to the 2000 Act provide for the circumstances in which samples taken from a person may be retained instead of being destroyed. Under section 63R(6) of the 1984 Act and paragraph 20G(6) of Schedule 8 to the 2000 Act, a chief officer of police to whom those provisions apply may apply for an order to retain a sample for up to 12 months after the date on which it would otherwise have to be destroyed. Under section 63R(9) and paragraph 20G(9), such an order may be renewed, on one or more occasions, for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.]*

## Appeal

**6.36.**—(1) This rule applies where, under rule 6.35, a magistrates' court determines an application relating to fingerprints or a DNA profile and—

- (a) the person from whom the material was taken wants to appeal to the Crown Court against an order extending the retention period; or

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(149) 1984 c. 60; section 63F was inserted by section 3 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

(150) 2000 c. 11; paragraphs 20B and 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.

(151) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9).

(152) 2000 c. 11; paragraph 20A of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) for certain purposes, and for remaining purposes with effect from a date to be appointed.



- (b) a chief officer of police wants to appeal to the Crown Court against a refusal to make such an order.
- (2) The appellant must—
  - (a) serve an appeal notice—
    - (i) on the Crown Court officer and on the other party, and
    - (ii) not more than 21 days after the magistrates’ court’s decision, or, if applicable, service of notice under rule 6.35(5); and
  - (b) in the appeal notice, explain, as appropriate, why the retention period should, or should not, be extended.
- (3) Rule 63.10 (Constitution of the Crown Court) applies on such an appeal.

*[Note. Under section 63F(10) of the Police and Criminal Evidence Act 1984, and under paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000, the person from whom fingerprints were taken, or from whom a DNA profile derives, may appeal to the Crown Court against an order extending the retention period; and a chief officer of police may appeal to the Crown Court against the refusal of such an order.]*

## PART 7

### STARTING A PROSECUTION IN A MAGISTRATES’ COURT

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#### Contents of this Part

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When this Part applies	rule 7.1
Information and written charge	rule 7.2
Allegation of offence in information or charge	rule 7.3
Summons, warrant and requisition	rule 7.4

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#### When this Part applies

- 7.1.—(1) This Part applies in a magistrates’ court where—
- (a) a prosecutor wants the court to issue a summons or warrant under section 1 of the Magistrates’ Courts Act 1980(153);
  - (b) a public prosecutor—
    - (i) wants the court to issue a warrant under section 1 of the Magistrates’ Courts Act 1980, or
    - (ii) issues a written charge and requisition under section 29 of the Criminal Justice Act 2003(154); or
  - (c) a person who is in custody is charged with an offence.

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(153) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(154) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, S.I. 2008/1424 and S.I. 2009/2879). It 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).

(2) In this Part, ‘public prosecutor’ means one of those public prosecutors listed in section 29 of the Criminal Justice Act 2003.

*[Note. Under section 1 of the Magistrates’ Courts Act 1980, on receiving a formal statement (described in that section as an ‘information’) alleging that someone has committed an offence, the court may issue—*

- (a) *a summons requiring that person to attend court; or*
- (b) *a warrant for that person’s arrest, if—*
  - (i) *the alleged offence must or may be tried in the Crown Court,*
  - (ii) *the alleged offence is punishable with imprisonment, or*
  - (iii) *the person’s address cannot be established sufficiently clearly to serve a summons or requisition.*

*The powers of the court to which this Part applies may be exercised by a single justice of the peace.*

*Under section 29 of the Criminal Justice Act 2003, a public prosecutor listed in that section may issue a written charge alleging that someone has committed an offence, and a requisition requiring that person to attend court. Section 30 of that Act(155) contains other provisions about written charges and requisitions.*

*A person detained under a power of arrest may be charged if the custody officer decides that there is sufficient evidence to do so. See sections 37 and 38 of the Police and Criminal Evidence Act 1984(156).]*

### **Information and written charge**

- 7.2.—**(1) A prosecutor who wants the court to issue a summons must—
- (a) serve an information in writing on the court officer; or
  - (b) unless other legislation prohibits this, present an information orally to the court, with a written record of the allegation that it contains.
- (2) A prosecutor who wants the court to issue a warrant must—
- (a) serve on the court officer—
    - (i) an information in writing, or
    - (ii) a copy of a written charge that has been issued; or
  - (b) present to the court either of those documents.
- (3) A public prosecutor who issues a written charge must notify the court officer immediately.
- (4) A single document may contain—
- (a) more than one information; or

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(155) 2003 c. 44; section 30 was amended by article 3 of, and paragraphs 45 and 46 of the Schedule to S.I. 2004/2035.

(156) 1984 c. 60; section 37 was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41), sections 72 and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 29(4) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 28 of, and paragraphs 1 and 2 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), section 23(1) of, and paragraphs 1 and 2 of Schedule 1 to, the Drugs Act 2005 (c. 17) and sections 11 and 52 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48). Section 38 was amended by section 108(5) of, and paragraph 53 of Schedule 13 to, the Children Act 1989 (c. 41), section 59 of the Criminal Justice Act 1991 (c. 53), sections 24, 28 and 168(2) of, and paragraph 54 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), section 5 of, and paragraph 44 of Schedule 32 and paragraph 5 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 23 of, and paragraphs 1 and 3 of Schedule 1 to, the Drugs Act 2005 (c. 17) and paragraph 34 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(b) more than one written charge.

(5) Where an offence can be tried only in a magistrates' court, then unless other legislation otherwise provides—

(a) a prosecutor must serve an information on the court officer or present it to the court; or

(b) a public prosecutor must issue a written charge,

not more than 6 months after the offence alleged.

(6) Where an offence can be tried in the Crown Court then—

(a) a prosecutor must serve an information on the court officer or present it to the court; or

(b) a public prosecutor must issue a written charge,

within any time limit that applies to that offence.

*[Note. In some legislation, including the Magistrates' Courts Act 1980, serving an information on the court officer or presenting it to the court is described as 'laying' that information.*

*The time limits for serving or presenting an information and for issuing a written charge are prescribed by section 127 of the Magistrates' Courts Act 1980(157) and section 30(5) of the Criminal Justice Act 2003(158).*

*Part 2 contains rules allowing a member, officer or employee of a prosecutor, on the prosecutor's behalf, to—*

(a) *serve on the court officer or present to the court an information; or*

(b) *issue a written charge and requisition.*

*See Part 3 for the court's general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an information or charge and for separate trials.*

*See also Part 44 (Breach, revocation and amendment of community and other orders). Rule 44.2(2) (Application by responsible officer) applies rules 7.2 to 7.4 to the procedure with which that rule deals.*

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

### **Allegation of offence in information or charge**

**7.3.—**(1) An allegation of an offence in an information or charge must contain—

(a) a statement of the offence that—

(i) describes the offence in ordinary language, and

(ii) identifies any legislation that creates it; and

(b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

(2) More than one incident of the commission of the offence may be included in the allegation if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

### **Summons, warrant and requisition**

**7.4.—**(1) The court may issue or withdraw a summons or warrant—

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(157) 1980 c. 43.

(158) 2003 c. 44.

- (a) without giving the parties an opportunity to make representations; and
  - (b) without a hearing, or at a hearing in public or in private.
- (2) A summons, warrant or requisition may be issued in respect of more than one offence.
- (3) A summons or requisition must—
- (a) contain notice of when and where the defendant is required to attend the court;
  - (b) specify each offence in respect of which it is issued;
  - (c) in the case of a summons, identify—
    - (i) the court that issued it, unless that is otherwise recorded by the court officer, and
    - (ii) the court office for the court that issued it; and
  - (d) in the case of a requisition, identify the person under whose authority it is issued.
- (4) A summons may be contained in the same document as an information.
- (5) A requisition may be contained in the same document as a written charge.
- (6) Where the court issues a summons—
- (a) the prosecutor must—
    - (i) serve it on the defendant, and
    - (ii) notify the court officer; or
  - (b) the court officer must—
    - (i) serve it on the defendant, and
    - (ii) notify the prosecutor.
- (7) Where a public prosecutor issues a requisition that prosecutor must—
- (a) serve on the defendant—
    - (i) the requisition, and
    - (ii) the written charge; and
  - (b) serve a copy of each on the court officer.
- (8) Unless it would be inconsistent with other legislation, a replacement summons or requisition may be issued without a fresh information or written charge where the one replaced—
- (a) was served by leaving or posting it under rule 4.7 (documents that must be served only by handing them over, leaving or posting them); but
  - (b) is shown not to have been received by the addressee.
- (9) A summons or requisition issued to a defendant under 18 may require that defendant's parent or guardian to attend the court with the defendant, or a separate summons or requisition may be issued for that purpose.

*[Note. Part 18 contains other rules about warrants.]*

*Section 47 of the Magistrates' Courts Act 1980(159) and section 30(5) of the Criminal Justice Act 2003 make special provision about time limits under other legislation for the issue and service of a summons or requisition, where service by post is not successful.*

*Section 34A of the Children and Young Persons Act 1933(160) allows, and in some cases requires, the court to summon the parent or guardian of a defendant under 18.]*

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(159) 1980 c. 43; section 47 was amended by section 109(1) of, and paragraph 207 of Schedule 8 to, the Courts Act 2003 (c. 39).  
 (160) 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).

## PART 8

### DISCONTINUING A PROSECUTION

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#### Contents of this Part

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When this Part applies	rule 8.1
Discontinuing a case	rule 8.2
Defendant's notice to continue	rule 8.3

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#### When this Part applies

**8.1.**—(1) This Part applies where—

- (a) the Director of Public Prosecutions can discontinue a case in a magistrates' court, under section 23 of the Prosecution of Offences Act 1985(**161**);
- (b) the Director of Public Prosecutions, or another public prosecutor, can discontinue a case sent for trial in the Crown Court, under section 23A of the Prosecution of Offences Act 1985(**162**).

(2) In this Part, 'prosecutor' means one of those authorities.

*[Note. Under section 23 of the Prosecution of Offences Act 1985, the Director of Public Prosecutions may discontinue proceedings in a magistrates' court, before the court—*

- (a) *commits or sends the defendant for trial in the Crown Court; or*
- (b) *begins to hear the prosecution evidence, at a trial in the magistrates' court.*

*Under section 23(4) of the 1985 Act, the Director may discontinue proceedings where a person charged is in custody but has not yet been brought to court.*

*Under section 23 of the 1985 Act, the defendant has a right to require the proceedings to continue. See rule 8.3.*

*Under section 23A of the 1985 Act, the Director of Public Prosecutions, or a public authority within the meaning of section 17 of that Act(**163**), may discontinue proceedings where the defendant was sent for trial in the Crown Court under section 51 of the Crime and Disorder Act 1998(**164**). In such a case—*

- (a) *the prosecutor must discontinue before a draft indictment has been served under rule 14.1; and*
- (b) *the defendant has no right to require the proceedings to continue.*

*Where a prosecution does not proceed, the court has power to order the payment of the defendant's costs out of central funds. See rule 76.4.]*

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**(161)** 1985 c. 23; section 23 was amended by section 119 of, and paragraph 63 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 290 of Schedule 8 to the Courts Act 2003 (c. 39) and paragraph 57 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

**(162)** 1985 c. 23; section 23A was inserted by section 119 of, and paragraph 64 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and amended by paragraph 57 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

**(163)** 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(164)** 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

### **Discontinuing a case**

- 8.2.**—(1) A prosecutor exercising a power to which this Part applies must serve notice on—
- (a) the court officer;
  - (b) the defendant; and
  - (c) any custodian of the defendant.
- (2) Such a notice must—
- (a) identify—
    - (i) the defendant and each offence to which the notice relates,
    - (ii) the person serving the notice, and
    - (iii) the power that that person is exercising;
  - (b) explain—
    - (i) in the copy of the notice served on the court officer, the reasons for discontinuing the case,
    - (ii) that the notice brings the case to an end,
    - (iii) if the defendant is in custody for any offence to which the notice relates, that the defendant must be released from that custody, and
    - (iv) if the notice is under section 23 of the 1985 Act, that the defendant has a right to require the case to continue.
- (3) Where the defendant is on bail, the court officer must notify—
- (a) any surety; and
  - (b) any person responsible for monitoring or securing the defendant’s compliance with a condition of bail.

### **Defendant’s notice to continue**

- 8.3.**—(1) This rule applies where a prosecutor serves a notice to discontinue under section 23 of the 1985 Act.
- (2) A defendant who wants the case to continue must serve notice—
- (a) on the court officer; and
  - (b) not more than 35 days after service of the notice to discontinue.
- (3) If the defendant serves such a notice, the court officer must—
- (a) notify the prosecutor; and
  - (b) refer the case to the court.

## **PART 9**

### **ALLOCATION AND SENDING FOR TRIAL**

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#### **Contents of this Part**

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When this Part applies

rule 9.1

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**Contents of this Part**

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*SECTION 1: GENERAL RULES*

**When this Part applies**

**9.1.**—(1) This Part applies to the allocation and sending of cases for trial under—

- (a) sections 17A to 26 of the Magistrates' Courts Act 1980(**165**); and
- (b) sections 50A to 52 of the Crime and Disorder Act 1998(**166**).

(2) Section 2 of this Part applies in a magistrates' court where the court must, or can, send a defendant to the Crown Court for trial, without allocating the case for trial there.

(3) Section 3 of this Part applies in a magistrates' court where the court must allocate the case to a magistrates' court or to the Crown Court for trial.

(4) Section 4 of this Part applies in the Crown Court, where a defendant is sent for trial there.

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(165) 1980 c. 43; sections 17A, 17D, 17E, 18 to 21 and 23 to 26 were inserted or amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(166) 1998 c. 37; sections 50A to 52 were inserted or amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44).

[Note. A magistrates' court's powers to send a defendant to the Crown Court for trial are contained in section 51 of the Crime and Disorder Act 1998(167).

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 an offence classified as triable on indictment exclusively must be sent for Crown Court trial; an offence classified as triable only summarily must be tried in a magistrates' court; and an offence classified as triable either on indictment or summarily must be allocated to one or the other court for trial: see in particular sections 50A, 51 and 51A of the 1998 Act(168) and section 19 of the Magistrates' Courts Act 1980(169);
- (b) the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act(170);
- (c) whether the defendant is awaiting Crown Court trial for another offence;
- (d) whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence; and
- (e) in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000.

The court's powers of sending and allocation, including its powers (i) to receive a defendant's indication of an intention to plead guilty (see rules 9.7, 9.8 and 9.13) and (ii) to give an indication of likely sentence (see rule 9.11), may be exercised by a single justice: see sections 51 and 51A(11) of the 1998 Act, and sections 17E, 18(5) and 24D of the 1980 Act(171).]

## Exercise of magistrates' court's powers

9.2.—(1) This rule applies to the exercise of the powers to which Sections 2 and 3 apply.

(2) The general rule is that the court must exercise its powers at a hearing in public, but it may exercise any power it has to—

- (a) withhold information from the public; or
- (b) order a hearing in private.

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(167) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(168) 1998 c. 37; section 50A was inserted by paragraphs 15 and 17 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(169) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(170) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). Section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(171) 1980 c. 43; section 17E was inserted by paragraphs 1 and 3 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 18 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), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 24D was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).



(3) The general rule is that the court must exercise its powers in the defendant's presence, but it may exercise the powers to which the following rules apply in the defendant's absence on the conditions specified—

- (a) where rule 9.8 (adult defendant: request for plea), rule 9.9 (adult defendant: guilty plea) or rule 9.13 (young defendant) applies, if—
  - (i) the defendant is represented, and
  - (ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable;
- (b) where rule 9.10 (adult defendant: not guilty plea) or rule 9.11 (adult defendant: allocation for magistrates' court trial) applies, if—
  - (i) the defendant is represented and waives the right to be present, or
  - (ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable.

(4) The court may exercise its power to adjourn—

- (a) if either party asks; or
- (b) on its own initiative.

(5) Where the court on the same occasion deals with two or more offences alleged against the same defendant, the court must deal with those offences in the following sequence—

- (a) any to which rule 9.6 applies (prosecutor's notice requiring Crown Court trial);
- (b) any to which rule 9.7 applies (sending for Crown Court trial, without allocation there), in this sequence—
  - (i) any the court must send for trial, then
  - (ii) any the court can send for trial; and
- (c) any to which rule 9.14 applies (allocation for Crown Court trial).

(6) Where the court on the same occasion deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court then in the following sequence—

- (a) the court must explain, in terms each defendant can understand (with help, if necessary), that if the court sends one of them to the Crown Court for trial then the court must send for trial in the Crown Court, too, any other of them—
  - (i) who is charged with the same offence as the defendant sent for trial, or with an offence which the court decides is related to that offence,
  - (ii) who does not wish to plead guilty to each offence with which he or she is charged, and
  - (iii) (if that other defendant is under 18, and the court would not otherwise have sent him or her for Crown Court trial) where the court decides that sending is necessary in the interests of justice

even if the court by then has decided to allocate that other defendant for magistrates' court trial; and

- (b) the court may ask the defendants questions to help it decide in what order to deal with them.

(7) After following paragraph (5), if it applies, where the court on the same occasion—

- (a) deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court;
- (b) allocates any of them to a magistrates' court for trial; and
- (c) then sends another one of them to the Crown Court for trial,

the court must deal again with each one whom, on that occasion, it has allocated for magistrates' court trial.

*[Note. See sections 50A, 51, 51A and 52 of the Crime and Disorder Act 1998(172) and sections 17A, 17B, 17C, 18, 23, 24A, 24B and 24C of the Magistrates' Courts Act 1980(173).*

*Under sections 57A to 57E of the 1998 Act(174), the court may require a defendant to attend by live link a hearing to which this Part applies.*

*Where a defendant waives the right to be present then the court may nonetheless require his or her attendance by summons or warrant: see section 26 of the 1980 Act(175).*

*Under section 52A of the 1998 Act(176), reporting restrictions apply to the proceedings to which Sections 2 and 3 apply.*

*Part 2 contains rules allowing a representative to act on a defendant's behalf for the purposes of these Rules.*

*Part 3 contains rules about the court's powers of case management.]*

### **Matters to be specified on sending for trial**

**9.3.—**(1) Where the court sends a defendant to the Crown Court for trial, it must specify—

- (a) each offence to be tried;
- (b) in respect of each, the power exercised to send the defendant for trial for that offence; and
- (c) the Crown Court centre at which the trial will take place.

(2) In a case in which the prosecutor serves a notice to which rule 9.6(1)(a) applies (notice requiring Crown Court trial in a case of serious or complex fraud), the court must specify the Crown Court centre identified by that notice.

(3) In any other case, in deciding the Crown Court centre at which the trial will take place, the court must take into account—

- (a) the convenience of the parties and witnesses;
- (b) how soon a suitable courtroom will be available; and
- (c) the directions on the allocation of Crown Court business contained in the Practice Direction.

*[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(177).]*

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(172) 1998 c. 37; section 52 was amended by paragraphs 68 and 69 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(173) 1980 c. 43; sections 17A, 17B and 17C were inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25). Section 17A was amended by paragraph 62 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 23 was amended by section 125 of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41) and paragraphs 1 and 8 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Sections 24A, 24B and 24C were inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(174) 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), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(175) 1980 c. 43; section 26 was amended by paragraphs 1 and 12 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(176) 1998 c. 37; section 52A was inserted by paragraphs 15 and 19 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by paragraphs 46 and 47 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(177) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

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

**9.4.**—(1) This rule applies—

- (a) only in a magistrates' court; and
- (b) unless the court—
  - (i) includes a District Judge (Magistrates' Courts), and
  - (ii) otherwise directs.

(2) On the court's behalf, a justices' legal adviser may—

- (a) read the allegation of the offence to the defendant;
- (b) give any explanation and ask any question required by the rules in this Part;
- (c) make any announcement required by the rules in this Part, other than an announcement of—
  - (i) the court's decisions about allocation and sending,
  - (ii) any indication by the court of likely sentence, or
  - (iii) sentence.

(3) A justices' legal adviser must—

- (a) assist an unrepresented defendant;
- (b) give the court such advice as is required to enable it to exercise its powers;
- (c) if required, attend the members of the court outside the courtroom to give such advice, but inform the parties of any advice so given.

*[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(178).]*

### **Duty of magistrates' court officer**

**9.5.**—(1) The magistrates' court officer must—

- (a) serve notice of a sending for Crown Court trial on—
  - (i) the Crown Court officer, and
  - (ii) the parties;
- (b) in that notice record—
  - (i) the matters specified by the court under rule 9.3 (matters to be specified on sending for trial),
  - (ii) any indication of intended guilty plea given by the defendant under rule 9.7 (sending for Crown Court trial),
  - (iii) any decision by the defendant to decline magistrates' court trial under rule 9.11 (adult defendant: allocation to magistrates' court for trial), and
  - (iv) the date on which any custody time limit will expire;
- (c) record any indication of likely sentence to which rule 9.11 applies; and
- (d) give the court such other assistance as it requires.

(2) The magistrates' court officer must include with the notice served on the Crown Court officer—

- (a) the initial details of the prosecution case served by the prosecutor under rule 21.2;
- (b) a record of any—
  - (i) listing or case management direction affecting the Crown Court,
  - (ii) direction about reporting restrictions,
  - (iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(179),
  - (iv) recognizance given by a surety, or
  - (v) representation order; and
- (c) if relevant, any available details of any—
  - (i) interpreter,
  - (ii) intermediary, or
  - (iii) other supporting adult, where the defendant is assisted by such a person.

*[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(180), and section 20A of the Magistrates' Courts Act 1980(181).]*

## *SECTION 2: SENDING WITHOUT ALLOCATION FOR CROWN COURT TRIAL*

### **Prosecutor's notice requiring Crown Court trial**

**9.6.**—(1) This rule applies where a prosecutor with power to do so requires a magistrates' court to send for trial in the Crown Court—

- (a) a case of serious or complex fraud; or
  - (b) a case which will involve a child witness.
- (2) The prosecutor must serve written notice of that requirement—
- (a) on the magistrates' court officer and on the defendant; and
  - (b) before trial in a magistrates' court begins under Part 37 (Trial and sentence in a magistrates' court).
- (3) The notice must identify—
- (a) the power on which the prosecutor relies; and
  - (b) the Crown Court centre at which the prosecutor wants the trial to take place.
- (4) The prosecutor—
- (a) must, when choosing a Crown Court centre, take into account the matters listed in rule 9.3(3) (court deciding to which Crown Court centre to send a case); and
  - (b) may change the centre identified before the case is sent for trial.

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(179) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

(180) 1998 c. 37; section 51 was substituted and section 51D inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). They were amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(181) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

*[Note. Under section 51B of the Crime and Disorder Act 1998(182), the Director of Public Prosecutions or a Secretary of State may require the court to send a case for trial in the Crown Court if, in that prosecutor’s opinion, the evidence of the offence charged—*

- (a) is sufficient for the person charged to be put on trial for the offence; and*
- (b) reveals a case of fraud of such seriousness or complexity that it is appropriate that the management of the case should without delay be taken over by the Crown Court.*

*Under section 51C of the Crime and Disorder Act 1998(183), the Director of Public Prosecutions may require the court to send for trial in the Crown Court a case involving one of certain specified violent or sexual offences if, in the Director’s opinion—*

- (a) the evidence of the offence would be sufficient for the person charged to be put on trial for that offence;*
- (b) a child would be called as a witness at the trial; and*
- (c) for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Crown Court.*

*‘Child’ for these purposes is defined by section 51C(7) of the 1998 Act.]*

### **Sending for Crown Court trial**

**9.7.**—(1) This rule applies where a magistrates’ court must, or can, send a defendant to the Crown Court for trial without first allocating the case for trial there.

- (2) The court must read the allegation of the offence to the defendant.
- (3) The court must explain, in terms the defendant can understand (with help, if necessary)—
  - (a) the allegation, unless it is self-explanatory;
  - (b) that the offence is one for which the court, as appropriate—
    - (i) must send the defendant to the Crown Court for trial because the offence is one which can only be tried there or because the court for some other reason is required to send that offence for trial,
    - (ii) may send the defendant to the Crown Court for trial if the magistrates’ court decides that the offence is related to one already sent for trial there, or
    - (iii) (where the offence is low-value shoplifting and the defendant is 18 or over) must send the defendant to the Crown Court for trial if the defendant wants to be tried there;
  - (c) that reporting restrictions apply, which the defendant may ask the court to vary or remove.
- (4) In the following sequence, the court must then—
  - (a) invite the prosecutor to—
    - (i) identify the court’s power to send the defendant to the Crown Court for trial for the offence, and
    - (ii) make representations about any ancillary matters, including bail and directions for the management of the case in the Crown Court;
  - (b) invite the defendant to make representations about—
    - (i) the court’s power to send the defendant to the Crown Court, and

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**(182)** 1998 c. 37; section 51B was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and paragraphs 46 and 48 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(183)** 1998 c. 37; section 51C was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and modified by section 63 of, and paragraph 36 of Schedule 6 to, the Serious Crime Act 2007 (c. 27).

- (ii) any ancillary matters;
  - (c) (where the offence is low-value shoplifting and the defendant is 18 or over) offer the defendant the opportunity to require trial in the Crown Court; and
  - (d) decide whether or not to send the defendant to the Crown Court for trial.
- (5) If the court sends the defendant to the Crown Court for trial, it must—
- (a) ask whether the defendant intends to plead guilty in the Crown Court and—
    - (i) if the answer is ‘yes’, make arrangements for the Crown Court to take the defendant’s plea as soon as possible, or
    - (ii) if the defendant does not answer, or the answer is ‘no’, make arrangements for a case management hearing in the Crown Court; and
  - (b) give any other ancillary directions.

*[Note. See sections 51, 51A and 51E of the Crime and Disorder Act 1998(184), and sections 22A and 24A of the Magistrates’ Courts Act 1980(185).*

*For the circumstances in which a magistrates’ court may (and in some cases must) commit a defendant who is under 18 to the Crown Court for sentence after that defendant has indicated a guilty plea, see sections 3B, 4A and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(186).*

*See also Part 16 (Reporting, etc. restrictions).]*

### *SECTION 3: ALLOCATION FOR MAGISTRATES’ COURT OR CROWN COURT TRIAL*

#### **Adult defendant: request for plea**

- 9.8.**—(1) This rule applies where—
- (a) the defendant is 18 or over; and
  - (b) the court must decide whether a case is more suitable for trial in a magistrates’ court or in the Crown Court.
- (2) The court must read the allegation of the offence to the defendant.
- (3) The court must explain, in terms the defendant can understand (with help, if necessary)—
- (a) the allegation, unless it is self-explanatory;
  - (b) that the offence is one which can be tried in a magistrates’ court or in the Crown Court;
  - (c) that the court is about to ask whether the defendant intends to plead guilty;
  - (d) that if the answer is ‘yes’, then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;
  - (e) that if the defendant does not answer, or the answer is ‘no’, then—

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**(184)** 1998 c. 37; section 51 was substituted, and sections 51A and 51E inserted, by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51 was amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(185)** 1980 c. 43; section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

**(186)** 2000 c. 6; sections 3B and 4A were inserted by paragraphs 21, 23 and 25 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 6 was amended by paragraphs 21 and 28 of Schedule 3, paragraphs 90 and 91 of Schedule 32 and Parts 7 and 9 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

- (i) the court must decide whether to allocate the case to a magistrates' court or to the Crown Court for trial,
  - (ii) the value involved may require the court to order trial in a magistrates' court (where the offence is one to which section 22 of the Magistrates' Courts Act 1980(187) applies), and
  - (iii) if the court allocates the case to a magistrates' court for trial, the defendant can nonetheless require trial in the Crown Court (unless the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies and the value involved requires magistrates' court trial); and
- (f) that reporting restrictions apply, which the defendant may ask the court to vary or remove.
- (4) The court must then ask whether the defendant intends to plead guilty.

[Note. See section 17A of the Magistrates' Courts Act 1980(188).

*For the circumstances in which a magistrates' court may (and in some cases must) commit a defendant to the Crown Court for sentence after that defendant has indicated an intention to plead guilty where this rule applies, see sections 4 and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(189).*

*See also Part 16 (Reporting, etc. restrictions).]*

#### **Adult defendant: guilty plea**

- 9.9.**—(1) This rule applies where—
- (a) rule 9.8 applies; and
  - (b) the defendant indicates an intention to plead guilty.
- (2) The court must exercise its power to deal with the case—
- (a) as if the defendant had just pleaded guilty to an offence that can be tried only in a magistrates' court; and
  - (b) in accordance with rule 37.10 (procedure if the court convicts).

[Note. See section 17A of the Magistrates' Courts Act 1980.]

#### **Adult defendant: not guilty plea**

- 9.10.**—(1) This rule applies where—
- (a) rule 9.8 applies; and
  - (b) the defendant—
    - (i) indicates an intention to plead not guilty, or
    - (ii) gives no indication of intended plea.
- (2) In the following sequence, the court must then—
- (a) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies, explain in terms the defendant can understand (with help, if necessary) that—

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(187) 1980 c. 43; section 22 was amended by sections 38 and 170(2) of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 2(2) of the Aggravated Vehicle Taking Act 1992 (c. 11) and sections 46 and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(188) 1980 c. 43; section 17A was inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by paragraph 62 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(189) 2000 c. 6; section 4 was amended by paragraphs 21 and 24 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

- (i) if the court decides that the value involved clearly is less than £5,000, the court must order trial in a magistrates' court,
- (ii) if the court decides that it is not clear whether that value is more or less than £5,000, then the court will ask whether the defendant agrees to be tried in a magistrates' court, and
- (iii) if the answer to that question is 'yes', then the court must order such a trial and if the defendant is convicted then the maximum sentence is limited;
- (b) invite the prosecutor to—
  - (i) identify any previous convictions of which it can take account, and
  - (ii) make representations about how the court should allocate the case for trial, including representations about the value involved, if relevant;
- (c) invite the defendant to make such representations;
- (d) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies—
  - (i) if it is not clear whether the value involved is more or less than £5,000, ask whether the defendant agrees to be tried in a magistrates' court,
  - (ii) if the defendant's answer to that question is 'yes', or if that value clearly is less than £5,000, order a trial in a magistrates' court,
  - (iii) if the defendant does not answer that question, or the answer is 'no', or if that value clearly is more than £5,000, apply paragraph (2)(e);
- (e) exercise its power to allocate the case for trial, taking into account—
  - (i) the adequacy of a magistrates' court's sentencing powers,
  - (ii) any representations by the parties, and
  - (iii) any allocation guidelines issued by the Sentencing Council.

*[Note. See sections 17A, 18, 19, 22 and 24A of the Magistrates' Courts Act 1980(190).*

*Under section 22 of the 1980 Act, some offences, which otherwise could be tried in a magistrates' court or in the Crown Court, must be tried in a magistrates' court in the circumstances described in this rule.*

*The convictions of which the court may take account are those specified by section 19 of the 1980 Act.*

*The Sentencing Council may issue allocation guidelines under section 122 of the Coroners and Justice Act 2009(191).]*

### **Adult defendant: allocation for magistrates' court trial**

- 9.11.**—(1) This rule applies where—
- (a) rule 9.10 applies; and
  - (b) the court allocates the case to a magistrates' court for trial.
- (2) The court must explain, in terms the defendant can understand (with help, if necessary) that—

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**(190)** 1980 c. 43; section 18 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), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). It is amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25) with effect from a date to be appointed.

**(191)** 2009 c. 25.



- (a) the court considers the case more suitable for trial in a magistrates' court than in the Crown Court;
  - (b) if the defendant is convicted at a magistrates' court trial, then in some circumstances the court may commit the defendant to the Crown Court for sentence;
  - (c) if the defendant does not agree to a magistrates' court trial, then the court must send the defendant to the Crown Court for trial; and
  - (d) before deciding whether to accept magistrates' court trial, the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea at such a trial, but the court need not give such an indication.
- (3) If the defendant asks for such an indication of sentence and the court gives such an indication—
- (a) the court must then ask again whether the defendant intends to plead guilty;
  - (b) if, in answer to that question, the defendant indicates an intention to plead guilty, then the court must exercise its power to deal with the case—
    - (i) as if the defendant had just pleaded guilty to an offence that can be tried only in a magistrates' court, and
    - (ii) in accordance with rule 37.10 (procedure if the court convicts);
  - (c) if, in answer to that question, the defendant indicates an intention to plead not guilty, or gives no indication of intended plea, in the following sequence the court must then—
    - (i) ask whether the defendant agrees to trial in a magistrates' court,
    - (ii) if the defendant's answer to that question is 'yes', order such a trial,
    - (iii) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.
- (4) If the defendant asks for an indication of sentence but the court gives none, or if the defendant does not ask for such an indication, in the following sequence the court must then—
- (a) ask whether the defendant agrees to trial in a magistrates' court;
  - (b) if the defendant's answer to that question is 'yes', order such a trial;
  - (c) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.

[*Note. See section 20 of the Magistrates' Courts Act 1980*(**192**).

*For the circumstances in which a magistrates' court may (and in some cases must) commit a defendant to the Crown Court for sentence after that defendant has been convicted at a magistrates' court trial, see sections 3, 3A, 3C, and 6 of the Powers of Criminal Courts (Sentencing) Act 2000*(**193**).

*For the circumstances in which an indication of sentence to which this rule applies restricts the sentencing powers of a court, see section 20A of the 1980 Act*(**194**).

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(192) 1980 c. 43; section 20 was amended by section 100 of, and paragraph 25 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraph 63 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(193) 2000 c. 6; sections 3 and 6 were amended, and sections 3A and 3C inserted, by paragraphs 21, 22A, 23 and 28 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 3A was amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 7 and 8 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 3C was amended by paragraphs 7 and 9 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 6 was further amended by paragraphs 90 and 91 of Schedule 32, and Parts 7 and 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(194) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

### **Adult defendant: prosecutor's application for Crown Court trial**

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

- (a) rule 9.11 applies;
- (b) the defendant agrees to trial in a magistrates' court; but
- (c) the prosecutor wants the court to exercise its power to send the defendant to the Crown Court for trial instead.

(2) The prosecutor must—

- (a) apply before trial in a magistrates' court begins under Part 37 (Trial and sentence in a magistrates' court); and
- (b) notify—
  - (i) the defendant, and
  - (ii) the magistrates' court officer.

(3) The court must determine an application to which this rule applies before it deals with any other pre-trial application.

*[Note. See sections 8A and 25 of the Magistrates' Courts Act 1980(195). Under section 25(2B), the court may grant an application to which this rule applies only if it is satisfied that the sentence which a magistrates' court would have power to impose would be inadequate.]*

### **Young defendant**

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

- (a) the defendant is under 18; and
- (b) the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court.

(2) The court must read the allegation of the offence to the defendant.

(3) The court must explain, in terms the defendant can understand (with help, if necessary)—

- (a) the allegation, unless it is self-explanatory;
- (b) that the offence is one which can be tried in the Crown Court instead of in a youth court;
- (c) that the court is about to ask whether the defendant intends to plead guilty;
- (d) that if the answer is 'yes', then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;
- (e) that if the defendant does not answer, or the answer is 'no', then the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court; and
- (f) that reporting restrictions apply, which the defendant may ask the court to vary or remove.

(4) The court must then ask whether the defendant intends to plead guilty.

(5) If the defendant's answer to that question is 'yes', the court must exercise its power to deal with the case—

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(195) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 25 was amended by section 31 of, and paragraph 3 of Schedule 1 and Schedule 2, to the Prosecution of Offences Act 1985 (c. 23), paragraph 6 of Schedule 8 to the Criminal Justice Act 1991 (c. 53), paragraphs 1 and 5 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 42 of the Criminal Justice Act 2003 (c. 44) and paragraphs 1 and 11 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

- (a) as if the defendant had just pleaded guilty to an offence that can be tried only in a magistrates' court; and
  - (b) in accordance with rule 37.10 (procedure if the court convicts).
- (6) If the defendant does not answer that question, or the answer is 'no', in the following sequence the court must then—
- (a) invite the prosecutor to make representations about whether Crown Court or youth court trial is more appropriate;
  - (b) invite the defendant to make such representations;
  - (c) exercise its power to allocate the case for trial, taking into account—
    - (i) the offence and the circumstances of the offence,
    - (ii) the suitability of a youth court's sentencing powers,
    - (iii) where the defendant is jointly charged with an adult, whether it is necessary in the interests of justice for them to be tried together in the Crown Court, and
    - (iv) any representations by the parties.

*[Note. See section 24A of the Magistrates' Courts Act 1980(196).]*

#### **Allocation and sending for Crown Court trial**

- 9.14.**—(1) This rule applies where—
- (a) under rule 9.10 or rule 9.13, the court allocates the case to the Crown Court for trial;
  - (b) under rule 9.11, the defendant does not agree to trial in a magistrates' court; or
  - (c) under rule 9.12, the court grants the prosecutor's application for Crown Court trial.
- (2) In the following sequence, the court must—
- (a) invite the prosecutor to make representations about any ancillary matters, including bail and directions for the management of the case in the Crown Court;
  - (b) invite the defendant to make any such representations; and
  - (c) exercise its powers to—
    - (i) send the defendant to the Crown Court for trial, and
    - (ii) give any ancillary directions.

*[Note. See sections 21 and 24A of the Magistrates' Courts Act 1980(197) and section 51 of the Crime and Disorder 1998(198). See also rule 9.3 (matters to be specified on sending for trial).]*

#### **SECTION 4: CROWN COURT INITIAL PROCEDURE AFTER SENDING FOR TRIAL**

##### **Service of prosecution evidence**

- 9.15.**—(1) This rule applies where—
- (a) a magistrates' court sends the defendant to the Crown Court for trial; and
  - (b) the prosecutor serves on the defendant copies of the documents containing the evidence on which the prosecution case relies.

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**(196)** 1980 c. 43; section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

**(197)** 1980 c. 43; section 21 was amended by paragraphs 1 and 7 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

**(198)** 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(2) The prosecutor must at the same time serve copies of those documents on the Crown Court officer.

*[Note. See the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(199). The time for service of the prosecution evidence is prescribed by regulation 2. It is—*

- (a) not more than 50 days after sending for trial, where the defendant is in custody; and*
- (b) not more than 70 days after sending for trial, where the defendant is on bail.]*

### **Application to dismiss offence sent for Crown Court trial**

**9.16.**—(1) This rule applies where a defendant wants the Crown Court to dismiss an offence sent for trial there.

- (2) The defendant must—
  - (a) apply in writing—
    - (i) not more than 28 days after service of the prosecution evidence, and
    - (ii) before the defendant’s arraignment;
  - (b) serve the application on—
    - (i) the Crown Court officer, and
    - (ii) each other party;
  - (c) in the application—
    - (i) explain why the prosecution evidence would not be sufficient for the defendant to be properly convicted,
    - (ii) ask for a hearing, if the defendant wants one, and explain why it is needed,
    - (iii) identify any witness whom the defendant wants to call to give evidence in person, with an indication of what evidence the witness can give,
    - (iv) identify any material already served that the defendant thinks the court will need to determine the application, and
    - (v) include any material not already served on which the defendant relies.
- (3) A prosecutor who opposes the application must—
  - (a) serve notice of opposition, not more than 14 days after service of the defendant’s notice, on—
    - (i) the Crown Court officer, and
    - (ii) each other party;
  - (b) in the notice of opposition—
    - (i) explain the grounds of opposition,
    - (ii) ask for a hearing, if the prosecutor wants one, and explain why it is needed,
    - (iii) identify any witness whom the prosecutor wants to call to give evidence in person, with an indication of what evidence the witness can give,
    - (iv) identify any material already served that the prosecutor thinks the court will need to determine the application, and
    - (v) include any material not already served on which the prosecutor relies.
- (4) The court may determine an application under this rule—
  - (a) at a hearing, in public or in private, or without a hearing;

- (b) in the absence of—
  - (i) the defendant who made the application,
  - (ii) the prosecutor, if the prosecutor has had at least 14 days in which to serve notice opposing the application.
- (5) The court may—
  - (a) shorten or extend (even after it has expired) a time limit under this rule;
  - (b) allow a witness to give evidence in person even if that witness was not identified in the defendant’s application or in the prosecutor’s notice.

*[Note. Under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998(200), on an application by the defendant the Crown Court must dismiss an offence charged if it appears to the court that the evidence would not be sufficient for the applicant to be properly convicted.]*

## PART 10

### INITIAL DETAILS OF THE PROSECUTION CASE

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#### Contents of this Part

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When this Part applies	rule 10.1
Providing initial details of the prosecution case	rule 10.2
Content of initial details	rule 10.3

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#### When this Part applies

**10.1.**—(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(201). In some circumstances, the Crown Court can try an offence that usually can be tried only in a magistrates’ court.*

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**(200)** 1998 c. 37; paragraph 2 of Schedule 3 was amended by paragraphs 15 and 20 of Schedule 3, paragraph 73 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and SI 2004/2035.

**(201)** 1978 c. 30; Schedule 1 was amended by and section 154 of, and Schedule 7 to, the Magistrates’ Courts Act 1980 (c. 43), section 170 of, and paragraph 59 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33) and section 41 of, and paragraph 49 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). Other amendments to Schedule 1 are not relevant to procedure in magistrates’ courts.

*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 9 contains relevant rules.]*

### **Providing initial details of the prosecution case**

- 10.2.**—(1) The prosecutor must serve initial details of the prosecution case on the court officer—
- (a) as soon as practicable; and
  - (b) in any event, no later than the beginning of the day of the first hearing.
- (2) Where a defendant requests those details, the prosecutor must serve them on the defendant—
- (a) as soon as practicable; and
  - (b) in any event, no later than the beginning of the day of the first hearing.
- (3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

### **Content of initial details**

- 10.3.** 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.

## **PART 11**

*[Note. There are no rules in this Part.]*

## **PART 12**

### **DEFERRED PROSECUTION AGREEMENTS**

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#### **Contents of this Part**

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When this Part applies	rule 12.1
Exercise of court’s powers	rule 12.2
Application to approve a proposal to enter an agreement	rule 12.3
Application to approve the terms of an agreement	rule 12.4
Application on breach of agreement	rule 12.5
Application to approve a variation of the terms of an agreement	rule 12.6
Application to lift suspension of prosecution	rule 12.7
Notice to discontinue prosecution	rule 12.8
Application to postpone the publication of information by the prosecutor	rule 12.9

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**Contents of this Part**

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Duty of court officer, etc.	rule 12.10
Court's power to vary requirements under this Part	rule 12.11

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**When this Part applies**

**12.1.**—(1) This Part applies to proceedings in the Crown Court under Schedule 17 to the Crime and Courts Act 2013(202).

(2) In this Part—

- (a) ‘agreement’ means a deferred prosecution agreement under paragraph 1 of that Schedule;
- (b) ‘prosecutor’ means a prosecutor designated by or under paragraph 3 of that Schedule; and
- (c) ‘defendant’ means the corporation, partnership or association with whom the prosecutor proposes to enter, or enters, an agreement.

*[Note. Under Schedule 17 to the Crime and Courts Act 2013, a designated prosecutor may make a deferred prosecution agreement with a defendant, other than an individual, whom the prosecutor is considering prosecuting for an offences or offences listed in that Schedule. Under such an agreement, the defendant agrees to comply with its terms and the prosecutor agrees that, if the Crown Court approves those terms, then paragraph 2 of the Schedule will apply and —*

- (a) the prosecutor will serve a draft indictment charging the defendant with the offence or offences the subject of the agreement;*
- (b) the prosecution will be suspended under that paragraph, and the suspension may not be lifted while the agreement is in force; and*
- (c) no-one may prosecute the defendant for the offence or offences charged while the agreement is in force, or after it expires if the defendant complies with it.*

*The Code for prosecutors issued under paragraph 6 of that Schedule contains guidance on the exercise of prosecution functions in relation to a deferred prosecution agreement.]*

**Exercise of court's powers**

**12.2.**—(1) The court must determine an application to which this Part applies at a hearing, which—

- (a) must be in private, under rule 12.3 (Application to approve a proposal to enter an agreement);
- (b) may be in public or private, under rule 12.4 (Application to approve the terms of an agreement), rule 12.6 (Application to approve a variation of the terms of an agreement) or rule 12.9 (Application to postpone the publication of information by the prosecutor);
- (c) must be in public, under rule 12.5 (Application on breach of agreement) or rule 12.7 (Application to lift suspension of prosecution), unless the court otherwise directs.

(2) If at a hearing in private to which rule 12.4 or rule 12.6 applies the court approves the agreement or the variation proposed, the court must announce its decision and reasons at a hearing in public.

- (3) The court must not determine an application under rule 12.3, rule 12.4 or rule 12.6 unless—
  - (a) both parties are present;

- (b) the prosecutor provides the court with a written declaration that, for the purposes of the application—
  - (i) the investigator enquiring into the alleged offence or offences has certified that no information has been supplied which the investigator knows to be inaccurate, misleading or incomplete, and
  - (ii) the prosecutor has complied with the prosecution obligation to disclose material to the defendant; and
- (c) the defendant provides the court with a written declaration that, for the purposes of the application—
  - (i) the defendant has not supplied any information which the defendant knows to be inaccurate, misleading or incomplete, and
  - (ii) the individual through whom the defendant makes the declaration has made reasonable enquiries and believes the defendant's declaration to be true.
- (4) The court must not determine an application under rule 12.5 or rule 12.7—
  - (a) in the prosecutor's absence; or
  - (b) in the absence of the defendant, unless the defendant has had at least 28 days in which to make representations.
- (5) If the court approves a proposal to enter an agreement—
  - (a) the general rule is that any further application to which this Part applies must be made to the same judge; but
  - (b) the court may direct other arrangements.
- (6) The court may adjourn a hearing—
  - (a) if either party asks, or on its own initiative;
  - (b) in particular, if the court requires more information about—
    - (i) the facts of an alleged offence,
    - (ii) the terms of a proposal to enter an agreement, or of a proposed agreement or variation of an agreement, or
    - (iii) the circumstances in which the prosecutor wants the court to decide whether the defendant has failed to comply with the terms of an agreement.
- (7) The court may—
  - (a) hear an application under rule 12.4 immediately after an application under rule 12.3, if the court approves a proposal to enter an agreement;
  - (b) hear an application under rule 12.7 immediately after an application under rule 12.5, if the court terminates an agreement.

*[Note. See paragraphs 7(4), 8(5), (6) and 10(5), (6) of Schedule 17 to the Crime and Courts Act 2013.*

*The Code for prosecutors issued under paragraph 6 of that Schedule contains guidance on fulfilling the prosecution duty of disclosure.]*

### **Application to approve a proposal to enter an agreement**

**12.3.—**(1) This rule applies where a prosecutor wants the court to approve a proposal to enter an agreement.

- (2) The prosecutor must—



- (a) apply in writing after the commencement of negotiations between the parties but before the terms of agreement have been settled; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the defendant.
- (3) The application must—
  - (a) identify the parties to the proposed agreement;
  - (b) attach a proposed indictment setting out such of the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013 as the prosecutor is considering;
  - (c) include or attach a statement of facts proposed for inclusion in the agreement, which must give full particulars of each alleged offence, including details of any alleged financial gain or loss;
  - (d) include any information about the defendant that would be relevant to sentence in the event of conviction for the offence or offences;
  - (e) specify the proposed expiry date of the agreement;
  - (f) describe the proposed terms of the agreement, including details of any—
    - (i) monetary penalty to be paid by the defendant, and the time within which any such penalty is to be paid,
    - (ii) compensation, reparation or donation to be made by the defendant, the identity of the recipient of any such payment and the time within which any such payment is to be made,
    - (iii) surrender of profits or other financial benefit by the defendant, and the time within which any such sum is to be surrendered,
    - (iv) arrangement to be made in relation to the management or conduct of the defendant's business,
    - (v) co-operation required of the defendant in any investigation related to the offence or offences,
    - (vi) other action required of the defendant,
    - (vii) arrangement to monitor the defendant's compliance with a term,
    - (viii) consequence of the defendant's failure to comply with a term, and
    - (ix) prosecution costs to be paid by the defendant, and the time within which any such costs are to be paid;
  - (g) in relation to those terms, explain how they comply with—
    - (i) the requirements of the code issued under paragraph 6 of Schedule 17 to the Crime and Courts Act 2013, and
    - (ii) any sentencing guidelines or guideline cases which apply;
  - (h) contain or attach the defendant's written consent to the proposal; and
  - (i) explain why—
    - (i) entering into an agreement is likely to be in the interests of justice, and
    - (ii) the proposed terms of the agreement are fair, reasonable and proportionate.
- (4) If the proposed statement of facts includes assertions that the defendant does not admit, the application must—
  - (a) specify the facts that are not admitted; and

- (b) explain why that is immaterial for the purposes of the proposal to enter an agreement.

*[Note. See paragraphs 5 and 7 of Schedule 17 to the Crime and Courts Act 2013.]*

### **Application to approve the terms of an agreement**

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

- (a) the court has approved a proposal to enter an agreement on an application under rule 12.3; and
  - (b) the prosecutor wants the court to approve the terms of the agreement.
- (2) The prosecutor must—
- (a) apply in writing as soon as practicable after the parties have settled the terms; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the defendant.
- (3) The application must—
- (a) attach the agreement;
  - (b) indicate in what respect, if any, the terms of the agreement differ from those proposed in the application under rule 12.3;
  - (c) contain or attach the defendant’s written consent to the agreement;
  - (d) explain why—
    - (i) the agreement is in the interests of justice, and
    - (ii) the terms of the agreement are fair, reasonable and proportionate;
  - (e) attach a draft indictment, charging the defendant with the offence or offences the subject of the agreement; and
  - (f) include any application for the hearing to be in private.
- (4) If the court approves the agreement and the draft indictment, the court officer must—
- (a) endorse any paper copy of the indictment made for the court with—
    - (i) a note to identify it as the indictment approved by the court, and
    - (ii) the date of the court’s approval; and
  - (b) treat the case as if it had been suspended by order of the court.

*[Note. See paragraph 8 of Schedule 17 to the Crime and Courts Act 2013. See also rule 12.9 (Application to postpone the publication of information by the prosecutor).]*

*Under paragraph 2(1) of Schedule 17 to the 2013 Act and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(203), the draft indictment to which this rule applies becomes an indictment when the court approves the agreement and consents to the service of that draft. Part 14 contains rules about indictments.*

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(203) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25) and paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).

*Under paragraph 2(2) of Schedule 17 to the 2013 Act, on approval of the draft indictment the proceedings are automatically suspended.*

*Under paragraph 13(2) of Schedule 17 to the 2013 Act, where the court approves an agreement the statement of facts contained in that agreement is to be treated as an admission by the defendant under section 10 of the Criminal Justice Act 1967(204) (proof by formal admission) in any criminal proceedings against the defendant for the alleged offence.]*

### **Application on breach of agreement**

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

- (a) the prosecutor believes that the defendant has failed to comply with the terms of an agreement; and
- (b) the prosecutor wants the court to decide—
  - (i) whether the defendant has failed to comply, and
  - (ii) if so, whether to terminate the agreement, or to invite the parties to agree proposals to remedy that failure.

(2) The prosecutor must—

- (a) apply in writing, as soon as practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the defendant.

(3) The application must—

- (a) specify each respect in which the prosecutor believes the defendant has failed to comply with the terms of the agreement, and explain the reasons for the prosecutor's belief; and
- (b) attach a copy of any document containing evidence on which the prosecutor relies.

(4) A defendant who wants to make representations in response to the application must serve the representations on—

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

not more than 28 days after service of the application.

*[Note. See paragraph 9 of Schedule 17 to the Crime and Courts Act 2013. See also rule 12.9 (Application to postpone the publication of information by the prosecutor).]*

### **Application to approve a variation of the terms of an agreement**

**12.6.**—(1) This rule applies where the parties have agreed to vary the terms of an agreement because—

- (a) on an application under rule 12.5 (Application on breach of agreement), the court has invited them to do so; or
- (b) variation of the agreement is necessary to avoid a failure by the defendant to comply with its terms in circumstances that were not, and could not have been, foreseen by either party at the time the agreement was made.

(2) The prosecutor must—

- (a) apply in writing, as soon as practicable after the parties have settled the terms of the variation; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the defendant.
- (3) The application must—
  - (a) specify each variation proposed;
  - (b) contain or attach the defendant’s written consent to the variation;
  - (c) explain why—
    - (i) the variation is in the interests of justice, and
    - (ii) the terms of the agreement as varied are fair, reasonable and proportionate; and
  - (d) include any application for the hearing to be in private.

*[Note. See paragraph 10 of Schedule 17 to the Crime and Courts Act 2013. See also rule 12.9 (Application to postpone the publication of information by the prosecutor).]*

#### **Application to lift suspension of prosecution**

- 12.7.**—(1) This rule applies where—
- (a) the court terminates an agreement before its expiry date; and
  - (b) the prosecutor wants the court to lift the suspension of the prosecution that applied when the court approved the terms of the agreement.
- (2) The prosecutor must—
- (a) apply in writing, as soon as practicable after the termination of the agreement; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) the defendant.
- (3) A defendant who wants to make representations in response to the application must serve the representations on—
- (a) the court officer; and
  - (b) the prosecutor,
- not more than 28 days after service of the application.

*[Note. See paragraphs 2(3) and 9 of Schedule 17 to the Crime and Courts Act 2013.]*

#### **Notice to discontinue prosecution**

- 12.8.**—(1) This rule applies where an agreement expires—
- (a) on its expiry date, or on a date treated as its expiry date; and
  - (b) without having been terminated by the court.
- (2) The prosecutor must—
- (a) as soon as practicable give notice in writing discontinuing the prosecution on the indictment approved by the court under rule 12.4 (Application to approve the terms of an agreement); and
  - (b) serve the notice on—

- (i) the court officer, and
- (ii) the defendant.

*[Note. See paragraph 11 of Schedule 17 to the Crime and Courts Act 2013.]*

**Application to postpone the publication of information by the prosecutor**

**12.9.**—(1) This rule applies where the prosecutor—

- (a) makes an application under rule 12.4 (Application to approve the terms of an agreement), rule 12.5 (Application on breach of agreement) or rule 12.6 (Application to approve a variation of the terms of an agreement);
- (b) decides not to make an application under rule 12.5, despite believing that the defendant has failed to comply with the terms of the agreement; or
- (c) gives a notice under rule 12.8 (Notice to discontinue prosecution).

(2) A party who wants the court to order that the publication of information by the prosecutor about the court’s or the prosecutor’s decision should be postponed must—

- (a) apply in writing, as soon as practicable and in any event before such publication occurs;
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the other party; and
- (c) in the application—
  - (i) specify the proposed terms of the order, and for how long it should last, and
  - (ii) explain why an order in the terms proposed is necessary.

*[Note. See paragraph 12 of Schedule 17 to the Crime and Courts Act 2013.*

*Part 16 of these Rules contains rules about applications for a restriction on reporting what takes place at a public hearing, or public access to what otherwise would be a public hearing.]*

**Duty of court officer, etc.**

**12.10.**—(1) Unless the court otherwise directs, the court officer must—

- (a) arrange for the recording of proceedings on an application to which this Part applies;
- (b) arrange for the transcription of such a recording if—
  - (i) a party wants such a transcript, or
  - (ii) anyone else wants such a transcript (but that is subject to the restrictions in paragraph (2)).

(2) Unless the court otherwise directs, a person who transcribes a recording of proceedings under such arrangements—

- (a) must not supply anyone other than a party with a transcript of a recording of—
  - (i) a hearing in private, or
  - (ii) a hearing in public to which reporting restrictions apply;
- (b) subject to that, must supply any person with any transcript for which that person asks—
  - (i) in accordance with the transcription arrangements made by the court officer, and
  - (ii) on payment by that person of any fee prescribed.

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(3) The court officer must not identify either party to a hearing in private under rule 12.3 (Application to approve a proposal to enter an agreement) or rule 12.4 (Application to approve the terms of an agreement)—

- (a) in any notice displayed in the vicinity of the courtroom; or
- (b) in any other information published by the court officer.

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

**12.11.**—(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow there to be made orally—
  - (i) an application under rule 12.4 (Application to approve the terms of an agreement), or
  - (ii) an application under rule 12.7 (Application to lift suspension of prosecution)
 where the court exercises its power under rule 12.2(7) to hear one application immediately after another.

(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.

## **PART 13**

*[Note. There are no rules in this Part.]*

## **PART 14**

### **THE INDICTMENT**

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#### **Contents of this Part**

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Service of indictment	rule 14.1
Form and content of indictment	rule 14.2

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*[Note. See also sections 3, 4 and 5 of the Indictments Act 1915(205) and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(206).]*

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**(205)** 1915 c. 90; section 4 was amended by section 83 of, and Part I of Schedule 10 to, the Criminal Justice Act 1948 (c. 58) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 5 was amended by section 12 of, and paragraph 8 of Schedule 2 to, the Bail Act 1976 (c. 63), section 31 of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23) and section 331 of, and paragraph 40 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

**(206)** 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25) and paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).

## Service of indictment

**14.1.**—(1) The prosecutor must serve a draft indictment on the Crown Court officer not more than 28 days after—

- (a) service on the defendant and on the Crown Court officer of copies of the documents containing the evidence on which the charge or charges are based, in a case where the defendant is sent for trial;
  - (b) a High Court judge gives permission to serve a draft indictment;
  - (c) the Court of Appeal orders a retrial; or
  - (d) the committal or transfer of the defendant for trial.
- (2) The Crown Court may extend the time limit, even after it has expired.
- (3) Unless the Crown Court otherwise directs, the court officer must—
- (a) endorse any paper copy of the indictment made for the court with—
    - (i) a note to identify it as the indictment served under this rule, and
    - (ii) the date on which the draft indictment was served on the court officer; and
  - (b) serve a copy of the indictment on all parties.

*[Note. In some other legislation, serving a draft indictment on the Crown Court officer is described as “preferring a bill of indictment”. Under section 2(1) of the Administration of Justice (Miscellaneous Provisions) Act 1933, a draft indictment (“bill of indictment”) becomes an indictment when it is so served (“preferred”).*

*See Part 3 for the court’s general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an indictment and for separate trials under section 5 of the Indictments Act 1915.*

*A magistrates’ court may send a defendant for trial in the Crown Court under section 51 or 51A of the Crime and Disorder Act 1998(207). Under section 51D of that Act(208) the magistrates’ court must notify the Crown Court of the offence or offences for which the defendant is sent for trial. Paragraph 1 of Schedule 3 to that Act(209), and the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(210), deal with the service of prosecution evidence in a case sent for trial. See Part 9 for the procedure on allocation and sending for trial.*

*The procedure for applying for the permission of a High Court judge to serve a draft indictment is in rules 6 to 10 of the Indictments (Procedure) Rules 1971(211). See also the Practice Direction.*

*The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968(212) (on a defendant’s appeal against conviction) or under section 77 of the Criminal Justice Act*

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(207) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(208) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(209) 1998 c. 37; paragraph 1 of Schedule 3 was amended by section 67 of, and paragraph 106 of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(210) S.I. 2005/902.

(211) S. I. 1971/2084; amended by S.I. 1997/711, 2000/3360.

(212) 1968 c. 19; section 8 was amended by Section 12 of, and paragraph 38 of Schedule 2 to, the Bail Act 1976 (c. 63), section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 65 of, and paragraph 36 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 43 of the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 19 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraph 43 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 32 of, and paragraph 2 of Schedule 4 to, the Mental Health Act 2007 (c. 12).

2003(213) (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act, and rules 41.14 and 41.15, require the arraignment of a defendant within 2 months.

With effect from 30<sup>th</sup> August 2013, Schedule 3 to the Criminal Justice Act 2003 abolished committal for trial under section 6 of the Magistrates' Courts Act 1980(214), and transfer for trial under section 4 of the Criminal Justice Act 1987(215) (serious fraud cases) or under section 53 of the Criminal Justice Act 1991(216) (certain cases involving children).]

### Form and content of indictment

**14.2.**—(1) An indictment must be in one of the forms set out in the Practice Direction and must contain, in a paragraph called a 'count'—

- (a) a statement of the offence charged that—
  - (i) describes the offence in ordinary language, and
  - (ii) identifies any legislation that creates it; and
- (b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

(2) More than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

- (3) An indictment may contain more than one count if all the offences charged—
  - (a) are founded on the same facts; or
  - (b) form or are a part of a series of offences of the same or a similar character.
- (4) The counts must be numbered consecutively.
- (5) An indictment may contain—
  - (a) any count charging substantially the same offence as one—
    - (i) specified in the notice of the offence or offences for which the defendant was sent for trial,
    - (ii) on which the defendant was committed for trial, or
    - (iii) specified in the notice of transfer given by the prosecutor; and
  - (b) any other count based on the prosecution evidence already served which the Crown Court may try.

*[Note. In certain circumstances the Crown Court may try a defendant for an offence other than one sent, committed or transferred for trial: see section 2(2) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (indictable offences founded on the prosecution evidence on which the sending, committal or transfer was based) and section 40 of the Criminal Justice Act 1988(217)(specified summary offences founded on that evidence).]*

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(213)2003 c. 44.

(214)1980 c. 43; section 6 was repealed by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(215)1987 c. 38; section 4 was repealed by paragraph 58 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(216)1991 c. 53; section 53 was repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(217)1988 c. 33; section 40 was amended by section 4 of, and paragraph 39 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 168 of, and paragraph 35 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 47 of, and paragraph 34 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), section 119 of, and paragraph 66 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 60 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).



## PART 15

*[Note. There are no rules in this Part.]*

## PART 16

### REPORTING, ETC. RESTRICTIONS

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#### Contents of this Part

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##### **Section 1: general rules**

When this Part applies	rule 16.1
Exercise of court's powers to which this Part applies	rule 16.2
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##### **Section 2: reporting and access restrictions**

Reporting and access restrictions	rule 16.4
Varying or removing restrictions	rule 16.5
Trial in private	rule 16.6
Representations in response	rule 16.7
Order about restriction or trial in private	rule 16.8

##### **Section 3: sound recording and electronic communication**

Sound recording and electronic communication	rule 16.9
Forfeiture of unauthorised sound recording	rule 16.10

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#### *SECTION 1: GENERAL RULES*

##### **When this Part applies**

- 16.1.**—(1) This Part applies where the court can—
- (a) impose a restriction on—
    - (i) reporting what takes place at a public hearing, or
    - (ii) public access to what otherwise would be a public hearing;
  - (b) vary or remove a reporting or access restriction that is imposed by legislation;
  - (c) withhold information from the public during a public hearing;
  - (d) order a trial in private;
  - (e) allow there to take place during a hearing—
    - (i) sound recording, or
    - (ii) communication by electronic means.

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(2) This Part does not apply to arrangements required by legislation, or directed by the court, in connection with—

- (a) sound recording during a hearing, or the transcription of such a recording; or
- (b) measures to assist a witness or defendant to give evidence.

*[Note. The court can impose reporting restrictions under—*

- (a) *section 39 of the Children and Young Persons Act 1933(218)(identity of a person under 18);*
- (b) *section 4(2) of the Contempt of Court Act 1981(219)(postponed report of public hearing);*
- (c) *section 11 of the Contempt of Court Act 1981 (matter withheld from the public during a public hearing);*
- (d) *section 58 of the Criminal Procedure and Investigations Act 1996(220)(postponed report of derogatory assertion in mitigation);*
- (e) *section 46 of the Youth Justice and Criminal Evidence Act 1999(221)(identity of a vulnerable adult witness);*
- (f) *section 82 of the Criminal Justice Act 2003(222)(order for retrial after acquittal); or*
- (g) *section 75 of the Serious Organised Crime and Police Act 2005(223) (identity of a defendant who assisted the police).*

*There are reporting restrictions imposed by legislation that the court can vary or remove, under—*

- (a) *section 49 of the Children and Young Persons Act 1933(224)(youth court proceedings);*
- (b) *section 8C of the Magistrates' Courts Act 1980(225)(pre-trial ruling in magistrates' courts);*
- (c) *section 11 of the Criminal Justice Act 1987(226)(preparatory hearing in the Crown Court);*
- (d) *section 1 of the Sexual Offences (Amendment) Act 1992(227)(identity of complainant of sexual offence);*

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(218) 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) and sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48). It is further amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

(219) 1981 c. 49.

(220) 1996 c. 25.

(221) 1999 c. 23.

(222) 2003 c. 44.

(223) 2005 c. 15.

(224) 1933 c. 12; section 49 was substituted by section 49 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by 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), paragraph 2 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 208 and 210 of, and paragraphs 15 and 19 of Schedule 21, and Schedule 23 to, the Legal Services Act 2007 (c. 29) and section 6 of, and paragraphs 1, 3 and 100 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further 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 5 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43) and sections 6 and 149 of, and paragraphs 1 and 3 of Schedule 4 and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from dates to be appointed.

(225) 1980 c. 43; section 8C was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraphs 12 and 15 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(226) 1987 c. 38; section 11 was amended by paragraphs 1 and 6 of Schedule 3 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 24 of, and paragraphs 38 and 40 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 311 of, and paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 46 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(227) 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).

- (e) section 37 of the Criminal Procedure and Investigations Act 1996(**228**) (preparatory hearing in the Crown Court);
- (f) *section 41 of the Criminal Procedure and Investigations Act 1996*(**229**)(*pre-trial ruling in the Crown Court*);
- (g) *section 52A of, and paragraph 3 of Schedule 3 to, the Crime and Disorder Act 1998*(**230**)(*allocation and sending for trial proceedings*);
- (h) *section 47 of the Youth Justice and Criminal Evidence Act 1999*(**231**)(*special measures direction*);
- (i) *section 141F of the Education Act 2002*(**232**)(*restrictions on reporting alleged offences by teachers*); and
- (j) *section 71 of the Criminal Justice Act 2003*(**233**)(*prosecution appeal against Crown Court ruling*).

*There are reporting restrictions imposed by legislation that the court has no power to vary or remove, under—*

- (a) *section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926*(**234**)(*indecent or medical matter*);
- (b) *section 2 of the Contempt of Court Act 1981*(**235**)(*risk of impeding or prejudicing active proceedings*).

*Access to a youth court is restricted under section 47 of the Children and Young Persons Act 1933*(**236**). See also rule 37.2.

*Under section 36 of the Children and Young Persons Act 1933*(**237**), *no-one under 14 may be present in court when someone else is on trial, or during proceedings preliminary to a trial, unless that person is required as a witness, or for the purposes of justice, or the court permits.*

*The court can restrict access to the courtroom under—*

- (a) *section 8(4) of the Official Secrets Act 1920*(**238**), *during proceedings for an offence under the Official Secrets Acts 1911 and 1920*;

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(**228**) 1996 c. 25; section 37 was amended by section 24 of, and paragraph 49 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 311 of the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 61 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**229**) 1996 c. 25; section 41 was amended by section 311 of the Criminal Justice Act 2003 (c. 44).

(**230**) 1998 c. 37; section 52A was inserted by paragraphs 15 and 19 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by paragraphs 46 and 47 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Paragraph 3 of Schedule 3 was amended by section 24 of, and paragraphs 53 and 55 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), paragraphs 68 and 71 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and paragraphs 46 and 50 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**231**) 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).

(**232**) 2002 c. 32; section 141F was inserted by section 13 of the Education Act 2011 (c. 21).

(**233**) 2003 c. 44; section 71 was amended by section 40(4) of, and paragraph 82 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 65 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**234**) 1926 c. 61; section 1 was amended by sections 38 and 46 of the Criminal Justice Act 1982 (c. 48) and paragraph 8 of Schedule 27 to the Civil Partnership Act 2004 (c. 33), and is amended by paragraph 2 of Schedule 8 to the Family Law Act 1996 (c. 27) and by paragraph 7 of Schedule 26 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(**235**) 1981 c. 49; section 2 was amended by paragraph 31 of Schedule 20 to the Broadcasting Act 1990 (c. 42).

(**236**) 1933 c. 12; section 47 was amended by Parts II and III of Schedule 7 to the Justices of the Peace Act 1949 (c. 101), paragraph 40 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), sections 47(7) and 120(2) of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37) and paragraphs 15 and 18 of Schedule 21 to the Legal Services Act 2007 (c. 29). It is further amended by paragraph 2 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

(**237**) 1933 c. 12; section 36 was amended by section 73 of, and Part III of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

(**238**) 1920 c. 75; section 8 was amended by section 32 of the Magistrates' Courts Act 1980 (c. 43).

- (b) *section 37 of the Children and Young Persons Act 1933(239), where the court receives evidence from a person under 18;*
- (c) *section 75 of the Serious Organised Crime and Police Act 2005(240), where the court reviews a sentence passed on a defendant who assisted an investigation.*

*The court has an inherent power, in exceptional circumstances—*

- (a) *to allow information, for example a name or address, to be withheld from the public at a public hearing;*
- (b) *to restrict public access to what otherwise would be a public hearing, for example to control disorder;*
- (c) *to hear a trial in private, for example for reasons of national security.*

*Under section 9(1) of the Contempt of Court Act 1981(241), it is a contempt of court without the court's permission to—*

- (a) *use in court, or bring into court for use, a device for recording sound;*
- (b) *publish a recording of legal proceedings made by means of such a device; or*
- (c) *use any such recording in contravention of any condition on which permission was granted.*

*Under section 41 of the Criminal Justice Act 1925(242), it is an offence to take or attempt to take a photograph, or with a view to publication to make or attempt to make a portrait or sketch, of any judge, juror, witness or party, in the courtroom, or in the building or in the precincts of the building in which the court is held, or while that person is entering or leaving the courtroom, building or precincts; or to publish such a photograph, portrait or sketch.*

*When it comes into force, section 32 of the Crime and Courts Act 2013(243) will allow for exceptions to be made to the prohibitions imposed by section 9 of the 1981 Act and section 41 of the 1925 Act.*

*By reason of sections 15 and 45 of the Senior Courts Act 1981(244), the Court of Appeal and the Crown Court each has an inherent power to deal with a person for contempt of court for disrupting the proceedings. Under section 12 of the Contempt of Court Act 1981(245), a magistrates' court has a similar power.*

*See also—*

- (a) *rule 5.5, under which the court officer must make arrangements for recording proceedings in the Crown Court;*
- (b) *Part 29, which applies to live links and other measures to assist a witness or defendant to give evidence;*
- (c) *Part 62, which contains rules about contempt of court; and*
- (d) *rule 76.10, which applies to costs orders against a non-party for serious misconduct.]*

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**(239)** 1933 c. 12; section 37 was amended by paragraphs 15 and 16 of Schedule 21 to the Legal Services Act 2007 (c. 29) and is further amended by paragraph 2 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

**(240)** 2005 c. 15.

**(241)** 1981 c. 49.

**(242)** 1925 c. 86; section 41 was amended by section 56(4) of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), sections 38 and 46 of the Criminal Justice Act 1982 (c. 48) and section 47 of the Constitutional Reform Act 2005 (c. 4).

**(243)** 2013 c. 22.

**(244)** 1981 c. 54.

**(245)** 1981 c. 49; section 12 was amended by section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 17(3) of, and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53); section 65(3) and (4) of, and paragraph 6(4) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36) and section 165 of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

### **Exercise of court's powers to which this Part applies**

**16.2.**—(1) When exercising a power to which this Part applies, as well as furthering the overriding objective, in accordance with rule 1.3, the court must have regard to the importance of—

- (a) dealing with criminal cases in public; and
- (b) allowing a public hearing to be reported to the public.

(2) The court may determine an application or appeal under this Part—

- (a) at a hearing, in public or in private; or
- (b) without a hearing.

(3) But the court must not exercise a power to which this Part applies unless each party and any other person directly affected—

- (a) is present; or
- (b) has had an opportunity—
  - (i) to attend, or
  - (ii) to make representations.

*[Note. See also section 121 of the Magistrates' Courts Act 1980(246) and rule 37.2.]*

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

**16.3.**—(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) require an application to be made in writing instead of orally;
- (c) consider an application or representations made orally instead of in writing;
- (d) dispense with a requirement to—
  - (i) give notice, or
  - (ii) serve a written application.

(2) Someone who wants an extension of time must—

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

## *SECTION 2: REPORTING AND ACCESS RESTRICTIONS*

### **Reporting and access restrictions**

**16.4.**—(1) This rule applies where the court can—

- (a) impose a restriction on—
  - (i) reporting what takes place at a public hearing, or
  - (ii) public access to what otherwise would be a public hearing;
- (b) withhold information from the public during a public hearing.

(2) The court may do so—

- (a) on application by a party; or

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**(246)** 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).

- (b) on its own initiative.
- (3) A party who wants the court to do so must—
  - (a) apply as soon as reasonably practicable;
  - (b) notify—
    - (i) each other party, and
    - (ii) such other person (if any) as the court directs;
  - (c) specify the proposed terms of the order, and for how long it should last;
  - (d) explain—
    - (i) what power the court has to make the order, and
    - (ii) why an order in the terms proposed is necessary;
  - (e) where the application is for a reporting direction in respect of a witness under section 46 of the Youth Justice and Criminal Evidence Act 1999, explain—
    - (i) how the witness is eligible for assistance, and
    - (ii) why a reporting direction would be likely to improve the quality of the witness' evidence, or the level of co-operation the witness gives the applicant in connection with the preparation of the applicant's case.

### **Varying or removing restrictions**

- 16.5.**—(1) This rule applies where the court can vary or remove a reporting or access restriction.
- (2) Unless other legislation otherwise provides, the court may do so—
    - (a) on application by a party or person directly affected; or
    - (b) on its own initiative.
  - (3) A party or person who wants the court to do so must—
    - (a) apply as soon as reasonably practicable;
    - (b) notify—
      - (i) each other party, and
      - (ii) such other person (if any) as the court directs;
    - (c) specify the restriction;
    - (d) explain, as appropriate, why it should be varied or removed.
  - (4) A person who wants to appeal to the Crown Court under section 141F of the Education Act 2002~~(247)~~ must—
    - (a) serve an appeal notice on—
      - (i) the Crown Court officer, and
      - (ii) each other party;
    - (b) serve on the Crown Court officer, with the appeal notice, a copy of the application to the magistrates' court;
    - (c) serve the appeal notice not more than 21 days after the magistrates' court's decision against which the appellant wants to appeal; and
    - (d) in the appeal notice, explain, as appropriate, why the restriction should be maintained, varied or removed.

(5) Rule 63.10 (Constitution of the Crown Court) applies on such an appeal.

*[Note. Under section 141F(7) of the Education Act 2002, a party to an application to a magistrates' court to remove the statutory restriction on reporting an alleged offence by a teacher may appeal to the Crown Court against the decision of the magistrates' court. With the Crown Court's permission, any other person may appeal against such a decision.]*

### **Trial in private**

**16.6.**—(1) This rule applies where the court can order a trial in private.

(2) A party who wants the court to do so must—

- (a) apply in writing not less than 5 business days before the trial is due to begin; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) each other party.

(3) The applicant must explain—

- (a) the reasons for the application;
- (b) how much of the trial the applicant proposes should be in private; and
- (c) why no measures other than trial in private will suffice, such as—
  - (i) reporting restrictions,
  - (ii) an admission of facts,
  - (iii) the introduction of hearsay evidence,
  - (iv) a direction for a special measure under section 19 of the Youth Justice and Criminal Evidence Act 1999,
  - (v) a witness anonymity order under section 86 of the Coroners and Justice Act 2009, or
  - (vi) arrangements for the protection of a witness.

(4) Where the application includes information that the applicant thinks ought not be revealed to another party, the applicant must—

- (a) omit that information from the part of the application that is served on that other party;
- (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
- (c) in that other part, explain why the applicant has withheld that information from that other party.

(5) The court officer must at once—

- (a) display notice of the application somewhere prominent in the vicinity of the courtroom; and
- (b) give notice of the application to reporters by such other arrangements as the Lord Chancellor directs.

(6) The application must be determined at a hearing which—

- (a) must be in private, unless the court otherwise directs;
- (b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld; and
- (c) in the Crown Court, must be after the defendant is arraigned but before the jury is sworn.

(7) At the hearing of the application—

- (a) the general rule is that the court must consider, in the following sequence—
  - (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
  - (ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but
- (b) the court may direct other arrangements for the hearing.
- (8) The court must not hear a trial in private until—
  - (a) the business day after the day on which it orders such a trial, or
  - (b) the disposal of any appeal against, or review of, any such order, if later.

### **Representations in response**

**16.7.**—(1) This rule applies where a party, or person directly affected, wants to make representations about an application or appeal.

- (2) Such a party or person must—
  - (a) serve the representations on—
    - (i) the court officer,
    - (ii) the applicant,
    - (iii) each other party, and
    - (iv) such other person (if any) as the court directs;
  - (b) do so as soon as reasonably practicable after notice of the application; and
  - (c) ask for a hearing, if that party or person wants one, and explain why it is needed.
- (3) Representations must—
  - (a) explain the reasons for any objection;
  - (b) specify any alternative terms proposed.

### **Order about restriction or trial in private**

- 16.8.**—(1) This rule applies where the court—
- (a) orders, varies or removes a reporting or access restriction; or
  - (b) orders a trial in private.
- (2) The court officer must—
- (a) record the court's reasons for the decision; and
  - (b) as soon as reasonably practicable, arrange for notice of the decision to be—
    - (i) displayed somewhere prominent in the vicinity of the courtroom, and
    - (ii) communicated to reporters by such other arrangements as the Lord Chancellor directs.

## *SECTION 3: SOUND RECORDING AND ELECTRONIC COMMUNICATION*

### **Sound recording and electronic communication**

- 16.9.**—(1) This rule applies where the court can give permission to—
- (a) bring into a hearing for use, or use during a hearing, a device for—



- (i) recording sound, or
  - (ii) communicating by electronic means; or
- (b) publish a sound recording made during a hearing.
- (2) The court may give such permission—
  - (a) on application; or
  - (b) on its own initiative.
- (3) A person who wants the court to give such permission must—
  - (a) apply as soon as reasonably practicable;
  - (b) notify—
    - (i) each party, and
    - (ii) such other person (if any) as the court directs; and
  - (c) explain why the court should permit the use or publication proposed.
- (4) As a condition of the applicant using such a device, the court may direct arrangements to minimise the risk of its use—
  - (a) contravening a reporting restriction;
  - (b) disrupting the hearing; or
  - (c) compromising the fairness of the hearing, for example by affecting—
    - (i) the evidence to be given by a witness, or
    - (ii) the verdict of a jury.
- (5) Such a direction may require that the device is used only—
  - (a) in a specified part of the courtroom;
  - (b) for a specified purpose;
  - (c) for a purpose connected with the applicant’s activity as a member of a specified group, for example representatives of news-gathering or reporting organisations;
  - (d) at a specified time, or in a specified way.

### **Forfeiture of unauthorised sound recording**

- 16.10.**—(1) This rule applies where someone without the court’s permission—
  - (a) uses a device for recording sound during a hearing; or
  - (b) publishes a sound recording made during a hearing.
- (2) The court may exercise its power to forfeit the device or recording—
  - (a) on application by a party, or on its own initiative;
  - (b) provisionally, despite rule 16.2(3), to allow time for representations.
- (3) A party who wants the court to forfeit a device or recording must—
  - (a) apply as soon as reasonably practicable;
  - (b) notify—
    - (i) as appropriate, the person who used the device, or who published the recording, and
    - (ii) each other party; and
  - (c) explain why the court should exercise that power.

*[Note. Under section 9(3) of the Contempt of Court Act 1981(248), the court can forfeit any device or recording used or made in contravention of section 9(1) of the Act.]*

## PART 17

### EXTRADITION

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### SECTION 1: GENERAL RULES

#### When this Part applies

- 17.1.**—(1) This Part applies to extradition under Part 1 or Part 2 of the Extradition Act 2003(249).  
(2) Section 2 of this Part applies to proceedings in a magistrates' court, and in that Section—  
(a) rules 17.3 to 17.7, 17.15 and 17.16 apply to extradition under Part 1 of the Act;  
(b) rules 17.3, 17.4 and 17.8 to 17.16 apply to extradition under Part 2 of the Act.  
(3) Section 3 of this Part applies where—  
(a) a party wants to appeal to the High Court against an order by the magistrates' court or by the Secretary of State;  
(b) a party to an appeal to the High Court wants to appeal further to the Supreme Court under—  
(i) section 32 of the Act (appeal under Part 1 of the Act), or  
(ii) section 114 of the Act (appeal under Part 2 of the Act).

*[Note. The Extradition Act 2003 provides for the extradition of a person accused or convicted of a crime to the territory within which that person is accused or was convicted.]*

*Under Part 1 of the Act (sections 1 to 68), the magistrates' court may give effect to a warrant for arrest issued by an authority in a territory designated for the purposes of that Part, including a Member State of the European Union.*

*Under Part 2 of the Act (sections 69 to 141), the magistrates' court and the Secretary of State may give effect to a request for extradition made under a treaty between the United Kingdom and the requesting territory.*

*There are rights of appeal to the High Court from decisions of the magistrates' court and of the Secretary of State: see Section 3 of this Part.]*

### **Meaning of 'magistrates' court', 'presenting officer' and 'defendant'**

**17.2.** In this Part, and for the purposes of this Part in other rules—

- (a) 'magistrates' court' means a District Judge (Magistrates' Courts) exercising the powers to which Section 2 of this Part applies;
- (b) 'presenting officer' means an officer of the National Crime Agency, a police officer, a prosecutor or other person representing an authority or territory seeking the extradition of a defendant;
- (c) 'defendant' means a person arrested under Part 1 or Part 2 of the Extradition Act 2003.

*[Note. Under sections 67 and 139 of the Extradition Act 2003(250), a District Judge (Magistrates' Courts) must be designated for the purposes of the Act to exercise the powers to which Section 2 of this Part applies.]*

## **SECTION 2: EXTRADITION PROCEEDINGS IN A MAGISTRATES' COURT**

### **Exercise of magistrates' court's powers**

**17.3.—(1)** The general rule is that the magistrates' court must exercise its powers at a hearing in public, but that is subject to any power it has to—

- (a) impose reporting restrictions;
- (b) withhold information from the public; or
- (c) order a hearing in private.

(2) The general rule is that the court must exercise its powers in the defendant's presence, but it may do so in the defendant's absence where—

- (a) the court discharges the defendant; or
- (b) the defendant is represented and the defendant's presence is impracticable by reason of his or her—
  - (i) ill health, or
  - (ii) disorderly conduct.

(3) The court may exercise its power to adjourn—

- (a) if either party asks, or on its own initiative; and
- (b) in particular—
  - (i) to allow there to be obtained information that the court requires,
  - (ii) following a provisional arrest under Part 1 of the Extradition Act 2003, pending receipt of the warrant,
  - (iii) following a provisional arrest under Part 2 of the Act, pending receipt of the extradition request,

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(250)2003 c. 41; sections 67 and 139 were amended by section 15 of, and paragraphs 352 and 353 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and section 42 of, and paragraph 15 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

- (iv) if the court is informed that the defendant is serving a custodial sentence in the United Kingdom,
- (v) if it appears to the court that the defendant is not fit to be extradited, unless the court discharges the defendant for that reason,
- (vi) where a court dealing with a warrant to which Part 1 of the Act applies is informed that another such warrant has been received in the United Kingdom, or
- (vii) where a court dealing with a warrant to which Part 1 of the Act applies is informed of a request for the temporary transfer of the defendant to the territory to which the defendant's extradition is sought.

(4) The court must exercise its power to adjourn if informed that the defendant has been charged with an offence in the United Kingdom.

(5) The general rule is that, before exercising a power to which this Part applies, the court must give each party an opportunity to make representations, unless that party is absent deliberately.

*[Note. See sections 8A, 8B, 9, 21B, 22, 23, 25 and 44 of the Extradition Act 2003(251) (powers in relation to extradition under Part 1 of the Act) and sections 76A, 76B, 77, 88, 89 and 91 of the Act(252) (powers in relation to extradition under Part 2 of the Act).*

*Under sections 206A to 206C of the 2003 Act(253), the court may require a defendant to attend by live link a preliminary hearing to which rule 17.5, 17.9 or 17.11 applies, and any hearing for the purposes of rule 17.12.*

*Part 3 contains rules about case management which apply at an extradition hearing and during preparation for that hearing. The rules in this Part must be read in conjunction with those rules.*

*Part 16 contains rules about reporting and access restrictions.]*

### **Duty of magistrates' court officer**

**17.4.** The magistrates' court officer must—

- (a) as soon as practicable, serve notice of the court's decision to extradite or discharge—
  - (i) on the defendant,
  - (ii) on the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies,
  - (iii) on the Secretary of State, where Part 2 of the Act applies; and
- (b) give the court such assistance as it requires.

## *EXTRADITION UNDER PART 1 OF THE EXTRADITION ACT 2003*

### **Preliminary hearing after arrest**

**17.5.—(1)** This rule applies where the defendant is first brought before the court after—

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**(251)**2003 c. 41; sections 8A and 8B were inserted by section 69 of the Policing and Crime Act 2009 (c. 26). Sections 9 and 44 were amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 21B is inserted by section 159 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed. Section 22 was amended by section 71 of the Policing and Crime Act 2009 (c. 26). Section 23 was amended by paragraph 7 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 71 of the Policing and Crime Act 2009 (c. 26).

**(252)**2003 c. 41; sections 76A and 76B were inserted by section 70 of the Policing and Crime Act 2009 (c. 26). Section 77 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 88 was amended by section 71 of the Policing and Crime Act 2009 (c. 26). Section 89 was amended by paragraph 7 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 71 of the Policing and Crime Act 2009 (c. 26).

**(253)**2003 c. 41; sections 206A, 206B and 206C were inserted by section 78 of the Policing and Crime Act 2009 (c. 26).

- (a) arrest under a warrant to which Part 1 of the Extradition Act 2003 applies; or
  - (b) provisional arrest under Part 1 of the Act.
- (2) The presenting officer must—
- (a) serve on the court officer—
    - (i) the arrest warrant, and
    - (ii) a certificate, given by the authority designated by the Secretary of State, that the warrant was issued by an authority having the function of issuing such warrants in the territory to which the defendant’s extradition is sought; or
  - (b) apply at once for an extension of time within which to serve that warrant and that certificate.
- (3) An application under paragraph (2)(b) must—
- (a) explain why the requirement to serve the warrant and certificate at once could not reasonably be complied with; and
  - (b) include—
    - (i) any written material in support of that explanation, and
    - (ii) representations about bail pending service of those documents.
- (4) When the presenting officer serves the warrant and certificate, in the following sequence the court must—
- (a) decide whether the defendant is the person in respect of whom the warrant was issued;
  - (b) explain, in terms the defendant can understand (with help, if necessary)—
    - (i) the allegation made in the warrant, and
    - (ii) that the defendant may consent to extradition, and how that may be done and with what effect;
  - (c) arrange for an extradition hearing to begin—
    - (i) no more than 21 days after the defendant’s arrest, or
    - (ii) if either party so applies, at such a later date as the court decides is in the interests of justice;
  - (d) consider any ancillary application, including an application about bail pending the extradition hearing; and
  - (e) give any direction as is appropriate to the needs of the case about the introduction of evidence at the extradition hearing.

*[Note. See sections 4, 6, 7 and 8 of the Extradition Act 2003(254).*

*Under section 6 of the Act, following a provisional arrest pending receipt of a warrant the defendant must be brought before the court within 48 hours, and the warrant and certificate must be served within that same period. If they are not so served, the court may extend the time for service by a further 48 hours.*

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**(254)** 2003 c. 41; section 6 was amended by section 77 of the Policing and Crime Act 2009 (c. 26). Section 7 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 77 of the Policing and Crime Act 2009 (c. 26). Section 8 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). It is further amended by section 155 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

*Under section 45 of the Act(255), a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.*

*Part 19 contains rules about bail.]*

### **Extradition hearing**

**17.6.**—(1) This rule applies at the extradition hearing arranged by the court under rule 17.5.

(2) In the following sequence, the court must decide—

- (a) whether the offence specified in the warrant is an extradition offence;
- (b) whether a bar to extradition applies, namely—
  - (i) the rule against double jeopardy,
  - (ii) absence of prosecution decision,
  - (iii) extraneous considerations,
  - (iv) the passage of time,
  - (v) the defendant's age,
  - (vi) speciality,
  - (vii) earlier extradition or transfer to the United Kingdom, or
  - (viii) forum;
- (c) where the warrant alleges that the defendant is unlawfully at large after conviction, whether conviction was in the defendant's presence and if not—
  - (i) whether the defendant was absent deliberately,
  - (ii) if the defendant was not absent deliberately, whether the defendant would be entitled to a retrial (or to a review of the conviction, amounting to a retrial);
- (d) whether extradition would be—
  - (i) compatible with the defendant's human rights, and
  - (ii) proportionate;
- (e) whether it would be unjust or oppressive to extradite the defendant because of his or her physical or mental condition;
- (f) after deciding each of (a) to (e) above, before progressing to the next, whether to order the defendant's discharge;
- (g) whether to order the temporary transfer of the defendant to the territory to which the defendant's extradition is sought.

(3) If the court discharges the defendant, the court must consider any ancillary application, including an application about—

- (a) reporting restrictions; or
- (b) costs.

(4) If the court does not discharge the defendant, the court must—

- (a) exercise its power to order the defendant's extradition;

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**(255)**2003 c. 41; section 45 was amended by paragraphs 62 and 63 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 163 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

- (b) explain, in terms the defendant can understand (with help, if necessary), that the defendant may appeal to the High Court within the next 7 days; and
- (c) consider any ancillary application, including an application about—
  - (i) bail pending extradition,
  - (ii) reporting restrictions, or
  - (iii) costs.
- (5) If the court orders the defendant’s extradition, the court must order its postponement where—
  - (a) the defendant has been charged with an offence in the United Kingdom; or
  - (b) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

*[Note. See sections 10, 11, 20, 21, 21B, 25, 26, 36A, 36B, 64 and 65 of the Extradition Act 2003(256).*

*Part 16 contains rules about reporting restrictions. Part 76 contains rules about costs.]*

#### **Discharge where warrant withdrawn**

**17.7.**—(1) This rule applies where the authority that certified the warrant gives the court officer notice that the warrant has been withdrawn—

- (a) after the start of the hearing under rule 17.5; and
  - (b) before the court orders the defendant’s extradition or discharge.
- (2) The court must exercise its power to discharge the defendant.

*[Note. See section 41 of the Extradition Act 2003.]*

### *EXTRADITION UNDER PART 2 OF THE EXTRADITION ACT 2003*

#### **Issue of arrest warrant**

- 17.8.**—(1) This rule applies where the Secretary of State serves on the court officer—
- (a) an extradition request to which Part 2 of the Extradition Act 2003 applies;
  - (b) a certificate given by the Secretary of State that the request was received in the way approved for the request; and
  - (c) a copy of any Order in Council which applies to the request.
- (2) In the following sequence, the court must decide—
- (a) whether the offence in respect of which extradition is requested is an extradition offence; and
  - (b) whether there is sufficient evidence, or (where the Secretary of State has so ordered, for this purpose) information, to justify the issue of a warrant of arrest.
- (3) The court may issue an arrest warrant—
- (a) without giving the parties an opportunity to make representations; and

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**(256)** 2003 c. 41; section 11 was amended by paragraphs 3 and 4 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and by paragraphs 1 and 2 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). It is further amended by sections 156, 157 and 158 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from dates to be appointed. Section 21 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 21B is inserted by section 159 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), section 26 is amended by section 160 of that Act, sections 36A and 36B are inserted by section 161 of that Act and sections 64 and 65 are substituted by section 164 of that Act, all with effect from dates to be appointed.



- (b) without a hearing, or at a hearing in public or in private.

*[Note. See sections 70, 71, 137 and 138 of the Extradition Act 2003(257).]*

### **Preliminary hearing after arrest**

**17.9.**—(1) This rule applies where a defendant is first brought before the court after arrest under a warrant to which rule 17.8 applies.

- (2) In the following sequence, the court must—
  - (a) explain, in terms the defendant can understand (with help, if necessary)—
    - (i) the content of the extradition request, and
    - (ii) that the defendant may consent to extradition, and how that may be done and with what effect;
  - (b) arrange for an extradition hearing to begin—
    - (i) no more than 2 months later, or
    - (ii) if either party so applies, at such a later date as the court decides is in the interests of justice;
  - (c) consider any ancillary application, including an application about bail pending the extradition hearing; and
  - (d) give any direction as is appropriate to the needs of the case about the introduction of evidence at the extradition hearing.

*[Note. See sections 72 and 75 of the Extradition Act 2003(258).*

*Under section 127 of the 2003 Act(259) a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.*

*Part 19 contains rules about bail.]*

### **Issue of provisional arrest warrant**

**17.10.**—(1) This rule applies where a presenting officer wants a justice of the peace to issue a provisional arrest warrant under Part 2 of the Extradition Act 2003, pending receipt of an extradition request.

- (2) The presenting officer must—
  - (a) serve on the court officer an information in writing; and
  - (b) verify the information on oath or affirmation.
- (3) In the following sequence, the justice must decide—
  - (a) whether the alleged offence is an extradition offence; and
  - (b) whether there is sufficient evidence, or (where the Secretary of State has so ordered, for this purpose) information, to justify the issue of a warrant of arrest.

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(257)2003 c. 41; section 70 was amended by paragraphs 1 and 17 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

Section 71 was amended by paragraph 202 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Sections 137 and 138 are substituted by section 164 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(258)2003 c. 41; section 72 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(259)2003 c. 41; section 127 was amended by paragraphs 62 and 64 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

*[Note. See sections 73, 137 and 138 of the Extradition Act 2003(260).]*

### **Preliminary hearing after provisional arrest**

**17.11.**—(1) This rule applies where a defendant is first brought before the court after arrest under a provisional arrest warrant to which rule 17.10 applies.

- (2) The court must—
- (a) explain, in terms the defendant can understand (with help, if necessary)—
    - (i) the allegation in respect of which the warrant was issued, and
    - (ii) that the defendant may consent to extradition, and how that may be done and with what effect; and
  - (b) consider any ancillary application, including an application about bail pending receipt of the extradition request.

*[Note. See section 74 of the Extradition Act 2003(261). Under section 127 of the Act, a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.]*

### **Arrangement of extradition hearing after provisional arrest**

- 17.12.**—(1) This rule applies when the Secretary of State serves on the court officer—
- (a) a request for extradition in respect of which a defendant has been arrested under a provisional arrest warrant to which rule 17.10 applies;
  - (b) a certificate given by the Secretary of State that the request was received in the way approved for the request; and
  - (c) a copy of any Order in Council which applies to the request.
- (2) Unless a time limit for service of the request has expired, the court must—
- (a) arrange for an extradition hearing to begin—
    - (i) no more than 2 months after service of the request, or
    - (ii) if either party so applies, at such a later date as the court decides is in the interests of justice;
  - (b) consider any ancillary application, including an application about bail pending the extradition hearing; and
  - (c) give any direction as is appropriate to the needs of the case about the introduction of evidence at the extradition hearing.

*[Note. See section 76 of the Extradition Act 2003.]*

### **Extradition hearing**

**17.13.**—(1) This rule applies at the extradition hearing arranged by the court under rule 17.9 or rule 17.12.

- (2) In the following sequence, the court must decide—

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**(260)**2003 c. 41; section 73 was amended by paragraph 203 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Sections 137 and 138 are substituted by section 164 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

**(261)**2003 c. 41; section 74 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

- (a) whether the documents served on the court officer by the Secretary of State include—
    - (i) those listed in rule 17.8(1) or rule 17.12(1), as the case may be,
    - (ii) particulars of the person whose extradition is requested,
    - (iii) particulars of the offence specified in the request, and
    - (iv) as the case may be, a warrant for the defendant's arrest, or a certificate of the defendant's conviction and (if applicable) sentence, issued in the requesting territory;
  - (b) whether the defendant is the person whose extradition is requested;
  - (c) whether the offence specified in the request is an extradition offence;
  - (d) whether the documents served on the court officer by the Secretary of State have been served also on the defendant;
  - (e) whether a bar to extradition applies, namely—
    - (i) the rule against double jeopardy,
    - (ii) extraneous considerations,
    - (iii) the passage of time,
    - (iv) hostage-taking considerations, or
    - (v) forum;
  - (f) where the request accuses the defendant of an offence, whether there is evidence which would be sufficient to make a case requiring an answer by the defendant if the extradition proceedings were a trial (unless the Secretary of State has otherwise ordered, for this purpose);
  - (g) where the request accuses the defendant of being unlawfully at large after conviction, whether the defendant was—
    - (i) convicted in his or her presence, or
    - (ii) absent deliberately;
  - (h) where the request accuses the defendant of being unlawfully at large after conviction, and the defendant was absent but not deliberately—
    - (i) whether the defendant would be entitled to a retrial (or to a review of the conviction amounting to a retrial), and
    - (ii) if so, whether there is evidence which would be sufficient to make a case requiring an answer by the defendant if the extradition proceedings were a trial (unless the Secretary of State has otherwise ordered, for this purpose);
  - (i) whether extradition would be compatible with the defendant's human rights;
  - (j) whether it would be unjust or oppressive to extradite the defendant because of his or her physical or mental condition;
  - (k) after deciding each of (a) to (j) above, before progressing to the next, whether to order the defendant's discharge.
- (3) If the court discharges the defendant, the court must consider any ancillary application, including an application about—
- (a) reporting restrictions; or
  - (b) costs.
- (4) If the court does not discharge the defendant, the court must—
- (a) exercise its power to send the case to the Secretary of State to decide whether to extradite the defendant;

- (b) explain, in terms the defendant can understand (with help, if necessary), that—
    - (i) the defendant may appeal to the High Court not more than 14 days after being informed of the Secretary of State’s decision, and
    - (ii) any such appeal brought before the Secretary of State’s decision has been made will not be heard until after that decision; and
  - (c) consider any ancillary application, including an application about—
    - (i) bail pending extradition,
    - (ii) reporting restrictions, or
    - (iii) costs.
- (5) If the Secretary of State orders the defendant’s extradition, the court must order its postponement where—
- (a) the defendant has been charged with an offence in the United Kingdom; or
  - (b) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

*[Note. See sections 78, 79, 84, 85, 86, 87, 91, 92, 103, 118A, 118B, 137 and 138 of the Extradition Act 2003(262).*

*Part 16 contains rules about reporting restrictions. Part 76 contains rules about costs.]*

#### **Discharge where extradition request withdrawn**

**17.14.**—(1) This rule applies where the Secretary of State gives the court officer notice that the extradition request has been withdrawn—

- (a) after the start of the hearing under rule 17.9 or 17.11; and
- (b) before the court—
  - (i) sends the case to the Secretary of State to decide whether to extradite the defendant, or
  - (ii) discharges the defendant.

(2) The court must exercise its power to discharge the defendant.

*[Note. See section 122 of the Extradition Act 2003.]*

### *EVIDENCE AT EXTRADITION HEARING*

#### **Introduction of additional evidence**

**17.15.**—(1) Where a party wants to introduce evidence at an extradition hearing under the law that would apply if that hearing were a trial, the relevant Part of these Rules applies with such adaptations as the court directs.

- (2) If the court admits as evidence the written statement of a witness—
  - (a) each relevant part of the statement must be read or summarised aloud; or
  - (b) the court must read the statement and its gist must be summarised aloud.

(3) If a party introduces in evidence a fact admitted by another party, or the parties jointly admit a fact, a written record must be made of the admission.

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**(262)**2003 c. 41; section 79 was amended by paragraphs 4 and 5 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 103 is amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), sections 118A and 118B are inserted by section 161 of that Act and sections 137 and 138 are substituted by section 164 of that Act, all with effect from dates to be appointed.

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

*Under section 202 of the Extradition Act 2003(263), the court may receive in evidence—*

- (a) a warrant to which Part 1 of the Act applies;*
- (b) any other document issued in a territory to which Part 1 of the Act applies, if the document is authenticated as required by the Act;*
- (c) a document issued in a territory to which Part 2 of the Act applies, if the document is authenticated as required by the Act.*

*Under sections 84 and 86 of the Act, which apply to evidence, if required, at an extradition hearing to which Part 2 of the Act applies, the court may accept as evidence of a fact a statement by a person in a document if oral evidence by that person of that fact would be admissible, and the statement was made to a police officer, or to someone else responsible for investigating offences or charging offenders.*

*Under section 205 of the Act, section 9 (proof by written witness statement) and section 10 (proof by formal admission) of the Criminal Justice Act 1967(264) apply to extradition proceedings as they apply in relation to proceedings for an offence.]*

#### DISCHARGE AFTER FAILURE TO COMPLY WITH A TIME LIMIT

### **Defendant's application to be discharged**

**17.16.**—(1) This rule applies where a defendant wants to be discharged—

- (a) because of a failure—
  - (i) to give the defendant a copy of any warrant under which the defendant is arrested as soon as practicable after arrest,
  - (ii) to bring the defendant before the court as soon as practicable after arrest under a warrant,
  - (iii) to bring the defendant before the court no more than 48 hours after provisional arrest under Part 1 of the Extradition Act 2003;
- (b) following the expiry of a time limit for—
  - (i) service of a warrant to which Part 1 of the 2003 Act applies, after provisional arrest under that Part of the Act (48 hours, under section 6 of the Act(265), unless the court otherwise directs),
  - (ii) service of an extradition request to which Part 2 of the Act applies, after provisional arrest under that Part of the Act (45 days, under section 74 of the Act(266), unless the Secretary of State has otherwise ordered for this purpose),
  - (iii) receipt of an undertaking that the defendant will be returned to complete a sentence in the United Kingdom, where the court required such an undertaking (21 days, under section 37 of the Act(267)),

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(263)2003 c. 41; section 202 was amended by paragraph 26 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(264)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 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

(265)2003 c. 41; section 6 was amended by section 77 of the Policing and Crime Act 2009 (c. 26).

(266)2003 c. 41; section 74 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(267)2003 c. 41; section 37 was amended by paragraphs 9 and 10 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

- (iv) making an extradition order, after the defendant has consented to extradition under Part 1 of the Act (10 days, under section 46 of the Act(**268**)),
  - (v) extradition, where an extradition order has been made under Part 1 of the Act and any appeal by the defendant has failed (10 days, under sections 35, 36 and 47 of the Act(**269**), unless the court otherwise directs),
  - (vi) extradition, where an extradition order has been made under Part 2 of the Act and any appeal by the defendant has failed (28 days, under sections 117 and 118 of the Act(**270**)),
  - (vii) the resumption of extradition proceedings, where those proceedings were adjourned pending disposal of another extradition claim which has concluded (21 days, under section 180 of the Act),
  - (viii) extradition, where extradition has been deferred pending the disposal of another extradition claim which has concluded (21 days, under section 181 of the Act), or
  - (ix) re-extradition, where the defendant has been returned to the United Kingdom to serve a sentence before serving a sentence overseas (as soon as practicable, under section 187 of the Act(**271**)); or
- (c) because an extradition hearing does not begin on the date arranged by the court.
- (2) Unless the court otherwise directs—
- (a) such a defendant must apply in writing and serve the application on—
    - (i) the court officer, and
    - (ii) the prosecutor;
  - (b) the application must explain the grounds on which it is made; and
  - (c) the court officer must arrange a hearing as soon as practicable, and in any event no later than the second business day after an application is served.

*[Note. See sections 4(4) & (5), 6(6) & (7), 8(7) & (8)(**272**), 35(5), 36(8), 37(7), 46(8)(**273**), 47(4), 72(5) & (6), 74(5), (6) & (10), 75(4), 76(5), 117(3), 118(7), 180(4) & (5), 181(4) & (5) and 187(3) of the Extradition Act 2003.]*

### SECTION 3: APPEAL TO THE HIGH COURT

*[Note. Under Part 1 of the Extradition Act 2003—*

- (a) *a defendant may appeal to the High Court against an order for extradition made by the magistrates' court; and*
- (b) *the authority requesting the defendant's extradition may appeal to the High Court against an order for the defendant's discharge,*

*(see sections 26 and 28 of the Act(**274**)).*

*Under Part 2 of the 2003 Act—*

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(**268**) 2003 c. 41; section 46 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).  
 (**269**) 2003 c. 41; section 35 was amended by paragraph 9 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 36 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).  
 (**270**) 2003 c. 41; section 118 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).  
 (**271**) 2003 c. 41; section 187 was amended by paragraph 15 of Schedule 13 to the Police and Justice Act 2006 (c. 48).  
 (**272**) 2003 c. 41; section 8 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).  
 (**273**) 2003 c. 41; section 46 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).  
 (**274**) 2003 c. 41; sections 26 and 28 are amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

- (a) a defendant may appeal to the High Court against an order by the magistrates' court sending a case to the Secretary of State for a decision whether to extradite the defendant;
- (b) a defendant may appeal to the High Court against an order for extradition made by the Secretary of State; and
- (c) the territory requesting the defendant's extradition may appeal to the High Court against an order for the defendant's discharge by the magistrates' court or by the Secretary of State,

(see sections 103, 105, 108 and 110 of the Act(275)).

In each case the appellant needs the High Court's permission to appeal (in the 2003 Act, described as 'leave to appeal').]

### Exercise of the High Court's powers

**17.17.**—(1) The general rule is that the High Court must exercise its powers at a hearing in public, but—

- (a) that is subject to any power the court has to—
  - (i) impose reporting restrictions,
  - (ii) withhold information from the public, or
  - (iii) order a hearing in private;
- (b) despite the general rule, the court may determine without a hearing—
  - (i) an application for permission to appeal to the High Court (but a renewed such application must be determined at a hearing),
  - (ii) an application for permission to appeal from the High Court to the Supreme Court,
  - (iii) an application for permission to reopen a decision under rule 17.27 (Reopening the determination of an appeal), or
  - (iv) an application concerning bail; and
- (c) despite the general rule the court may, without a hearing—
  - (i) give case management directions, or
  - (ii) reject a notice or application and, if applicable, dismiss an application for permission to appeal, where rule 17.31 (Payment of High Court fees) applies and the party who served the notice or application fails to comply with that rule.

(2) If the High Court so directs, a party may attend a hearing by live link.

(3) The general rule is that where the High Court exercises its powers at a hearing it may do so only if the defendant attends, in person or by live link, but, despite the general rule, the court may exercise its powers in the defendant's absence if—

- (a) the defendant waives the right to attend;
- (b) subject to any appeal to the Supreme Court, the result of the court's order would be the discharge of the defendant; or
- (c) the defendant is represented and—
  - (i) the defendant is in custody, or
  - (ii) the defendant's presence is impracticable by reason of his or her ill health or disorderly conduct.

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(275)2003 c. 41; section 108 was amended by paragraphs 10 and 12 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 108 is further amended, and sections 103, 105 and 110 are amended, by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

- (4) If the High Court gives permission to appeal to the High Court—
- (a) unless the court otherwise directs, the decision indicates that the court gives the appellant permission to appeal on each ground identified by the appeal notice;
  - (b) unless the court otherwise directs, the decision indicates that the court finds reasonably arguable each ground on which the court gives permission to appeal; and
  - (c) the court must give such directions as are required for the preparation and hearing of the appeal, including a direction as to whether the appeal must be heard by a single judge of the High Court or by a divisional court.
- (5) If the High Court decides without a hearing an application for permission to appeal from the High Court to the Supreme Court, the High Court must announce its decision at a hearing in public.
- (6) The High Court may—
- (a) shorten a time limit or extend it (even after it has expired), unless that is inconsistent with other legislation;
  - (b) allow or require a party to vary or supplement a notice that that party has served;
  - (c) direct that a notice or application be served on any person;
  - (d) allow a notice or application to be in a different form to one set out in the Practice Direction, or to be presented orally.
- (7) A party who wants an extension of time within which to serve a notice or make an application must—
- (a) apply for that extension of time when serving that notice or making that application; and
  - (b) give the reasons for the application for an extension of time.

*[Note. The time limits for serving an appeal notice are prescribed by the Extradition Act 2003: see rule 17.19.]*

### **Case management in the High Court**

- 17.18.**—(1) The High Court and the parties have the same duties and powers as under Part 3 (Case management), subject to paragraph (3).
- (2) A master of the High Court, a deputy master, or a court officer nominated for the purpose by the Lord Chief Justice—
- (a) must fulfil the duty of active case management under rule 3.2, and in fulfilling that duty may exercise any of the powers of case management under—
    - (i) rule 3.5 (the court’s general powers of case management),
    - (ii) rule 3.10(3) (requiring a certificate of readiness), and
    - (iii) rule 3.11 (requiring a party to identify intentions and anticipated requirements)
 subject to the directions of a judge of the High Court; and
  - (b) must nominate a case progression officer under rule 3.4.
- (3) Rule 3.6 (Application to vary a direction) does not apply to a decision to give or to refuse—
- (a) permission to appeal; or
  - (b) permission to reopen a decision under rule 17.27 (Reopening the determination of an appeal).

### **Service of appeal notice**

- 17.19.**—(1) A party who wants to appeal to the High Court must serve an appeal notice on—



- (a) in every case—
    - (i) the High Court officer,
    - (ii) the other party, and
    - (iii) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings;
  - (b) the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies; and
  - (c) the Secretary of State, where the appeal is against—
    - (i) an order by the Secretary of State, or
    - (ii) an order by the magistrates' court sending a case to the Secretary of State.
- (2) A defendant who wants to appeal must serve the appeal notice—
- (a) not more than 7 days after the day on which the magistrates' court makes an order for the defendant's extradition, starting with that day, where that order is under Part 1 of the Extradition Act 2003;
  - (b) not more than 14 days after the day on which the Secretary of State informs the defendant of the Secretary of State's decision, starting with that day, where under Part 2 of the Act—
    - (i) the magistrates' court sends the case to the Secretary of State for a decision whether to extradite the defendant, or
    - (ii) the Secretary of State orders the defendant's extradition.
- (3) An authority or territory seeking the defendant's extradition which wants to appeal against an order for the defendant's discharge must serve the appeal notice—
- (a) not more than 7 days after the day on which the magistrates' court makes that order, starting with that day, if the order is under Part 1 of the Extradition Act 2003;
  - (b) not more than 14 days after the day on which the magistrates' court makes that order, starting with that day, if the order is under Part 2 of the Act;
  - (c) not more than 14 days after the day on which the Secretary of State informs the territory's representative of the Secretary of State's order, starting with that day, where the order is under Part 2 of the Act.

*[Note. See sections 26, 28, 103, 105, 108 and 110 of the Extradition Act 2003(276). The time limits for serving an appeal notice are prescribed by those sections. They may be neither shortened nor extended, but—*

- (a) *if a defendant applies out of time for permission to appeal to the High Court the court must not for that reason refuse to consider the application if the defendant did everything reasonably possible to ensure that the notice was given as soon as it could be; and*
- (b) *a defendant may apply out of time for permission to appeal to the High Court on human rights grounds against an order for extradition made by the Secretary of State.*

*Under section 3 of the Prosecution of Offences Act 1985(277), the Director of Public Prosecutions may conduct extradition proceedings (but need not do so).]*

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(276) 2003 c. 41; section 108 was amended by paragraphs 10 and 12 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 108 is further amended, and sections 26, 28, 103, 105 and 110 are amended, by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(277) 1985 c. 23; section 3 was amended by section 15 of, and paragraph 13 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), section 134 of, and paragraph 48 of Schedule 9 to, the Police Act 1997 (c. 50), section 164 of the Immigration and Asylum Act 1999 (c. 33), paragraph 10 of Schedule 7 to the Police Reform Act 2002 (c. 30), sections 86 and 92 of, and Schedule 3 to, the Anti-social Behaviour Act 2003 (c. 38), section 190 of the Extradition Act 2003 (c. 41), section 7 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 59,

## Form of appeal notice

- 17.20.**—(1) An appeal notice constitutes—
- (a) an application to the High Court for permission to appeal to that court; and
  - (b) an appeal to that court, if the court gives permission.
- (2) An appeal notice must be in writing.
- (3) In every case, the appeal notice must—
- (a) specify—
    - (i) the date of the defendant’s arrest under Part 1 or Part 2 of the Extradition Act 2003, and
    - (ii) the decision about which the appellant wants to appeal, including the date of that decision;
  - (b) identify each ground of appeal on which the appellant relies;
  - (c) summarise the relevant facts;
  - (d) identify any document or other material that the appellant thinks the court will need to decide the appeal; and
  - (e) include or attach a list of those on whom the appellant has served the appeal notice.
- (4) If a defendant serves an appeal notice after the expiry of the time limit specified in rule 17.19 (Service of appeal notice)—
- (a) the notice must explain what the defendant did to ensure that it was served as soon as it could be; and
  - (b) where the appeal is on human rights grounds against an order for extradition made by the Secretary of State, the notice must explain why—
    - (i) the appeal is necessary to avoid real injustice, and
    - (ii) the circumstances are exceptional and make it appropriate to consider the appeal.
- (5) Unless the High Court otherwise directs, the appellant may amend the appeal notice—
- (a) by serving on those listed in rule 17.19(1) the appeal notice as so amended;
  - (b) not more than 10 business days after service of the appeal notice.
- (6) Where the appeal is against an order by the magistrates’ court—
- (a) if the grounds of appeal are that the magistrates’ court ought to have decided differently a question of fact or law at the extradition hearing, the appeal notice must—
    - (i) identify that question,
    - (ii) explain what decision the magistrates’ court should have made, and why, and
    - (iii) explain why the magistrates’ court would have been required not to make the order under appeal, if that question had been decided differently;
  - (b) if the grounds of appeal are that there is an issue which was not raised at the extradition hearing, or that evidence is available which was not available at the extradition hearing, the appeal notice must—
    - (i) identify that issue or evidence,

- (ii) explain why it was not then raised or available,
  - (iii) explain why that issue or evidence would have resulted in the magistrates' court deciding a question differently at the extradition hearing, and
  - (iv) explain why, if the court had decided that question differently, the court would have been required not to make the order it made.
- (7) Where the appeal is against an order by the Secretary of State—
- (a) if the grounds of appeal are that the Secretary of State ought to have decided differently a question of fact or law, the appeal notice must—
    - (i) identify that question,
    - (ii) explain what decision the Secretary of State should have made, and why, and
    - (iii) explain why the Secretary of State would have been required not to make the order under appeal, if that question had been decided differently;
  - (b) if the grounds of appeal are that there is an issue which was not raised when the case was being considered by the Secretary of State, or that information is available which was not then available, the appeal notice must—
    - (i) identify that issue or information,
    - (ii) explain why it was not then raised or available,
    - (iii) explain why that issue or information would have resulted in the Secretary of State deciding a question differently, and
    - (iv) explain why, if the Secretary of State had decided that question differently, the order under appeal would not have been made.

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

### **Respondent's notice**

- 17.21.**—(1) A party on whom an appellant serves an appeal notice under rule 17.19 may serve a respondent's notice, and must do so if—
- (a) that party wants to make representations to the High Court; or
  - (b) the court so directs.
- (2) Such a party must serve any such notice on—
- (a) the High Court officer;
  - (b) the appellant;
  - (c) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings; and
  - (d) any other person on whom the appellant served the appeal notice.
- (3) Such a party must serve any such notice not more than 5 business days after service on that party of, as appropriate—
- (a) the appeal notice;
  - (b) an appellant's notice renewing an application for permission to appeal;
  - (c) a direction to serve a respondent's notice.
- (4) A respondent's notice must—
- (a) give the date or dates on which the respondent was served with, as appropriate—

- (i) the appeal notice,
- (ii) the appellant's notice renewing the application for permission to appeal,
- (iii) the direction to serve a respondent's notice;
- (b) identify each ground of opposition on which the respondent relies, and identifying the ground of appeal to which each relates;
- (c) summarise any relevant facts not already summarised in the appeal notice; and
- (d) identify any document or other material that the appellant thinks the court will need to decide the appeal.

*[Note. Under rule 17.17, the High Court may extend or shorten the time limit under this rule.]*

### **Renewing an application for permission to appeal**

**17.22.**—(1) This rule applies where the High Court—

- (a) refuses permission to appeal to the High Court; or
- (b) gives permission to appeal to the High Court, but not on every ground identified by the appeal notice.

(2) Unless the court makes that decision at a hearing, the appellant may renew the application by serving notice on—

- (a) the High Court officer;
- (b) the respondent; and
- (c) any other person on whom the appellant served the appeal notice,

not more than 5 business days after service of notice of the court's decision on the appellant.

(3) Where the court refuses permission to appeal, the renewal notice must explain the grounds for the renewal.

(4) Where the court gives permission to appeal, but not on every ground identified by the appeal notice, the renewal notice must specify the excluded ground or grounds on which the appellant wants to rely and explain the grounds for the renewal.

*[Note. Under rule 17.17, the High Court may extend or shorten the time limit under this rule.]*

### **Appeal hearing**

**17.23.**—(1) Unless the High Court otherwise directs, where the appeal to the High Court is under Part 1 of the Extradition Act 2003 the hearing of the appeal must begin no more than 40 days after the defendant's arrest.

(2) Unless the High Court otherwise directs, where the appeal to the High Court is under Part 2 of the 2003 Act the hearing of the appeal must begin no more than 76 days after the later of—

- (a) service of the appeal notice; or
- (b) the day on which the Secretary of State informs the defendant of the Secretary of State's order, in a case in which—
  - (i) the appeal is by the defendant against an order by the magistrates' court sending the case to the Secretary of State, and
  - (ii) the appeal notice is served before the Secretary of State decides whether the defendant should be extradited.

(3) If the effect of the decision of the High Court on the appeal is that the defendant is to be extradited—

- (a) the High Court must consider any ancillary application, including an application about—
    - (i) bail pending extradition,
    - (ii) reporting restrictions,
    - (iii) costs;
  - (b) the High Court is the appropriate court to order a postponement of the defendant's extradition where—
    - (i) the defendant has been charged with an offence in the United Kingdom, or
    - (ii) the defendant has been sentenced to imprisonment or detention in the United Kingdom.
- (4) If the effect of the decision of the High Court on the appeal is that the defendant is discharged, the High Court must consider any ancillary application, including an application about—
- (a) reporting restrictions;
  - (b) costs.

*[Note. Under sections 31 and 113 of the Extradition Act 2003(278), if the appeal hearing does not begin within the period prescribed by this rule or ordered by the High Court the appeal must be taken to have been dismissed by decision of the High Court.*

*Under section 103 of the Extradition Act 2003(279), a defendant's appeal against an order by the magistrates' court sending the case to the Secretary of State must not be heard until after the Secretary of State has decided whether to order the defendant's extradition.*

*Part 16 contains rules about reporting restrictions. Part 76 contains rules about costs.*

*See sections 36A, 36B, 118A and 118B Extradition Act 2003(280). Where there is an appeal against an order for extradition, rules may provide that the appeal court may exercise the power under those sections to postpone the extradition.]*

## **Discontinuing an appeal**

- 17.24.**—(1) This rule applies where—
- (a) an appellant has served an appeal notice under rule 17.19;
  - (b) the High Court has given permission to appeal to the High Court; and
  - (c) the court has not determined the appeal.
- (2) If the appellant wants to discontinue the appeal, the appellant must notify—
- (a) the High Court officer;
  - (b) the respondent;
  - (c) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings; and
  - (d) any other person on whom the appellant served the appeal notice.
- (3) The parties to the appeal must serve on the High Court officer—
- (a) a joint notice consenting to the dismissal of the appeal; and
  - (b) a joint notice of any agreement between the parties about costs.

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(278) 2003 c. 41.

(279) 2003 c. 41; section 103 is amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(280) 2003 c. 41; sections 36A, 36B, 118A and 118B are inserted by section 161 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

- (4) Where a defendant who is on bail pending appeal discontinues that appeal—
- (a) the defendant must surrender to custody as directed by the magistrates' court officer; and
  - (b) any conditions of bail apply until then.

*[Note. See sections 36 and 118 of the Extradition Act 2003(281).*

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

*Part 76 contains rules about costs.]*

### **Application for permission to appeal to the Supreme Court**

**17.25.**—(1) This rule applies where a party to an appeal to the High Court wants to appeal to the Supreme Court.

- (2) Such a party must—
- (a) apply orally to the High Court for permission to appeal immediately after the court's decision; or
  - (b) apply in writing and serve the application on the High Court officer and every other party not more than 14 days after that decision.
- (3) Such a party must—
- (a) identify the point of law of general public importance that the appellant wants the High Court to certify is involved in the decision;
  - (b) serve on the High Court officer a written statement of that point of law; and
  - (c) give reasons why—
    - (i) that point of law ought to be considered by the Supreme Court, and
    - (ii) the High Court ought to give permission to appeal.
- (4) As well as complying with paragraph (3), a defendant's application for permission to appeal to the Supreme Court must include or attach any application for the following, with reasons—
- (a) bail pending appeal;
  - (b) permission to attend any hearing in the Supreme Court, if the appellant is in custody.

*[Note. See sections 32 and 114 of the Extradition Act 2003(282). Those sections prescribe the time limit for serving an application for permission to appeal to the Supreme Court. It may be neither shortened nor extended.]*

### **Determination of detention pending appeal to the Supreme Court against discharge**

**17.26.** On an application for permission to appeal to the Supreme Court against a decision of the High Court which, but for that appeal, would have resulted in the defendant's discharge, the High Court must—

- (a) decide whether to order the detention of the defendant; and
- (b) determine any application for—
  - (i) bail pending appeal,
  - (ii) permission to attend any hearing in the Supreme Court,

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(281) 2003 c. 41; sections 36 and 118 were amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(282) 2003 c. 41; sections 32 and 114 were amended by paragraph 81 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and section 42 of, and paragraph 8 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(iii) a representation order.

[*Note. See sections 33A and 115A of the Extradition Act 2003*(283).

*For the grant of legal aid for proceedings in the Supreme Court, see sections 14, 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*(284).]

### **Reopening the determination of an appeal**

**17.27.**—(1) This rule applies where a party wants the High Court to reopen a decision of that court which determines an appeal or an application for permission to appeal.

(2) Such a party must—

- (a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on the High Court officer and every other party.

(3) The application must—

- (a) specify the decision which the applicant wants the court to reopen; and
- (b) give reasons why—
  - (i) it is necessary for the court to reopen that decision in order to avoid real injustice,
  - (ii) the circumstances are exceptional and make it appropriate to reopen the decision, and
  - (iii) there is no alternative effective remedy.

(4) The court must not give permission to reopen a decision unless each other party has had an opportunity to make representations.

### **Declaration of incompatibility with a Convention right**

**17.28.**—(1) This rule applies where a party—

- (a) wants the High Court to make a declaration of incompatibility with a Convention right under section 4 of the Human Rights Act 1998(285); or
- (b) raises an issue that appears to the High Court may lead to the court making such a declaration.

(2) If the High Court so directs, the High Court officer must serve notice on—

- (a) the relevant person named in the list published under section 17(1) of the Crown Proceedings Act 1947(286); or
- (b) the Treasury Solicitor, if it is not clear who is the relevant person.

(3) That notice must include or attach details of—

- (a) the legislation affected and the Convention right concerned;
- (b) the parties to the appeal; and
- (c) any other information or document that the High Court thinks relevant.

(4) A person who has a right under the 1998 Act to become a party to the appeal must—

- (a) serve notice on—

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(283) 2003 c. 41; sections 33A and 115A were inserted by section 42 of, and paragraphs 8 and 35 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(284) 2012 c. 10.

(285) 1998 c. 42; section 4 was amended by section 40 of, and paragraph 66 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 67 of, and paragraph 43 of Schedule 6 to, the Mental Capacity Act 2005 (c. 9).

(286) 1947 c. 44; section 17 was amended by article 3(2) of S.I. 1968/1656.

- (i) the High Court officer, and
  - (ii) the other parties,
- if that person wants to exercise that right; and
- (b) in that notice—
    - (i) indicate the conclusion that that person invites the High Court to reach on the question of incompatibility, and
    - (ii) identify each ground for that invitation, concisely outlining the arguments in support.
- (5) The High Court must not make a declaration of incompatibility—
- (a) less than 21 days after the High Court officer serves notice under paragraph (2); and
  - (b) without giving any person who serves a notice under paragraph (4) an opportunity to make representations at a hearing.

### **Duties of court officers**

- 17.29.**—(1) The magistrates’ court officer must—
- (a) keep any document or object exhibited in the proceedings in the magistrates’ court, or arrange for it to be kept by some other appropriate person, until—
    - (i) 6 weeks after the conclusion of those proceedings, or
    - (ii) the conclusion of any proceedings in the High Court that begin within that 6 weeks;
  - (b) provide the High Court with any document, object or information for which the High Court officer asks, within such period as the High Court officer may require; and
  - (c) arrange for the magistrates’ court to hear as soon as practicable any application to that court for bail pending appeal.
- (2) A person who, under arrangements made by the magistrates’ court officer, keeps a document or object exhibited in the proceedings in the magistrates’ court must—
- (a) keep that exhibit until—
    - (i) 6 weeks after the conclusion of those proceedings, or
    - (ii) the conclusion of any proceedings in the High Court that begin within that 6 weeks, unless the magistrates’ court or the High Court otherwise directs; and
  - (b) provide the High Court with any such document or object for which the High Court officer asks, within such period as the High Court officer may require.
- (3) The High Court officer must—
- (a) give as much notice as reasonably practicable of each hearing to—
    - (i) the parties,
    - (ii) the defendant’s custodian, if any, and
    - (iii) any other person whom the High Court requires to be notified;
  - (b) serve a record of each order or direction of the High Court on—
    - (i) the parties,
    - (ii) any other person whom the High Court requires to be notified;
  - (c) if the High Court’s decision determines an appeal or application for permission to appeal, serve a record of that decision on—
    - (i) the defendant’s custodian, if any,
    - (ii) the magistrates’ court officer, and



- (iii) the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies;
- (d) where rule 17.24 applies (Discontinuing an appeal), arrange for the High Court to consider the parties' joint notice under that rule;
- (e) treat the appeal as if it had been dismissed by the High Court where—
  - (i) the hearing of the appeal does not begin within the period required by rule 17.23 (Appeal hearing) or ordered by the High Court, or
  - (ii) on an appeal by a requesting territory under section 105 of the Extradition Act 2003(287), the High Court directs the magistrates' court to decide a question again and the magistrates' court comes to the same conclusion as it had done before.

[Note. See section 106 of the Extradition Act 2003(288).]

### Constitution of the High Court

**17.30.**—(1) A master of the High Court, a deputy master, or a court officer nominated for the purpose by the Lord Chief Justice, may exercise any power of the High Court to which the rules in this Section apply, except the power to—

- (a) give or refuse permission to appeal;
- (b) determine an appeal;
- (c) reopen a decision which determines an appeal or an application for permission to appeal;
- (d) grant or withhold bail; or
- (e) impose or vary a condition of bail.

(2) Despite paragraph (1), such a master, deputy master or court officer may exercise one of the powers listed in paragraph (1)(b), (d) or (e) if making a decision to which the parties have agreed in writing.

- (3) A renewed application for permission to appeal to the High Court may be determined by—
  - (a) a single judge of the High Court other than the judge who first refused permission, or
  - (b) a divisional court.
- (4) An appeal may be determined by—
  - (a) a single judge of the High Court; or
  - (b) a divisional court.

[Note. See sections 19 and 66 of the Senior Courts Act 1981(289).]

### Payment of High Court fees

**17.31.**—(1) This rule applies where a party serves on the High Court officer a notice or application in respect of which a court fee is payable under legislation that requires the payment of such a fee.

(2) Such a party must pay the fee, or satisfy the conditions for any remission of the fee, when so serving the notice or application.

(3) If such a party fails to comply with paragraph (2), then unless the High Court otherwise directs—

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(287)2003 c. 41; section 105 is amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(288)2003 c. 41; section 106 was amended by section 42 of, and paragraph 8 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(289)1981 c. 54.

- (a) the High Court officer must serve on that party a notice requiring payment of the fee due, or satisfaction of the conditions for any remission of that fee, within a period specified in the notice;
- (b) that party must comply with such a requirement; and
- (c) until the expiry of the period specified in the notice, the High Court must not exercise its power—
  - (i) to reject the notice or application in respect of which the fee is payable, or
  - (ii) to dismiss an application for permission to appeal, in consequence of rejecting an appeal notice.

*[Note. Section 92 of the Courts Act 2003(290) and the Civil Proceedings Fees Order 2008(291) require the payment of High Court fees in cases to which this Section of this Part applies. Article 5 and Schedule 2 to the 2008 Order provide for the remission of such fees in some cases.]*

## PART 18

### WARRANTS FOR ARREST, DETENTION OR IMPRISONMENT

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#### Contents of this Part

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*[Note. Part 52 contains rules about warrants to take goods to pay fines, etc.]*

#### When this Part applies

**18.1.**—(1) This Part applies where the court can issue a warrant for arrest, detention or imprisonment.

(2) In this Part, ‘defendant’ means anyone against whom such a warrant is issued.

#### Terms of a warrant for arrest

**18.2.** A warrant for arrest must require each person to whom it is directed to arrest the defendant and—

- (a) bring the defendant to a court—
  - (i) specified in the warrant, or

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**(290)** 2003 c. 39; section 92 was amended by sections 15 and 59 of, and paragraphs 308 and 345 of Schedule 4 and paragraph 4 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and section 17 of, and paragraph 40 of Schedule 9 and paragraphs 83 and 95 of Schedule 10 to, the Crime and Courts Act 2013.

**(291)** S. I. 2008/1053; amended by S.I. 2013/1410, 2013/2302.

- (ii) required or allowed by law; or
- (b) release the defendant on bail (with conditions or without) to attend court at a date, time and place—
  - (i) specified in the warrant, or
  - (ii) to be notified by the court.

*[Note. The principal provisions under which the court can issue a warrant for arrest are—*

- (a) *section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(292);*
- (b) *section 7 of the Bail Act 1976(293);*
- (c) *sections 1 and 97 of the Magistrates' Courts Act 1980(294); and*
- (d) *sections 79, 80 and 81(4), (5) of the Senior Courts Act 1981(295).*

*See also section 27A of the Magistrates' Courts Act 1980(296) (power to transfer criminal proceedings) and section 78(2) of the Senior Courts Act 1981(297) (adjournment of Crown Court case to another place).]*

### **Terms of a warrant for detention or imprisonment**

**18.3.—(1)** A warrant for detention or imprisonment must—

- (a) require each person to whom it is directed to detain the defendant and—
  - (i) take the defendant to any place specified in the warrant or required or allowed by law, and
  - (ii) deliver the defendant to the custodian of that place; and
- (b) require that custodian to detain the defendant, as ordered by the court, until in accordance with the law—
  - (i) the defendant is delivered to the appropriate court or place, or
  - (ii) the defendant is released.

(2) Where a magistrates' court remands a defendant to police detention under section 128(7)(298) or section 136(299) of the Magistrates' Courts Act 1980, or to customs detention under section 152 of the Criminal Justice Act 1988(300), the warrant it issues must—

- (a) be directed, as appropriate, to—
  - (i) a constable, or

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(292) 1965 c. 69; section 4 was amended by section 56 of, and paragraph 45 of Schedule 8 to, the Courts Act 1971 (c. 23) and sections 65, 66, 67 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).

(293) 1976 c. 63; section 7(1A) and (1B) were inserted section 198 of the Extradition Act 2003 (c. 41).

(294) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(295) 1981 c. 54; section 80 was amended by paragraph 54 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(296) 1980 c. 43; section 27A was inserted by section 46 of the Courts Act 2003 (c. 39).

(297) 1981 c. 54.

(298) 1980 c. 43; section 128(7) was amended by section 48 of the Police and Criminal Evidence Act 1984 (c. 60). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(299) 1980 c. 43; section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 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), section 95(2) of the Access to Justice Act 1999 (c. 22) and section 165(1) of, and paragraph 78 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by sections 74, and 75 of, and paragraphs 58, 68 of Schedule 7 and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(300) 1988 c. 33; section 152 was amended by paragraphs 1 and 17 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29) and section 8 of the Drugs Act 2005 (c. 17).

- (ii) an officer of Her Majesty's Revenue and Customs; and
- (b) require that constable or officer to detain the defendant—
  - (i) for a period (not exceeding the maximum permissible) specified in the warrant, or
  - (ii) until in accordance with the law the defendant is delivered to the appropriate court or place.

*[Note. Under section 128(7) of the Magistrates' Courts Act 1980, a magistrates' court can remand a defendant to police detention for not more than 3 clear days, if the defendant is an adult, or for not more than 24 hours if the defendant is under 18.*

*Under section 136 of the 1980 Act, a magistrates' court can order a defendant's detention in police custody until the following 8am for non-payment of a fine, etc.*

*Under section 152 of the Criminal Justice Act 1988, a magistrates' court can remand a defendant to customs detention for not more than 192 hours if the defendant is charged with a drug trafficking offence.]*

#### **Information to be included in a warrant**

- 18.4.**—(1) A warrant must identify—
- (a) each person to whom it is directed;
  - (b) the defendant against whom it was issued;
  - (c) the reason for its issue;
  - (d) the court that issued it, unless that is otherwise recorded by the court officer; and
  - (e) the court office for the court that issued it.
- (2) A warrant for detention or imprisonment must contain a record of any decision by the court under—
- (a) section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**301**) (remands of children otherwise than on bail), including in particular—
    - (i) whether the defendant must be detained in local authority accommodation or youth detention accommodation,
    - (ii) the local authority designated by the court,
    - (iii) any requirement imposed by the court on that authority,
    - (iv) any condition imposed by the court on the defendant, and
    - (v) the reason for any such requirement or condition;
  - (b) section 80 of the Magistrates' Courts Act 1980(**302**) (application of money found on defaulter to satisfy sum adjudged); or
  - (c) section 82(1) or (4) of the 1980 Act(**303**) (conditions for issue of a warrant).
- (3) A warrant that contains an error is not invalid, as long as—

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**(301)** 2012 c. 10.

**(302)** 1980 c. 43; section 80 was amended by section 33(1) of, and paragraph 83 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42) and section 62(3) of, and paragraphs 45 and 49 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

**(303)** 1980 c. 43; section 82 was amended by section 61(1), (3) and (4) of, and paragraph 52(b) of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraphs (1) and (2) of Schedule 8 to the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10(1) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraphs 220(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39), section 62(3) of, and paragraphs 45 and 51 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). It is further amended by paragraphs 58 and 63 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

- (a) it was issued in respect of a lawful decision by the court; and
- (b) it contains enough information to identify that decision.

*[Note. See sections 93(7) and 102(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Under section 91 of the Act, instead of granting bail to a defendant under 18 the court may—*

- (a) *remand him or her to local authority accommodation and, after consulting with that authority, impose on the defendant a condition that the court could impose if granting bail; or*
- (b) *remand him or her to youth detention accommodation, if the defendant is at least 12 years old and the other conditions, about the offence and the defendant, prescribed by the Act are met.*

*Under section 80 of the Magistrates' Courts Act 1980, the court may decide that any money found on the defendant must not be applied towards payment of the sum for which a warrant is issued under section 76 of that Act (enforcement of sums adjudged to be paid).*

*See section 82(6) of the 1980 Act. Under section 82(1) and (4), the court may only issue a warrant for the defendant's imprisonment for non-payment of a sum due where it finds that the prescribed conditions are met.*

*Under section 123 of the 1980 Act(304), "no objection shall be allowed to any ... warrant to procure the presence of the defendant, for any defect in it in substance or in form ...".]*

## **Execution of a warrant**

**18.5.—**(1) A warrant may be executed—

- (a) by any person to whom it is directed; or
- (b) if the warrant was issued by a magistrates' court, by anyone authorised to do so by section 125(305) (warrants), 125A(306) (civilian enforcement officers) or 125B(307) (execution by approved enforcement agency) of the Magistrates' Courts Act 1980.

(2) The person who executes a warrant must—

- (a) explain, in terms the defendant can understand, what the warrant requires, and why;
- (b) show the defendant the warrant, if that person has it; and
- (c) if the defendant asks—
  - (i) arrange for the defendant to see the warrant, if that person does not have it, and
  - (ii) show the defendant any written statement of that person's authority required by section 125A or 125B of the 1980 Act.

(3) The person who executes a warrant of arrest that requires the defendant to be released on bail must—

- (a) make a record of—

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(304) 1980 c. 43.

(305) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 62(3), 86 and 146 of and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(306) 1980 c. 43; section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22) and amended by articles 46 and 52 of S.I. 2006/1737 and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128 and section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(307) 1980 c. 43; section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22) and amended by paragraph 239 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 59 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (i) the defendant's name,
- (ii) the reason for the arrest,
- (iii) the defendant's release on bail, and
- (iv) when and where the warrant requires the defendant to attend court; and
- (b) serve the record on—
  - (i) the defendant, and
  - (ii) the court officer.
- (4) The person who executes a warrant of detention or imprisonment must—
  - (a) take the defendant—
    - (i) to any place specified in the warrant, or
    - (ii) if that is not immediately practicable, to any other place at which the defendant may be lawfully detained (and the warrant then has effect as if it specified that place);
  - (b) obtain a receipt from the custodian; and
  - (c) notify the court officer that the defendant has been taken to that place.

*[Note. Under section 125 of the Magistrates' Courts Act 1980, a warrant issued by a magistrates' court may be executed by any person to whom it is directed or by any constable acting within that constable's police area.*

*Certain warrants issued by a magistrates' court may be executed anywhere in England and Wales by a civilian enforcement officer, under section 125A of the 1980 Act; or by an approved enforcement agency, under section 125B of the Act. In either case, the person executing the warrant must, if the defendant asks, show a written statement indicating: that person's name; the authority or agency by which that person is employed, or in which that person is a director or partner; that that person is authorised to execute warrants; and, where section 125B applies, that the agency is registered as one approved by the Lord Chancellor.*

*See also section 125D of the 1980 Act(308), under which—*

- (a) *a warrant to which section 125A applies may be executed by any person entitled to execute it even though it is not in that person's possession at the time; and*
- (b) *certain other warrants, including any warrant to arrest a person in connection with an offence, may be executed by a constable even though it is not in that constable's possession at the time.]*

### **Warrants that cease to have effect on payment**

**18.6.—**(1) This rule applies to a warrant issued by a magistrates' court under any of the following provisions of the Magistrates' Courts Act 1980—

- (a) section 76(309) (enforcement of sums adjudged to be paid);
- (b) section 83(310) (process for securing attendance of offender);

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(308) 1980 c. 43; section 125D was inserted by section 96 of the Access to Justice Act 1999 (c. 22) and amended by sections 62 and 146 of, and paragraphs 45 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(309) 1980 c. 43: section 76 was amended by section 7 of the Maintenance Enforcement Act 1991 (c. 17); section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), and section 62(3) of, and paragraphs 45 and 46 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(310) 1980 c. 43; section 83 was amended by articles 46 and 47 of S.I. 2006/1737 and sections 97(2) and 106 of, and Part V (table 8) of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

- (c) section 86(311) (power of magistrates' court to fix day for appearance of offender at means inquiry, etc.);
  - (d) section 136(312) (committal to custody overnight at police station for non-payment of sum adjudged by conviction).
- (2) The warrant no longer has effect if—
- (a) the sum in respect of which the warrant was issued is paid to the person executing it;
  - (b) that sum is offered to, but refused by, that person; or
  - (c) that person is shown a receipt for that sum given by—
    - (i) the court officer, or
    - (ii) the authority to which that sum is due.

[Note. See sections 79(313) and 125(1) of the Magistrates' Courts Act 1980.]

### **Warrant issued when the court office is closed**

- 18.7.**—(1) This rule applies where the court issues a warrant when the court office is closed.
- (2) The applicant for the warrant must, not more than 72 hours later, serve on the court officer—
- (a) a copy of the warrant; and
  - (b) any written material that was submitted to the court.

## **PART 19**

### **BAIL AND CUSTODY TIME LIMITS**

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(311) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

(312) 1980 c. 43; section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 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), section 95(2) of the Access to Justice Act 1999 (c. 22) and section 165(1) of, and paragraph 78 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by sections 74, and 75 of, and paragraphs 58, 68 of Schedule 7 and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(313) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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### Contents of this Part

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## SECTION 1: GENERAL RULES

### When this Part applies

- 19.1.**—(1) This Part applies where a magistrates’ court or the Crown Court can—
- grant or withhold bail, or impose or vary a condition of bail; and
  - where bail has been withheld, extend a custody time limit.
- (2) In this Part, ‘defendant’ includes a person who has been granted bail by a police officer.

[Note. See in particular—

- the Bail Act 1976*(**314**);
- section 128 of the Magistrates’ Courts Act 1980*(**315**)(*general powers of magistrates’ courts in relation to bail*);
- section 81 of the Senior Courts Act 1981*(**316**)(*general powers of the Crown Court in relation to bail*);

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**(314)** 1976 c. 63.

**(315)** 1980 c. 43; section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(316)** 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).



- (d) *section 115 of the Coroners and Justice Act 2009*(**317**)(exclusive power of the Crown Court to grant bail to a defendant charged with murder);
- (e) *section 22 of the Prosecution of Offences Act 1985*(**318**)(provision for custody time limits); and
- (f) the Prosecution of Offences (Custody Time Limits) Regulations 1987(**319**) (maximum periods during which a defendant may be kept in custody pending trial).

*A summary of the general entitlement to bail, and of the exceptions to that entitlement, is at the end of this Part.]*

### **Exercise of court’s powers to which this Part applies**

**19.2.**—(1) The court must not make a decision to which this Part applies unless—

- (a) each party to the decision and any surety directly affected by the decision—
  - (i) is present, or
  - (ii) has had an opportunity to make representations;
- (b) on an application for bail by a defendant who is absent and in custody, the court is satisfied that the defendant—
  - (i) has waived the right to attend, or
  - (ii) was present when a court withheld bail in the case on a previous occasion and has been in custody continuously since then;
- (c) on a prosecutor’s appeal against a grant of bail, application to extend a custody time limit or appeal against a refusal to extend such a time limit—
  - (i) the court is satisfied that a defendant who is absent has waived the right to attend, or
  - (ii) the court is satisfied that it would be just to proceed even though the defendant is absent.

(2) The court may make a decision to which this Part applies at a hearing, in public or in private.

(3) The court may determine without a hearing an application to vary a condition of bail if—

- (a) the parties to the application have agreed the terms of the variation proposed; or
- (b) on an application by a defendant, the court determines the application no sooner than the fifth business day after the application was served.

(4) The court may adjourn a determination to which this Part applies, if that is necessary to obtain information sufficient to allow the court to make the decision required.

(5) At any hearing at which the court makes one of the following decisions, the court must announce in terms the defendant can understand (with help, if necessary) its reasons for—

- (a) withholding bail, or imposing or varying a bail condition;
- (b) granting bail, where the prosecutor opposed the grant; or
- (c) where the defendant is under 18—

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**(317)** 2009 c. 25.

**(318)** 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(319)** S.I. 1987/299; amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1995/555, 1999/2744, 2000/3284, 2012/1344.

- (i) imposing or varying a bail condition when ordering the defendant to be detained in local authority accommodation, or
  - (ii) ordering the defendant to be detained in youth detention accommodation.
- (6) At any hearing at which the court grants bail, the court must—
- (a) tell the defendant where and when to surrender to custody; or
  - (b) arrange for the court officer to give the defendant, as soon as practicable, notice of where and when to surrender to custody.

*[Note. See section 5 of the Bail Act 1976 and sections 93(7) and 102(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(320).*

*Under sections 57A and 57B of the Crime and Disorder Act 1998(321), a defendant is to be treated as present in court when, by virtue of a live link direction within the meaning of those sections, he or she attends a hearing through a live link.*

*Under section 91 of the 2012 Act, instead of granting bail to a defendant under 18 the court may—*

- (a) *remand him or her to local authority accommodation and, after consulting with that authority, impose on the defendant a condition that the court could impose if granting bail; or*
- (b) *remand him or her to youth detention accommodation, if the defendant is at least 12 years old and the other conditions, about the offence and the defendant, prescribed by the Act are met.]*

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

- 19.3.**—(1) This rule applies—
- (a) only in a magistrates' court; and
  - (b) unless the court—
    - (i) includes a District Judge (Magistrates' Courts), and
    - (ii) otherwise directs.
- (2) A justices' legal adviser must—
- (a) assist an unrepresented defendant;
  - (b) give the court such advice as is required to enable it to exercise its powers;
  - (c) if required, attend the members of the court outside the courtroom to give such advice, but inform the parties of any advice so given.

*[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(322).]*

### **General duties of court officer**

- 19.4.**—(1) The court officer must arrange for a note or other record to be made of—

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(320) 2012 c. 10.

(321) 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), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(322) 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).

- (a) the parties' representations about bail; and
- (b) the court's reasons for a decision—
  - (i) to withhold bail, or to impose or vary a bail condition, or
  - (ii) to grant bail, where the prosecutor opposed the grant.
- (2) The court officer must serve notice of a decision about bail on—
  - (a) the defendant (but, in the Crown Court, only where the defendant's legal representative asks for such a notice, or where the defendant has no legal representative);
  - (b) the prosecutor (but only where the court granted bail, the prosecutor opposed the grant, and the prosecutor asks for such a notice);
  - (c) a party to the decision who was absent when it was made;
  - (d) a surety who is directly affected by the decision;
  - (e) the defendant's custodian, where the defendant is in custody and the decision requires the custodian—
    - (i) to release the defendant (or will do so, if a requirement ordered by the court is met), or
    - (ii) to transfer the defendant to the custody of another custodian;
  - (f) the court officer for any other court at which the defendant is required by that decision to surrender to custody.
- (3) Where the court postpones the date on which a defendant who is on bail must surrender to custody, the court officer must serve notice of the postponed date on—
  - (a) the defendant; and
  - (b) any surety.
- (4) Where a magistrates' court withholds bail in a case to which section 5(6A) of the Bail Act 1976(323) applies (remand in custody after hearing full argument on an application for bail), the court officer must serve on the defendant a certificate that the court heard full argument.

*[Note. See section 5 of the Bail Act 1976(324); section 43 of the Magistrates' Courts Act 1980(325); and section 52 of the Mental Health Act 1983(326).]*

## SECTION 2: BAIL

### Prosecutor's representations about bail

- 19.5.—(1) This rule applies whenever the court can grant or withhold bail.
- (2) The prosecutor must provide the court with all the information in the prosecutor's possession which is material to what the court must decide.

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(323) 1976 c. 63; section 5(6A) was inserted by section 60 of the Criminal Justice Act 1982 (c. 48) and amended by section 165 of, and paragraph 53 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and by paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(324) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

(325) 1980 c. 43; section 43 was substituted by section 47 of the Police and Criminal Evidence Act 1984 (c. 60) and amended by paragraph 43 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 206 of Schedule 8 to the Courts Act 2003 (c. 39).

(326) 1983 c. 20; section 52 was amended by paragraph 55 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 11 of the Mental Health Act 2007 (c. 12) and paragraphs 53 and 57 of Schedule 21 to the Legal Services Act 2007 (c. 29).

- (3) A prosecutor who opposes the grant of bail must specify—
  - (a) each exception to the general right to bail on which the prosecutor relies; and
  - (b) each consideration that the prosecutor thinks relevant.
- (4) A prosecutor who wants the court to impose a condition on any grant of bail must—
  - (a) specify each condition proposed; and
  - (b) explain what purpose would be served by such a condition.

*[Note. A summary of the general entitlement to bail and of the exceptions to that entitlement is at the end of this Part.]*

### **Reconsideration of police bail by magistrates' court**

**19.6.**—(1) This rule applies where a party wants a magistrates' court to reconsider a bail decision by a police officer.

- (2) An application under this rule must be made to—
  - (a) the magistrates' court to whose custody the defendant is under a duty to surrender, if any; or
  - (b) any magistrates' court acting for the police officer's local justice area, in any other case.
- (3) The applicant party must—
  - (a) apply in writing; and
  - (b) serve the application on—
    - (i) the court officer,
    - (ii) the other party, and
    - (iii) any surety affected or proposed.
- (4) The application must—
  - (a) specify—
    - (i) the decision that the applicant wants the court to make,
    - (ii) each offence charged, or for which the defendant was arrested, and
    - (iii) the police bail decision to be reconsidered and the reasons given for it;
  - (b) explain, as appropriate—
    - (i) why the court should grant bail itself, or withdraw it, or impose or vary a condition, and
    - (ii) if the applicant is the prosecutor, what material information has become available since the police bail decision was made;
  - (c) propose the terms of any suggested condition of bail; and
  - (d) if the applicant wants an earlier hearing than paragraph (7) requires, ask for that, and explain why it is needed.
- (5) A prosecutor who applies under this rule must serve on the defendant, with the application, notice that the court has power to withdraw bail and, if the defendant is absent when the court makes its decision, order the defendant's arrest.
- (6) A party who opposes an application must—
  - (a) so notify the court officer and the applicant at once; and
  - (b) serve on each notice of the reasons for opposition.
- (7) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event—

- (a) if it is an application to withdraw bail, no later than the second business day after it was served;
  - (b) in any other case, no later than the fifth business day after it was served.
- (8) The court may—
- (a) vary or waive a time limit under this rule;
  - (b) allow an application to be in a different form to one set out in the Practice Direction;
  - (c) if rule 19.2 allows, determine without a hearing an application to vary a condition.

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

*Under section 5B of the Bail Act 1976(327)—*

- (a) *where a defendant has been charged with an offence which can be tried in the Crown Court; or*
- (b) *in an extradition case,*

*on application by the prosecutor a magistrates' court may withdraw bail granted by a constable, impose conditions of bail, or vary conditions of bail. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1B) of the Police and Criminal Evidence Act 1984(328).*

*Under section 43B of the Magistrates' Courts Act 1980(329), where a defendant has been charged with an offence, on application by the defendant a magistrates' court may grant bail itself, in substitution for bail granted by a custody officer, or vary the conditions of bail granted by a custody officer. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1C), (1D) of the Police and Criminal Evidence Act 1984(330).*

*Under section 47(1E) of the Police and Criminal Evidence Act 1984(331), where a defendant has been released on bail by a custody officer without being charged with an offence, on application by the defendant a magistrates' court may vary any conditions of that bail. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1C) of the Act.]*

## **Notice of application to consider bail**

- 19.7.—**(1) This rule applies where—
- (a) in a magistrates' court—

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- (327) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).
- (328) 1984 c. 60; section 37 was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41), sections 72 and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 29(4) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 28 of, and paragraphs 1 and 2 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), section 23(1) of, and paragraphs 1 and 2 of Schedule 1 to, the Drugs Act 2005 (c. 17) and sections 11 and 52 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48). Section 37C was inserted by section 28 of, and paragraphs 1 and 3 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44). Section 37CA was inserted by section 10 of, and paragraphs 1 and 8 of Schedule 6 to, the Police and Justice Act 2006 (c. 48). Section 46A was inserted by section 29 of the Criminal Justice and Public Order Act 1994 (c. 33), and amended by section 28 of, and paragraphs 1 and 5 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), sections 10 and 46 of, and paragraphs 1 and 7 of Schedule 6 to, the Police and Justice Act 2006 (c. 48) and sections 107 and 178 of, and Part 3 of Schedule 3 to, the Coroners and Justice Act 2009 (c. 25). Section 47(1B) was inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44) and amended by section 10 of, and paragraphs 1 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48).
- (329) 1980 c. 43; section 43B was inserted by section 27 of, and paragraph 3 of Schedule 3 to, the Criminal Justice and Public Order Act 1994 (c. 33).
- (330) 1984 c. 60; section 47(1C) and (1D) were inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), and section 47(1C) was amended by section 10 of, and paragraphs 1 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48).
- (331) 1984 c. 60; section 47(1E) was inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44).

- (i) a prosecutor wants the court to withdraw bail granted by the court, or to impose or vary a condition of such bail, or
    - (ii) a defendant wants the court to reconsider such bail before the next hearing in the case;
  - (b) in the Crown Court, a party wants the court to grant bail that has been withheld, or to withdraw bail that has been granted, or to impose a new bail condition or to vary a present one.
- (2) Such a party must—
- (a) apply in writing;
  - (b) serve the application on—
    - (i) the court officer,
    - (ii) the other party, and
    - (iii) any surety affected or proposed; and
  - (c) serve the application not less than 2 business days before any hearing in the case at which the applicant wants the court to consider it, if such a hearing is already due.
- (3) The application must—
- (a) specify—
    - (i) the decision that the applicant wants the court to make,
    - (ii) each offence charged, and
    - (iii) each relevant previous bail decision and the reasons given for each;
  - (b) if the applicant is a defendant, explain—
    - (i) as appropriate, why the court should not withhold bail, or why it should vary a condition, and
    - (ii) what further information or legal argument, if any, has become available since the most recent previous bail decision was made;
  - (c) if the applicant is the prosecutor, explain—
    - (i) as appropriate, why the court should withdraw bail, or impose or vary a condition, and
    - (ii) what material information has become available since the most recent previous bail decision was made;
  - (d) propose the terms of any suggested condition of bail; and
  - (e) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed.
- (4) A prosecutor who applies under this rule must serve on the defendant, with the application, notice that the court has power to withdraw bail and, if the defendant is absent when the court makes its decision, order the defendant's arrest.
- (5) A party who opposes an application must—
- (a) so notify the court officer and the applicant at once; and
  - (b) serve on each notice of the reasons for opposition.
- (6) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event—
- (a) if it is an application to grant or withdraw bail, no later than the second business day after it was served;

- (b) if it is an application to impose or vary a condition, no later than the fifth business day after it was served.
- (7) The court may—
  - (a) vary or waive a time limit under this rule;
  - (b) allow an application to be in a different form to one set out in the Practice Direction, or to be made orally;
  - (c) if rule 19.2 allows, determine without a hearing an application to vary a condition.

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

*In addition to the court's general powers in relation to bail—*

- (a) *under section 3(8) of the Bail Act 1976(332), on application by either party the court may impose a bail condition or vary a condition it has imposed. Until the Crown Court makes its first bail decision in the case, a magistrates' court may vary a condition which it imposed on committing or sending a defendant for Crown Court trial.*
- (b) *under section 5B of the Bail Act 1976(333), where the defendant is on bail and the offence is one which can be tried in the Crown Court, or in an extradition case, on application by the prosecutor a magistrates' court may withdraw bail, impose conditions of bail or vary the conditions of bail.*

*Under Part IIA of Schedule 1 to the Bail Act 1976(334), if the court withholds bail then at the first hearing after that the defendant may support an application for bail with any argument as to fact or law, whether or not that argument has been advanced before. At subsequent hearings, the court need not hear arguments which it has heard previously.]*

### **Defendant's application or appeal to the Crown Court after magistrates' court bail decision**

- 19.8.—**(1) This rule applies where a defendant wants to—
- (a) apply to the Crown Court for bail after a magistrates' court has withheld bail; or
  - (b) appeal to the Crown Court after a magistrates' court has refused to vary a bail condition as the defendant wants.
- (2) The defendant must—
- (a) apply to the Crown Court in writing as soon as practicable after the magistrates' court's decision; and
  - (b) serve the application on—
    - (i) the Crown Court officer,
    - (ii) the magistrates' court officer,
    - (iii) the prosecutor, and
    - (iv) any surety affected or proposed.
- (3) The application must—
- (a) specify—
    - (i) the decision that the applicant wants the Crown Court to make, and

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**(332)** 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

**(333)** 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

**(334)** 1976 c. 63; Schedule 1, Part IIA was added by section 154 of the Criminal Justice Act 1988 (c. 33).

- (ii) each offence charged;
- (b) explain—
  - (i) as appropriate, why the Crown Court should not withhold bail, or why it should vary the condition under appeal, and
  - (ii) what further information or legal argument, if any, has become available since the magistrates' court's decision;
- (c) propose the terms of any suggested condition of bail;
- (d) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed; and
- (e) on an application for bail, attach a copy of the certificate of full argument served on the defendant under rule 19.4(4).
- (4) The magistrates' court officer must as soon as practicable serve on the Crown Court officer—
  - (a) a copy of the note or record made under rule 19.4(1) in connection with the magistrates' court's decision; and
  - (b) the date of the next hearing, if any, in the magistrates' court.
- (5) A prosecutor who opposes the application must—
  - (a) so notify the Crown Court officer and the defendant at once; and
  - (b) serve on each notice of the reasons for opposition.
- (6) Unless the Crown Court otherwise directs, the court officer must arrange for the court to hear the application or appeal as soon as practicable and in any event no later than the business day after it was served.
- (7) The Crown Court may vary a time limit under this rule.

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

*Under section 81 of the Senior Courts Act 1981(335), the Crown Court may grant bail in a magistrates' court case in which the magistrates' court has withheld bail.*

*Under section 16 of the Criminal Justice Act 2003(336), a defendant may appeal to the Crown Court against a bail condition imposed by a magistrates' court only where—*

- (a) *the condition is one that the defendant must—*
  - (i) *live and sleep at a specified place, or away from a specified place,*
  - (ii) *give a surety or a security,*
  - (iii) *stay indoors between specified hours,*
  - (iv) *comply with electronic monitoring requirements, or*
  - (v) *make no contact with a specified person; and*
- (b) *the magistrates' court has determined an application by either party to vary that condition.*

*In an extradition case, where a magistrates' court withholds bail or imposes bail conditions, on application by the defendant the High Court may grant bail, or vary the conditions, under*

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**(335)** 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

**(336)** 2003 c. 44.



section 22 of the Criminal Justice Act 1967(337). For the procedure in the High Court, see Schedule 1 to the Civil Procedure Rules 1998 (RSC Order 79)(338).]

### **Prosecutor's appeal against grant of bail**

- 19.9.**—(1) This rule applies where a prosecutor wants to appeal—
- (a) to the Crown Court against a grant of bail by a magistrates' court, in a case in which the defendant has been charged with, or convicted of, an offence punishable with imprisonment; or
  - (b) to the High Court against a grant of bail—
    - (i) by a magistrates' court, in an extradition case, or
    - (ii) by the Crown Court, in a case in which the defendant has been charged with, or convicted of, an offence punishable with imprisonment (but not in a case in which the Crown Court granted bail on an appeal to which paragraph (1)(a) applies).
- (2) The prosecutor must tell the court which has granted bail of the decision to appeal—
- (a) at the end of the hearing during which the court granted bail; and
  - (b) before the defendant is released on bail.
- (3) The court which has granted bail must exercise its power to remand the defendant in custody pending determination of the appeal.
- (4) The prosecutor must serve an appeal notice—
- (a) on the court officer for the court which has granted bail and on the defendant;
  - (b) not more than 2 hours after telling that court of the decision to appeal.
- (5) The appeal notice must specify—
- (a) each offence with which the defendant is charged;
  - (b) the decision under appeal;
  - (c) the reasons given for the grant of bail; and
  - (d) the grounds of appeal.
- (6) On an appeal to the Crown Court, the magistrates' court officer must, as soon as practicable, serve on the Crown Court officer—
- (a) the appeal notice;
  - (b) a copy of the note or record made under rule 19.4(1) (record of bail decision); and
  - (c) notice of the date of the next hearing in the court which has granted bail.
- (7) If the Crown Court so directs, the Crown Court officer must arrange for the defendant to be assisted by the Official Solicitor in a case in which the defendant—
- (a) has no legal representative; and
  - (b) asks for such assistance.
- (8) On an appeal to the Crown Court, the Crown Court officer must arrange for the court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.

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(337) 1967 c. 80; section 22 was amended by section 56 of, and paragraph 48 of Schedule 8 and Schedule 11 to, the Courts Act 1971 (c. 23), section 12 of, and paragraphs 36 and 37 of Schedule 2 and Schedule 3 to, the Bail Act 1976 (c. 63), section 65 of, and Schedules 12 and 13 to, the Criminal Law Act 1977 (c. 45), paragraph 15 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33), sections 17 and 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 42 of, and paragraph 27 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(338) S.I. 1998/3132; Schedule 1 RSC Order 79 was amended by S.I. 1999/1008, 2001/256, 2003/3361 and 2005/617.

## (9) The prosecutor—

- (a) may abandon an appeal to the Crown Court without the court’s permission, by serving a notice of abandonment, signed by or on behalf of the prosecutor, on—
  - (i) the defendant,
  - (ii) the Crown Court officer, and
  - (iii) the magistrates’ court officer
 before the hearing of the appeal begins; but
- (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court’s permission.

(10) The court officer for the court which has granted bail must instruct the defendant’s custodian to release the defendant on the bail granted by that court, subject to any condition or conditions of bail imposed, if—

- (a) the prosecutor fails to serve an appeal notice within the time to which paragraph (4) refers; or
- (b) the prosecutor serves a notice of abandonment under paragraph (9).

*[Note. See section 1 of the Bail (Amendment) Act 1993(339). The time limit for serving an appeal notice is prescribed by section 1(5) of the Act. It may be neither extended nor shortened.*

*For the procedure in the High Court, see Schedule 1 to the Civil Procedure Rules 1998 (RSC Order 79, rule 9) and the Practice Direction which supplements that Order. Under those provisions, the prosecutor must file in the High Court, among other things—*

- (a) *a copy of the appeal notice served by the prosecutor under rule 19.9(4);*
- (b) *notice of the Crown Court decision to grant bail served on the prosecutor under rule 19.4(2); and*
- (c) *notice of the date of the next hearing in the Crown Court.]*

### Consideration of bail in a murder case

**19.10.**—(1) This rule applies in a case in which—

- (a) the defendant is charged with murder; and
- (b) the Crown Court has not yet considered bail.

(2) The magistrates’ court officer must arrange with the Crown Court officer for the Crown Court to consider bail as soon as practicable and in any event no later than the second business day after—

- (a) a magistrates’ court sends the defendant to the Crown Court for trial; or
- (b) the first hearing in the magistrates’ court, if the defendant is not at once sent for trial.

*[Note. See section 115 of the Coroners and Justice Act 2009(340).]*

### Condition of residence

**19.11.**—(1) The defendant must notify the prosecutor of the address at which the defendant will live and sleep if released on bail with a condition of residence—

- (a) as soon as practicable after the institution of proceedings, unless already done; and

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**(339)** 1993 c. 26; section 1 was amended by sections 200 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 18 of the Criminal Justice Act 2003 (c. 44), section 15 of, and paragraph 231 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4), section 42 of, and paragraph 28 of Schedule 13 to, the Police and Justice Act 2006 (c. 48) and paragraph 32 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(340)** 2009 c. 25.

(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.

### Electronic monitoring requirements

**19.12.**—(1) This rule applies where the court imposes electronic monitoring requirements, where available, as a condition of bail.

(2) The court officer must—

- (a) inform the person responsible for the monitoring ('the monitor') of—
  - (i) the defendant's name, and telephone number if available,
  - (ii) each offence with which the defendant is charged,
  - (iii) details of the place at which the defendant's presence must be monitored,
  - (iv) the period or periods during which the defendant's presence at that place must be monitored, and
  - (v) if fixed, the date on which the defendant must surrender to custody;
- (b) inform the defendant and, where the defendant is under 16, an appropriate adult, of the monitor's identity and the means by which the monitor may be contacted; and
- (c) notify the monitor of any subsequent—
  - (i) variation or termination of the electronic monitoring requirements, or
  - (ii) fixing or variation of the date on which the defendant must surrender to custody.

*[Note. Under section 3(6ZAA) of the Bail Act 1976(341), the conditions of bail that the court may impose include requirements for the electronic monitoring of a defendant's compliance with other bail conditions, for example a curfew. Sections 3AA and 3AB of the 1976 Act(342) set out conditions for imposing such requirements.*

*Under section 3AC of the 1976 Act(343), where the court imposes electronic monitoring requirements they must provide for the appointment of a monitor.]*

### Accommodation or support requirements

**19.13.**—(1) This rule applies where the court imposes as a condition of bail a requirement, where available, that the defendant must—

- (a) reside in accommodation provided for that purpose by, or on behalf of, a public authority;
- (b) receive bail support provided by, or on behalf of, a public authority.

(2) The court officer must—

- (a) inform the person responsible for the provision of any such accommodation or support ('the service provider') of—

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**(341)** 1976 c. 63; 1976 c. 63; section 3(6ZAA) was substituted, with sub-section (6ZAB), for sub-section (6ZAA) as inserted by section 131 of the Criminal Justice and Police Act 2001 (c. 16) by section 51 of, and paragraphs 1 and 2 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4) and amended by paragraphs 1 and 3 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(342)** 1976 c. 63; section 3AA was inserted by section 131 of the Criminal Justice and Police Act 2001 (c. 16) and amended by sections 51 and 149 of, and paragraphs 1 and 3 of Schedule 11 to, and Part 4 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 4 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(343)** 1976 c. 63; section 3AC was inserted by section 51 of, and paragraphs 1 and 4 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4) and amended by paragraphs 1 and 7 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (i) the defendant's name, and telephone number if available,
- (ii) each offence with which the defendant is charged,
- (iii) details of the requirement,
- (iv) any other bail condition, and
- (v) if fixed, the date on which the defendant must surrender to custody;
- (b) inform the defendant and, where the defendant is under 16, an appropriate adult, of—
  - (i) the service provider's identity and the means by which the service provider may be contacted, and
  - (ii) the address of any accommodation in which the defendant must live and sleep; and
- (c) notify the service provider of any subsequent—
  - (i) variation or termination of the requirement,
  - (ii) variation or termination of any other bail condition, and
  - (iii) fixing or variation of the date on which the defendant must surrender to custody.

**Requirement for a surety or payment, etc.**

- 19.14.**—(1) This rule applies where the court imposes as a condition of bail a requirement for—
- (a) a surety;
  - (b) a payment;
  - (c) the surrender of a document or thing.
- (2) The court may direct how such a condition must be met.
- (3) Unless the court otherwise directs, if any such condition or direction requires a surety to enter into a recognizance—
- (a) the recognizance must specify—
    - (i) the amount that the surety will be required to pay if the purpose for which the recognizance is entered is not fulfilled, and
    - (ii) the date, or the event, upon which the recognizance will expire;
  - (b) the surety must enter into the recognizance in the presence of—
    - (i) the court officer,
    - (ii) the defendant's custodian, where the defendant is in custody, or
    - (iii) someone acting with the authority of either; and
  - (c) the person before whom the surety enters into the recognizance must at once serve a copy on—
    - (i) the surety, and
    - (ii) as appropriate, the court officer and the defendant's custodian.
- (4) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, or surrender a document or thing—
- (a) that payment, document or thing must be made or surrendered to—
    - (i) the court officer,
    - (ii) the defendant's custodian, where the defendant is in custody, or
    - (iii) someone acting with the authority of either; and

(b) the court officer or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or thing has been made or surrendered.

(5) The custodian must release the defendant when each requirement ordered by the court has been met.

*[Note. See also section 119 of the Magistrates' Courts Act 1980(344).]*

### **Forfeiture of a recognizance given by a surety**

**19.15.**—(1) This rule applies where the court imposes as a condition of bail a requirement that a surety enter into a recognizance and, after the defendant is released on bail,—

- (a) the defendant fails to surrender to custody as required, or
- (b) it appears to the court that the surety has failed to comply with a condition or direction.

(2) The court officer must serve notice on—

- (a) the surety; and
- (b) each party to the decision to grant bail,

of the hearing at which the court will consider the forfeiture of the recognizance.

(3) The court must not forfeit the recognizance less than 5 business days after service of notice under paragraph (2).

*[Note. If the purpose for which a recognizance is entered is not fulfilled, that recognizance may be forfeited by the court. If the court forfeits a surety's recognizance, the sum promised by that person is then payable to the Crown. See also section 120 of the Magistrates' Courts Act 1980(345).]*

## **SECTION 3: CUSTODY TIME LIMITS**

### **Application to extend a custody time limit**

**19.16.**—(1) This rule applies where the prosecutor gives notice of application to extend a custody time limit.

(2) The court officer must arrange for the court to hear that application as soon as practicable after the expiry of—

- (a) 5 days from the giving of notice, in the Crown Court; or
- (b) 2 days from the giving of notice, in a magistrates' court.

(3) The court may shorten a time limit under this rule.

*[Note. See regulation 7 of the Prosecution of Offences (Custody Time Limits) Regulations 1987(346).]*

*Under regulations 4 and 5 of the 1987 Regulations(347), unless the court extends the time limit the maximum period during which the defendant may be in pre-trial custody is—*

- (a) *in a case which can be tried only in a magistrates' court, 56 days pending the beginning of the trial;*

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**(344)** 1980 c. 43; section 119 was amended by section 77 of, and paragraph 55 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48).

**(345)** 1980 c. 43; section 120 was amended by section 55 of the Crime and Disorder Act 1998 (c. 37) and section 62 of, and paragraphs 45 and 56 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

**(346)** S.I. 1987/299; regulation 7 was amended by S.I. 1989/767.

**(347)** S.I. 1987/299; regulation 4 was amended by section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1999/2744. Regulation 5 was amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 2000/3284, 2012/1344.

- (b) *in a magistrates' court, in a case which can be tried either in that court or in the Crown Court—*
  - (i) *70 days, pending the beginning of a trial in the magistrates' court, or*
  - (ii) *56 days, pending the beginning of a trial in the magistrates' court, if the court decides on such a trial during that period;*
- (c) *in the Crown Court, pending the beginning of the trial, 182 days from the sending of the defendant for trial, less any period or periods during which the defendant was in custody in the magistrates' court.*

*Under section 22(3) of the Prosecution of Offences Act 1985(348), the court cannot extend a custody time limit which has expired, and must not extend such a time limit unless satisfied—*

- (a) *that the need for the extension is due to—*
  - (i) *the illness or absence of the accused, a necessary witness, a judge or a magistrate,*
  - (ii) *a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more defendants or two or more offences, or*
  - (iii) *some other good and sufficient cause; and*
- (b) *that the prosecution has acted with all due diligence and expedition.]*

### **Appeal against custody time limit decision**

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

- (a) a defendant wants to appeal to the Crown Court against a decision by a magistrates' court to extend a custody time limit;
  - (b) a prosecutor wants to appeal to the Crown Court against a decision by a magistrates' court to refuse to extend a custody time limit.
- (2) The appellant must serve an appeal notice—
- (a) on—
    - (i) the other party to the decision,
    - (ii) the Crown Court officer, and
    - (iii) the magistrates' court officer;
  - (b) in a defendant's appeal, as soon as practicable after the decision under appeal;
  - (c) in a prosecutor's appeal—
    - (i) as soon as practicable after the decision under appeal, and
    - (ii) before the relevant custody time limit expires.
- (3) The appeal notice must specify—
- (a) each offence with which the defendant is charged;
  - (b) the decision under appeal;
  - (c) the date on which the relevant custody time limit will expire;

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**(348)** 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (d) on a defendant's appeal, the date on which the relevant custody time limit would have expired but for the decision under appeal; and
  - (e) the grounds of appeal.
- (4) The Crown Court officer must arrange for the Crown Court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.
- (5) The appellant—
- (a) may abandon an appeal without the Crown Court's permission, by serving a notice of abandonment, signed by or on behalf of the appellant, on—
    - (i) the other party,
    - (ii) the Crown Court officer, and
    - (iii) the magistrates' court officerbefore the hearing of the appeal begins; but
  - (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.

*[Note. See section 22(7), (8), (9) of the Prosecution of Offences Act 1985(349).]*

#### **Summary of the general entitlement to bail and of the exceptions**

*The court must consider bail whenever it can order the defendant's detention pending trial or sentencing, or in an extradition case, and whether an application is made or not. Under section 4 of the Bail Act 1976(350), the general rule, subject to exceptions, is that a defendant must be granted bail. Under Part IIA of Schedule 1 to the Act(351), if the court decides not to grant the defendant bail then at each subsequent hearing the court must consider whether to grant bail.*

*Section 3 of the Bail Act 1976(352) allows the court, before granting bail, to require a surety or security to secure the defendant's surrender to custody; and allows the court, on granting bail, to impose such requirements as appear to the court to be necessary—*

- (a) *to secure that the defendant surrenders to custody;*
- (b) *to secure that the defendant does not commit an offence while on bail;*
- (c) *to secure that the defendant does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to the defendant or any other person;*
- (d) *for the defendant's own protection or, if a child or young person, for the defendant's welfare or in the defendant's own interests;*

(349) 1985 c. 23; section 22(7) and (8) was amended by section 43 of the Crime and Disorder Act 1998 (c. 37).

(350) 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), section 42 of, and paragraph 34 of Schedule 13 to, the Police and Justice Act 2006 (c. 48), sections 6 and 148 of, and paragraphs 23 and 102 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 19 of Schedule 7, and Schedule 8, to the Policing and Crime Act 2009 (c. 26).

(351) 1976 c. 63; Schedule 1, Part IIA was added by section 154 of the Criminal Justice Act 1988 (c. 33).

(352) 1976 c. 63; section 3 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 34 of the Mental Health (Amendment) Act 1982 (c. 51), paragraph 46 of Schedule 4 to the Mental Health Act 1983 (c. 20), section 15 of, and paragraph 9 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 131 of the Criminal Justice Act 1988 (c. 33), sections 27 and 168 of, and paragraph 12 of Schedule 9 and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 54 and 120 of, and paragraph 37 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), paragraph 51 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 131 of the Criminal Justice and Police Act 2001 (c. 16), sections 13 and 19 of, and paragraph 48 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), paragraphs 33 and 34 of Schedule 21 to the Legal Services Act 2007 (c. 29) and paragraphs 1 and 2 of Schedule 11, paragraphs 1 and 2 of Schedule 12, to the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 1 to 4 of Schedule 11, and paragraphs 14 and 15 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (e) *to secure the defendant's availability for the purpose of enabling enquiries or a report to be made to assist the court in dealing with the defendant for the offence;*
- (f) *to secure that before the time appointed for surrender to custody the defendant attends an interview with a legal representative.*

*Under section 3 of the Bail Act 1976, a person granted bail in criminal proceedings is under a duty to surrender to custody as required by that bail. Under section 6 of the Act, such a person who fails without reasonable cause so to surrender commits an offence and, under section 7, may be arrested.*

*Exceptions to the general right to bail are listed in Schedule 1 to the Bail Act 1976(353). They differ according to the category of offence concerned. Under section 4(2B) of the 1976 Act(354), in an extradition case there is no general right to bail where the defendant is alleged to have been convicted in the territory requesting extradition.*

*Under Part I of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is not one that can be tried only in a magistrates' court, or in an extradition case—*

- (a) *the defendant need not be granted bail if the court is satisfied that—*
  - (i) *there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice,*
  - (ii) *there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (within the meaning of section 33 of the Family Law Act 1996), or cause that person to fear injury,*
  - (iii) *the defendant should be kept in custody for his or her own protection or welfare, or*
  - (iv) *it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;*
- (b) *the defendant need not be granted bail if it appears to the court that the defendant was on bail at the time of the offence (this exception does not apply in an extradition case);*
- (c) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail;*
- (d) *the defendant need not be granted bail if in custody pursuant to a sentence;*
- (e) *the defendant need not be granted bail if it appears to the court that it would be impracticable to complete enquiries or a report for which the case is to be adjourned without keeping the defendant in custody;*
- (f) *the defendant may not be granted bail if charged with murder, unless the court is of the opinion that there is no significant risk of the defendant committing an offence while on bail that would, or would be likely to, cause physical or mental injury to some other person;*

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(353) 1976 c. 63; Schedule 1 was amended by section 34 of the Mental Health (Amendment) Act 1982 (c. 51), sections 153, 154 and 155 of the Criminal Justice Act 1988 (c. 33), paragraph 22 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), section 26 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 38 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 54 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 129 and 137 of, and Schedule 7 to, the Criminal Justice and Police Act 2001 (c. 16), section 198 of the Extradition Act 2003 (c. 41), sections 13, 14, 15, 19 and 20 of, and paragraphs 20 and 23 of Schedule 32 and paragraphs 1 and 3 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), paragraph 40 of the Schedule to S.I. 2005/886, paragraph 78 of Schedule 16, and Schedule 17, to the Armed Forces Act 2006 (c. 52), paragraphs 1, 4, 5 and 6 of Schedule 12 to the Criminal Justice and Immigration Act 2008 (c. 4), section 114 of the Coroners and Justice Act 2009 (c. 25) and paragraphs 10 to 31 of Schedule 11, and paragraphs 14 and 17 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(354) 1976 c. 63; section 4(2B) was inserted by section 198 of the Extradition Act 2003 (c. 41) and amended by paragraph 34 of Schedule 13 to the Police and Justice Act 2006 (c. 48).



- (g) *the defendant in an extradition case need not be granted bail if he or she was on bail on the date of the alleged offence and that offence is not one that could be tried only in a magistrates' court if it were committed in England or Wales.*

*Exceptions (a)(i), (b) and (c) do not apply where—*

- (a) *the defendant is 18 or over;*
- (b) *the defendant has not been convicted of an offence in those proceedings; and*
- (c) *it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.*

*In deciding whether an exception to the right to bail applies the court must have regard to any relevant consideration, including—*

- (a) *the nature and seriousness of the offence, and the probable method of dealing with the defendant for it;*
- (b) *the character, antecedents, associations and community ties of the defendant;*
- (c) *the defendant's record of fulfilling obligations imposed under previous grants of bail; and*
- (d) *except where the case is adjourned for enquires or a report, the strength of the evidence of the defendant having committed the offence.*

*Under Part IA of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is one that can be tried only in a magistrates' court—*

- (a) *the defendant need not be granted bail if it appears to the court that—*
  - (i) *having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, or*
  - (ii) *the defendant was on bail on the date of the offence and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail;*
- (b) *the defendant need not be granted bail if the court is satisfied that—*
  - (i) *there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to some other person, or cause some other person to fear such injury,*
  - (ii) *the defendant should be kept in custody for his or her own protection or welfare, or*
  - (iii) *it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;*
- (c) *the defendant need not be granted bail if in custody pursuant to a sentence;*
- (d) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice.*

*Exceptions (a) and (d) do not apply where—*

- (a) *the defendant is 18 or over;*
- (b) *the defendant has not been convicted of an offence in those proceedings; and*

- (c) *it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.*

*Under Part II of Schedule 1 to the 1976 Act, where the offence is not punishable with imprisonment—*

- (a) *the defendant need not be granted bail if it appears to the court that having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody;*
- (b) *the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his or her own protection or welfare;*
- (c) *the defendant need not be granted bail if in custody pursuant to a sentence;*
- (d) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice;*
- (e) *the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (within the meaning of section 33 of the Family Law Act 1996), or to cause that person to fear such injury.*

*Exceptions (a) and (d) apply only where—*

- (a) *the defendant is under 18; and*
- (b) *the defendant has been convicted in those proceedings.*

*Further exceptions to the general right to bail are set out in section 25 of the Criminal Justice and Public Order Act 1994(355), under which a defendant charged with murder, attempted murder, manslaughter, rape or another sexual offence specified in that section, and who has been previously convicted of such an offence, may be granted bail only if there are exceptional circumstances which justify it.*

## PART 20

*[Note. There are no rules in this Part.]*

## PART 21

*[Note. There are no rules in this Part.]*

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(355) 1994 c. 33; section 25 was amended by section 56 of the Crime and Disorder Act 1998 (c. 37), paragraph 160 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 32 of Schedule 6 to the Sexual Offences Act 2003 (c. 42), paragraph 67 of Schedule 32 and Schedule 37 to the Criminal Justice Act 2003 (c. 44), article 16 of S.I. 2008/1779, paragraph 3 of Schedule 17, and Schedule 23, to the Coroners and Justice Act 2009 (c. 25) and paragraph 33 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

## PART 22

### DISCLOSURE

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#### When this Part applies

**22.1.**—(1) This Part applies—

- (a) in a magistrates' court and in the Crown Court;
- (b) where Parts I and II of the Criminal Procedure and Investigations Act 1996(**356**) apply.

*[Note. A summary of the disclosure requirements of the Criminal Procedure and Investigations Act 1996 is at the end of this Part.]*

#### Prosecution disclosure

**22.2.**—(1) This rule applies in the Crown Court where, under section 3 of the Criminal Procedure and Investigations Act 1996(**357**), the prosecutor—

- (a) discloses prosecution material to the defendant; or
  - (b) serves on the defendant a written statement that there is no such material to disclose.
- (2) The prosecutor must at the same time so inform the court officer.

#### Prosecutor's application for public interest ruling

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

- (a) without a court order, the prosecutor would have to disclose material; and
  - (b) the prosecutor wants the court to decide whether it would be in the public interest to disclose it.
- (2) The prosecutor must—
- (a) apply in writing for such a decision; and

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**(356)** 1996 c. 25.

**(357)** 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

- (b) serve the application on—
  - (i) the court officer,
  - (ii) any person who the prosecutor thinks would be directly affected by disclosure of the material, and
  - (iii) the defendant, but only to the extent that serving it on the defendant would not disclose what the prosecutor thinks ought not be disclosed.
- (3) The application must—
  - (a) describe the material, and explain why the prosecutor thinks that—
    - (i) it is material that the prosecutor would have to disclose,
    - (ii) it would not be in the public interest to disclose that material, and
    - (iii) no measure such as the prosecutor’s admission of any fact, or disclosure by summary, extract or edited copy, adequately would protect both the public interest and the defendant’s right to a fair trial;
  - (b) omit from any part of the application that is served on the defendant anything that would disclose what the prosecutor thinks ought not be disclosed (in which case, paragraph (4) of this rule applies); and
  - (c) explain why, if no part of the application is served on the defendant.
- (4) Where the prosecutor serves only part of the application on the defendant, the prosecutor must—
  - (a) mark the other part, to show that it is only for the court; and
  - (b) in that other part, explain why the prosecutor has withheld it from the defendant.
- (5) Unless already done, the court may direct the prosecutor to serve an application on—
  - (a) the defendant;
  - (b) any other person who the court considers would be directly affected by the disclosure of the material.
- (6) The court must determine the application at a hearing which—
  - (a) must be in private, unless the court otherwise directs; and
  - (b) if the court so directs, may take place, wholly or in part, in the defendant’s absence.
- (7) At a hearing at which the defendant is present—
  - (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the prosecutor and any other person served with the application, and then by the defendant, in the presence of them all, and then
    - (ii) further representations by the prosecutor and any such other person in the defendant’s absence; but
  - (b) the court may direct other arrangements for the hearing.
- (8) The court may only determine the application if satisfied that it has been able to take adequate account of—
  - (a) such rights of confidentiality as apply to the material; and
  - (b) the defendant’s right to a fair trial.
- (9) Unless the court otherwise directs, the court officer—
  - (a) must not give notice to anyone other than the prosecutor—
    - (i) of the hearing of an application under this rule, unless the prosecutor served the application on that person, or

- (ii) of the court's decision on the application;
- (b) may—
  - (i) keep a written application or representations, or
  - (ii) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

*[Note. The court's power to order that it is not in the public interest to disclose material is provided for by sections 3(6), 7(6) (where the investigation began between 1<sup>st</sup> April, 1997 and 3<sup>rd</sup> April, 2005) and 7A(8) (where the investigation began on or after 4<sup>th</sup> April, 2005) of the Criminal Procedure and Investigations Act 1996(358).*

*See also sections 16 and 19 of the 1996 Act(359).]*

### **Defence disclosure**

- 22.4.**—(1) This rule applies where—
- (a) under section 5 or 6 of the Criminal Procedure and Investigations Act 1996(360), the defendant gives a defence statement;
  - (b) under section 6C of the 1996 Act(361), the defendant gives a defence witness notice.
- (2) The defendant must serve such a statement or notice on—
- (a) the court officer; and
  - (b) the prosecutor.

*[Note. The Practice Direction sets out forms of—*

- (a) *defence statement; and*
- (b) *defence witness notice.*

*Under section 5 of the 1996 Act, in the Crown Court the defendant must give a defence statement. Under section 6 of the Act, in a magistrates' court the defendant may give such a statement but need not do so.*

*Under section 6C of the 1996 Act, in the Crown Court and in magistrates' courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them.]*

### **Defendant's application for prosecution disclosure**

- 22.5.**—(1) This rule applies where the defendant—
- (a) has served a defence statement given under the Criminal Procedure and Investigations Act 1996; and
  - (b) wants the court to require the prosecutor to disclose material.

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(358) 1996 c. 25; section 7 was repealed by sections 331 and 332 of, and paragraphs 20 and 25 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with transitional provisions for certain offences in article 2 of S.I. 2005/1817. Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

(359) 1996 c. 25; section 16 was amended by section 331 of, and paragraphs 20 and 32 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 19 was amended by section 109 of, and paragraph 377 of Schedule 8 to, the Courts Act 2003 (c. 39), section 331 of, and paragraphs 20 and 34 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 of, and paragraph 251 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(360) 1996 c. 25; section 5 was amended by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It was further amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) in respect of certain proceedings only.

(361) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

- (2) The defendant must serve an application on—
  - (a) the court officer; and
  - (b) the prosecutor.
- (3) The application must—
  - (a) describe the material that the defendant wants the prosecutor to disclose;
  - (b) explain why the defendant thinks there is reasonable cause to believe that—
    - (i) the prosecutor has that material, and
    - (ii) it is material that the Criminal Procedure and Investigations Act 1996 requires the prosecutor to disclose; and
  - (c) ask for a hearing, if the defendant wants one, and explain why it is needed.
- (4) The court may determine an application under this rule—
  - (a) at a hearing, in public or in private; or
  - (b) without a hearing.
- (5) The court must not require the prosecutor to disclose material unless the prosecutor—
  - (a) is present; or
  - (b) has had at least 14 days in which to make representations.

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

*Under section 8 of the Criminal Procedure and Investigations Act 1996(362), a defendant may apply for prosecution disclosure only if the defendant has given a defence statement.]*

### **Review of public interest ruling**

- 22.6.**—(1) This rule applies where the court has ordered that it is not in the public interest to disclose material that the prosecutor otherwise would have to disclose, and—
- (a) the defendant wants the court to review that decision; or
  - (b) the Crown Court reviews that decision on its own initiative.
- (2) Where the defendant wants the court to review that decision, the defendant must—
- (a) serve an application on—
    - (i) the court officer, and
    - (ii) the prosecutor; and
  - (b) in the application—
    - (i) describe the material that the defendant wants the prosecutor to disclose, and
    - (ii) explain why the defendant thinks it is no longer in the public interest for the prosecutor not to disclose it.
- (3) The prosecutor must serve any such application on any person who the prosecutor thinks would be directly affected if that material were disclosed.
- (4) The prosecutor, and any such person, must serve any representations on—
- (a) the court officer; and
  - (b) the defendant, unless to do so would in effect reveal something that either thinks ought not be disclosed.

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(362) 1996 c. 25; section 8 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 38 of the Criminal Justice Act 2003 (c. 44).

- (5) The court may direct—
  - (a) the prosecutor to serve any such application on any person who the court considers would be directly affected if that material were disclosed;
  - (b) the prosecutor and any such person to serve any representations on the defendant.
- (6) The court must review a decision to which this rule applies at a hearing which—
  - (a) must be in private, unless the court otherwise directs; and
  - (b) if the court so directs, may take place, wholly or in part, in the defendant's absence.
- (7) At a hearing at which the defendant is present—
  - (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the defendant, and then by the prosecutor and any other person served with the application, in the presence of them all, and then
    - (ii) further representations by the prosecutor and any such other person in the defendant's absence; but
  - (b) the court may direct other arrangements for the hearing.
- (8) The court may only conclude a review if satisfied that it has been able to take adequate account of—
  - (a) such rights of confidentiality as apply to the material; and
  - (b) the defendant's right to a fair trial.

*[Note. The court's power to review a public interest ruling is provided for by sections 14 and 15 of the Criminal Procedure and Investigations Act 1996(363). Under section 14 of the Act, a magistrates' court may reconsider an order for non-disclosure only if a defendant applies. Under section 15, the Crown Court may do so on an application, or on its own initiative.*

*See also sections 16 and 19 of the 1996 Act.]*

### **Defendant's application to use disclosed material**

- 22.7.**—(1) This rule applies where a defendant wants the court's permission to use disclosed prosecution material—
- (a) otherwise than in connection with the case in which it was disclosed; or
  - (b) beyond the extent to which it was displayed or communicated publicly at a hearing.
- (2) The defendant must serve an application on—
- (a) the court officer; and
  - (b) the prosecutor.
- (3) The application must—
- (a) specify what the defendant wants to use or disclose; and
  - (b) explain why.
- (4) The court may determine an application under this rule—
- (a) at a hearing, in public or in private; or
  - (b) without a hearing.
- (5) The court must not permit the use of such material unless—

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**(363)** 1996 c. 25; section 14 was amended by section 331 of, and paragraphs 20 and 30 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 was amended by section 331 of, and paragraphs 20 and 31 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

- (a) the prosecutor has had at least 28 days in which to make representations; and
- (b) the court is satisfied that it has been able to take adequate account of any rights of confidentiality that may apply to the material.

*[Note. The court's power to allow a defendant to use disclosed material is provided for by section 17 of the Criminal Procedure and Investigations Act 1996(364).*

*See also section 19 of the 1996 Act.]*

### **Unauthorised use of disclosed material**

**22.8.**—(1) This rule applies where a person is accused of using disclosed prosecution material in contravention of section 17 of the Criminal Procedure and Investigations Act 1996.

(2) A party who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

(3) The court must not exercise its power to forfeit material used in contempt of court unless—

- (a) the prosecutor; and
- (b) any other person directly affected by the disclosure of the material,

is present, or has had at least 14 days in which to make representations.

*[Note. Under section 17 of the Criminal Procedure and Investigations Act 1996, a defendant may use disclosed prosecution material—*

- (a) *in connection with the case in which it was disclosed, including on an appeal;*
- (b) *to the extent to which it was displayed or communicated publicly at a hearing in public; or*
- (c) *with the court's permission.*

*Under section 18 of the 1996 Act, the court can punish for contempt of court any other use of disclosed prosecution material. See also section 19 of the 1996 Act.]*

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

**22.9.** The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow a defence statement, or a defence witness notice, to be in a different written form to one set out in the Practice Direction, as long as it contains what the Criminal Procedure and Investigations Act 1996 requires;
- (c) allow an application under this Part to be in a different form to one set out in the Practice Direction, or to be presented orally; and
- (d) specify the period within which—
  - (i) any application under this Part must be made, or
  - (ii) any material must be disclosed, on an application to which rule 22.5 applies (defendant's application for prosecution disclosure).

### **Summary of disclosure requirements of Criminal Procedure and Investigations Act 1996**

*The Criminal Procedure and Investigations Act 1996 came into force on 1<sup>st</sup> April, 1997. It does not apply where the investigation began before that date. With effect from 4<sup>th</sup> April, 2005, the*

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(364) 1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).



*Criminal Justice Act 2003 made changes to the 1996 Act that do not apply where the investigation began before that date.*

*In some circumstances, the prosecutor may be required to disclose material to which the 1996 Act does not apply: see sections 1 and 21(365).*

*Part I of the 1996 Act contains sections 1 to 21A. Part II, which contains sections 22 to 27, requires an investigator to record information relevant to an investigation that is obtained during its course. See also the Criminal Procedure and Investigations Act 1996 (Code of Practice) (No. 2) Order 1997(366) and the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2005(367).*

### **Prosecution disclosure**

*Where the investigation began between 1<sup>st</sup> April, 1997, and 3<sup>rd</sup> April, 2005, sections 3 and 7 of the 1996 Act require the prosecutor—*

- (a) *to disclose material not previously disclosed that in the prosecutor's opinion might undermine the case for the prosecution against the defendant—*
  - (i) *in a magistrates' court, as soon as is reasonably practicable after the defendant pleads not guilty, and*
  - (ii) *in the Crown Court, as soon as is reasonably practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial; and*
- (b) *as soon as is reasonably practicable after service of the defence statement, to disclose material not previously disclosed that might be reasonably expected to assist the defendant's case as disclosed by that defence statement; or in either event*
- (c) *if there is no such material, then to give the defendant a written statement to that effect.*

*Where the investigation began on or after 4<sup>th</sup> April, 2005, sections 3 and 7A of the 1996 Act(368) require the prosecutor—*

- (a) *to disclose prosecution material not previously disclosed that might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant—*
  - (i) *in a magistrates' court, as soon as is reasonably practicable after the defendant pleads not guilty, or*
  - (ii) *in the Crown Court, as soon as is reasonably practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial, or after a count is added to the indictment; and in either case*
- (b) *if there is no such material, then to give the defendant a written statement to that effect; and after that*
- (c) *in either court, to disclose any such material—*
  - (i) *whenever there is any, until the court reaches its verdict or the prosecutor decides not to proceed with the case, and*

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**(365)** 1996 c. 25; section 1 was amended by section 119 of, and paragraph 125 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and paragraph 37 of Schedule 17 to the Crime and Courts Act 2013 (c. 22). It was amended in respect of certain proceedings only by section 119 of, and paragraph 125(a) of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37). It is further amended by section 9 of the Sexual Offences (Protected Material) Act 1997 (c. 39), with effect from a date to be appointed.

**(366)** S.I. 1997/1033; this Order was revoked by S.I. 2005/985.

**(367)** S.I. 2005/985.

**(368)** 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

(ii) *in particular, after the service of the defence statement.*

*Sections 2 and 3 of the 1996 Act define material, and prescribe how it must be disclosed.*

*In some circumstances, disclosure is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.*

*The prosecutor must not disclose material that the court orders it would not be in the public interest to disclose: see sections 3(6), 7(6) and 7A(8) of the 1996 Act.*

*Sections 12 and 13 of the 1996 Act prescribe the time for prosecution disclosure.*

*See also sections 1, 4 and 10 of the 1996 Act.*

### **Defence disclosure**

*Under section 5 of the 1996 Act(369), in the Crown Court the defendant must give a defence statement. Under section 6 of the Act, in a magistrates' court the defendant may give such a statement but need not do so.*

*Under section 6C of the 1996 Act(370), in the Crown Court and in magistrates' courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them.*

*The time for service of a defence statement is prescribed by section 12 of the 1996 Act(371)and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(372). It is—*

- (a) *in a magistrates' court, not more than 14 days after the prosecutor—*
  - (i) *discloses material under section 3 of the 1996 Act, or*
  - (ii) *serves notice that there is no such material to disclose;*
- (b) *in the Crown Court, not more than 28 days after either of those events, if the prosecution evidence has been served on the defendant.*

*The requirements for the content of a defence statement are set out in—*

- (a) *section 5 of the 1996 Act, where the investigation began between 1<sup>st</sup> April, 1997 and 3<sup>rd</sup> April, 2005;*
- (b) *section 6A of the 1996 Act(373), where the investigation began on or after 4<sup>th</sup> April, 2005. See also section 6E of the Act(374).*

*Where the investigation began between 1<sup>st</sup> April, 1997 and 3<sup>rd</sup> April, 2005, the defence statement must—*

- (a) *set out in general terms the nature of the defence;*
- (b) *indicate the matters on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;*
- (c) *if the defence statement discloses an alibi, give particulars, including—*

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(369) 1996 c. 25; section 5 was amended by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It was further amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) in respect of certain proceedings only.

(370) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

(371) 1996 c. 25; section 12 was amended by sections 331 of, and paragraphs 20 and 28 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(372) S.I. 2011/209.

(373) 1996 c. 25; section 6A was inserted by section 33 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).

(374) 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).

- (i) *the name and address of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),*
- (ii) *where the defendant does not know the name or address, any information that might help identify or find that witness.*

*Where the investigation began on or after 4<sup>th</sup> April, 2005, the defence statement must—*

- (a) *set out the nature of the defence, including any particular defences on which the defendant intends to rely;*
- (b) *indicate the matters of fact on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;*
- (c) *set out particulars of the matters of fact on which the defendant intends to rely for the purposes of the defence;*
- (d) *indicate any point of law that the defendant wants to raise, including any point about the admissibility of evidence or about abuse of process, and any authority relied on; and*
- (e) *if the defence statement discloses an alibi, give particulars, including—*
  - (i) *the name, address and date of birth of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),*
  - (ii) *where the defendant does not know any of those details, any information that might help identify or find that witness.*

*The time for service of a defence witness notice is prescribed by section 12 of the 1996 Act and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011. The time limits are the same as those for a defence statement.*

*A defence witness notice that identifies any proposed defence witness (other than the defendant) must—*

- (a) *give the name, address and date of birth of each such witness, or as many of those details as are known to the defendant when the notice is given;*
- (b) *provide any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the notice is given; and*
- (c) *amend any earlier such notice, if the defendant—*
  - (i) *decides to call a person not included in an earlier notice as a proposed witness,*
  - (ii) *decides not to call a person so included, or*
  - (iii) *discovers any information which the defendant would have had to include in an earlier notice, if then aware of it.*

*Under section 11 of the 1996 Act(375), if a defendant—*

- (a) *fails to disclose what the Act requires;*
- (b) *fails to do so within the time prescribed;*
- (c) *at trial, relies on a defence, or facts, not mentioned in the defence statement;*
- (d) *at trial, introduces alibi evidence without having given in the defence statement—*
  - (i) *particulars of the alibi, or*

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(375) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60(2) of the Criminal Justice and Immigration Act 2008 (c. 4).

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- (ii) the details of the alibi witness, or witnesses, required by the Act; or  
 (e) at trial, calls a witness not identified in a defence witness notice,

then the court or another party at trial may comment on that, and the court may draw such inferences as appear proper in deciding whether the defendant is guilty.

Under section 6E(2) of the 1996 Act, if before trial in the Crown Court it seems to the court that section 11 may apply, then the court must warn the defendant.

## PART 23

[Note. There are no rules in this Part.]

## PART 24

[Note. There are no rules in this Part.]

## PART 25

[Note. There are no rules in this Part.]

## PART 26

[Note. There are no rules in this Part.]

## PART 27

### WITNESS STATEMENTS

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#### Contents of this Part

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When this Part applies	rule 27.1
Content of written statement	rule 27.2
Reference to exhibit	rule 27.3
Written statement in evidence	rule 27.4

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#### When this Part applies

**27.1.** This Part applies where a party wants to introduce a written statement in evidence under section 9 of the Criminal Justice Act 1967(376).

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(376) 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 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

*[Note. Under section 9 of the Criminal Justice Act 1967, if the conditions specified in that section are met, the written statement of a witness is admissible in evidence to the same extent as if that witness gave evidence in person.]*

### **Content of written statement**

**27.2.** The statement must contain—

- (a) at the beginning—
  - (i) the witness' name, and
  - (ii) the witness' age, if under 18;
- (b) a declaration by the witness that—
  - (i) it is true to the best of the witness' knowledge and belief, and
  - (ii) the witness knows that if it is introduced in evidence, then it would be an offence wilfully to have stated in it anything that the witness knew to be false or did not believe to be true;
- (c) if the witness cannot read the statement, a signed declaration by someone else that that person read it to the witness; and
- (d) the witness' signature.

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

### **Reference to exhibit**

**27.3.** Where the statement refers to a document or object as an exhibit—

- (a) the statement must contain such a description of that exhibit as to identify it clearly; and
- (b) the exhibit must be labelled or marked correspondingly, and the label or mark signed by the maker of the statement.

### **Written statement in evidence**

**27.4.—(1)** A party who wants to introduce in evidence a written statement must—

- (a) before the hearing at which that party wants to introduce it, serve a copy of the statement on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (b) at or before that hearing, serve on the court officer the statement or an authenticated copy.
- (2) If that party relies on only part of the statement, that party must mark the copy in such a way as to make that clear.
- (3) A prosecutor must serve on a defendant, with the copy of the statement, a notice—
- (a) of the right within 7 days of service to object to the introduction of the statement in evidence instead of the witness giving evidence in person; and
  - (b) that if the defendant does not object in time, the court—
    - (i) can nonetheless require the witness to give evidence in person, but
    - (ii) may decide not to do so.
- (4) The court may exercise its power to require the witness to give evidence in person—

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- (a) on application by any party; or
  - (b) on its own initiative.
- (5) A party entitled to receive a copy of a statement 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.*

*Under section 133 of the Criminal Justice Act 2003(377), where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either (a) the document, or (b) (whether or not the document exists) a copy of the document or of the material part of it, authenticated in whatever way the court may approve. By section 134 of the 2003 Act, ‘document’ means anything in which information of any description is recorded.]*

## PART 28

### WITNESS SUMMONSES, WARRANTS AND ORDERS

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#### Contents of this Part

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When this Part applies	rule 28.1
Issue etc. of summons, warrant or order with or without a hearing	rule 28.2
Application for summons, warrant or order: general rules	rule 28.3
Written application: form and service	rule 28.4
Application for summons to produce a document, etc.: special rules	rule 28.5
Application for summons to produce a document, etc.: court’s assessment of relevance and confidentiality	rule 28.6
Application to withdraw a summons, warrant or order	rule 28.7
Court’s power to vary requirements under this Part	rule 28.8

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*[Note. A magistrates’ court may require the attendance of a witness to give evidence or to produce in evidence a document or thing by a summons, or in some circumstances a warrant for the witness’ arrest, under section 97 of the Magistrates’ Courts Act 1980(378) or under paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998(379). The Crown Court may do so under sections 2, 2D, 3 and 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(380). Either court may*

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**(377)** 2003 c. 44.

**(378)** 1980 c. 43; section 97 was amended by sections 13 and 14 of, and paragraph 7 of Schedule 2 to, the Contempt of Court Act 1981 (c. 47), section 31 of, and paragraph 2 of Schedule 4 to, the Criminal Justice (International Co-operation) Act 1990 (c. 5), sections 17 and 65 of, and paragraph 6 of Schedule 3 and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 51 of the Criminal Procedure and Investigations Act 1996 (c. 25) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15).

**(379)** 1998 c. 37; paragraph 4 of Schedule 3 was amended by paragraphs 15, 20, 68 and 72 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15), article 3 of, and paragraphs 35 and 37 of the Schedule to, S.I. 2004/2035 and article 2 of, and paragraph 61 of the Schedule to, S.I. 2005/886.

**(380)** 1965 c. 69; section 2 was substituted, together with sections 2 A to 2E, by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39), paragraph 42 of Schedule 3

order the production in evidence of a copy of an entry in a banker's book without the attendance of an officer of the bank, under sections 6 and 7 of the Bankers' Books Evidence Act 1879(381).

See Part 3 for the court's general powers to consider an application and to give directions.]

### **When this Part applies**

- 28.1.**—(1) This Part applies in magistrates' courts and in the Crown Court where—
- (a) a party wants the court to issue a witness summons, warrant or order under—
    - (i) section 97 of the Magistrates' Courts Act 1980,
    - (ii) paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998,
    - (iii) section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965, or
    - (iv) section 7 of the Bankers' Books Evidence Act 1879;
  - (b) the court considers the issue of such a summons, warrant or order on its own initiative as if a party had applied; or
  - (c) one of those listed in rule 28.7 wants the court to withdraw such a summons, warrant or order.

(2) A reference to a 'witness' in this Part is a reference to a person to whom such a summons, warrant or order is directed.

*[Note. See section 2D of the Criminal Procedure (Attendance of Witnesses) Act 1965 for the Crown Court's power to issue a witness summons on the court's own initiative.]*

### **Issue etc. of summons, warrant or order with or without a hearing**

**28.2.**—(1) The court may issue or withdraw a witness summons, warrant or order with or without a hearing.

(2) A hearing under this Part must be in private unless the court otherwise directs.

*[Note. If rule 28.5 applies, a person served with an application for a witness summons will have an opportunity to make representations about whether there should be a hearing of that application before the witness summons is issued.]*

### **Application for summons, warrant or order: general rules**

**28.3.**—(1) A party who wants the court to issue a witness summons, warrant or order must apply as soon as practicable after becoming aware of the grounds for doing so.

- (2) The party applying must—
- (a) identify the proposed witness;
  - (b) explain—
    - (i) what evidence the proposed witness can give or produce,
    - (ii) why it is likely to be material evidence, and
    - (iii) why it would be in the interests of justice to issue a summons, order or warrant as appropriate.
- (3) The application may be made orally unless—
- (a) rule 28.5 applies; or

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and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15) and paragraph 33 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).  
(381) 1879 c. 11; section 6 has been amended; none is relevant to these rules.

- (b) the court otherwise directs.

*[Note. The court may issue a warrant for a witness' arrest if that witness fails to obey a witness summons directed to him: see section 97(3) of the Magistrates' Courts Act 1980, paragraph 4(5) of Schedule 3 to the Crime and Disorder Act 1998 and section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965. Before a magistrates' court may issue a warrant under section 97(3) of the 1980 Act, the witness must first be paid or offered a reasonable amount for costs and expenses.]*

### **Written application: form and service**

**28.4.**—(1) An application in writing under rule 28.3 must be in the form set out in the Practice Direction, containing the same declaration of truth as a witness statement.

- (2) The party applying must serve the application—
- (a) in every case, on the court officer and as directed by the court; and
  - (b) as required by rule 28.5, if that rule applies.

*[Note. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(382). Section 89 of the 1967 Act(383) makes it an offence to make a written statement under section 9 of that Act which the person making it knows to be false or does not believe to be true.]*

### **Application for summons to produce a document, etc.: special rules**

**28.5.**—(1) This rule applies to an application under rule 28.3 for a witness summons requiring the proposed witness—

- (a) to produce in evidence a document or thing; or
  - (b) to give evidence about information apparently held in confidence,
- that relates to another person.

(2) The application must be in writing in the form required by rule 28.4.

(3) The party applying must serve the application—

- (a) on the proposed witness, unless the court otherwise directs; and
- (b) on one or more of the following, if the court so directs—
  - (i) a person to whom the proposed evidence relates,
  - (ii) another party.

(4) The court must not issue a witness summons where this rule applies unless—

- (a) everyone served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing of the application before the summons is issued; and
- (b) the court is satisfied that it has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the proposed evidence relates.

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(382) 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 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

(383) 1967 c. 80; section 89 was amended by section 154 of, and Schedule 9 to, the Magistrates' Courts Act 1980 (c. 43).



(5) This rule does not apply to an application for an order to produce in evidence a copy of an entry in a banker's book.

*[Note. Under section 2A of the Criminal Procedure (Attendance of Witnesses) Act 1965(384), a witness summons to produce a document or thing issued by the Crown Court may require the witness to produce it for inspection by the applicant before producing it in evidence.]*

### **Application for summons to produce a document, etc.: court's assessment of relevance and confidentiality**

**28.6.**—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the ground that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates, outweigh the reasons for issuing a summons.

(2) The court may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The court may invite—

- (a) the proposed witness or any representative of the proposed witness; or
- (b) a person to whom the document or thing relates or any representative of such a person, to help the court assess the objection.

### **Application to withdraw a summons, warrant or order**

**28.7.**—(1) The court may withdraw a witness summons, warrant or order if one of the following applies for it to be withdrawn—

- (a) the party who applied for it, on the ground that it no longer is needed;
- (b) the witness, on the grounds that—
  - (i) he was not aware of any application for it, and
  - (ii) he cannot give or produce evidence likely to be material evidence, or
  - (iii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates, outweigh the reasons for the issue of the summons, warrant or order; or
- (c) any person to whom the proposed evidence relates, on the grounds that—
  - (i) he was not aware of any application for it, and
  - (ii) that evidence is not likely to be material evidence, or
  - (iii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness, outweigh the reasons for the issue of the summons, warrant or order.

(2) A person applying under the rule must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why he wants the summons, warrant or order to be withdrawn; and
- (b) serve the application on the court officer and as appropriate on—

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(384) 1965 c. 69; section 2A was substituted, together with sections 2, 2 B, 2D and 2E, for existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

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- (i) the witness,
- (ii) the party who applied for the summons, warrant or order, and
- (iii) any other person who he knows was served with the application for the summons, warrant or order.

(3) Rule 28.6 applies to an application under this rule that concerns a document or thing to be produced in evidence.

*[Note. See sections 2B, 2C and 2E of the Criminal Procedure (Attendance of Witnesses) Act 1965(385) for the Crown Court's powers to withdraw a witness summons, including the power to order costs.]*

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

**28.8.**—(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part; and
- (b) where a rule or direction requires an application under this Part to be in writing, allow that application to be made orally instead.

(2) Someone who wants the court to allow an application to be made orally under paragraph (1) (b) of this rule must—

- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
- (b) in doing so explain the reasons for the application and for wanting the court to consider it orally.

## **PART 29**

### **MEASURES TO ASSIST A WITNESS OR DEFENDANT TO GIVE EVIDENCE**

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#### **Contents of this Part**

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Decisions and reasons	rule 29.4
Court's power to vary requirements under this Part	rule 29.5
Custody of documents	rule 29.6
Declaration by intermediary	rule 29.7

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**(385)** 1965 c. 69; sections 2B, 2C and 2E were substituted with section 2 and 2A, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39).

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## Contents of this Part

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## SECTION 1: UNDERSTANDING AND APPLYING THIS PART

### When this Part applies

#### 29.1. This Part applies—

- (a) where the court can give a direction (a 'special measures direction'), under section 19 of the Youth Justice and Criminal Evidence Act 1999(386), on an application or on its own initiative, for any of the following measures—

- (i) preventing a witness from seeing the defendant (section 23 of the 1999 Act),
- (ii) allowing a witness to give evidence by live link (section 24 of the 1999 Act(**387**)),
- (iii) hearing a witness' evidence in private (section 25 of the 1999 Act),
- (iv) dispensing with the wearing of wigs and gowns (section 26 of the 1999 Act),
- (v) admitting video recorded evidence (sections 27 and 28 of the 1999 Act(**388**)),
- (vi) questioning a witness through an intermediary (section 29 of the 1999 Act(**389**)),
- (vii) using a device to help a witness communicate (section 30 of the 1999 Act);
- (b) where the court can vary or discharge such a direction, under section 20 of the 1999 Act(**390**);
- (c) where the court can give, vary or discharge a direction (a 'defendant's evidence direction') for a defendant to give evidence—
  - (i) by live link, under section 33A of the 1999 Act(**391**), or
  - (ii) through an intermediary, under sections 33BA and 33BB of the 1999 Act(**392**);
- (d) where the court can—
  - (i) make a witness anonymity order, under section 86 of the Coroners and Justice Act 2009(**393**), or
  - (ii) vary or discharge such an order, under section 91, 92 or 93 of the 2009 Act;
- (e) where the court can give or discharge a direction (a 'live link direction'), on an application or on its own initiative, for a witness to give evidence by live link under—
  - (i) section 32 of the Criminal Justice Act 1988(**394**), or
  - (ii) sections 51 and 52 of the Criminal Justice Act 2003(**395**);
- (f) where the court can exercise any other power it has to give, vary or discharge a direction for a measure to help a witness give evidence.

### Meaning of 'witness'

**29.2.** In this Part, 'witness' means anyone (other than a defendant) for whose benefit an application, direction or order is made.

*[Note. At the end of this Part is a summary of the circumstances in which a witness or defendant may be eligible for the assistance of one of the measures to which this Part applies.]*

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**(387)** 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 102(1) of the Coroners and Justice Act 2009 (c. 25).

**(388)** 1999 c. 23; section 27 was amended by paragraph 384 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 73 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and sections 102(2), 103(1), (3), (4) and (5), 177(1) and (2) and 178 of, and paragraph 73 of Schedule 21, paragraph 23 of Schedule 22 and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

**(389)** 1999 c. 23; section 29 was amended by paragraph 384(d) of Schedule 8 to the Courts Act 2003 (c. 39).

**(390)** 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39).

**(391)** 1999 c. 23; section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).

**(392)** 1999 c. 23; sections 33BA and 33BB are inserted by section 104 of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

**(393)** 2009 c. 25.

**(394)** 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 S.I. 2004/2035.

**(395)** 2003 c. 44.

## SECTION 2: GENERAL RULES

### **Making an application for a direction or order**

**29.3.** A party who wants the court to exercise its power to give or make a direction or order must—

- (a) apply in writing as soon as reasonably practicable, and in any event not more than—
  - (i) 28 days after the defendant pleads not guilty, in a magistrates' court, or
  - (ii) 14 days after the defendant pleads not guilty, in the Crown Court; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) each other party.

*[Note. See also rule 29.10 (content of application for a special measures direction), rule 29.15 (content of application for a defendant's evidence direction), rule 29.19 (content and conduct of application for a witness anonymity order) and rule 29.24 (content of application for a live link direction).]*

*The Practice Direction sets out forms for use in connection with—*

- (a) *an application under rule 29.10 for a special measures direction;*
- (b) *an application under rule 29.24 for a live link direction (otherwise than as a special measures direction).]*

### **Decisions and reasons**

**29.4.—**(1) A party who wants to introduce the evidence of a witness who is the subject of an application, direction or order must—

- (a) inform the witness of the court's decision as soon as reasonably practicable; and
- (b) explain to the witness the arrangements that as a result will be made for him or her to give evidence.

(2) The court must announce, at a hearing in public before the witness gives evidence, the reasons for a decision—

- (a) to give, make, vary or discharge a direction or order; or
- (b) to refuse to do so.

*[Note. See sections 20(5), 33A(8) and 33BB(4) of the Youth Justice and Criminal Evidence Act 1999 and sections 51(8) and 52(7) of the Criminal Justice Act 2003(396).]*

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

**29.5.—**(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part; and
- (b) allow an application or representations to be made in a different form to one set out in the Practice Direction, or to be made orally.

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

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

### **Custody of documents**

- 29.6.** Unless the court otherwise directs, the court officer may—
- (a) keep a written application or representations; or
  - (b) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

### **Declaration by intermediary**

- 29.7.**—(1) This rule applies where—
- (a) a video recorded interview with a witness is conducted through an intermediary;
  - (b) the court directs the examination of a witness or defendant through an intermediary.
- (2) An intermediary must make a declaration—
- (a) before such an interview begins;
  - (b) before the examination begins (even if such an interview with the witness was conducted through the same intermediary).
- (3) The declaration must be in these terms—

“I solemnly, sincerely and truly declare [*or I swear by Almighty God*] that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.”

### **SECTION 3: SPECIAL MEASURES DIRECTIONS**

*[Note. The rules in Section 2 (general rules) also apply.]*

### **Exercise of court’s powers**

- 29.8.** The court may decide whether to give, vary or discharge a special measures direction—
- (a) at a hearing, in public or in private, or without a hearing;
  - (b) in a party’s absence, if that party—
    - (i) applied for the direction, variation or discharge, or
    - (ii) has had at least 14 days in which to make representations.

### **Special measures direction for a young witness**

- 29.9.**—(1) This rule applies where, under section 21 or section 22 of the Youth Justice and Criminal Evidence Act 1999(**397**), the primary rule requires the court to give a direction for a special measure to assist a child witness or a qualifying witness—
- (a) on an application, if one is made; or
  - (b) on the court’s own initiative, in any other case.
- (2) A party who wants to introduce the evidence of such a witness must as soon as reasonably practicable—
- (a) notify the court that the witness is eligible for assistance;
  - (b) provide the court with any information that the court may need to assess the witness’ views, if the witness does not want the primary rule to apply; and

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**(397)** 1999 c. 23; sections 21 and 22 were amended by sections 98, 100 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

- (c) serve any video recorded evidence on—
  - (i) the court officer, and
  - (ii) each other party.

*[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, a ‘child witness’ is one who is under 18, and a ‘qualifying witness’ is one who was a child witness when interviewed.*

*Under those sections, the ‘primary rule’ requires the court to give a direction—*

- (a) *for the evidence of a child witness or of a qualifying witness to be admitted—*
  - (i) *by means of a video recording of an interview with the witness, in the place of examination-in-chief, and*
  - (ii) *after that, by live link; or*
- (b) *if one or both of those measures is not taken, for the witness while giving evidence to be screened from seeing the defendant.*

*The primary rule always applies unless—*

- (a) *the witness does not want it to apply, and the court is satisfied that to omit a measure usually required by that rule would not diminish the quality of the witness’ evidence; or*
- (b) *the court is satisfied that to direct one of the measures usually required by that rule would not be likely to maximise, so far as practicable, the quality of the witness’ evidence.]*

### **Content of application for a special measures direction**

**29.10.** An applicant for a special measures direction must—

- (a) explain how the witness is eligible for assistance;
- (b) explain why special measures would be likely to improve the quality of the witness’ evidence;
- (c) propose the measure or measures that in the applicant’s opinion would be likely to maximise, so far as practicable, the quality of that evidence;
- (d) report any views that the witness has expressed about—
  - (i) his or her eligibility for assistance,
  - (ii) the likelihood that special measures would improve the quality of his or her evidence, and
  - (iii) the measure or measures proposed by the applicant;
- (e) in a case in which a child witness or a qualifying witness does not want the primary rule to apply, provide any information that the court may need to assess the witness’ views;
- (f) in a case in which the applicant proposes that the witness should give evidence by live link—
  - (i) identify someone to accompany the witness while the witness gives evidence,
  - (ii) name that person, if possible, and
  - (iii) explain why that person would be an appropriate companion for the witness, including the witness’ own views;
- (g) in a case in which the applicant proposes the admission of video recorded evidence, identify—
  - (i) the date and duration of the recording,

- (ii) which part the applicant wants the court to admit as evidence, if the applicant does not want the court to admit all of it;
- (h) attach any other material on which the applicant relies; and
- (i) if the applicant wants a hearing, ask for one, and explain why it is needed.

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

#### **Application to vary or discharge a special measures direction**

- 29.11.**—(1) A party who wants the court to vary or discharge a special measures direction must—
- (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party.
- (2) The applicant must—
- (a) explain what material circumstances have changed since the direction was given (or last varied, if applicable);
  - (b) explain why the direction should be varied or discharged; and
  - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.

*[Note. Under section 20 of the Youth Justice and Criminal Evidence Act 1999, the court can vary or discharge a special measures direction—*

- (a) *on application, if there has been a material change of circumstances; or*
- (b) *on the court's own initiative.]*

#### **Application containing information withheld from another party**

- 29.12.**—(1) This rule applies where—
- (a) an applicant serves an application for a special measures direction, or for its variation or discharge; and
  - (b) the application includes information that the applicant thinks ought not be revealed to another party.
- (2) The applicant must—
- (a) omit that information from the part of the application that is served on that other party;
  - (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
  - (c) in that other part, explain why the applicant has withheld that information from that other party.
- (3) Any hearing of an application to which this rule applies—
- (a) must be in private, unless the court otherwise directs; and
  - (b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.
- (4) At any hearing of an application to which this rule applies—
- (a) the general rule is that the court must consider, in the following sequence—



- (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
  - (ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but
- (b) the court may direct other arrangements for the hearing.

*[Note. See section 20 of the Youth Justice and Criminal Evidence Act 1999.]*

### **Representations in response**

- 29.13.**—(1) This rule applies where a party wants to make representations about—
- (a) an application for a special measures direction;
  - (b) an application for the variation or discharge of such a direction; or
  - (c) a direction, variation or discharge that the court proposes on its own initiative.
- (2) Such a party must—
- (a) serve the representations on—
    - (i) the court officer, and
    - (ii) each other party;
  - (b) do so not more than 14 days after, as applicable—
    - (i) service of the application, or
    - (ii) notice of the direction, variation or discharge that the court proposes; and
  - (c) ask for a hearing, if that party wants one, and explain why it is needed.
- (3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—
- (a) omit that information from the representations served on that other party;
  - (b) mark the information to show that, unless the court otherwise directs, it is only for the court; and
  - (c) with that information include an explanation of why it has been withheld from that other party.
- (4) Representations against a special measures direction must explain, as appropriate—
- (a) why the witness is not eligible for assistance;
  - (b) if the witness is eligible for assistance, why—
    - (i) no special measure would be likely to improve the quality of the witness' evidence,
    - (ii) the proposed measure or measures would not be likely to maximise, so far as practicable, the quality of the witness' evidence, or
    - (iii) the proposed measure or measures might tend to inhibit the effective testing of that evidence;
  - (c) in a case in which the admission of video recorded evidence is proposed, why it would not be in the interests of justice for the recording, or part of it, to be admitted as evidence.
- (5) Representations against the variation or discharge of a special measures direction must explain why it should not be varied or discharged.

*[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, where the witness is a child witness or a qualifying witness the special measures that the court usually*

*must direct must be treated as likely to maximise, so far as practicable, the quality of the witness' evidence, irrespective of representations to the contrary.]*

#### SECTION 4: DEFENDANT'S EVIDENCE DIRECTIONS

*[Note. The rules in Section 2 (general rules) also apply.]*

##### **Exercise of court's powers**

**29.14.** The court may decide whether to give, vary or discharge a defendant's evidence direction—

- (a) at a hearing, in public or in private, or without a hearing;
- (b) in a party's absence, if that party—
  - (i) applied for the direction, variation or discharge, or
  - (ii) has had at least 14 days in which to make representations.

##### **Content of application for a defendant's evidence direction**

**29.15.** An applicant for a defendant's evidence direction must—

- (a) explain how the proposed direction meets the conditions prescribed by the Youth Justice and Criminal Evidence Act 1999;
- (b) in a case in which the applicant proposes that the defendant give evidence by live link—
  - (i) identify a person to accompany the defendant while the defendant gives evidence, and
  - (ii) explain why that person is appropriate;
- (c) ask for a hearing, if the applicant wants one, and explain why it is needed.

*[Note. See sections 33A and 33BA of the Youth Justice and Criminal Evidence Act 1999.]*

##### **Application to vary or discharge a defendant's evidence direction**

**29.16.—(1)** A party who wants the court to vary or discharge a defendant's evidence direction must—

- (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party.
- (2)** The applicant must—
- (a) on an application to discharge a live link direction, explain why it is in the interests of justice to do so;
  - (b) on an application to discharge a direction for an intermediary, explain why it is no longer necessary in order to ensure that the defendant receives a fair trial;
  - (c) on an application to vary a direction for an intermediary, explain why it is necessary for the direction to be varied in order to ensure that the defendant receives a fair trial; and
  - (d) ask for a hearing, if the applicant wants one, and explain why it is needed.

*[Note. See sections 33A(7) and 33BB of the Youth Justice and Criminal Evidence Act 1999.]*

### **Representations in response**

- 29.17.**—(1) This rule applies where a party wants to make representations about—
- (a) an application for a defendant’s evidence direction;
  - (b) an application for the variation or discharge of such a direction; or
  - (c) a direction, variation or discharge that the court proposes on its own initiative.
- (2) Such a party must—
- (a) serve the representations on—
    - (i) the court officer, and
    - (ii) each other party;
  - (b) do so not more than 14 days after, as applicable—
    - (i) service of the application, or
    - (ii) notice of the direction, variation or discharge that the court proposes; and
  - (c) ask for a hearing, if that party wants one, and explain why it is needed.
- (3) Representations against a direction, variation or discharge must explain why the conditions prescribed by the Youth Justice and Criminal Evidence Act 1999 are not met.

### *SECTION 5: WITNESS ANONYMITY ORDERS*

*[Note. The rules in Section 2 (general rules) also apply.]*

### **Exercise of court’s powers**

- 29.18.**—(1) The court may decide whether to make, vary or discharge a witness anonymity order—
- (a) at a hearing (which must be in private, unless the court otherwise directs), or without a hearing (unless any party asks for one);
  - (b) in the absence of a defendant.
- (2) The court must not exercise its power to make, vary or discharge a witness anonymity order, or to refuse to do so—
- (a) before or during the trial, unless each party has had an opportunity to make representations;
  - (b) on an appeal by the defendant to which applies Part 63 (appeal to the Crown Court) or Part 68 (appeal to the Court of Appeal about conviction or sentence), unless in each party’s case—
    - (i) that party has had an opportunity to make representations, or
    - (ii) the appeal court is satisfied that it is not reasonably practicable to communicate with that party;
  - (c) after the trial and any such appeal are over, unless in the case of each party and the witness—
    - (i) each has had an opportunity to make representations, or
    - (ii) the court is satisfied that it is not reasonably practicable to communicate with that party or witness.

### **Content and conduct of application for a witness anonymity order**

- 29.19.**—(1) An applicant for a witness anonymity order must—

- (a) include in the application nothing that might reveal the witness' identity;
  - (b) describe the measures proposed by the applicant;
  - (c) explain how the proposed order meets the conditions prescribed by section 88 of the Coroners and Justice Act 2009**(398)**;
  - (d) explain why no measures other than those proposed will suffice, such as—
    - (i) an admission of the facts that would be proved by the witness,
    - (ii) an order restricting public access to the trial,
    - (iii) reporting restrictions, in particular under section 46 of the Youth Justice and Criminal Evidence Act 1999**(399)** or under section 39 of the Children and Young Persons Act 1933**(400)**,
    - (iv) a direction for a special measure under section 19 of the Youth Justice and Criminal Evidence Act 1999,
    - (v) introduction of the witness' written statement as hearsay evidence, under section 116 of the Criminal Justice Act 2003**(401)**, or
    - (vi) arrangements for the protection of the witness;
  - (e) attach to the application—
    - (i) a witness statement setting out the proposed evidence, edited in such a way as not to reveal the witness' identity,
    - (ii) where the prosecutor is the applicant, any further prosecution evidence to be served, and any further prosecution material to be disclosed under the Criminal Procedure and Investigations Act 1996, similarly edited, and
    - (iii) any defence statement that has been served, or as much information as may be available to the applicant that gives particulars of the defence; and
  - (f) ask for a hearing, if the applicant wants one.
- (2) At any hearing of the application, the applicant must—
- (a) identify the witness to the court, unless at the prosecutor's request the court otherwise directs; and
  - (b) present to the court, unless it otherwise directs—
    - (i) the unedited witness statement from which the edited version has been prepared,
    - (ii) where the prosecutor is the applicant, the unedited version of any further prosecution evidence or material from which an edited version has been prepared, and
    - (iii) such further material as the applicant relies on to establish that the proposed order meets the conditions prescribed by section 88 of the 2009 Act.
- (3) At any such hearing—
- (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the applicant and then by each other party, in all the parties' presence, and then

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**(398)**2009 c. 25.

**(399)**1999 c. 23.

**(400)**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) and sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48). It is further amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

**(401)**2003 c. 44.

- (ii) information withheld from a defendant, and further representations by the applicant, in the absence of any (or any other) defendant; but
- (b) the court may direct other arrangements for the hearing.
- (4) Before the witness gives evidence, the applicant must identify the witness to the court—
  - (a) if not already done;
  - (b) without revealing the witness' identity to any other party or person; and
  - (c) unless at the prosecutor's request the court otherwise directs.

#### **Duty of court officer to notify the Director of Public Prosecutions**

**29.20.** The court officer must notify the Director of Public Prosecutions of an application, unless the prosecutor is, or acts on behalf of, a public authority.

#### **Application to vary or discharge a witness anonymity order**

**29.21.—**(1) A party who wants the court to vary or discharge a witness anonymity order, or a witness who wants the court to do so when the case is over, must—

- (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) each other party.
- (2) The applicant must—
  - (a) explain what material circumstances have changed since the order was made (or last varied, if applicable);
  - (b) explain why the order should be varied or discharged, taking account of the conditions for making an order; and
  - (c) ask for a hearing, if the applicant wants one.
- (3) Where an application includes information that the applicant thinks might reveal the witness' identity, the applicant must—
  - (a) omit that information from the application that is served on a defendant;
  - (b) mark the information to show that it is only for the court and the prosecutor (if the prosecutor is not the applicant); and
  - (c) with that information include an explanation of why it has been withheld.
- (4) Where a party applies to vary or discharge a witness anonymity order after the trial and any appeal are over, the party who introduced the witness' evidence must serve the application on the witness.

*[Note. Under sections 91, 92 and 93 of the Coroners and Justice Act 2009, the court can vary or discharge a witness anonymity order—*

- (a) *on an application, if there has been a material change of circumstances since it was made or previously varied; or*
- (b) *on the court's own initiative, unless the trial and any appeal are over.]*

### **Representations in response**

**29.22.**—(1) This rule applies where a party or, where the case is over, a witness, wants to make representations about—

- (a) an application for a witness anonymity order;
- (b) an application for the variation or discharge of such an order; or
- (c) a variation or discharge that the court proposes on its own initiative.

(2) Such a party or witness must—

- (a) serve the representations on—
  - (i) the court officer, and
  - (ii) each other party;
- (b) do so not more than 14 days after, as applicable—
  - (i) service of the application, or
  - (ii) notice of the variation or discharge that the court proposes; and
- (c) ask for a hearing, if that party or witness wants one.

(3) Where representations include information that the person making them thinks might reveal the witness' identity, that person must—

- (a) omit that information from the representations served on a defendant;
- (b) mark the information to show that it is only for the court (and for the prosecutor, if relevant); and
- (c) with that information include an explanation of why it has been withheld.

(4) Representations against a witness anonymity order must explain why the conditions for making the order are not met.

(5) Representations against the variation or discharge of such an order must explain why it would not be appropriate to vary or discharge it, taking account of the conditions for making an order.

(6) A prosecutor's representations in response to an application by a defendant must include all information available to the prosecutor that is relevant to the conditions and considerations specified by sections 88 and 89 of the Coroners and Justice Act 2009.

### *SECTION 6: LIVE LINK DIRECTIONS*

*[Note. The rules in Section 2 (general rules) also apply. The rules in this Section do not apply to an application for a special measures direction allowing a witness to give evidence by live link: as to which, see the rules in Section 3 (special measures directions).]*

### **Exercise of court's powers**

**29.23.** The court may decide whether to give or discharge a live link direction—

- (a) at a hearing, in public or in private, or without a hearing;
- (b) in a party's absence, if that party—
  - (i) applied for the direction or discharge, or
  - (ii) has had at least 14 days in which to make representations.

### **Content of application for a live link direction**

**29.24.** An applicant for a live link direction must—

- (a) unless the court otherwise directs, identify the place from which the witness will give evidence;
- (b) if that place is in the United Kingdom, explain why it would be in the interests of the efficient or effective administration of justice for the witness to give evidence by live link;
- (c) if the applicant wants the witness to be accompanied by another person while giving evidence—
  - (i) name that person, if possible, and
  - (ii) explain why it is appropriate for the witness to be accompanied;
- (d) ask for a hearing, if the applicant wants one, and explain why it is needed.

*[Note. See section 32 of the Criminal Justice Act 1988(402) and section 51 of the Criminal Justice Act 2003(403).*

*The Practice Direction sets out a form of application for use in connection with this rule.]*

### **Application to discharge a live link direction**

- 29.25.**—(1) A party who wants the court to discharge a live link direction must—
- (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party.
- (2) The applicant must—
- (a) explain what material circumstances have changed since the direction was given;
  - (b) explain why it is in the interests of justice to discharge the direction; and
  - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.

*[Note. See section 32(4) of the Criminal Justice Act 1988(404) and section 52(3) of the Criminal Justice Act 2003(405).]*

### **Representations in response**

- 29.26.**—(1) This rule applies where a party wants to make representations about—
- (a) an application for a live link direction;
  - (b) an application for the discharge of such a direction; or
  - (c) a direction or discharge that the court proposes on its own initiative.
- (2) Such a party must—
- (a) serve the representations on—
    - (i) the court officer, and
    - (ii) each other party;

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**(402)** 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 S.I. 2004/2035.

**(403)** 2003 c. 44.

**(404)** 1988 c. 33; section 32(4) was amended by article 3 of, and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

**(405)** 2003 c. 44.

- (b) do so not more than 14 days after, as applicable—
  - (i) service of the application, or
  - (ii) notice of the direction or discharge that the court proposes; and
- (c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Representations against a direction or discharge must explain, as applicable, why the conditions prescribed by the Criminal Justice Act 1988 or the Criminal Justice Act 2003 are not met.

### **Summary of eligibility for measures to which this Part applies**

#### **Special measures direction**

*Under section 16 of the Youth Justice and Criminal Evidence Act 1999(406), a witness is eligible for the assistance of a special measures direction given under section 19 of that Act if—*

- (a) *the witness is under 18; or*
- (b) *the witness has—*
  - (i) *a mental disorder, or a significant impairment of intelligence and social functioning, or*
  - (ii) *a physical disability or disorder*

*and the court considers that the completeness, coherence and accuracy (the ‘quality’) of evidence given by the witness is likely to be diminished by reason of those circumstances.*

*Under section 17 of the 1999(407) Act, a witness is eligible for such assistance if—*

- (a) *the court is satisfied that the quality of evidence given by the witness is likely to be diminished because of his or her fear or distress in connection with giving evidence, taking account particularly of—*
  - (i) *the circumstances of the offence,*
  - (ii) *the witness’ age, social and cultural background, ethnic origins, domestic and employment circumstances, religious beliefs or political opinions,*
  - (iii) *any behaviour towards the witness on the part of the defendant, the defendant’s family or associates, or any other potential defendant or witness, and*
  - (iv) *the witness’ own views;*
- (b) *the witness is the complainant in respect of a sexual offence, and has not declined such assistance; or*
- (c) *the offence is one of a list of offences involving weapons, and the witness has not declined such assistance.*

*Section 28 of the 1999 Act (video recorded cross-examination or re-examination) is not yet in force. With that exception, all the special measures listed in rule 29.1 potentially are available where the witness is eligible for assistance under section 16 of the Act. Those numbered (i) to (v) are available where the witness is eligible for assistance under section 17.*

*As a general rule, but with exceptions, the court must give a special measures direction—*

- (a) *under section 21 or 22 of the 1999 Act(408), where the witness—*
  - (i) *is under 18, or*
  - (ii) *was under that age when interviewed*

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(406) 1999 c. 23.

(407) 1999 c. 23; section 17 was amended by section 99 of the Coroners and Justice Act 2009 (c. 25).

(408) 1999 c. 23; sections 21 and 22 were amended by sections 98, 100 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).



whether or not an application for a direction is made;

- (b) under section 22A of the 1999 Act(409), where an application is made in the Crown Court for the evidence of a witness who is the complainant of a sexual offence to be admitted by means of a video recording of an interview with the witness in the place of examination-in-chief.

### **Defendant's evidence direction**

Under section 33A of the 1999 Act(410), the court can allow a defendant to give evidence by live link, or (when the Coroners and Justice Act 2009 comes into force) under section 33BA(411) can allow a defendant to give evidence through an intermediary, if—

- (a) the defendant—
- (i) is under 18, and the defendant's ability to participate effectively as a witness giving oral evidence is compromised by his or her level of intellectual ability or social functioning; or
  - (ii) suffers from a mental disorder or some other significant impairment of intelligence and social functioning and cannot participate effectively as a witness giving oral evidence for that reason;
- (b) the use of a live link—
- (i) would enable the defendant to participate more effectively, and
  - (ii) is in the interests of justice;
- (c) the examination of the defendant through an intermediary is necessary to ensure that the defendant receives a fair trial.

### **Witness anonymity order**

Under section 86 of the Coroners and Justice Act 2009(412), a witness anonymity order is an order that specifies measures to be taken to ensure that the identity of a witness is not disclosed, such as withholding the witness' name from materials disclosed to a party to the proceedings, the use of a pseudonym, the screening of the witness from view, the modulation of the witness' voice, and the prohibition of questions that might reveal his or her identity. Before making such an order, the court must—

- (a) be satisfied that three conditions prescribed by the Act are met (section 88 of the 2009 Act); and
- (b) have regard to considerations specified by the Act (section 89 of the 2009 Act).

### **Live link direction**

Under section 32 of the Criminal Justice Act 1988, the court can allow a witness who is outside the United Kingdom to give evidence by live link—

- (a) in proceedings in a youth court, or on appeal from such proceedings; or
- (b) at a trial in the Crown Court, or on appeal from such a trial.

Under section 51 of the Criminal Justice Act 2003, on an application or on its own initiative, the court can allow a witness who is in the United Kingdom, but outside the building in which the proceedings are held, to give evidence by live link. The court must be satisfied that that is in the interests of the efficient or effective administration of justice.

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(409) 1999 c. 23; section 22A was inserted by section 101 of the Coroners and Justice Act 2009 (c. 25).

(410) 1999 c. 23; section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).

(411) 1999 c. 23; section 33BA is inserted by section 104 of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(412) 2009 c. 25.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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*If a witness is eligible for the assistance of a special measures direction (as to which, see the note above), the court can allow the witness to give evidence by live link under sections 19 and 24 of the 1999 Act(413). Section 3 of this Part contains relevant rules.*

## PART 30

*[Note. There are no rules in this Part.]*

## PART 31

### RESTRICTION ON CROSS-EXAMINATION BY A DEFENDANT ACTING IN PERSON

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#### Contents of this Part

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Restrictions on cross-examination of witness	rule 31.1
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Appointment arranged by the accused	rule 31.3
Prohibition on cross-examination of witness	rule 31.4

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#### Restrictions on cross-examination of witness

**31.1.**—(1) This rule and rules 31.2 and 31.3 apply where an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36 of the Youth Justice and Criminal Evidence Act 1999(414).

(2) The court shall explain to the accused as early in the proceedings as is reasonably practicable that he—

- (a) is prevented from cross-examining a witness in person; and
- (b) should arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The accused shall notify the court officer within 7 days of the court giving its explanation, or within such other period as the court may in any particular case allow, of the action, if any, he has taken.

(4) Where he has arranged for a legal representative to act for him, the notification shall include details of the name and address of the representative.

(5) The notification shall be in writing.

(6) The court officer shall notify all other parties to the proceedings of the name and address of the person, if any, appointed to act for the accused.

(7) Where the court gives its explanation under paragraph (2) to the accused either within 7 days of the day set for the commencement of any hearing at which a witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies may be cross-examined or after such

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(413) 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 102(1) of the Coroners and Justice Act 2009 (c. 25).

(414) 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), section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 105 of the Coroners and Justice Act 2009 (c. 25).

a hearing has commenced, the period of 7 days shall be reduced in accordance with any directions issued by the court.

(8) Where at the end of the period of 7 days or such other period as the court has allowed, the court has received no notification from the accused it may grant the accused an extension of time, whether on its own motion or on the application of the accused.

(9) Before granting an extension of time, the court may hold a hearing at which all parties to the proceedings may attend and be heard.

(10) Any extension of time shall be of such period as the court considers appropriate in the circumstances of the case.

(11) The decision of the court as to whether to grant the accused an extension of time shall be notified to all parties to the proceedings by the court officer.

### **Appointment of legal representative by the court**

**31.2.**—(1) Where the court decides, in accordance with section 38(4) of the Youth Justice and Criminal Evidence Act 1999, to appoint a qualified legal representative, the court officer shall notify all parties to the proceedings of the name and address of the representative.

(2) An appointment made by the court under section 38(4) of the 1999 Act shall, except to such extent as the court may in any particular case determine, terminate at the conclusion of the cross-examination of the witness or witnesses in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

### **Appointment arranged by the accused**

**31.3.**—(1) The accused may arrange for the qualified legal representative, appointed by the court under section 38(4) of the Youth Justice and Criminal Evidence Act 1999, to be appointed to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

(2) Where such an appointment is made—

- (a) both the accused and the qualified legal representative appointed shall notify the court of the appointment; and
- (b) the qualified legal representative shall, from the time of his appointment, act for the accused as though the arrangement had been made under section 38(2)(a) of the 1999 Act and shall cease to be the representative of the court under section 38(4).

(3) Where the court receives notification of the appointment either from the qualified legal representative or from the accused but not from both, the court shall investigate whether the appointment has been made, and if it concludes that the appointment has not been made, paragraph (2)(b) shall not apply.

(4) An accused may, notwithstanding an appointment by the court under section 38(4) of the 1999 Act, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

(5) Where the accused arranges for, or informs the court of his intention to arrange for, a legal representative to act for him, he shall notify the court, within such period as the court may allow, of the name and address of any person appointed to act for him.

(6) Where the court is notified within the time allowed that such an appointment has been made, any qualified legal representative appointed by the court in accordance with section 38(4) of the 1999 Act shall be discharged.

(7) The court officer shall, as soon as reasonably practicable after the court receives notification of an appointment under this rule or, where paragraph (3) applies, after the court is satisfied that the appointment has been made, notify all the parties to the proceedings—

- (a) that the appointment has been made;
- (b) where paragraph (4) applies, of the name and address of the person appointed; and
- (c) that the person appointed by the court under section 38(4) of the 1999 Act has been discharged or has ceased to act for the court.

### **Prohibition on cross-examination of witness**

**31.4.**—(1) An application by the prosecutor for the court to give a direction under section 36 of the Youth Justice and Criminal Evidence Act 1999 in relation to any witness must be sent to the court officer and at the same time a copy thereof must be sent by the applicant to every other party to the proceedings.

(2) In his application the prosecutor must state why, in his opinion—

- (a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the accused in person;
- (b) the evidence would be improved if a direction were given under section 36(2) of the 1999 Act; and
- (c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application the court officer must refer it—

- (a) if the trial has started, to the court of trial; or
- (b) if the trial has not started when the application is received—
  - (i) to the judge or court designated to conduct the trial, or
  - (ii) if no judge or court has been designated for that purpose, to such judge or court designated for the purposes of hearing that application.

(4) Where a copy of the application is received by a party to the proceedings more than 14 days before the date set for the trial to begin, that party may make observations in writing on the application to the court officer, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties to the proceedings.

(5) A party to whom an application is sent in accordance with paragraph (1) who wishes to oppose the application must give his reasons for doing so to the court officer and the other parties to the proceedings.

(6) Those reasons must be notified—

- (a) within 14 days of the date the application was served on him, if that date is more than 14 days before the date set for the trial to begin;
- (b) if the trial has begun, in accordance with any directions issued by the court; or
- (c) if neither paragraph (6)(a) nor (b) applies, before the date set for the trial to begin.

(7) Where the application made in accordance with paragraph (1) is made before the date set for the trial to begin and—

- (a) is not contested by any party to the proceedings, the court may determine the application without a hearing;
- (b) is contested by a party to the proceedings, the court must direct a hearing of the application.

(8) Where the application is made after the trial has begun—

- (a) the application may be made orally; and

- (b) the court may give such directions as it considers appropriate to deal with the application.
- (9) Where a hearing of the application is to take place, the court officer shall notify each party to the proceedings of the time and place of the hearing.
- (10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.
- (11) The court officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), give notice of the decision and the reasons for it to all the parties to the proceedings.
- (12) A person making an oral application under paragraph (8)(a) must—
- (a) give reasons why the application was not made before the trial commenced; and
  - (b) provide the court with the information set out in paragraph (2).

## PART 32

### INTERNATIONAL CO-OPERATION

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#### Contents of this Part

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Notice required to accompany process served outside the United Kingdom and translations	rule 32.1
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#### Notice required to accompany process served outside the United Kingdom and translations

**32.1.**—(1) The notice which by virtue of section 3(4)(b) of the Crime (International Co-operation) Act 2003(**415**) (general requirements for service of process) must accompany any process served outside the United Kingdom must give the information specified in paragraphs (2) and (4) below.

(2) The notice must—

- (a) state that the person required by the process to appear as a party or attend as a witness can obtain information about his rights in connection therewith from the relevant authority; and

- (b) give the particulars specified in paragraph (4) about that authority.
- (3) The relevant authority where the process is served—
  - (a) at the request of the prosecuting authority, is that authority; or
  - (b) at the request of the defendant or the prosecutor in the case of a private prosecution, is the court by which the process is served.
- (4) The particulars referred to in paragraph (2) are—
  - (a) the name and address of the relevant authority, together with its telephone and fax numbers and e-mail address; and
  - (b) the name of a person at the relevant authority who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.
- (5) The justices' clerk or Crown Court officer must send, together with any process served outside the United Kingdom —
  - (a) any translation which is provided under section 3(3)(b) of the 2003 Act; and
  - (b) any translation of the information required to be given by this rule which is provided to him.
- (6) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

#### **Proof of service outside the United Kingdom**

- 32.2.**—(1) A statement in a certificate given by or on behalf of the Secretary of State—
- (a) that process has been served on any person under section 4(1) of the Crime (International Co-operation) Act 2003 (service of process otherwise than by post);
  - (b) of the manner in which service was effected; and
  - (c) of the date on which process was served;

shall be admissible as evidence of any facts so stated.

- (2) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

#### **Supply of copy of notice of request for assistance abroad**

**32.3.** Where a request for assistance under section 7 of the Crime (International Co-operation) Act 2003 is made by a justice of the peace or a judge exercising the jurisdiction of the Crown Court and is sent in accordance with section 8(1) of the 2003 Act, the justices' clerk or the Crown Court officer shall send a copy of the letter of request to the Secretary of State as soon as practicable after the request has been made.

#### **Persons entitled to appear and take part in proceedings before a nominated court, and exclusion of the public**

**32.4.** A court nominated under section 15(1) of the Crime (International Co-operation) Act 2003 (nominating a court to receive evidence) may—

- (a) determine who may appear or take part in the proceedings under Schedule 1 to the 2003 Act before the court and whether a party to the proceedings is entitled to be legally represented; and
- (b) direct that the public be excluded from those proceedings if it thinks it necessary to do so in the interests of justice.

### **Record of proceedings to receive evidence before a nominated court**

**32.5.**—(1) Where a court is nominated under section 15(1) of the Crime (International Co-operation) Act 2003 the justices' clerk or Crown Court officer shall enter in an overseas record—

- (a) details of the request in respect of which the notice under section 15(1) of the 2003 Act was given;
- (b) the date on which, and place at which, the proceedings under Schedule 1 to the 2003 Act in respect of that request took place;
- (c) the name of any witness who gave evidence at the proceedings in question;
- (d) the name of any person who took part in the proceedings as a legal representative or an interpreter;
- (e) whether a witness was required to give evidence on oath or (by virtue of section 5 of the Oaths Act 1978(416)) after making a solemn affirmation; and
- (f) whether the opportunity to cross-examine any witness was refused.

(2) When the court gives the evidence received by it under paragraph 6(1) of Schedule 1 to the 2003 Act to the court or authority that made the request or to the territorial authority for forwarding to the court or authority that made the request, the justices' clerk or Crown Court officer shall send to the court, authority or territorial authority (as the case may be) a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

*[Note. As to the keeping of an overseas record, see rule 32.9.]*

### **Interpreter for the purposes of proceedings involving a television or telephone link**

**32.6.**—(1) This rule applies where a court is nominated under section 30(3) (hearing witnesses in the UK through television links) or section 31(4) (hearing witnesses in the UK by telephone) of the Crime (International Co-operation) Act 2003.

(2) Where it appears to the justices' clerk or the Crown Court officer that the witness to be heard in the proceedings under Part 1 or 2 of Schedule 2 to the 2003 Act ('the relevant proceedings') is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the proceedings to translate what is said into English.

(3) Where it appears to the justices' clerk or the Crown Court officer that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the proceedings of the court referred to in section 30(1) or, as the case may be, 31(1) of the 2003 Act ('the external court') will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is either given in a language other than English or is not translated into English by an interpreter, the court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

(5) Where a court in Wales understands Welsh—

- (a) paragraph (2) does not apply where it appears to the justices' clerk or Crown Court officer that the witness in question is likely to give evidence in Welsh;
- (b) paragraph (4) does not apply where the evidence is given in Welsh; and
- (c) any translation which is provided pursuant to paragraph (2) or (4) may be into Welsh instead of English.

### **Record of television link hearing before a nominated court**

**32.7.**—(1) This rule applies where a court is nominated under section 30(3) of the Crime (International Co-operation) Act 2003.

- (2) The justices' clerk or Crown Court officer shall enter in an overseas record—
- (a) details of the request in respect of which the notice under section 30(3) of the 2003 Act was given;
  - (b) the date on which, and place at which, the proceedings under Part 1 of Schedule 2 to that Act in respect of that request took place;
  - (c) the technical conditions, such as the type of equipment used, under which the proceedings took place;
  - (d) the name of the witness who gave evidence;
  - (e) the name of any person who took part in the proceedings as a legal representative or an interpreter; and
  - (f) the language in which the evidence was given.

(3) As soon as practicable after the proceedings under Part 1 of Schedule 2 to the 2003 Act took place, the justices' clerk or Crown Court officer shall send to the external authority that made the request a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

*[Note. As to the keeping of an overseas record, see rule 32.9.]*

### **Record of telephone link hearing before a nominated court**

**32.8.**—(1) This rule applies where a court is nominated under section 31(4) of the Crime (International Co-operation) Act 2003.

- (2) The justices' clerk or Crown Court officer shall enter in an overseas record—
- (a) details of the request in respect of which the notice under section 31(4) of the 2003 Act was given;
  - (b) the date, time and place at which the proceedings under Part 2 of Schedule 2 to the 2003 Act took place;
  - (c) the name of the witness who gave evidence;
  - (d) the name of any interpreter who acted at the proceedings; and
  - (e) the language in which the evidence was given.

*[Note. As to the keeping of an overseas record, see rule 32.9.]*

### **Overseas record**

**32.9.**—(1) The overseas records of a magistrates' court shall be part of the register (within the meaning of section 150(1) of the Magistrates' Courts Act 1980(**417**)).

- (2) The overseas records of any court shall not be open to inspection by any person except—
- (a) as authorised by the Secretary of State; or
  - (b) with the leave of the court.

*[Note. As to the making of court records, see rule 5.4.]*

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(417) 1980 c. 43; a relevant amendment was made to section 150(1) by paragraph 250 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).



### Overseas freezing orders

**32.10.**—(1) This rule applies where a court is nominated under section 21(1) of the Crime (International Co-operation) Act 2003(418) to give effect to an overseas freezing order.

- (2) Where the Secretary of State serves a copy of such an order on the court officer—
- (a) the general rule is that the court must consider the order no later than the next business day;
  - (b) exceptionally, the court may consider the order later than that, but not more than 5 business days after service.
- (3) The court must not consider the order unless—
- (a) it is satisfied that the chief officer of police for the area in which the evidence is situated has had notice of the order; and
  - (b) that chief officer of police has had an opportunity to make representations, at a hearing if that officer wants.
- (4) The court may consider the order—
- (a) without a hearing; or
  - (b) at a hearing, in public or in private.

## PART 33

### EXPERT EVIDENCE

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#### Contents of this Part

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Instructions to a single joint expert	rule 33.8
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#### When this Part applies

**33.1.**—(1) This Part applies where a party wants to introduce expert opinion evidence.

(2) 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(419). It may be required also under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(420), under Part III of the Mental Health Act 1983(421) or under Part 12 of the Criminal Justice Act 2003(422). 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 opinion which is—

- (a) objective and unbiased; and
- (b) within the expert's area or areas of expertise.

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

(3) This duty includes obligations—

- (a) to define the expert's area or areas of expertise—
  - (i) in the expert's report, and
  - (ii) when giving evidence in person;
- (b) when giving evidence in person, to draw the court's attention to any question to which the answer would be outside the expert's area or areas of expertise; and
- (c) 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.

### **Introduction of expert evidence**

**33.3.**—(1) A party who wants another party to admit as fact a summary of an expert's conclusions must serve that summary—

- (a) on the court officer and on each party from whom that admission is sought;
- (b) as soon as practicable after the defendant whom it affects pleads not guilty.

(2) A party on whom such a summary is served must—

- (a) serve a response stating—
  - (i) which, if any, of the expert's conclusions are admitted as fact, and
  - (ii) where a conclusion is not admitted, what are the disputed issues concerning that conclusion; and
- (b) serve the response—
  - (i) on the court officer and on the party who served the summary,
  - (ii) as soon as practicable, and in any event not more than 14 days after service of the summary.

(3) A party who wants to introduce expert evidence otherwise than as admitted fact must—

- (a) serve a report by the expert which complies with rule 33.4 on—

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(419) 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).

(420) 2000 c. 6.

(421) 1983 c. 20.

(422) 2003 c. 44.

- (i) the court officer, and
- (ii) each other party;
- (b) serve the report as soon as practicable, and in any event with any application in support of which that party relies on that evidence;
- (c) serve with the report notice of anything of which the party serving it is aware which might reasonably be thought capable of detracting substantially from the credibility of that expert;
- (d) 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.
- (4) Unless the parties otherwise agree or the court directs, a party may not—
  - (a) introduce expert evidence if that party has not complied with paragraph (3);
  - (b) introduce in evidence an expert report if the expert does not give evidence in person.

*[Note. A party who accepts another party's expert's conclusions may admit them as fact under section 10 of the Criminal Justice Act 1967(423).*

*Under section 81 of the Police and Criminal Evidence Act 1984(424), and under section 20(3) of the Criminal Procedure and Investigations Act 1996(425), Criminal Procedure Rules may require the disclosure of expert evidence before it is introduced as part of a party's case and prohibit its introduction without the court's permission, if it was not disclosed as required.*

*Under section 30 of the Criminal Justice Act 1988(426), an expert report is admissible in evidence whether or not the person who made it gives oral evidence, but if that person does not give oral evidence then the report is admissible only with the court's permission.]*

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

- 33.4.** Where rule 33.3(3) applies, 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,

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(423) 1967 c. 80.

(424) 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).

(425) 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).

(426) 1988 c. 33; section 30 was amended by section 47 of, and paragraph 32 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and paragraph 60 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).

- (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 the expert's own opinion;
- (g) if the expert is not able to give an opinion without qualification, state the qualification;
- (h) include such information as the court may need to decide whether the expert's opinion is sufficiently reliable to be admissible as evidence;
- (i) contain a summary of the conclusions reached;
- (j) contain a statement that the expert understands an expert's duty to the court, and has complied and will continue to comply with that duty; and
- (k) contain the same declaration of truth as a witness statement.

*[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(427). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the Criminal Justice Act 2003(428).]*

### **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
  - (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 9 of the Criminal Justice Act 1987(429); sections*

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**(427)**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 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

**(428)**2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.

**(429)**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 and 310 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, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of

31 and 40 of the Criminal Procedure and Investigations Act 1996(430); and section 8A of the Magistrates' Courts Act 1980(431).]

### **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) A co-defendant who gives instructions to the expert must, at the same time, send a copy of the instructions to each other co-defendant.

(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 extend (even after it has expired) a time limit under this Part.

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

- (a) apply when serving the report, summary or notice for which it is required; and
- (b) explain the delay.

## **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

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Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by 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.

(430) 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).

(431) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

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### Contents of this Part

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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(432).

*[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 117(1)(c) (evidence in a statement prepared for the purposes of criminal proceedings);
  - (d) 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), otherwise than as required by rule 34.2(1)(c);*
- (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(433)(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 guilty
- whichever 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, and
    - (iii) any other objection to the evidence.
- (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(434) (ruling at pre-trial hearing in a magistrates’ court), or
    - (ii) section 9 of the Criminal Justice Act 1987(435), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(436) (ruling at preparatory or other pre-trial hearing in the Crown Court).

### **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 must 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.]*

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(434) 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(435) 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 and 310 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, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by 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.

(436) 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).



### **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.

## **PART 35**

### **EVIDENCE OF BAD CHARACTER**

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#### **Contents of this Part**

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When this Part applies	rule 35.1
Content of application or notice	rule 35.2
Application to introduce evidence of a non-defendant's bad character	rule 35.3
Notice to introduce evidence of a defendant's bad character	rule 35.4
Reasons for decisions	rule 35.5
Court's power to vary requirements under this Part	rule 35.6

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#### **When this Part applies**

- 35.1.** This Part applies—
- (a) in a magistrates' court and in the Crown Court;
  - (b) where a party wants to introduce evidence of bad character, within the meaning of section 98 of the Criminal Justice Act 2003(437).

*[Note. Under section 98 of the Criminal Justice Act 2003, evidence of a person's bad character means evidence of, or of a disposition towards, misconduct on that person's part, other than evidence that—*

- (a) *has to do with the alleged facts of the offence; or*
- (b) *is evidence of misconduct in connection with the investigation or prosecution.*

*Under section 100(1) of the Criminal Justice Act 2003, evidence of a non-defendant's bad character is admissible if—*

- (a) *it is important explanatory evidence;*
- (b) *it has substantial probative value in relation to a matter which—*
  - (i) *is a matter in issue in the proceedings, and*
  - (ii) *is of substantial importance in the context of the case as a whole; or*

(c) *all parties to the proceedings agree to the evidence being admissible.*

*The section explains requirements (a) and (b). Unless the parties agree to the evidence being admissible, it may not be introduced without the court's permission.*

*Under section 101(1) of the Criminal Justice Act 2003, evidence of a defendant's bad character is admissible if—*

- (a) *all parties to the proceedings agree to the evidence being admissible;*
- (b) *the evidence is introduced by the defendant, or is given in answer to a question asked by the defendant in cross-examination which was intended to elicit that evidence;*
- (c) *it is important explanatory evidence;*
- (d) *it is relevant to an important matter in issue between the defendant and the prosecution;*
- (e) *it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;*
- (f) *it is evidence to correct a false impression given by the defendant; or*
- (g) *the defendant has made an attack on another person's character.*

*Sections 102 to 106 of the Act supplement those requirements. The court must not admit evidence under (d) or (g) if, on an application by the defendant, the court concludes that to do so would be unfair.]*

### **Content of application or notice**

**35.2.**—(1) A party who wants to introduce evidence of bad character must—

- (a) make an application under rule 35.3, where it is evidence of a non-defendant's bad character;
- (b) give notice under rule 35.4, where it is evidence of a defendant's bad character.

(2) An application or notice must—

- (a) set out the facts of the misconduct on which that party relies,
- (b) explain how that party will prove those facts (whether by certificate of conviction, other official record, or other evidence), if another party disputes them, and
- (c) explain why the evidence is admissible.

*[Note. The Practice Direction sets out forms of application and notice for use in connection with rules 35.3 and 35.4.*

*The fact that a person was convicted of an offence may be proved under—*

- (a) *section 73 of the Police and Criminal Evidence Act 1984(438)(conviction in the United Kingdom or European Union); or*
- (b) *section 7 of the Evidence Act 1851(439) (conviction outside the United Kingdom).*

*See also sections 117 and 118 of the Criminal Justice Act 2003 (admissibility of evidence contained in business and other documents).*

*Under section 10 of the Criminal Justice Act 1967(440), a party may admit a matter of fact.]*

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(438) 1984 c. 60; section 73 was amended by section 90(1) of, and paragraphs 125 and 128 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and paragraph 285 of Schedule 8 to, the Courts Act 2003 (c. 39).

(439) 1851 c. 99.

(440) 1967 c. 80.

### Application to introduce evidence of a non-defendant's bad character

**35.3.**—(1) This rule applies where a party wants to introduce evidence of the bad character of a person other than the defendant.

- (2) That party must serve an application to do so on—
  - (a) the court officer; and
  - (b) each other party.
- (3) The applicant must serve the application—
  - (a) as soon as reasonably practicable; and in any event
  - (b) not more than 14 days after the prosecutor discloses material on which the application is based (if the prosecutor is not the applicant).
- (4) A party who objects to the introduction of the evidence must—
  - (a) serve notice on—
    - (i) the court officer, and
    - (ii) each other partynot more than 14 days after service of the application; and
  - (b) in the notice explain, as applicable—
    - (i) which, if any, facts of the misconduct set out in the application that party disputes,
    - (ii) what, if any, facts of the misconduct that party admits instead,
    - (iii) why the evidence is not admissible, and
    - (iv) any other objection to the application.
- (5) 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 each party other than the applicant—
    - (i) is present, or
    - (ii) has had at least 14 days in which to serve a notice of objection;
  - (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(**441**) (ruling at pre-trial hearing in a magistrates' court), or
    - (ii) section 9 of the Criminal Justice Act 1987(**442**), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(**443**) (ruling at preparatory or other pre-trial hearing in the Crown Court).

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**(441)** 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

**(442)** 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 and 310 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, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by 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.

**(443)** 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).

*[Note. The Practice Direction sets out a form of application for use in connection with this rule. See also rule 35.5 (reasons for decisions must be given in public).]*

**Notice to introduce evidence of a defendant's bad character**

**35.4.**—(1) This rule applies where a party wants to introduce evidence of a defendant's bad character.

- (2) That party must serve notice on—
  - (a) the court officer; and
  - (b) each other party.
- (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 co-defendant who wants to introduce such evidence must serve the notice—
  - (a) as soon as reasonably practicable; and in any event
  - (b) not more than 14 days after the prosecutor discloses material on which the notice is based.
- (5) A party who objects to the introduction of the evidence must—
  - (a) apply to the court to determine the objection;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party
 not more than 14 days after service of the notice; and
  - (c) in the application explain, as applicable—
    - (i) which, if any, facts of the misconduct set out in the notice that party disputes,
    - (ii) what, if any, facts of the misconduct that party admits instead,
    - (iii) why the evidence is not admissible,
    - (iv) why it would be unfair to admit the evidence, and
    - (v) any other objection to the notice.
- (6) 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 (ruling at pre-trial hearing in a magistrates' court), or
    - (ii) section 9 of the Criminal Justice Act 1987, or section 31 or 40 of the Criminal Procedure and Investigations Act 1996 (ruling at preparatory or other pre-trial hearing in the Crown Court).

- (7) A party entitled to receive a notice 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.*

*See also rule 35.5 (reasons for decisions must be given in public).*

*If notice is not given as this rule requires, then under section 111(4) of the Criminal Justice Act 2003 the court may take the failure into account in exercising its powers to order costs.]*

### **Reasons for decisions**

**35.5.** The court must announce at a hearing in public (but in the absence of the jury, if there is one) the reasons for a decision—

- (a) to admit evidence as evidence of bad character, or to refuse to do so; or
- (b) to direct an acquittal or a retrial under section 107 of the Criminal Justice Act 2003.

*[Note. See section 110 of the Criminal Justice Act 2003.]*

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

**35.6.—(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 a requirement for notice to introduce evidence of a defendant’s bad character.
- (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.

## **PART 36**

### **EVIDENCE OF A COMPLAINANT’S PREVIOUS SEXUAL BEHAVIOUR**

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#### **Contents of this Part**

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When this Part applies	rule 36.1
Application for permission to introduce evidence or cross-examine	rule 36.2
Content of application	rule 36.3
Service of application	rule 36.4
Reply to application	rule 36.5
Application for special measures	rule 36.6
Court’s power to vary requirements under this Part	rule 36.7

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*[Note: Section 41 of the Youth Justice and Criminal Evidence Act 1999(444) prohibits evidence or cross-examination about the sexual behaviour of a complainant of a sexual offence, subject to exceptions.*

See also—

- (a) *section 42 of the 1999 Act(445), which among other things defines ‘sexual behaviour’ and ‘sexual offence’;*
- (b) *section 43(446), which among other things, requires—*
  - (i) *an application under section 41 to be heard in private and in the absence of the complainant,*
  - (ii) *the reasons for the court’s decision on an application to be given in open court, and*
  - (iii) *the court to state in open court the extent to which evidence may be introduced or questions asked; and*
- (c) *section 34, which prohibits cross-examination by a defendant in person of the complainant of a sexual offence.]*

### **When this Part applies**

**36.1.** This Part applies in magistrates’ courts and in the Crown Court where a defendant wants to—

- (a) introduce evidence; or
- (b) cross-examine a witness,

about a complainant’s sexual behaviour despite the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999.

### **Application for permission to introduce evidence or cross-examine**

**36.2.** The defendant must apply for permission to do so—

- (a) in writing; and
- (b) not more than 28 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996(447) (disclosure by prosecutor).

*[Note. See Part 3 for the court’s general powers to consider an application with or without a hearing and to give directions.*

*At a pre-trial hearing a court may make binding rulings about the admissibility of evidence and about questions of law under section 9 of the Criminal Justice Act 1987(448); sections 31 and 40*

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(444) 1999 c. 23.

(445) 1999 c. 23; section 42 was amended by paragraph 73 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(446) 1999 c. 23; section 43(3) was amended by section 109(1) of, and paragraph 384(g) of Schedule 8 to, the Courts Act 2003 (c. 39).

(447) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(448) 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 and 310 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, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by 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.

of the Criminal Procedure and Investigations Act 1996(449); and section 8A of the Magistrates' Courts Act 1980(450).]

### Content of application

**36.3.** The application must—

- (a) identify the issue to which the defendant says the complainant's sexual behaviour is relevant;
- (b) give particulars of—
  - (i) any evidence that the defendant wants to introduce, and
  - (ii) any questions that the defendant wants to ask;
- (c) identify the exception to the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999 on which the defendant relies; and
- (d) give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

### Service of application

**36.4.** The defendant must serve the application on the court officer and all other parties.

### Reply to application

**36.5.** A party who wants to make representations about an application under rule 36.2 must—

- (a) do so in writing not more than 14 days after receiving it; and
- (b) serve those representations on the court officer and all other parties.

### Application for special measures

**36.6.** If the court allows an application under rule 36.2 then—

- (a) a party may apply not more than 14 days later for a special measures direction or for the variation of an existing special measures direction; and
- (b) the court may shorten the time for opposing that application.

*[Note. Special measures to improve the quality of evidence given by certain witnesses may be directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999 and varied under section 20(451). An application for a special measures direction may be made by a party under Part 29 or the court may make a direction on its own initiative. Rule 29.13(2) sets the usual time limit (14 days) for opposing a special measures application.]*

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

**36.7.** The court may shorten or extend (even after it has expired) a time limit under this Part.

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(449) 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).

(450) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(451) 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39).

## 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 of a witness in writing	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
Statutory declaration of ignorance of proceedings	rule 37.16
Setting aside a conviction or varying a costs, etc. order	rule 37.17

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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.]*

#### When this Part applies

- 37.1.**—(1) This Part applies in a magistrates' court where—
- (a) the court tries a case;
  - (b) the defendant pleads guilty;
  - (c) under section 14 of the Magistrates' Courts Act 1980(452), the defendant makes a statutory declaration of not having found out about the case until after the trial began;
  - (d) under section 142 of the 1980 Act(453), the court can—
    - (i) set aside a conviction, or
    - (ii) vary or rescind a costs order, or an order to which Part 50 applies (Civil behaviour order after verdict or finding).
- (2) Where the defendant is under 18, in this Part—

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(452) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

(453) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).



- (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(454). In relation to a defendant under 18, they are contained in sections 45, 46 and 48 of the Children and Young Persons Act 1933(455).*

*See also section 18 of the Children and Young Persons Act 1963(456), section 47 of the Crime and Disorder Act 1998(457) and section 9 of the Powers of Criminal Courts (Sentencing) Act 2000(458).*

*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, 14, 27A, 121 and 148 of the Magistrates' Courts Act 1980(459) and the Justices of the Peace (Size and Chairmanship of Bench) Rules 2005(460), the court—*

- (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);*

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**(454)** 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 Act 2003 (c. 44).

**(455)** 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); 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); and 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).

**(456)** 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).

**(457)** 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), section 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 59 of the Schedule to S.I. 2005/886.

**(458)** 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to S.I. 2005/886.

**(459)** 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 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 27A was inserted by section 46 of the Courts Act 2003 (c. 39). 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). Section 148 was amended by section 109 of, and paragraph 248 of Schedule 8 to, the Courts Act 2003 (c. 39).

**(460)** S.I. 2005/553.

- (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(461), 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(462), where two or more justices are present one may act on behalf of all.*

*Section 59 of the Children and Young Persons Act 1933(463) 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.*

*Under section 14 of the Magistrates' Courts Act 1980, proceedings which begin with a summons or requisition will become void if the defendant, at any time during or after the trial, makes a statutory declaration that he or she did not know of them until a date after the trial began. See rule 37.16.*

*Under section 142 of the Magistrates' Courts Act 1980—*

- (a) *where a defendant is convicted by a magistrates' court, the court may order that the case should be heard again by different justices; and*
- (b) *the court may vary or rescind an order which it has made when dealing with a convicted defendant,*

*if in either case it appears to the court to be in the interests of justice to do so. See rule 37.17.*

*See also Part 44 (Breach, revocation and amendment of community and other orders). 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,

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(461) S.I. 2007/1611.

(462) 1980 c. 43; section 150 has been amended but none is relevant to the note to this rule.

(463) 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).

- (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,
  - (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(464) 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(465) (identification of any defendant or witness under 18);*
- (b) *section 4(2) of the Contempt of Court Act 1981(466) (information that may prejudice the administration of justice);*
- (c) *section 11 of the 1981 Act (information about a matter withheld from the public); and*
- (d) *section 46 of the Youth Justice and Criminal Evidence Act 1999(467) (identification of an adult witness).*

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

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**(464)** 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).

**(465)** 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) and sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48). It is further amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

**(466)** 1981 c. 49.

**(467)** 1999 c. 23.

- (a) *section 49 of the Children and Young Persons Act 1933(468)(identification of any defendant or witness under 18 involved in proceedings in a youth court);*
- (b) *section 1 of the Sexual Offences (Amendment) Act 1992(469)(identification of the complainant of a sexual offence); and*
- (c) *section 47 of the Youth Justice and Criminal Evidence Act 1999(470)(special measures direction or application for such a direction).*

*Under section 34A of the Children and Young Persons Act 1933(471), 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;

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**(468)** 1933 c. 12; section 49 was substituted by section 49 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by 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), paragraph 2 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 208 and 210 of, and paragraphs 15 and 19 of Schedule 21, and Schedule 23 to, the Legal Services Act 2007 (c. 29) and section 6 of, and paragraphs 1, 3 and 100 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further 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 5 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43) and sections 6 and 149 of, and paragraphs 1 and 3 of Schedule 4 and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from dates to be appointed.

**(469)** 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).

**(470)** 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).

**(471)** 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).

- (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;
  - (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 prosecutor may make final representations in support of the prosecution case, where—
    - (i) the defendant is represented by a legal representative, or
    - (ii) whether represented or not, the defendant has introduced evidence other than his or her own; and
  - (h) the defendant may make final representations in support of the defence case.
- (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(472).*

*Under section 37(3) of the Mental Health Act 1983(473), 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(474), 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.*

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(472) 1980 c. 43.

(473) 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). 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).

(474) 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.

*Section 2 of the Criminal Procedure Act 1865(475) and section 3 of the Criminal Evidence Act 1898(476) restrict the circumstances in which the prosecutor may make final representations without the court's permission.*

*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;
- (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.

(5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) 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(477) 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(478).*

*Sections 1, 3, 5 and 6 of the Oaths Act 1978(479) 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*

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(475) 1865 c. 18; section 2 was amended by section 10(2) of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58).

(476) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).

(477) 1999 c. 23.

(478) 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).

(479) 1978 c. 19.

Act 1963(480) 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, 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,
  - (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)(481);
- (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(482), 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(483), 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(484), or by live link under section 32 of the Criminal Justice Act 1988(485) or section 51 of the Criminal Justice Act 2003. Parts 29 and 30 contain relevant rules.]

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(480) 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).

(481) 1865 c. 18.

(482) 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).

(483) 2003 c. 44.

(484) 1999 c. 23.

(485) 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 S.I. 2004/2035.

### **Evidence of a witness in writing**

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

- (a) Part 27 (Witness statements);
  - (b) Part 33 (Expert evidence); or
  - (c) Part 34 (Hearsay evidence).
- (2) If the court admits such evidence—
- (a) each relevant part of the statement must be read or summarised aloud; or
  - (b) the court must read the statement and its gist must be summarised aloud.

*[Note. See Parts 27, 33 and 34, and the other legislation to which those Parts apply. The admissibility of evidence that a party introduces is governed by rules of evidence.]*

### **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(486). 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(487).]*

### **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(488);
- (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,

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(486) 1967 c. 80.

(487) 1980 c. 43.

(488) 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).



- (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.
- (3) A defendant who wants to withdraw such a notice must notify the court officer in writing before the hearing date.
- (4) If the defendant does not withdraw the notice before the hearing date, then on or after that date—
  - (a) to establish the facts of the offence and other information about the defendant, the court may take account only of the material and any representations served under this rule (and rule 37.10(3) to (9) inclusive must be read accordingly);
  - (b) unless the court otherwise directs, the prosecutor need not attend; and
  - (c) the court may accept such a guilty plea and pass sentence in the defendant's absence.
- (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(489). 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(490) 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(491) 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.*

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**(489)** 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).

**(490)** 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

**(491)** 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, S.I. 2008/1424 and S.I. 2009/2879). It 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).

*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
  - (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, including any statement of the effect of the offence on the victim, the victim’s family or others; 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 sentencing guidelines, or guideline cases.
- (4) The defendant must provide details of financial circumstances—
- (a) in any form required by the court officer;

- (b) by any date directed by the court or by the court officer.
- (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 must—
    - (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
    - (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 court must—
  - (a) as a general rule, pass sentence there and then;
  - (b) when passing sentence, explain the reasons for deciding on that sentence, unless neither the defendant nor any member of the public is present;
  - (c) when passing sentence, explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence, unless—
    - (i) the defendant is absent, or
    - (ii) the defendant’s ill-health or disorderly conduct makes such an explanation impracticable;
  - (d) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and
  - (e) consider exercising any power it has to make a costs or other order.
- (10) Despite the general rule—

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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- (a) the court must adjourn the hearing if the defendant is absent, the case started with a summons or requisition, and either—
  - (i) the court considers passing a custodial sentence, or
  - (ii) 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(492), and sections 143, 158, 164, 172 and 174 of the Criminal Justice Act 2003(493).*

*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(494), the court may require a defendant to attend a sentencing hearing by live link.*

*Under section 162 of the Criminal Justice Act 2003(495), the court may require a defendant who is an individual to provide a statement of financial circumstances if the defendant—*

- (a) *notice of guilty plea, where rule 37.8 applies; or*
- (b) *is convicted.*

*Under section 20A of the Criminal Justice Act 1991(496), 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(497), 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.*

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**(492)** 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 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).

**(493)** 2003 c. 44; section 143 was amended by section 378 of, and paragraph 216 of Schedule 16 to the Armed Forces Act 2006 (c. 52). 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, 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 substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(494)** 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), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

**(495)** 2003 c. 44.

**(496)** 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).

**(497)** 2003 c. 44; section 156 was 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) and paragraphs 8 and 13 of Schedule 19, and paragraphs 20 and 22 of Schedule 21, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

Under section 159 of the Criminal Justice Act 2003(498), 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(499).

The Sentencing Council may issue sentencing guidelines under section 120 of the Coroners and Justice Act 2009(500).

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(501). 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.

Under section 174(4) of the Criminal Justice Act 2003(502), Criminal Procedure Rules may prescribe cases in which there do not apply the court's usual duties to give reasons and explanations. Written notice of the effect of some sentences is required by rule 42.2 (notice of requirements of suspended sentence or community, etc. order), rule 42.3 (notice of statutory notification requirements) and rule 52.2 (notice of fine or other financial order).

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(503).

Under section 1 of the 2000 Act(504), 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

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(498)2003 c. 44; section 159 was amended by section 208 of, and paragraphs 145 and 147 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(499)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 S.I. 2005/886.

(500)2009 c. 25.

(501)1988 c. 53; section 34 was amended by section 29(1), (2) and (3) of the Road Traffic Act 1991 (c. 40), section 3(2) of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165(1) of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25(2) of the Road Safety Act 2006 (c. 49), article 2(1)(b) of S.I. 2007/3480 and paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 177(1) of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) and section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22), with effect from a date to be appointed.

(502)2003 c. 44; section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(503)2000 c. 6; sections 3, 4 and 6 were amended, and sections 3A, 3B, 3C and 4A inserted, by paragraphs 21, 22A, 23, 24, 25 and 28 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 3A was amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 7 and 8 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 3C was amended by paragraphs 7 and 9 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 6 was further amended by paragraphs 90 and 91 of Schedule 32, and Parts 7 and 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(504)2000 c. 6; section 1 was substituted, together with sections 1A to 1D, by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44) and amended by article 3 of, and paragraph 14 of Schedule 1 to, S.I. 2008/912.

- (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 must 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).
- (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, 15 and 16 of the Magistrates’ Courts Act 1980(505).*

*Under section 27 of the 1980 Act, 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 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(506), 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(507), the court has power to issue a warrant for the arrest of an absent defendant, instead of proceeding, where—*

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**(505)** 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

**(506)** 1976 c. 63.

**(507)** 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).

- (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.]>*

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

**37.12.**—(1) A party who introduces a document in evidence, or who otherwise uses a document in presenting that party's case, must provide a copy for—

- (a) each other party;
- (b) any witness that party wants to refer to that document;
- (c) the court; and
- (d) the justices' legal adviser.

(2) Unless the court otherwise directs, on application or on its own initiative, the court officer must provide for the court—

- (a) any copy received under paragraph (1) before the hearing begins; and
- (b) a copy of the court officer's record of—
  - (i) information supplied by each party for the purposes of case management, including any revision of information previously supplied,
  - (ii) each pre-trial direction for the management of the case,
  - (iii) any pre-trial decision to admit evidence,
  - (iv) any pre-trial direction about the giving of evidence, and
  - (v) any admission to which rule 37.6 applies.

*[Note. A written witness statement to which Part 27 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 27.4 refers.*

*An expert report to which Part 33 applies may only be introduced in evidence if it has been served in accordance with rule 33.3.*

*See also rule 34.3 for the procedure where a party objects to the introduction of hearsay evidence, including such evidence in a document, and rules 35.3 and 35.4 for the procedure where a party objects to the introduction of evidence of bad character.*

*A direction about the giving of evidence may be made on an application to which Part 29 applies (measures to assist a witness or defendant to give evidence).]*

### **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—
  - (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(508) and section 22 of the Welsh Language Act 1993(509).*

*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) before the hearing begins, by reference to what is provided for the court under rule 37.12 draw the court's attention to—
    - (i) what the prosecutor alleges,
    - (ii) what the parties say is agreed,
    - (iii) what the parties say is in dispute, and
    - (iv) what the parties say about how each expects to present the case, especially where that may affect its duration and timetabling;
  - (b) whenever necessary, give the court legal advice and—
    - (i) if necessary, attend the members of the court outside the courtroom to give such advice, but
    - (ii) inform the parties of any such advice given outside the courtroom; and
  - (c) assist the court, where appropriate, in the formulation of its reasons and the recording of those reasons.
- (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(510) provides for the functions of a justices' legal adviser. See also section 12 of the Magistrates' Courts Act 1980(511).]*

### **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—
  - (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(512), 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,
  - (ii) any declaration served under rule 37.16 that the defendant did not know about the case;
- (f) serve on the prosecutor notice of any hearing date arranged in consequence of such a declaration, unless—
  - (i) the prosecutor was present when that was arranged, or
  - (ii) the court otherwise directs;
- (g) 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
- (h) give the court such other assistance as it requires.

*[Note. See sections 10, 11 and 12 of the Magistrates' Courts Act 1980(513).*

*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 5, the magistrates' court officer must record in the court register details of a case and of the court's decisions.]*

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(510) 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).

(511) 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).

(512) 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).

(513) 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).

### Statutory declaration of ignorance of proceedings

- 37.16.**—(1) This rule applies where—
- (a) the case started with—
    - (i) an information and summons, or
    - (ii) a written charge and requisition; and
  - (b) under section 14 of the Magistrates’ Courts Act 1980(**514**), the defendant makes a statutory declaration of not having found out about the case until after the trial began.
- (2) The defendant must serve such a declaration on the court officer—
- (a) not more than 21 days after the date of finding out about the case; or
  - (b) with an explanation for the delay, if serving it more than 21 days after that date.
- (3) The court may extend that time limit, even after it has expired—
- (a) at a hearing, in public or in private; or
  - (b) without a hearing.
- (4) Where the defendant serves such a declaration, in time or with an extension of time in which to do so—
- (a) the court must treat the summons or requisition and all subsequent proceedings as void (but not the information or written charge with which the case began);
  - (b) if the defendant is present when the declaration is served, the rules in this Part apply as if the defendant had been required to attend the court on that occasion;
  - (c) if the defendant is absent when the declaration is served—
    - (i) the rules in Part 7 apply (Starting a prosecution in a magistrates’ court) as if the prosecutor had just served an information in the same terms as the original information or written charge;
    - (ii) the court may exercise its power to issue a summons in accordance with those rules; and
    - (iii) except for rule 37.8 (Written guilty plea: special rules), the rules in this Part then apply.

*[Note. Under section 14 of the Magistrates’ Courts Act 1980, proceedings which begin with a summons or requisition will become void if the defendant, at any time during or after the trial, makes a statutory declaration that he or she did not know of them until a date after the trial began.*

*Under section 14(3) of the 1980 Act, the court which decides whether or not to extend the time limit for serving a declaration under this rule may comprise a single justice.*

*The Practice Direction sets out a form of declaration for use in connection with this rule.]*

### Setting aside a conviction or varying a costs etc. order

- 37.17.**—(1) This rule applies where under section 142 of the Magistrates’ Courts Act 1980(**515**), the court can—
- (a) set aside a conviction, or
  - (b) vary or rescind—
    - (i) a costs order, or

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**(514)** 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

**(515)** 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

- (ii) an order to which Part 50 applies (Civil behaviour order after verdict or finding).
- (2) The court may exercise its power—
  - (a) on application by a party, or on its own initiative;
  - (b) at a hearing, in public or in private, or without a hearing.
- (3) The court must not exercise its power in a party's absence unless—
  - (a) the court makes a decision proposed by that party;
  - (b) the court makes a decision to which that party has agreed in writing; or
  - (c) that party has had an opportunity to make representations at a hearing (whether or not that party in fact attends).
- (4) A party who wants the court to exercise its power must—
  - (a) apply in writing as soon as reasonably practicable after the conviction or order that that party wants the court to set aside, vary or rescind;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (c) in the application—
    - (i) explain why, as appropriate, the conviction should be set aside, or the order varied or rescinded,
    - (ii) specify any variation of the order that the applicant proposes,
    - (iii) identify any witness that the defendant wants to call, and any other proposed evidence,
    - (iv) say whether the defendant waives legal professional privilege, giving any relevant name and date, and
    - (v) if the application is late, explain why.
- (5) The court may—
  - (a) extend (even after it has expired) the time limit under paragraph (4), unless the court's power to set aside the conviction, or vary the order, can no longer be exercised;
  - (b) allow an application to be made orally.

*[Note. Under section 142 of the Magistrates' Courts Act 1980—*

- (a) *where a defendant is convicted by a magistrates' court, the court may order that the case should be heard again by different justices; and*
- (b) *the court may vary or rescind an order which it has made when dealing with a convicted defendant,*

*if in either case it appears to the court to be in the interests of justice to do so.*

*The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that conviction or order.*

*See also rule 42.4 (Variation of sentence), which applies to an application under section 142 of the 1980 Act to vary or rescind a sentence.]*

## PART 38

### TRIAL AND SENTENCE IN THE CROWN COURT

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

#### When this Part applies

**38.1.** This Part applies in the Crown Court where—

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

*[Note. The Crown Court's powers to try an allegation of an offence are contained in sections 45 and 46 of the Senior Courts Act 1981(516).*

*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 the Crown Court must try—*

- (i) *an offence classified as one that can be tried only in the Crown Court (in other legislation, described as triable only on indictment), 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 the Crown Court); and*
- (b) *the defendant's age (and the general rule 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, unless the offence is—*
  - (i) *one of homicide,*
  - (ii) *one for which a convicted adult could be imprisoned for 14 years or more,*
  - (iii) *one of certain specified offences involving firearms, or*
  - (iv) *one of certain specified sexual offences).*

*See sections 17 and 24 of the Magistrates' Courts Act 1980(517) and section 51A of the Crime and Disorder Act 1998(518).*

*Under section 34A of the Children and Young Persons Act 1933(519), 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 2 contains rules allowing a parent, guardian or other supporting adult to help a defendant under 18.]*

## **General powers and requirements**

**38.2.**—(1) Where this Part applies, the general rule is that—

- (a) the trial must be in public, but that is subject to the court's power to—
  - (i) impose a restriction on reporting what takes place at a public hearing, or public access to what otherwise would be a public hearing,
  - (ii) withhold information from the public during a public hearing, or
  - (iii) order a trial in private;
- (b) the court must not proceed if the defendant is absent, unless the court is satisfied that—
  - (i) the defendant has waived the right to attend, and
  - (ii) the trial will be fair despite the defendant's absence;
- (c) the court must not sentence the defendant to imprisonment or detention unless—
  - (i) the defendant has a legal representative,

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**(517)** 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38).

**(518)** 1998 c. 37; section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(519)** 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).

- (ii) the defendant has been sentenced to imprisonment or detention on a previous occasion in the United Kingdom, or
- (iii) the defendant could have been represented under legal aid but for a failure to apply, or the withdrawal of legal aid because of the defendant's conduct or financial resources.

(2) The court may adjourn the trial at any stage.

*[Note. See section 83 of the Powers of Criminal Courts (Sentencing) Act 2000.*

*Part 16 contains rules about reporting, etc. restrictions. For a list of the court's powers to impose reporting and access restrictions, see the note to rule 16.1.]*

### **Application for ruling on procedure, evidence or other question of law**

**38.3.**—(1) This rule applies to an application—

- (a) about—
  - (i) case management, or any other question of procedure, or
  - (ii) the introduction or admissibility of evidence, or any other question of law;
- (b) that has not been determined before the trial begins.

(2) The application is subject to any other rule that applies to it (for example, as to the time and form in which the application must be made).

(3) Unless the court otherwise directs, the application must be made, and the court's decision announced, in the absence of the jury (if there is one).

*[Note. See also rule 3.13 (Pre-trial hearings).]*

### **Procedure on plea of guilty**

**38.4.**—(1) This rule applies if—

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

(2) The court need not receive evidence unless rule 38.16(4) applies (determination of facts for sentencing).

*[Note. See also rule 3.24 (Arraigning the defendant on the indictment).]*

### **Application to vacate a guilty plea**

**38.5.**—(1) This rule applies where a party wants the court to vacate a guilty plea.

(2) Such a party must—

- (a) apply in writing—
  - (i) as soon as practicable after becoming aware of the grounds for doing so, and
  - (ii) in any event, before the final disposal of the case, by sentence or otherwise; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the prosecutor.

(3) Unless the court otherwise directs, the application must—

- (a) explain why it would be unjust for the guilty plea to remain unchanged;
- (b) indicate what, if any, evidence the applicant wishes to call;

- (c) identify any proposed witness; and
- (d) indicate whether legal professional privilege is waived, specifying any material name and date.

### Selecting the jury

**38.6.**—(1) This rule—

- (a) applies where—
  - (i) the defendant pleads not guilty,
  - (ii) the defendant declines to enter a plea and the court treats that as a not guilty plea, or
  - (iii) the court determines that the defendant is not fit to be tried;
- (b) does not apply where—
  - (i) the court orders a trial without a jury because of a danger of jury tampering or where jury tampering appears to have taken place, or
  - (ii) the court tries without a jury counts on an indictment after a trial of sample counts with a jury.

(2) The court must select a jury to try the case from the panel, or part of the panel, of jurors summoned by the Lord Chancellor to attend at that time and place.

(3) Where it appears that too few jurors to constitute a jury will be available from among those so summoned, the court—

- (a) may exercise its own power to summon others in the court room, or in the vicinity, up to the number likely to be required, and add their names to the panel summoned by the Lord Chancellor; but
- (b) must inform the parties, if they are absent when the court exercises that power.

(4) The court must select the jury by drawing at random each juror's name from among those so summoned and—

- (a) announcing each name so drawn; or
- (b) announcing an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.

(5) If too few jurors to constitute a jury are available from the panel after all their names have been drawn, the court may—

- (a) exercise its own power to summon others in the court room, or in the vicinity, up to the number required; and
- (b) announce—
  - (i) the name of each person so summoned, or
  - (ii) an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.

(6) The jury the court selects—

- (a) must comprise no fewer than 12 jurors;
- (b) may comprise as many as 14 jurors to begin with, where the court expects the trial to last for more than 4 weeks.

(7) Where the court selects a jury comprising more than 12 jurors, the court must explain to them that—

- (a) the purpose of selecting more than 12 jurors to begin with is to fill any vacancy or vacancies caused by the discharge of any of the first 12 before the prosecution evidence begins;

- (b) any such vacancy or vacancies will be filled by the extra jurors in order of their selection from the panel;
  - (c) the court will discharge any extra juror or jurors remaining by no later than the beginning of the prosecution evidence; and
  - (d) any juror who is discharged for that reason then will be available to be selected for service on another jury, during the period for which that juror has been summoned.
- (8) Each of the 12 or more jurors the court selects—
- (a) must take an oath or affirm; and
  - (b) becomes a full jury member until discharged.

(9) The oath or affirmation must be in these terms, or in any corresponding terms that the juror declares to be binding on him or her—

“I swear by Almighty God [*or I do solemnly, sincerely and truly declare and affirm*] that I will faithfully try the defendant and give a true verdict according to the evidence.”

*[Note. See sections 2, 5, 6, and 11 of the Juries Act 1974(520). See also rule 38.7 (Discharging jurors).*

*Under sections 44 and 46 of the Criminal Justice Act 2003(521), the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004(522), the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.*

*Sections 1, 3, 4, 5 and 6 of the Oaths Act 1978(523) provide for the taking of oaths and the making of affirmations, and for the words that must be used.*

*Part 39 contains other rules about jurors.]*

### **Discharging jurors**

**38.7.—**(1) The court may exercise its power to discharge a juror at any time—

- (a) after the juror completes the oath or affirmation; and
- (b) before the court discharges the jury.

(2) No later than the beginning of the prosecution evidence, if the jury then comprises more than 12 jurors the court must discharge any in excess of 12 in reverse order of their selection from the panel.

(3) The court may exercise its power to discharge the jury at any time—

- (a) after each juror has completed the oath or affirmation; and
- (b) before the jury has delivered its verdict on each offence charged in the indictment.

(4) The court must exercise its power to discharge the jury when, in respect of each offence charged in the indictment, either—

- (a) the jury has delivered its verdict on that offence; or

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**(520)** 1974 c. 23; section 2 was amended by section 61 of the Administration of Justice Act 1982 (c. 53) and Part 10 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). Section 5 was amended by section 15 of, and paragraphs 77 and 78 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). Section 6 was amended by paragraph 45 of Schedule 15 to the Criminal Justice Act 1988 (c. 33). Section 11 was amended by section 58 of, and paragraph 8 of Schedule 10 and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

**(521)** 2003 c. 44.

**(522)** 2004 c. 28.

**(523)** 1978 c. 19.



- (b) the court has discharged the jury from reaching a verdict.

[*Note. See sections 16 and 18 of the Juries Act 1974(524).*]

### **Objecting to jurors**

**38.8.**—(1) A party who objects to the panel of jurors must serve notice explaining the objection on the court officer and on the other party before the first juror’s name or number is drawn.

- (2) A party who objects to the selection of an individual juror must—

- (a) tell the court of the objection—
  - (i) after the juror’s name or number is announced, and
  - (ii) before the juror completes the oath or affirmation; and
- (b) explain the objection.

(3) A prosecutor who exercises the prosecution right without giving reasons to prevent the court selecting an individual juror must announce the exercise of that right before the juror completes the oath or affirmation.

- (4) The court must determine an objection under paragraph (1) or (2)—

- (a) at a hearing, in public or in private; and
- (b) in the absence of the jurors, unless the court otherwise directs.

[*Note. See section 29 of the Juries Act 1825(525) and section 12 of the Juries Act 1974(526).*]

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

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

- (a) the defendant pleads not guilty; or
- (b) the defendant declines to enter a plea and the court treats that as a not guilty plea.

- (2) In the following sequence—

- (a) where there is a jury, the court must—
  - (i) inform the jurors of each offence charged in the indictment to which the defendant pleads not guilty, and
  - (ii) explain to the jurors that it is their duty, after hearing the evidence, to decide whether the defendant is guilty or not guilty of each offence;
- (b) the prosecutor may summarise the prosecution case;
- (c) the prosecutor must introduce the evidence on which the prosecution case relies;
- (d) subject to paragraph (3), at the end of the prosecution evidence, on the defendant’s application or on its own initiative, the court—
  - (i) may direct the jury (if there is one) to 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;
- (e) subject to paragraph (4), at the end of the prosecution evidence, the court must ask whether the defendant intends to give evidence in person and, if the answer is ‘no’, then the court

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(524) 1974 c. 23; section 16 was amended by sections 121 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

(525) 1825 c. 50; section 29 was amended by section 40 of, and paragraph 3 of Schedule 4 to, the Courts Act 1971 (c. 23). There are other amendments not relevant to this rule.

(526) 1974 c. 23; section 12 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—

- (i) the right to give evidence in person, and
- (ii) that if the defendant does not give evidence in person, or refuses to answer a question while giving evidence, the court may draw such inferences as seem proper;
- (f) the defendant may summarise the defence case, if he or she intends to call at least one witness other than him or herself to give evidence in person about the facts of the case;
- (g) in this order (or in a different order, if the court so directs) the defendant may—
  - (i) give evidence in person,
  - (ii) call another witness, or witnesses, to give evidence in person, and
  - (iii) introduce any other evidence;
- (h) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);
- (i) the prosecutor may make final representations, where—
  - (i) the defendant has a legal representative,
  - (ii) the defendant has called at least one witness, other than the defendant him or herself, to give evidence in person about the facts of the case, or
  - (iii) the court so permits; and
- (j) the defendant may make final representations.

(3) Paragraph (2)(d) does not apply in relation to a charge of murder, manslaughter, attempted murder, or causing harm contrary to section 18 or 20 of the Offences against the Person Act 1861<sup>(527)</sup> until the court has heard all the evidence (including any defence evidence), where the defendant is charged with—

- (a) any of those offences; and
- (b) an offence of causing or allowing a child or vulnerable adult to die or to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004<sup>(528)</sup>.

(4) Paragraph (2)(e) does not apply where it appears to the court that, taking account of all the circumstances, the defendant's physical or mental condition makes it undesirable for the defendant to give evidence in person.

(5) Where there is more than one defendant, this rule applies to each in the order their names appear in the indictment, or in an order directed by the court.

(6) Unless the jury (if there is one) has retired to consider its verdict, the court may allow a party to introduce evidence, or make representations, after that party's opportunity to do so under paragraph (2).

(7) Unless the jury has already reached a verdict on a count, the court may exercise its power to—

- (a) discharge the jury from reaching a verdict on that count;
- (b) direct the jury to acquit the defendant on that count; or
- (c) invite the jury to convict the defendant, if the defendant pleads guilty to the offence charged by that count.

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<sup>(527)</sup> 1861 c. 100; section 18 was amended by the Statute Law Revision Act 1892 (c. 19), the Statute Law Revision (No 2) Act 1893 (c. 54) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 20 was amended by the Statute Law Revision Act 1892 (c. 19).

<sup>(528)</sup> 2004 c. 28; section 5 was amended by section 1 of the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4).

[Note. See also rule 3.24 (Arraigning the defendant on the indictment).

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

Under section 35 of the Criminal Justice and Public Order Act 1994(529), 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 38.9(2)(e) and (4) is prescribed by that section.

Section 2 of the Criminal Evidence Act 1898(530) restricts the circumstances in which the defendant may summarise the defence case before introducing evidence.

Section 79 of the Police and Criminal Evidence Act 1984(531) requires a defendant who wishes to give evidence in person to do so before calling any other witness, unless the court otherwise permits.

Section 2 of the Criminal Procedure Act 1865(532) and section 3 of the Criminal Evidence Act 1898(533) restrict the circumstances in which the prosecutor may make final representations without the court's permission. See also section 1 of the Criminal Procedure (Right of Reply) Act 1964(534).

The procedure set out in rule 38.9(3) is prescribed by sections 6 and 6A of the Domestic Violence, Crime and Victims Act 2004(535).

Under section 17 of the Criminal Justice Act 1967(536), the court may direct the jury to acquit where the prosecutor offers no evidence.

See rule 38.14 for the procedure on taking the verdict and rule 38.16 for the procedure if the court convicts the defendant.]

## **Defendant unfit to plead**

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

- (a) it appears to the court, on application or on its own initiative, that the defendant may not be fit to be tried; and
  - (b) the defendant has not by then been acquitted of each offence charged by the indictment.
- (2) The court—
- (a) must exercise its power to decide, without a jury, whether the defendant is fit to be tried;
  - (b) may postpone the exercise of that power until immediately before the opening of the defence case.
- (3) Where the court determines that the defendant is not fit to be tried—
- (a) the court must exercise its power to appoint a person to put the case for the defence, taking account of all the circumstances and in particular—
    - (i) the willingness and suitability (including the qualifications and experience) of that person,

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(529) 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) and paragraphs 62 and 63 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(530) 1898 c. 36.

(531) 1984 c. 60.

(532) 1865 c. 18; section 2 was amended by section 10(2) of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58).

(533) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).

(534) 1964 c. 34; section 1 was amended by section 1 of, and the Schedule to, the Statute Law (Repeals) Act 1974 (c. 22).

(535) 2004 c. 28; section 6 was amended by section 3 of, and paragraphs 7 and 8 of the Schedule to, the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4) and section 6A was inserted by section 2 of that Act.

(536) 1967 c. 80; section 17 was amended by paragraph 42 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

- (ii) the nature and complexity of the case,
- (iii) any advantage of continuity of representation, and
- (iv) the defendant's wishes and needs;
- (b) the court must select a jury, if none has been selected yet; and
- (c) rule 38.9 (Procedure on plea of not guilty) applies, if the steps it lists have not already been taken, except that—
  - (i) everything which that rule requires to be done by the defendant may be done instead by the person appointed to put the case for the defence,
  - (ii) under rule 38.9(2)(a), the court must explain to the jurors that their duty is to decide whether or not the defendant did the act or made the omission charged as an offence, not whether the defendant is guilty of that offence, and
  - (iii) rule 38.9(2)(e) does not apply (warning of consequences of defendant not giving evidence).

*[Note. See sections 4 and 4A of the Criminal Procedure (Insanity) Act 1964(537).*

*Under section 4 of the 1964 Act, the court must not determine the defendant's fitness to be tried except on the evidence of two or more registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. Under section 4A, if satisfied that the defendant did the act or made the omission charged as an offence the jury must make a finding to that effect, and if not so satisfied must acquit the defendant.]*

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

**38.11.**—(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;
- (b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and
- (c) a witness' address—
  - (i) must not be given in public unless the address is relevant to an issue in the case,
  - (ii) may be given in writing to the court, parties and jury.

(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 may ask questions in examination-in-chief;
- (b) if the witness gives evidence for the prosecution—
  - (i) the defendant, if there is only one, may ask questions in cross-examination, or

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(537) 1964 c. 84; sections 4 and 4A were substituted 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).

- (ii) subject to the court's directions, each defendant, if there is more than one, may ask such questions, in the order their names appear in the indictment or as directed by the court;
- (c) if the witness gives evidence for a defendant—
  - (i) subject to the court's directions, each other defendant, if there is more than one, may ask questions in cross-examination, in the order their names appear in the indictment or as directed by the court, and
  - (ii) the prosecutor may ask such questions;
- (d) the party who called the witness may ask questions in re-examination arising out of any cross-examination.
- (5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.
- (6) The court may—
  - (a) ask a witness questions; and in particular
  - (b) where the defendant is not represented, ask a witness any question necessary in the defendant's interests.

*[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(538) 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(539).*

*Sections 1, 3, 5 and 6 of the Oaths Act 1978(540) 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(541) 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, 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,*
  - (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)(542);*
- (b) *by the court are in its discretion, but that is subject to—*
  - (i) *rules of evidence, and*

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(538) 1999 c. 23.

(539) 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).

(540) 1978 c. 19.

(541) 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).

(542) 1865 c. 18.

(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<sup>(543)</sup>, 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<sup>(544)</sup>, a witness may refresh his or her memory by referring to a record made earlier, 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 by the time the witness gives evidence in person.

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<sup>(545)</sup>, or by live link under section 32 of the Criminal Justice Act 1988<sup>(546)</sup> or section 51 of the Criminal Justice Act 2003. Parts 29 and 30 contain relevant rules.]

### **Evidence of a witness in writing**

**38.12.**—(1) This rule applies where a party wants to introduce in evidence the written statement of a witness to which applies—

- (a) Part 27 (Witness statements);
  - (b) Part 33 (Expert evidence); or
  - (c) Part 34 (Hearsay evidence).
- (2) If the court admits such evidence—
- (a) each relevant part of the statement must be read or summarised aloud; or
  - (b) the court and the jury (if there is one) must read the statement and its gist must be summarised aloud.

[*Note. See Parts 27, 33 and 34, and the other legislation to which those Parts apply. The admissibility of evidence that a party introduces is governed by rules of evidence.*

*A written witness statement to which Part 27 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 27.4 refers.*

*An expert report to which Part 33 applies may only be introduced in evidence if it has been served in accordance with rule 33.3.*

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<sup>(543)</sup> 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).

<sup>(544)</sup> 2003 c. 44.

<sup>(545)</sup> 1999 c. 23.

<sup>(546)</sup> 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 S.I. 2004/2035.

*Rule 34.3 provides for opposing the introduction of hearsay evidence, including such evidence in a document.*

*Where a witness gives evidence in person, a previous written statement by that witness may be admissible as evidence under section 119 (Inconsistent statements) or under section 120 (Other previous statements of witnesses) of the Criminal Justice Act 2003.]*

### **Evidence by admission**

**38.13.**—(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(547). The admissibility of evidence that a party introduces is governed by rules of evidence.]*

### **Summing up the case to the jury and taking the verdict**

**38.14.**—(1) This rule applies—

- (a) where there is a jury; and
- (b) after following the sequence in rule 38.9 (Procedure on plea of not guilty).

(2) The court must—

- (a) give the jury directions about the relevant law;
- (b) summarise for the jury the evidence relevant to the issues they must decide;
- (c) give the jury such questions, if any, as the court invites jurors to answer in coming to a verdict;
- (d) direct the jury to retire to consider its verdict;
- (e) if necessary, recall the jury to answer jurors' questions;
- (f) if appropriate, recall the jury to give directions for a verdict by a majority; and
- (g) recall the jury when it informs the court that it has reached a verdict.

(3) The court may give the jury directions and questions in writing.

(4) When the court recalls the jury to deliver its verdict, the court must ask the foreman chosen by the jury, in respect of each count—

- (a) whether the jury has reached a verdict on which all the jurors agree;
- (b) if so, whether that verdict is guilty or not guilty;
- (c) if not, where the jury has deliberated for at least 2 hours and if the court decides to invite a majority verdict, then—
  - (i) whether at least 10 (of 11 or 12 jurors), or 9 (of 10 jurors), agreed on a verdict,
  - (ii) if so, is that verdict guilty or not guilty, and
  - (iii) if (and only if) such a verdict is guilty, how many jurors agreed to that verdict and how many disagreed.

(5) Where evidence has been given that the defendant was insane, so as not to be responsible for the act or omission charged as the offence, then under paragraph (4)(a) the court must ask whether the jury's verdict is guilty, not guilty, or not guilty by reason of insanity.

*[Note. Under section 17 of the Juries Act 1974(548), the court may accept the verdict of a majority, as long as the jury has had at least 2 hours for deliberation.*

*Under section 6 of the Criminal Law Act 1967, the jury may convict a defendant of an offence other than one charged by the indictment if that offence is proved by the evidence.*

*The verdict to which rule 38.14(6) refers is provided for by section 2 of the Trial of Lunatics Act 1883(549). The evidence required before such a verdict may be reached is prescribed by section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991(550).]*

### **Conviction or acquittal without a jury**

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

- (a) the court tries the case without a jury; and
  - (b) after following the sequence in rule 38.9 (Procedure on plea of not guilty).
- (2) In respect of each count, the court must give reasons for its decision to convict or acquit.

*[Note. Under sections 44 and 46 of the Criminal Justice Act 2003(551), the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004(552), the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.]*

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

**38.16.**—(1) This rule applies where, in respect of any count in the indictment—

- (a) the defendant pleads guilty; or
  - (b) the court convicts the defendant.
- (2) The court may exercise its power—
- (a) if the defendant is an individual—
    - (i) to require a pre-sentence report,
    - (ii) to request a medical report,
    - (iii) to require a statement of the defendant’s financial circumstances;
  - (b) if the defendant is a corporation, to require such information as the court directs about the defendant’s corporate structure and financial resources;
  - (c) to adjourn sentence pending—
    - (i) receipt of any such report, statement or information,
    - (ii) the verdict in a related case.
- (3) The prosecutor must—
- (a) summarise the prosecution case, if the sentencing court has not heard evidence;
  - (b) identify in writing any offence that the prosecutor proposes should be taken into consideration in sentencing;
  - (c) provide information relevant to sentence, including—

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(548) 1974 c. 23.

(549) 1883 c. 38; section 2 was amended by section 17 of, and Schedule 2 to, the Criminal Lunatics Act 1884 (c. 64) and sections 1 and 8 of the Criminal Procedure (Insanity) Act 1964 (c. 84).

(550) 1991 c. 25.

(551) 2003 c. 44.

(552) 2004 c. 28.



- (i) any previous conviction of the defendant, and the circumstances where relevant,
- (ii) any statement of the effect of the offence on the victim, the victim's family or others;  
and
- (d) identify any other matter relevant to sentence, including—
  - (i) the legislation applicable,
  - (ii) any sentencing guidelines, or guideline cases,
  - (iii) aggravating and mitigating features affecting the defendant's culpability and the harm which the offence caused, was intended to cause or might foreseeably have caused, and
  - (iv) the effect of such of the information listed in paragraph (2) as the court may need to take into account.
- (4) Where the defendant pleads guilty, the court may give directions for determining the facts on the basis of which sentence must be passed if—
  - (a) the defendant wants to be sentenced on a basis agreed with the prosecutor; or
  - (b) in the absence of such agreement, the defendant wants to be sentenced on the basis of different facts to those disclosed by the prosecution case.
- (5) 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.
- (6) Before passing sentence—
  - (a) the court must give the defendant an opportunity to make representations and introduce evidence relevant to sentence;
  - (b) where the defendant is under 18, the court may give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well; and
  - (c) if the court requires more information, it may exercise its power to adjourn the hearing.
- (7) When the court has taken into account all the evidence, information and any report available, the court must—
  - (a) as a general rule, pass sentence at the earliest opportunity;
  - (b) when passing sentence—
    - (i) explain the reasons,
    - (ii) explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence, unless the defendant is absent or the defendant's ill-health or disorderly conduct makes such an explanation impracticable, and
    - (iii) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and
  - (c) deal with confiscation, costs and any civil behaviour order.
- (8) The general rule is subject to the court's power to defer sentence for up to 6 months.

[Note. See sections 143, 158, 164, 172 and 174 of the Criminal Justice Act 2003(553).

Under sections 57D and 57E of the Crime and Disorder Act 1998(554), the court may require a defendant to attend a sentencing hearing by live link.

Under section 156 of the Criminal Justice Act 2003(555), 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(556), 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.

Rule 42.8 of these Rules applies to requests for medical reports.

Under section 162 of the Criminal Justice Act 2003(557), the court may require a defendant who is an individual to provide a statement of financial circumstances if the defendant is convicted.

Under section 20A of the Criminal Justice Act 1991(558), 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.

The Sentencing Council may issue sentencing guidelines under section 120 of the Coroners and Justice Act 2009(559).

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(560). 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 38.2.

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(553) 2003 c. 44; section 143 was amended by section 378 of, and paragraph 216 of Schedule 16 to the Armed Forces Act 2006 (c. 52). 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, 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 substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(554) 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), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(555) 2003 c. 44; section 156 was 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) and paragraphs 8 and 13 of Schedule 19, and paragraphs 20 and 22 of Schedule 21, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(556) 2003 c. 44; section 159 was amended by section 208 of, and paragraphs 145 and 147 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(557) 2003 c. 44.

(558) 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).

(559) 2009 c. 25.

(560) 1988 c. 53; section 34 was amended by section 29(1), (2) and (3) of the Road Traffic Act 1991 (c. 40), section 3(2) of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165(1) of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25(2) of the Road Safety Act 2006 (c. 49), article 2(1)(b) of S.I. 2007/3480 and paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 177(1) of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) and section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22), with effect from a date to be appointed.

*Part 42 contains rules about sentencing procedure in special cases. Part 50 contains rules about civil behaviour orders after verdict. Parts 56 to 61 contain rules about confiscation and related orders. Part 76 contains rules about costs.*

*Under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(561), 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.]*

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

**38.17.**—(1) Unless the court otherwise directs, a party who introduces a document in evidence, or who otherwise uses a document in presenting that party's case, must provide a copy for—

- (a) each other party;
- (b) any witness that party wants to refer to the document; and
- (c) the court.

(2) If the court so directs, a party who introduces or uses a document for such a purpose must provide a copy for the jury.

(3) Unless the court otherwise directs, on application or on its own initiative, the court officer must provide for the court—

- (a) any copy received under paragraph (1) before the trial begins; and
- (b) a copy of the court officer's record of—
  - (i) information supplied by each party for the purposes of case management, including any revision of information previously supplied,
  - (ii) each pre-trial direction for the management of the case,
  - (iii) any pre-trial decision to admit evidence,
  - (iv) any pre-trial direction about the giving of evidence, and
  - (v) any admission to which rule 38.13 (Evidence by admission) applies; and
- (c) any other document served on the court officer for the use of the court.

### **Duty of court officer**

**38.18.** The court officer must—

- (a) serve on each party notice of where and when an adjourned hearing will resume, unless that party was present when that was arranged;
- (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 38.16(2) applies (pre-sentence and medical reports);
- (d) where the court has ordered a defendant to provide information under section 25 of the Road Traffic Offenders Act 1988(562), serve on the defendant notice of that order unless the defendant was present when it was made;
- (e) give the court such other assistance as it requires, including—

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(561)2000 c. 6; section 1 was substituted, together with sections 1A to 1D, for this section by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44).

(562)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).

- (i) selecting jurors from the panel summoned by the Lord Chancellor, under rule 38.6 (Selecting the jury),
- (ii) taking the oaths or affirmations of jurors and witnesses, under rules 38.6 and 38.11 (Evidence of a witness in person);
- (iii) informing the jurors of the offence or offences charged in the indictment, and of their duty, under rule 38.9 (Procedure on plea of not guilty);
- (iv) endorsing any written directions or questions which the court gives the jury under rule 38.14(3) (Summing up the case to the jury and taking the verdict) with a note recording the date and time at which those directions or questions were given; and
- (v) asking the jury foreman to deliver the verdict, under rule 38.14(4).

*[Note. See also section 82 of the Senior Courts Act 1981(563) (Duties of officers of Crown Court).*

*Under Part 5, the court officer must—*

- (a) *record details of a case and of the court's decisions; and*
- (b) *give public notice of specified details about a trial, including by such arrangements as the Lord Chancellor directs.*

*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.]*

## PART 39

### JURORS

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#### Contents of this Part

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Appeal against officer's refusal to excuse or postpone jury service	rule 39.1
Excusal from jury service by court	rule 39.2
Provision of information for jurors	rule 39.3
Assessment of juror's availability for long trial, etc.	rule 39.4

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#### **Appeal against officer's refusal to excuse or postpone jury service**

**39.1.**—(1) This rule applies where a person summoned for jury service in the Crown Court, the High Court or a county court wants to appeal against a refusal by an officer on the Lord Chancellor's behalf—

- (a) to excuse that person from such service; or
  - (b) to postpone the date on which that person is required to attend for such service.
- (2) The appellant must appeal to the court to which the appellant has been summoned.
- (3) The appellant must—
- (a) apply in writing, as soon as reasonably practicable; and

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(563) 1981 c. 54; section 82 was amended by section 15 of, and paragraphs 114 and 135 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and sections 116 and 178 of, and Part 3 of Schedule 3 to, the Coroners and Justice Act 2009 (c. 25).

- (b) serve the application on the court officer.
- (4) The application must—
  - (a) attach a copy of—
    - (i) the jury summons, and
    - (ii) the refusal to excuse or postpone which is under appeal; and
  - (b) explain why the court should excuse the appellant from jury service, or postpone its date, as appropriate.
- (5) The court to which the appeal is made—
  - (a) may extend the time for appealing, and may allow the appeal to be made orally;
  - (b) may determine the appeal at a hearing in public or in private, or without a hearing;
  - (c) may adjourn any hearing of the appeal;
  - (d) must not determine an appeal unless the appellant has had a reasonable opportunity to make representations in person.

*[Note. See sections 9 and 9A of the Juries Act 1974(564).*

*Where a person summoned for jury service—*

- (a) *fails to attend as required; or*
- (b) *after attending as required, when selected under rule 38.6—*
  - (i) *is not available, or*
  - (ii) *is unfit for jury service by reason of drink or drugs*

*that conduct may be punished as if it were a contempt of court. See section 20 of the Juries Act 1974 and rules 62.5 to 62.8 (contempt of court). The maximum penalty which the court can impose is a fine of £1,000.]*

### **Excusal from jury service by court**

**39.2.** At any time before a juror completes the oath or affirmation, the court may exercise its power to excuse him or her from jury service for lack of capacity to act effectively as a juror because of an insufficient understanding of English—

- (a) on the court's own initiative, or where the court officer refers the juror to the court; and
- (b) after enquiry of the juror.

*[Note. See section 10 of the Juries Act 1974(565).]*

### **Provision of information for jurors**

**39.3.** The court officer must arrange for each juror to receive—

- (a) by such means as the Lord Chancellor directs, general information about jury service and about a juror's responsibilities;
- (b) written notice of the prohibitions against—
  - (i) discussion of a case with someone who is not a member of the jury, and

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**(564)** 1974 c. 23; section 9 was amended by paragraphs 1, 3, 4, 5 and 6 of Schedule 33, and Part 10 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and paragraph 172 of Schedule 8 to the Courts Act 2003 (c. 39). Section 9A was inserted by section 120 of the Criminal Justice Act 1988 (c. 33) and amended by paragraphs 1, 7, 8, 9, 10 and 11 of Schedule 33 to the Criminal Justice Act 2003 (c. 44) and paragraph 172 of Schedule 8 to the Courts Act 2003 (c. 39).

**(565)** 1974 c. 23; section 10 was amended by section 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33) and sections 65 and 109 of, and paragraph 4 of Schedule 4 and Schedule 10 to, the Courts Act 2003 (c. 39).

- (ii) enquiry into the circumstances of a case, or into the parties, beyond what is described in evidence; and
- (c) written warning that—
  - (i) breach of those prohibitions is a contempt of court, and
  - (ii) the court can impose imprisonment, or a fine, or both, for contempt of court.

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

#### **Assessment of juror’s availability for long trial, etc.**

**39.4.**—(1) The court may invite each member of a panel of jurors to provide such information, by such means and at such a time as the court directs, about—

- (a) that juror’s availability to try a case expected to last for longer than the juror had expected to serve;
- (b) any association of that juror with, or any knowledge by that juror of—
  - (i) a party or witness, or
  - (ii) any other person, or any place, of significance to the case.

(2) Where jurors provide information under this rule, the court may postpone the selection of the jury to try a case to allow each juror an opportunity to review and amend that information before that selection.

(3) Using that information, the court may exercise its power to excuse a juror from selection as a member of the jury to try a case, but the court must not—

- (a) excuse a juror without allowing the parties an opportunity to make representations; or
- (b) refuse to excuse a juror without allowing that juror such an opportunity.

## PART 40

### TAINTED ACQUITTALS

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Display of copy of notice received from High Court	rule 40.8

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### **Time of certification**

**40.1.** Where a person is convicted of an offence as referred to in section 54(1)(b) of the Criminal Procedure and Investigations Act 1996(**566**) and it appears to the court before which the conviction has taken place that the provisions of section 54(2) are satisfied, the court shall make the certification referred to in section 54(2) at any time following conviction but no later than—

- (a) immediately after the court sentences or otherwise deals with that person in respect of the offence; or
- (b) where the court, being a magistrates' court, commits that person to the Crown Court, or remits him to another magistrates' court, to be dealt with in respect of the offence, immediately after he is so committed or remitted, as the case may be; or
- (c) where that person is a child or young person and the court, being the Crown Court, remits him to a youth court to be dealt with in respect of the offence, immediately after he is so remitted.

### **Form of certification in the Crown Court**

**40.2.** A certification referred to in section 54(2) of the Criminal Procedure and Investigations Act 1996 by the Crown Court shall be drawn up in the form set out in the Practice Direction.

### **Service of a copy of the certification**

**40.3.** Where a magistrates' court or the Crown Court makes a certification as referred to in section 54(2) of the Criminal Procedure and Investigations Act 1996, the court officer shall, as soon as practicable after the drawing up of the form, serve a copy on the acquitted person referred to in the certification, on the prosecutor in the proceedings which led to the acquittal, and, where the acquittal has taken place before a court other than, or at a different place to, the court where the certification has been made, on—

- (a) the clerk of the magistrates' court before which the acquittal has taken place; or
- (b) the Crown Court officer at the place where the acquittal has taken place.

### **Entry in register or records in relation to the conviction which occasioned certification**

**40.4.** A clerk of a magistrates' court or an officer of a Crown Court which has made a certification under section 54(2) of the Criminal Procedure and Investigations Act 1996 shall enter in the register or records, in relation to the conviction which occasioned the certification, a note of the fact that certification has been made, the date of certification, the name of the acquitted person referred to in the certification, a description of the offence of which the acquitted person has been acquitted, the date of the acquittal, and the name of the court before which the acquittal has taken place.

*[Note. For the general requirement to make court records, see rule 5.4.]*

### **Entry in the register or records in relation to the acquittal**

**40.5.** The court officer of the court before which an acquittal has taken place shall, as soon as practicable after receipt of a copy of a form recording a certification under section 54(2) of the Criminal Procedure and Investigations Act 1996 relating to the acquittal, enter in the register or records a note that the certification has been made, the date of the certification, the name of the court which has made the certification, the name of the person whose conviction occasioned the making of the certification, and a description of the offence of which that person has been convicted. Where the certification has been made by the same court as the court before which the acquittal has

occurred, sitting at the same place, the entry shall be made as soon as practicable after the making of the certification. In the case of an acquittal before a magistrates' court, the entry in the register shall be signed by the clerk of the court.

*[Note. For the general requirement to make court records, see rule 5.4.]*

#### **Display of copy certification form**

**40.6.**—(1) Where a court makes a certification as referred to in section 54(2) of the Criminal Procedure and Investigations Act 1996, the court officer shall, as soon as practicable after the drawing up of the form, display a copy of that form at a prominent place within court premises to which place the public has access.

(2) Where an acquittal has taken place before a court other than, or at a different place to, the court which has made the certification under section 54(2) of the 1996 Act in relation to the acquittal, the court officer at the court where the acquittal has taken place shall, as soon as practicable after receipt of a copy of the form recording the certification, display a copy of it at a prominent place within court premises to which place the public has access.

(3) The copy of the form referred to in paragraph (1), or the copy referred to in paragraph (2), shall continue to be displayed as referred to, respectively, in those paragraphs at least until the expiry of 28 days from, in the case of paragraph (1), the day on which the certification was made, or, in the case of paragraph (2), the day on which the copy form was received at the court.

#### **Entry in the register or records in relation to decision of High Court**

**40.7.**—(1) The court officer at the court where an acquittal has taken place shall, on receipt from the Administrative Court Office of notice of an order made under section 54(3) of the Criminal Procedure and Investigations Act 1996 quashing the acquittal, or of a decision not to make such an order, enter in the register or records, in relation to the acquittal, a note of the fact that the acquittal has been quashed by the said order, or that a decision has been made not to make such an order, as the case may be.

(2) The court officer of the court which has made a certification under section 54(2) of the 1996 Act shall, on receipt from the Administrative Court Office of notice of an order made under section 54(3) of that Act quashing the acquittal referred to in the certification, or of a decision not to make such an order, enter in the register or records, in relation to the conviction which occasioned the certification, a note that the acquittal has been quashed by the said order, or that a decision has been made not to make such an order, as the case may be.

(3) The entries in the register of a magistrates' court referred to, respectively, in paragraphs (1) and (2) above shall be signed by the magistrates' court officer.

*[Note. For the general requirement to make court records, see rule 5.4. As to the procedure to be followed in the High Court, see RSC Order 116 in Schedule 1 to the Civil Procedure Rules 1998(567).]*

#### **Display of copy of notice received from High Court**

**40.8.**—(1) Where the court officer of a court which has made a certification under section 54(2) of the Criminal Procedure and Investigations Act 1996 or before which an acquittal has occurred to which such a certification refers, receives from the Administrative Court Office notice of an order quashing the acquittal concerned, or notice of a decision not to make such an order, he shall, as soon as practicable after receiving the notice, display a copy of it at a prominent place within court premises to which place the public has access.



(2) The copy notice referred to in paragraph (1) shall continue to be displayed as referred to in that paragraph at least until the expiry of 28 days from the day on which the notice was received at the court.

*[Note. As to the procedure to be followed in the High Court, see RSC Order 116 in Schedule 1 to the Civil Procedure Rules 1998.]*

## PART 41

### RETRIAL FOLLOWING ACQUITTAL FOR SERIOUS OFFENCE

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#### Interpretation

**41.1.** In this Part, ‘section 76 application’ means an application made by a prosecutor under section 76(1) or (2) of the Criminal Justice Act 2003(**568**).

#### Notice of a section 76 application

**41.2.—**(1) A prosecutor who wants to make a section 76 application must serve notice of that application in the form set out in the Practice Direction on the Registrar and the acquitted person.

(2) That notice shall, where practicable, be accompanied by—

- (a) relevant witness statements which are relied upon as forming new and compelling evidence of guilt of the acquitted person as well as any relevant witness statements from the original trial;
  - (b) any unused statements which might reasonably be considered capable of undermining the section 76 application or of assisting an acquitted person's application to oppose that application under rule 41.3;
  - (c) a copy of the indictment and paper exhibits from the original trial;
  - (d) copies of the transcript of the summing up and any other relevant transcripts from the original trial; and
  - (e) any other documents relied upon to support the section 76 application.
- (3) The prosecutor must, as soon as practicable after service of that notice on the acquitted person, file with the Registrar a witness statement or certificate of service which exhibits a copy of that notice.

### **Response of the acquitted person**

**41.3.**—(1) An acquitted person who wants to oppose a section 76 application must serve a response in the form set out in the Practice Direction on the Registrar and the prosecutor which—

- (a) indicates if he is also seeking an order under section 80(6) of the Criminal Justice Act 2003(569) for—
  - (i) the production of any document, exhibit or other thing, or
  - (ii) a witness to attend for examination and to be examined before the Court of Appeal; and
- (b) exhibits any relevant documents.

(2) The acquitted person must serve that response not more than 28 days after receiving notice under rule 41.2.

(3) The Court of Appeal may extend the period for service under paragraph (2), either before or after that period expires.

### **Examination of witnesses or evidence by the Court of Appeal**

**41.4.**—(1) Prior to the hearing of a section 76 application, a party may apply to the Court of Appeal for an order under section 80(6) of the Criminal Justice Act 2003 for—

- (a) the production of any document, exhibit or other thing; or
- (b) a witness to attend for examination and to be examined before the Court of Appeal.

(2) An application under paragraph (1) must be in the form set out in the Practice Direction and must be sent to the Registrar and a copy sent to each party to the section 76 application.

(3) An application must set out the reasons why the order was not sought from the Court when—

- (a) the notice was served on the Registrar under rule 41.2, if the application is made by the prosecutor; or
- (b) the response was served on the Registrar under rule 41.3, if the application is made by the acquitted person.

(4) An application must be made at least 14 days before the day of the hearing of the section 76 application.

(5) If the Court of Appeal makes an order under section 80(6) of the 2003 Act on its own motion or on application from the prosecutor, it must serve notice and reasons for that order on all parties to the section 76 application.

### **Bail or custody hearings in the Crown Court**

**41.5.**—(1) Part 19 (Bail and custody time limits) shall apply where a person is to appear or be brought before the Crown Court pursuant to section 88 or 89 of the Criminal Justice Act 2003(**570**) as it applies to other proceedings in the Crown Court but with the modification set out in paragraph (2).

(2) For rule 19.7 substitute:

“Where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the Criminal Justice Act 2003, the prosecutor must serve notice of the need for such a hearing on the court officer.”

(3) Where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the 2003 Act the Crown Court may order that the person shall be released from custody on entering into a recognizance, with or without sureties, or giving other security before—

- (a) the Crown Court officer; or
- (b) any other person authorised by virtue of section 119(1) of the Magistrates’ Courts Act 1980(**571**) to take a recognizance where a magistrates’ court having power to take the recognizance has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound.

(4) The court officer shall forward to the Registrar a copy of any record made in pursuance of section 5(1) of the Bail Act 1976(**572**).

### **Further provisions regarding bail and custody in the Crown Court**

**41.6.**—(1) The prosecutor may only apply to extend or further extend the relevant period before it expires and that application must be served on the Crown Court officer and the acquitted person.

(2) A prosecutor’s application for a summons or a warrant under section 89(3)(a) or (b) of the Criminal Justice Act 2003 must be served on the court officer and the acquitted person.

### **Bail or custody orders in the Court of Appeal**

**41.7.** Rules 68.8 and 68.9 shall apply to bail or custody orders made in the Court of Appeal under section 90 of the Criminal Justice Act 2003(**573**) as if they were orders made pursuant to an application under rule 68.7.

### **Application for restrictions on publication**

**41.8.**—(1) An application by the Director of Public Prosecutions, under section 82 of the Criminal Justice Act 2003(**574**), for restrictions on publication must be in the form set out in the Practice Direction and be served on the Registrar and the acquitted person.

(2) If notice of a section 76 application has not been given and the Director of Public Prosecutions has indicated that there are reasons why the acquitted person should not be notified of the application

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(**570**) 2003 c. 44; section 89 was amended by section 59(5) of, and paragraph 1(2) of the Constitutional Reform Act 2005 (c. 4) and it is amended by section 148(1) of the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

(**571**) 1980 c. 43.

(**572**) 1976 c. 63; section 5(1) was amended by section 27 of and paragraph 1 of Schedule 3 to, the Criminal Justice and Public Order Act 1994 (c. 33), and Part 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(**573**) 2003 c. 44.

(**574**) 2003 c. 44.

for restrictions on publication, the Court of Appeal may order that service on the acquitted person is not to be effected until notice of a section 76 application is served on that person.

(3) If the Court of Appeal makes an order for restrictions on publication of its own motion or on application of the Director of Public Prosecutions, the Registrar must serve notice and reasons for that order on all parties, unless paragraph (2) applies.

#### **Variation or revocation of restrictions on publication**

**41.9.**—(1) A party who wants to vary or revoke an order for restrictions on publication, under section 82(7) of the Criminal Justice Act 2003(**575**), may apply to the Court of Appeal in writing at any time after that order was made.

(2) A copy of the application to vary or revoke shall be sent to all parties to the section 76 application unless paragraph (3) applies.

(3) If the application to vary or revoke is made by the Director of Public Prosecutions and—

- (a) the notice of a section 76 application has not been given under rule 41.2; and
- (b) the Director of Public Prosecutions has indicted that there are reasons why the acquitted person should not be notified of an application for restrictions on publication,

the Court of Appeal may order that service on the acquitted person is not to be effected until notice of a section 76 application is served on that person.

(4) If the Court of Appeal varies or revokes an order for restrictions on publication of its own motion or on application, it must serve notice and reasons for that order on all parties, unless paragraph (3) applies.

#### **Powers exercisable by a single judge of the Court of Appeal**

**41.10.**—(1) The following powers under the Criminal Justice Act 2003 and under this Part may be exercised by a single judge in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions, namely to—

- (a) order the production of any document, exhibit or thing under section 80(6)(a) of the 2003 Act;
- (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the Court of Appeal under section 80(6)(b) of the 2003 Act;
- (c) extend the time for service under rule 41.3(2); and
- (d) delay the requirement of service on the acquitted person of an application for restrictions on publication under rules 41.8(2) and 41.9(3).

(2) A single judge may, for the purposes of exercising any of the powers specified in paragraph (1), sit in such place as he appoints and may sit otherwise than in open court.

(3) Where a single judge exercises one of the powers set out in paragraph (1), the Registrar must serve notice of the single judge's decision on all parties to the section 76 application.

#### **Powers exercisable by the Registrar**

**41.11.**—(1) The Registrar may require the Crown Court at the place of original trial to provide the Court of Appeal with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 10 of the Criminal Justice Act 2003(**576**) or this Part.

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(575) 2003 c. 44.

(576) 2003 c. 44.

(2) The following powers may be exercised by the Registrar in the same manner as the Court of Appeal and subject to the same provisions—

- (a) order the production of any document, exhibit or thing under section 80(6)(a) of the 2003 Act;
- (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the Court of Appeal under section 80(6)(b) of the 2003 Act; and
- (c) extend the time for service under rule 41.3(2).

(3) Where the Registrar exercises one of the powers set out in paragraph (2) the Registrar must serve notice of that decision on all parties to the section 76 application.

(4) Where the Registrar has refused an application to exercise any of the powers referred to in paragraph (2), the party making the application may have it determined by a single judge by serving a notice of renewal within 14 days of the day on which notice of the Registrar's decision is served on the party making the application, unless that period is extended by the Court of Appeal.

#### **Determination by full court**

**41.12.**—(1) Where a single judge has refused an application to exercise any of the powers referred to in rule 41.10, the applicant may have that application determined by the Court of Appeal by serving a notice of renewal.

(2) A notice under paragraph (1) must be served on the Registrar within 14 days of the day on which notice of the single judge's decision is served on the party making the application, unless that period is extended by the Court of Appeal.

(3) If a notice under paragraph (1) is not served on the Registrar within the period specified in paragraph (2) or such extended period as the Court of Appeal has allowed, the application shall be treated as having been refused by the Court of Appeal.

#### **Notice of the determination of the application**

**41.13.**—(1) The Court of Appeal may give its determination of the section 76 application at the conclusion of the hearing.

(2) If the determination is reserved, the Registrar shall as soon as practicable, serve notice of the determination on the parties to the section 76 application.

(3) If the Court of Appeal orders under section 77 of the Criminal Justice Act 2003(577) that a retrial take place, the Registrar must as soon as practicable, serve notice on the Crown Court officer at the appropriate place of retrial.

#### **Notice of application to set aside order for retrial**

**41.14.**—(1) If an acquitted person has not been arraigned before the end of 2 months after the date of an order under section 77 of the Criminal Justice Act 2003 he may apply in the form set out in the Practice Direction to the Court of Appeal to set aside the order.

(2) An application under paragraph (1) must be served on the Registrar and the prosecutor.

### **Leave to arraign**

**41.15.**—(1) If the acquitted person has not been arraigned before the end of 2 months after the date of an order under section 77 of the Criminal Justice Act 2003, the prosecutor may apply in the form set out in the Practice Direction to the Court of Appeal for leave to arraign.

(2) An application under paragraph (1) must be served on the Registrar and the acquitted person.

### **Abandonment of the application**

**41.16.**—(1) A section 76 application may be abandoned by the prosecutor before the hearing of that application by serving a notice in the form set out in the Practice Direction on the Registrar and the acquitted person.

(2) The Registrar must, as soon as practicable, after receiving a notice under paragraph (1) send a copy of it endorsed with the date of receipt to the prosecutor and acquitted person.

## **PART 42**

### **SENTENCING PROCEDURES IN SPECIAL CASES**

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#### **Contents of this Part**

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*[Note. See also—*

- (a) *Part 37, which contains rules about the general procedure on sentencing in a magistrates' court;*
- (b) *Part 44 (Breach, revocation and amendment of community and other orders);*
- (c) *Part 52 (Enforcement of fines and other orders for payment on conviction); and*
- (d) *Part 55 (Road traffic penalties).]*

### **Reasons for not following usual sentencing requirements**

**42.1.**—(1) This rule applies where the court decides—

- (a) not to follow a relevant sentencing guideline;

- (b) not to make, where it could—
  - (i) a reparation order (unless it passes a custodial or community sentence),
  - (ii) a compensation order, or
  - (iii) a travel restriction order;
- (c) not to order, where it could—
  - (i) that a suspended sentence of imprisonment is to take effect,
  - (ii) the endorsement of the defendant's driving record, or
  - (iii) the defendant's disqualification from driving, for the usual minimum period or at all;
- (d) to pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.

(2) The court must explain why it has so decided, when it explains the sentence that it has passed.

(3) Where paragraph (1)(d) applies, the court must arrange for such an explanation to be given to the defendant and to the prosecutor in writing, if the court thinks that it would not be in the public interest to explain in public.

*[Note. See section 174 of the Criminal Justice Act 2003(578); section 73(8) of the Powers of Criminal Courts (Sentencing) Act 2000(579); section 130(3) of the 2000 Act(580); section 33(2) of the Criminal Justice and Police Act 2001(581); paragraph 8(3) of Schedule 12 to the 2003 Act(582); section 47(1) of the Road Traffic Offenders Act 1988(583); and section 73 of the Serious Organised Crime and Police Act 2005(584).*

*For the duty to explain the sentence the court has passed, see section 174(1) of the 2003 Act and, in a magistrates' court, rule 37.10(9) (Procedure if the court convicts).*

*Under section 125 of the Coroners and Justice Act 2009(585), the court when sentencing must follow any relevant sentencing guideline unless satisfied that to do so would be contrary to the interests of justice.*

*For the circumstances in which the court may make—*

- (a) *a reparation or compensation order, see sections 73(586) and 130(587) of the 2000 Act;*
- (b) *a travel restriction order against a defendant convicted of drug trafficking, see sections 33 and 34 of the 2001 Act(588).]*

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(578) 2003 c. 44; section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(579) 2000 c. 6.

(580) 2000 c. 6.

(581) 2001 c. 16.

(582) 2003 c. 44.

(583) 1988 c. 53.

(584) 2005 c. 15.

(585) 2009 c. 25.

(586) 2000 c. 6; section 73 was amended by section 74 of, and paragraph 4(1)(a) and (2) of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), sections 304 and 332 of, and paragraphs 90 and 106 of Schedule 32 and Part 37 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), section 64 of, and Part 4 of Schedule 5 to, the Children Act 2004 (c. 31), article 3 and paragraph 14 (1) and (14) of Schedule 1 to S.I. 2008/912 and section 6(2) of, and paragraphs 51 and 53 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(587) 2000 c. 6; section 130 was amended by paragraphs 90 and 117 of Schedule 32 to the Criminal Justice Act 2003 (c. 44), section 14(1) of, and paragraph 29 of Schedule 1 to, the Fraud Act 2006 (c. 35), section 49 of, and paragraph 6(b) of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38), section 148(1) of, and paragraphs 40 and 46 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 63 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(588) 2001 c. 16; section 33 was amended by sections 39(3) and 39(4) of the Identity Cards Act 2006 (c. 15).

## Notice of requirements of suspended sentence and community, etc. orders

- 42.2.**—(1) This rule applies where the court—
- (a) makes a suspended sentence order;
  - (b) imposes a requirement under—
    - (i) a community order,
    - (ii) a youth rehabilitation order, or
    - (iii) a suspended sentence order; or
  - (c) orders the defendant to attend meetings with a supervisor.
- (2) The court officer must notify—
- (a) the defendant of—
    - (i) the length of the sentence suspended by a suspended sentence order, and
    - (ii) the period of the suspension;
  - (b) the defendant and, where the defendant is under 14, an appropriate adult, of—
    - (i) any requirement or requirements imposed, and
    - (ii) the identity of any responsible officer or supervisor, and the means by which that person may be contacted;
  - (c) any responsible officer or supervisor, and, where the defendant is under 14, the appropriate qualifying officer (if that is not the responsible officer), of—
    - (i) the defendant’s name, address and telephone number (if available),
    - (ii) the offence or offences of which the defendant was convicted, and
    - (iii) the requirement or requirements imposed; and
  - (d) the person affected, where the court imposes a requirement—
    - (i) for the protection of that person from the defendant, or
    - (ii) requiring the defendant to reside with that person.
- (3) If the court imposes an electronic monitoring requirement, the monitor of which is not the responsible officer, the court officer must—
- (a) notify the defendant and, where the defendant is under 16, an appropriate adult, of the monitor’s identity, and the means by which the monitor may be contacted; and
  - (b) notify the monitor of—
    - (i) the defendant’s name, address and telephone number (if available),
    - (ii) the offence or offences of which the defendant was convicted,
    - (iii) the place or places at which the defendant’s presence must be monitored,
    - (iv) the period or periods during which the defendant’s presence there must be monitored, and
    - (v) the identity of the responsible officer, and the means by which that officer may be contacted.

*[Note. See section 219(1) of the Criminal Justice Act 2003(589); paragraph 34(1) of Schedule 1 to the Criminal Justice and Immigration Act 2008(590); and section 1A(7) of the Street Offences Act 1959(591).*

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(589)2003 c. 44; section 219(1) was amended by article 3 of, and paragraphs 19(1) and (12) of Schedule 1 to, S.I. 2008/912.

(590)2008 c. 4.

(591)1959 c. 57; section 1A was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).



For the circumstances in which the court may—

- (a) make a suspended sentence order; see section 189 of the 2003 Act(592);
- (b) make a community order (defined by section 177 of the Criminal Justice Act 2003(593)), or a youth rehabilitation order (defined by section 7 of the Criminal Justice and Immigration Act 2008(594)), and for the identity and duties of responsible officers and qualifying officers, see generally—
  - (i) Part 12 of the 2003 Act, and
  - (ii) Part 1 of the 2008 Act;
- (c) order the defendant to attend meetings with a supervisor; see section 1(2A) of the Street Offences Act 1959(595).

Under sections 190 or 215 of the 2003 Act(596), or section 1(2) of the 2008 Act(597), the court may impose an electronic monitoring requirement to secure the monitoring of the defendant's compliance with certain other requirements (for example, a curfew or an exclusion).]

### Notification requirements

**42.3.**—(1) This rule applies where, on a conviction, sentence or order, legislation requires the defendant—

- (a) to notify information to the police; or
- (b) to be included in a barred list.

(2) The court must tell the defendant that such requirements apply, and under what legislation.

[Note. For the circumstances in which a defendant is required to notify information to the police, see—

- (a) Part 2 of, and Schedule 3 to, the Sexual Offences Act 2003(598)(notification after conviction of a specified sexual offence for which a specified sentence is imposed);
- (b) Part 4 of the Counter Terrorism Act 2008(599)(notification after conviction of a specified offence of, or connected with, terrorism, for which a specified sentence is imposed).

For the circumstances in which a defendant will be included in a barred list, see paragraphs 1, 2, 7, 8 and 24 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006(600). See also paragraph 25 of that Schedule(601).

(592) 2003 c. 44; section 189 was amended by articles 2(1) and (2), and 3(1) and (2) of S.I. 2005/643 and section 68 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(593) 2003 c. 44; section 177 was amended by section 6 of, and paragraphs 71 and 82 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4) and sections 66, 70 and 72 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 44 of, and paragraphs 11 and 12 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed.

(594) 2008 c. 4.

(595) 1959 c. 57; section 1(2A) was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).

(596) 2003 c. 44; section 190 was amended by sections 68 and 72 of, and paragraphs 2 and 4 of Schedule 9 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 44 of, and paragraphs 11 and 13 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed. Section 215 is amended by section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 44 of, and paragraphs 11 and 16 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed.

(597) 2008 c. 4.

(598) 2003 c. 42; Schedule 3 was amended by article 2 of S.I. 2007/296, section 63(2) of, and paragraph 63 of Schedule 6 to, the Serious Crimes Act 2007 (c. 27), section 148(1) of, and paragraphs 53 and 58 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177(1) of, and paragraph 62 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Other amendments to Schedule 3 are not relevant to these Rules.

(599) 2008 c. 28.

(600) 2006 c. 47; paragraphs 1, 2, 7 and 8 of Schedule 3 were amended by sections 81 and 89 of the Policing and Crime Act 2009 (c. 26). Paragraph 24 was amended by article 2 of S.I. 2008/3050.

*These requirements are not part of the court's sentence.]*

### Variation of sentence

**42.4.**—(1) This rule—

- (a) applies where a magistrates' court or the Crown Court can vary or rescind a sentence or order, other than an order to which rule 37.17 applies (Setting aside a conviction or varying a costs etc. order); and
  - (b) authorises the Crown Court, in addition to its other powers, to do so within the period of 56 days beginning with another defendant's acquittal or sentencing where—
    - (i) defendants are tried separately in the Crown Court on the same or related facts alleged in one or more indictments, and
    - (ii) one is sentenced before another is acquitted or sentenced.
- (2) The court may exercise its power—
- (a) on application by a party, or on its own initiative;
  - (b) at a hearing, in public or in private, or without a hearing.
- (3) A party who wants the court to exercise that power must—
- (a) apply in writing as soon as reasonably practicable after—
    - (i) the sentence or order that that party wants the court to vary or rescind, or
    - (ii) where paragraph (1)(b) applies, the other defendant's acquittal or sentencing;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (c) in the application—
    - (i) explain why the sentence should be varied or rescinded,
    - (ii) specify the variation that the applicant proposes, and
    - (iii) if the application is late, explain why.
- (4) The court must not exercise its power in the defendant's absence unless—
- (a) the court makes a variation—
    - (i) which is proposed by the defendant, or
    - (ii) the effect of which is that the defendant is no more severely dealt with under the sentence as varied than before; or
  - (b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).
- (5) The court may—
- (a) extend (even after it has expired) the time limit under paragraph (3), unless the court's power to vary or rescind the sentence cannot be exercised;
  - (b) allow an application to be made orally.

*[Note. Under section 142 of the Magistrates' Courts Act 1980(602), in some cases a magistrates' court can vary or rescind a sentence or other order that it has imposed or made, if that appears*

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(601)2006 c. 47; paragraph 25 of Schedule 3 was amended by article 3 of S.I. 2008/3050 and section 81 of the Policing and Crime Act 2009 (c. 26).

(602)1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

*to be in the interests of justice. The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that sentence or order. See also rule 37.17 (Setting aside a conviction or varying a costs etc. order), which governs the exercise of the power conferred by section 142 of the 1980 Act in the circumstances to which that rule applies.*

*Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000(603), the Crown Court can vary or rescind a sentence or other order that it has imposed or made. The power cannot be exercised—*

- (a) after the period of 56 days beginning with the sentence or order (but see the note below); or*
- (b) if an appeal or application for permission to appeal against that sentence or order has been determined.*

*Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.]*

### **Application to vary or discharge a compensation order**

**42.5.—(1)** This rule applies where a magistrates' court can vary or discharge a compensation order on application by the defendant.

- (2) A defendant who wants the court to exercise that power must—
  - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on the magistrates' court officer;
  - (c) where the compensation order was made in the Crown Court, serve a copy of the application on the Crown Court officer; and
  - (d) in the application, specify the compensation order that the defendant wants the court to vary or discharge and explain (as applicable)—
    - (i) what civil court finding shows that the injury, loss or damage was less than it had appeared to be when the order was made,
    - (ii) in what circumstances the person for whose benefit the order was made has recovered the property for the loss of which it was made,
    - (iii) why a confiscation order makes the defendant now unable to pay compensation in full, or
    - (iv) in what circumstances the defendant's means have been reduced substantially and unexpectedly, and why they seem unlikely to increase for a considerable period.
- (3) The court officer must serve a copy of the application on the person for whose benefit the compensation order was made.
- (4) The court must not vary or discharge the compensation order unless—
  - (a) the defendant, and the person for whose benefit it was made, each has had an opportunity to make representations at a hearing (whether or not either in fact attends); and
  - (b) where the order was made in the Crown Court, the Crown Court has notified its consent.

*[Note. For the circumstances in which—*

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**(603)**2000 c. 6; section 155 was amended by article 3 of, and paragraphs 39 and 43 of the Schedule to, S.I. 2004/2035, sections 47 and 149 of, and paragraph 28 (1), (2), (3) and (4) of Schedule 8 and Part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 52 and 54 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (a) *the court may make a compensation order, see section 130 of the Powers of Criminal Courts (Sentencing) Act 2000(604);*
- (b) *a magistrates' court with power to enforce such an order may vary or discharge it under the 2000 Act, see section 133(605). (Under section 133(4), where the order was made in the Crown Court, the magistrates' court must first obtain the Crown Court's consent.)]*

### **Application to remove, revoke or suspend a disqualification or restriction**

**42.6.**—(1) This rule applies where, on application by the defendant, the court can remove, revoke or suspend a disqualification or restriction included in a sentence (except a disqualification from driving).

- (2) A defendant who wants the court to exercise such a power must—
  - (a) apply in writing, no earlier than the date on which the court can exercise the power;
  - (b) serve the application on the court officer; and
  - (c) in the application—
    - (i) specify the disqualification or restriction, and
    - (ii) explain why the defendant wants the court to remove, revoke or suspend it.

(3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

*[Note. Part 55 contains rules about disqualification from driving. See in particular rule 55.1.*

*Part 63 (Appeal to the Crown Court) and Part 64 (Appeal to the High Court by case stated) contain rules about applications to suspend disqualifications pending appeal.*

*For the circumstances in which the court may—*

- (a) *remove a disqualification from keeping a dog, see section 4(6) of the Dangerous Dogs Act 1991(606). The court may not consider an application made within 1 year of the disqualification; or, after that, within 1 year of any previous application that was refused.*
- (b) *revoke or suspend a travel restriction order against a defendant convicted of drug trafficking, see section 35 of the Criminal Justice and Police Act 2001(607). The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.]*

### **Application for a restitution order by the victim of a theft**

**42.7.**—(1) This rule applies where, on application by the victim of a theft, the court can order a defendant to give that person goods obtained with the proceeds of goods stolen in that theft.

- (2) A person who wants the court to exercise that power if the defendant is convicted must—
  - (a) apply in writing as soon as practicable (without waiting for the verdict);
  - (b) serve the application on the court officer; and
  - (c) in the application—

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**(604)**2000 c. 6; section 130 was amended by paragraphs 90 and 117 of Schedule 32 to the Criminal Justice Act 2003 (c. 44), section 14(1) of, and paragraph 29 of Schedule 1 to, the Fraud Act 2006 (c. 35), section 49 of, and paragraph 6(b) of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38), section 148(1) of, and paragraphs 40 and 46 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 63 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(605)**2000 c. 6; section 133 was amended by section 456 of, and paragraphs 1 and 37(1) and (3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

**(606)**1991 c. 65; section 4(6) was amended by section 109(1) of, and paragraph 353 of Schedule 8 to, the Courts Act 2003 (c. 39).

**(607)**2001 c. 16; section 35 was amended by sections 39(3) of the Identity Cards Act 2006 (c. 15).

- (i) identify the goods, and
  - (ii) explain why the applicant is entitled to them.
- (3) The court officer must serve a copy of the application on each party.
- (4) The court must not determine the application unless the applicant and each party has had an opportunity to make representations at a hearing (whether or not each in fact attends).
- (5) The court may —
- (a) extend (even after it has expired) the time limit under paragraph (2); and
  - (b) allow an application to be made orally.

*[Note. For the circumstances in which the court may order—*

- (a) *the return of stolen goods, see section 148 of the Powers of Criminal Courts (Sentencing) Act 2000(608);*
- (b) *the defendant to give the victim of the theft goods that are not themselves the stolen goods but which represent their proceeds, see section 148(2)(b) of the 2000 Act.]*

#### **Requests for medical reports, etc.**

- 42.8.**—(1) This rule applies where the court—
- (a) requests a medical examination of the defendant and a report; or
  - (b) requires information about the arrangements that could be made for the defendant where the court is considering—
    - (i) a hospital order, or
    - (ii) a guardianship order.
- (2) Unless the court otherwise directs, the court officer must, as soon as practicable, serve on each person from whom a report or information is sought a note that—
- (a) specifies the power exercised by the court;
  - (b) explains why the court seeks a report or information from that person; and
  - (c) sets out or summarises any relevant information available to the court.

*[Note. The court may request a medical examination of the defendant and a report in connection with—*

- (a) *section 4 of the Criminal Procedure (Insanity) Act 1964(609), under which the Crown Court may determine a defendant's fitness to plead;*
- (b) *section 35 of the Mental Health Act 1983(610), under which the court may order the defendant's detention in hospital to obtain a further medical report;*
- (c) *section 36 of the 1983 Act(611), under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial;*

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**(608)** 2000 c. 6; section 148 was amended by paragraph 74 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

**(609)** 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).

**(610)** 1983 c. 20; section 35 was amended by sections 1(4) and 10(1) and (2) of, and paragraphs 1 and 5 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 54 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

**(611)** 1983 c. 20; section 36 was amended by sections 1(4), 5(1) and (2) and 10(1) and (3) of, and paragraphs 1 and 6 of Schedule 1 to, the Mental Health Act 2007 (c. 12).

- (d) *section 37 of the 1983 Act(612), under which the court may order the defendant's detention and treatment in hospital, or make a guardianship order, instead of disposing of the case in another way;*
- (e) *section 38 of the 1983 Act(613), under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;*
- (f) *section 157 of the Criminal Justice Act 2003(614), under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;*
- (g) *section 207 of the 2003 Act(615)(in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(616)(in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.*

*For the purposes of the legislation listed in (a), (d) and (e) above, the court requires the written or oral evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. For the purposes of (b), the court requires one medical practitioner's evidence. For the purposes of (c), the court requires two medical practitioners' evidence. For the purposes of (f) and (g), the court requires the evidence of a registered medical practitioner with special experience in the diagnosis or treatment of mental disorder.*

*Under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(617), a magistrates' court may adjourn a trial to obtain medical reports.*

*Part 33 contains rules about the content of expert medical reports.*

*For the authorities from whom the court may require information about hospital treatment or guardianship, see sections 39 and 39A of the 1983 Act(618).]*

### **Information to be supplied on admission to hospital or guardianship**

- 42.9.—**(1) This rule applies where the court—
- (a) orders the defendant's detention and treatment in hospital; or
  - (b) makes a guardianship order.

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**(612)** 1983 c. 20; section 37 was amended by Schedule 6 and paragraph 12 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 11 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 2 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), sections 1, 4, 10, 55 and paragraphs 1 and 7 of Schedule 1, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12), and sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 1 of Schedule 19, and paragraph 2 of Schedule 26, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 148 of, and paragraph 8 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) with effect from a date to be appointed.

**(613)** 1983 c. 20; section 38 was amended by section 49(1) of the Crime (Sentences) Act 1997 (c. 43), sections 1(4) and 10(1) and (5) of, and paragraphs 1 and 8 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 56 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

**(614)** 2003 c. 44.

**(615)** 2003 c. 44; section 207 was amended by article 4(2) of, and paragraph 7 of Schedule 5 to, S.I. 2009/1182, article 14(a) and (b) of, and Part 1 of Schedule 5 to, S.I. 2010/813, section 72 of the Health and Social Care Act 2012 (c. 7) and section 73 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(616)** 2008 c. 4.

**(617)** 2000 c. 6.

**(618)** 1983 c. 20; section 39 was amended by sections 2(1) and 5(1) of, and paragraph 107(5) of Schedule 1, and Schedule 3 to, the Health Authorities Act 1995 (c. 17), section 2(5) of, and paragraphs 42 and 46 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 31(1) and (2) of the Mental Health Act 2007 (c. 12) and paragraph 13(1) and (8) of article 3 of, S.I. 2007/961. Section 39A was inserted by section 27(1) of the Criminal Justice Act 1991 (c. 53).

(2) Unless the court otherwise directs, the court officer must, as soon as practicable, serve on (as applicable) the hospital or the guardian—

- (a) a record of the court's order;
- (b) such information as the court has received that appears likely to assist in treating or otherwise dealing with the defendant, including information about—
  - (i) the defendant's mental condition,
  - (ii) the defendant's other circumstances, and
  - (iii) the circumstances of the offence.

*[Note. For the circumstances in which the court may order the defendant's detention and treatment in hospital, see sections 35, 36, 37, 38 and 44 of the Mental Health Act 1983(619). For the circumstances in which the court may make a guardianship order, see the same section 37.]*

### **Information to be supplied on committal for sentence, etc.**

**42.10.**—(1) This rule applies where a magistrates' court or the Crown Court convicts the defendant and—

- (a) commits or adjourns the case to another court—
    - (i) for sentence, or
    - (ii) for the defendant to be dealt with for breach of a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by that other court;
  - (b) deals with a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court; or
  - (c) makes an order that another court is, or may be, required to enforce.
- (2) Unless the convicting court otherwise directs, the court officer must, as soon as practicable—
- (a) where paragraph (1)(a) applies, arrange the transmission from the convicting to the other court of a record of any relevant—
    - (i) certificate of conviction,
    - (ii) magistrates' court register entry,
    - (iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(620),

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(619) 1983 c. 20; section 35 was amended by sections 1(4) and 10(1) and (2) of, and paragraphs 1 and 5 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 54 of Schedule 21 to, the Legal Services Act 2007 (c. 29). Section 36 was amended by sections 1(4), 5(1) and (2) and 10(1) and (3) of, and paragraphs 1 and 6 of Schedule 1 to, the Mental Health Act 2007 (c. 12). Section 37 was amended by Schedule 6 and paragraph 12 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 11 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 2 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), sections 1, 4, 10, 55 and paragraphs 1 and 7 of Schedule 1, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12), and sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 1 of Schedule 19, and paragraph 2 of Schedule 26, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 148 of, and paragraph 8 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) with effect from a date to be appointed. Section 38 was amended by section 49(1) of the Crime (Sentences) Act 1997 (c. 43), sections 1(4) and 10(1) and (5) of, and paragraphs 1 and 8 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 56 of Schedule 21 to, the Legal Services Act 2007 (c. 29). Section 44 was amended by sections 10(1) and (7) and 40(3) and 55 of, and part 8 of Schedule 11 to, the Mental Health Act 2007 (c. 12).

(620) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

- (iv) note of evidence,
- (v) statement or other document introduced in evidence,
- (vi) medical or other report,
- (vii) representation order or application for such order, and
- (viii) interim driving disqualification;
- (b) where paragraph (1)(b) or (c) applies, arrange—
  - (i) the transmission from the convicting to the other court of notice of the convicting court's order, and
  - (ii) the recording of that order at the other court;
- (c) in every case, notify the defendant and, where the defendant is under 14, an appropriate adult, of the location of the other court.

*[Note. For the circumstances in which—*

- (a) *a magistrates' court may (and in some cases must) commit the 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(621) and section 43 of the Mental Health Act 1983(622);*
- (b) *a magistrates' court may adjourn the case to another magistrates' court for sentence, see section 10 of the Magistrates' Courts Act 1980(623) and section 10 of the 2000 Act(624);*
- (c) *a magistrates' court or the Crown Court may (and in some cases must) adjourn the case to a youth court for sentence, see section 8 of the 2000 Act(625);*
- (d) *a youth court may adjourn the case to a magistrates' court for sentence, see section 9 of the 2000 Act(626);*
- (e) *a magistrates' court may transfer a fine to be enforced to another court, see sections 89 and 90 of the 1980 Act(627).*

*For the court's powers where it convicts a defendant who is subject to a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court, see sections 1C and 13 of the 2000 Act(628) and section 189 of, and Schedule 12 to, the Criminal Justice Act 2003(629).*

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- (621) 2000 c. 6; sections 3, 4 and 6 were amended, and sections 3A, 3B, 3C and 4A inserted, by paragraphs 21, 22A, 23, 24, 25 and 28 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 3A was amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 7 and 8 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 3C was amended by paragraphs 7 and 9 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 6 was further amended by paragraphs 90 and 91 of Schedule 32, and Parts 7 and 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
  - (622) 1983 c. 20; section 43 was amended by paragraph 91 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 55 of Schedule 3, and Part 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
  - (623) 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).
  - (624) 2000 c. 6.
  - (625) 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, S.I. 2005/886.
  - (626) 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to, S.I. 2005/886.
  - (627) 1980 c. 43; section 89 was amended by section 47 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraphs 95 and 107 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 225 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 49 of S.I. 2006/1737. Section 90 was amended by section 47(2) of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 226 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 50 of S.I. 2006/1737.
  - (628) 2000 c. 6; section 1C was substituted, together with sections 1, 1A, 1B and 1D, for sections 1 and 2 as originally enacted, by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44). Section 13 was amended by article 2 of, and paragraph 64 of the Schedule to, S.I. 2005/886.
  - (629) 2003 c. 44; section 189 was amended by articles 2(1) and (2), and 3(1) and (2) of S.I. 2005/643 and section 68 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).



*Under section 140 of the 2000 Act(630), a fine imposed or other sum ordered to be paid in the Crown Court is enforceable by a magistrates' court specified in the order, or from which the case was committed or sent to the Crown Court.*

*See also section 219(3) of the 2003 Act(631); paragraph 34(3) of Schedule 1 to the Criminal Justice and Immigration Act 2008(632); and section 1A(9) of the Street Offences Act 1959(633).]*

### **Application to review sentence because of assistance given or withheld**

**42.11.**—(1) This rule applies where the Crown Court can reduce or increase a sentence on application by a prosecutor in a case in which—

- (a) since being sentenced, the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence; or
- (b) since receiving a reduced sentence for agreeing to give such assistance, the defendant has failed to do so.

(2) A prosecutor who wants the court to exercise that power must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the defendant; and
- (c) in the application—
  - (i) explain why the sentence should be reduced, or increased, as appropriate, and
  - (ii) identify any other matter relevant to the court's decision, including any sentencing guideline or guideline case.

(3) The general rule is that the application must be determined by the judge who passed the sentence, unless that judge is unavailable.

(4) The court must not determine the application in the defendant's absence unless the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

*[Note. Under section 73 of the Serious Organised Crime and Police Act 2005(634), the Crown Court may pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.*

*Under section 74 of the 2005 Act(635), where the Crown Court has sentenced a defendant a prosecutor may apply to the court—*

- (a) *to reduce the sentence, if the defendant subsequently assists, or agrees to assist, in the investigation or prosecution of an offence; or*
- (b) *to increase a reduced sentence to that which the court otherwise would have passed, if the defendant agreed to give such assistance but subsequently has knowingly failed to do so.*

*Such an application may be made only where—*

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**(630)**2000 c. 6; section 140 was amended by paragraphs 74 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 69 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4). It is further amended by sections 74 and 75 of, and paragraphs 160 and 194 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

**(631)**2003 c. 44; section 219(3) was amended by article 2 of, and paragraph 105(b) of the Schedule to, S.I. 2005/886.

**(632)**2008 c. 4.

**(633)**1959 c. 57; section 1A was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).

**(634)**2005 c. 15.

**(635)**2005 c. 15; section 74 was amended by article 13 of, and paragraphs 1 and 19 of Schedule 15 to, S.I. 2010/976.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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- (a) *the defendant is still serving the sentence; and*
- (b) *the prosecutor thinks it is in the interests of justice to apply.]*

## PART 43

*[Note. There are no rules in this Part.]*

## PART 44

### BREACH, REVOCATION AND AMENDMENT OF COMMUNITY AND OTHER ORDERS

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#### Contents of this Part

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When this Part applies	rule 44.1
Application by responsible officer or supervisor	rule 44.2
Application by defendant or person affected	rule 44.3
Procedure on application by responsible officer or supervisor	rule 44.4

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#### When this Part applies

##### 44.1. This Part applies where—

- (a) the person 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(**636**),
  - (ii) Schedule 8 or 12 to the Criminal Justice Act 2003(**637**),
  - (iii) Schedule 2 to the Criminal Justice and Immigration Act 2008(**638**), or
  - (iv) the Schedule to the Street Offences Act 1959(**639**)
 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 or supervisor,
  - (ii) the defendant, or

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**(636)** 2000 c. 6; Schedules 3, 5 and 7 were repealed by section 149 of, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). For transitional provisions and savings, see section 148(2) of, and paragraphs 1(1) and 5 of Schedule 27 to, the Criminal Justice and Immigration Act 2008 (c. 4). 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 was 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). Other amendments to these Schedules do not affect the procedure prescribed by these rules.

**(637)** 2003 c. 44; Schedule 8 was amended by article 2 of, and paragraph 106(a) of the Schedule to, S.I. 2005/886, section 6 of, and paragraph 109 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 66 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Other amendments to Schedule 8 do not affect the procedure prescribed by these rules. Schedule 12 was amended by article 2 of, and paragraph 110 of the Schedule to, S.I. 2005/886 and section 69 of, and paragraphs 2 and 11 of Schedule 9 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(638)** 2008 c. 4; Schedule 2 was amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and sections 83 and 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(639)** 1959 c. 57; Schedule: Orders under section 1(2A) was inserted by section 17(1) and (4) of the Policing and Crime Act 2009 (c. 26).

- (iii) where the legislation allows, 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) *Schedules 3, 5 and 7 are repealed, with savings for existing orders, by the relevant provisions of the Criminal Justice and Immigration Act 2008; and, with savings for existing orders, Schedule 8 no longer refers to action plan orders.*

*In the Criminal Justice Act 2003—*

- (a) *Schedule 8 deals with the breach, revocation and amendment of community orders; and*
- (b) *Schedule 12 deals with the breach and amendment of suspended sentence orders.*

*Schedule 2 to the Criminal Justice and Immigration Act 2008 deals with the breach, revocation and amendment of youth rehabilitation orders.*

*Under Schedule 8 to the 2000 Act, Schedule 8 to the 2003 Act and Schedule 2 to the 2008 Act, a single member of the court can adjourn a hearing to which this Part applies.]*

#### **Application by responsible officer or supervisor**

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

- (a) the responsible officer or supervisor 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 or supervisor; 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) where the legislation allows, 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 or supervisor, and
    - (iii) as appropriate, the defendant or the person affected.

**Procedure on application by responsible officer or supervisor**

**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,
    - (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.

**PART 45**

*[Note. There are no rules in this Part.]*

**PART 46**

*[Note. There are no rules in this Part.]*

**PART 47**

*[Note. There are no rules in this Part.]*

**PART 48**

*[Note. There are no rules in this Part.]*

**PART 49**

*[Note. There are no rules in this Part.]*

## PART 50

### CIVIL BEHAVIOUR ORDERS AFTER VERDICT OR FINDING

#### Contents of this Part

When this Part applies	rule 50.1
Behaviour orders: general rules	rule 50.2
Application for behaviour order and notice of terms of proposed order: special rules	rule 50.3
Evidence to assist the court: special rules	rule 50.4
Application to vary or revoke behaviour order	rule 50.5
Notice of hearsay evidence	rule 50.6
Cross-examination of maker of hearsay statement	rule 50.7
Credibility and consistency of maker of hearsay statement	rule 50.8
Court's power to vary requirements under this Part	rule 50.9

*[Note. See Part 3 for the court's general powers to consider an application and to give directions.]*

#### When this Part applies

**50.1.**—(1) This Part applies in magistrates' courts and in the Crown Court where the court could decide to make, vary or revoke a civil order—

- (a) under a power that the court can exercise after reaching a verdict or making a finding, and
- (b) that requires someone to do, or not do, something.

(2) A reference to a 'behaviour order' in this Part is a reference to any such order.

(3) A reference to 'hearsay evidence' in this Part is a reference to evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(**640**).

*[Note. In the circumstances set out in the Acts listed, the court can make a behaviour order:*

- (a) *on conviction, under—*
  - (i) *section 14A of the Football Spectators Act 1989(**641**)(football banning orders),*
  - (ii) *section 5 of the Protection from Harassment Act 1997(**642**)(restraining orders),*
  - (iii) *sections 1C and 1D of the Crime and Disorder Act 1998(**643**)(anti-social behaviour orders and interim anti-social behaviour orders),*

**(640)** 1995 c. 38.

**(641)** 1989 c. 37; section 14A was amended by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25), section 86(5) of the Anti-Social Behaviour Act 2003 (c. 38), section 139(10) of the Serious Organised Crime and Police Act 2005 (c. 15) and sections 52(2) and 65 of, and paragraphs 1 and 2 of Schedule 3 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38).

**(642)** 1997 c. 40; section 5 was amended by sections 12 and 58 of, and paragraph 43 of Schedule 10 and 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and by section 125 of the Serious Organised Crime and Police Act 2005 (c. 15).

**(643)** 1998 c. 37; section 1C was inserted by section 64 of the Police Reform Act 2002 (c. 30) and amended by sections 83 and 86 of the Anti-social Behaviour Act 2003 (c. 38), sections 139, 140, 141 and 174 of, and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15) and sections 123 and 124 of the Criminal Justice and Immigration Act 2008 (c. 4). Section 1D was inserted by section 65 of the Police Reform Act 2002 (c. 30) and amended by section 139 of the Serious Organised Crime and Police Act 2005 (c. 15).

- (iv) sections 8 and 9 of the Crime and Disorder Act 1998(644)(parenting orders),
  - (v) section 103A of the Sexual Offences Act 2003(645)(sexual harm prevention orders),
  - (vi) section 104 of the Sexual Offences Act 2003(646)(sexual offences prevention orders),
  - (vii) section 19 of the Serious Crime Act 2007(647)(serious crime prevention orders),
  - (viii) section 6 of the Violent Crime Reduction Act 2006(648)(drinking banning orders),
  - (ix) section 22 of the Anti-social Behaviour, Crime and Policing Act 2014(649)(criminal behaviour orders);
- (b) on acquittal, under section 5A of the Protection from Harassment Act 1997(650)(restraining orders on acquittal); and
  - (c) on the making of a finding of (i) not guilty by reason of insanity, or (ii) disability, under section 104 of the Sexual Offences Act 2003 (sexual offences prevention orders).

Section 1(2) of the Civil Evidence Act 1995 defines hearsay as meaning “a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated”. Section 13 of that Act defines a statement as meaning “any representation of fact or opinion, however made”.]

### **Behaviour orders: general rules**

**50.2.**—(1) The court must not make a behaviour order unless the person to whom it is directed has had an opportunity—

- (a) to consider—
  - (i) what order is proposed and why, and
  - (ii) the evidence in support; and
- (b) to make representations at a hearing (whether or not that person in fact attends).

(2) That restriction does not apply to making an interim behaviour order, but such an order has no effect unless the person to whom it is directed—

- (a) is present when it is made; or
- (b) is handed a document recording the order not more than 7 days after it is made.

(3) Where the court decides not to make, where it could—

- (a) a football banning order;
- (b) a parenting order, after a person under 16 is convicted of an offence; or
- (c) a drinking banning order,

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(644) 1998 c. 37; section 8 was amended by section 165 of, and paragraph 194 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 73 and 74 of, and paragraph 4 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), section 18 of the Anti-social Behaviour Act 2003 (c. 38), section 324 of, and paragraph 1 of Schedule 34 to, the Criminal Justice Act 2003 (c. 44), sections 18, 60 and 64 of, and paragraph 5 of Schedule 2 to, and Schedule 5 to, the Children Act 2004 (c. 31), section 144 of, and paragraph 3 of Schedule 10 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 60 of the Violent Crime Reduction Act 2006 (c. 38) and article 3 of, and paragraph 13 of Schedule 1 to, S.I. 2008/912. It has also been amended by section 144 of, and paragraph 3 of Schedule 10 to, the Serious Organised Crime and Police Act 2005 (c. 15), which is in force in relation to certain specified areas. The date for remaining purposes is to be appointed. It is further amended by section 41 of the Crime and Security Act 2010 (c. 17), with effect from a date to be appointed.

(645) 2003 c. 42; section 103A is inserted by paragraphs 1 and 2 of Schedule 5 to the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), with effect from a date to be appointed.

(646) 2003 c. 42.

(647) 2007 c. 27.

(648) 2006 c. 38.

(649) 2014 c. 12; section 22 comes into force on a date to be appointed.

(650) 1997 c. 40; section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

the court must announce, at a hearing in public, the reasons for its decision.

*[Note. The Acts listed in the note to rule 50.1 impose requirements specific to each different type of behaviour order. Not all allow the court to make an interim behaviour order.*

*See section 14A(3) of the Football Spectators Act 1989(651); sections 8A(4) and 9(1) of the Crime and Disorder Act 1998(652); and section 6(4) of the Violent Crime Reduction Act 2006(653).]*

### **Application for behaviour order and notice of terms of proposed order: special rules**

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

- (a) a prosecutor wants the court to make—
  - (i) an anti-social behaviour order,
  - (ii) a serious crime prevention order, or
  - (iii) a criminal behaviour order; or
- (b) a prosecutor proposes, on the prosecutor’s initiative or at the court’s request—
  - (i) a sexual offences prevention order, or
  - (ii) a sexual harm prevention order

if the defendant is convicted.

(2) Where paragraph (1)(a) applies, the prosecutor must serve a notice of intention to apply for such an order on—

- (a) the court officer;
- (b) the defendant against whom the prosecutor wants the court to make the order; and
- (c) any person on whom the order would be likely to have a significant adverse effect,

as soon as practicable (without waiting for the verdict).

(3) A notice under paragraph (2) must—

- (a) summarise the relevant facts;
- (b) identify the evidence on which the prosecutor relies in support;
- (c) attach any written statement that the prosecutor has not already served; and
- (d) specify the order that the prosecutor wants the court to make.

(4) A defendant served with a notice under paragraph (2) must—

- (a) serve written notice of any evidence on which the defendant relies on—
  - (i) the court officer, and
  - (ii) the prosecutor,

as soon as practicable (without waiting for the verdict); and

- (b) in the notice, identify that evidence and attach any written statement that has not already been served.

(5) Where paragraph (1)(b) applies, the prosecutor must—

- (a) serve a draft order on the court officer and on the defendant not less than 2 business days before the hearing at which the order may be made;

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(651) 1989 c. 37; section 14A was substituted, together with sections 14 and 14B–14J, for the existing sections 14–17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

(652) 1998 c. 37; section 8A is inserted and section 9(1) amended by section 41(1), (3) and (4) of the Crime and Security Act 2010 (c. 17), with effect from a date to be appointed.

(653) 2006 c. 38.

- (b) in a case in which a sexual offences prevention order is proposed, in the draft order specify those prohibitions which the prosecutor proposes as necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
- (c) in a case in which a sexual harm prevention order is proposed, in the draft order specify those prohibitions which the prosecutor proposes as necessary for the purpose of—
  - (i) protecting the public or any particular members of the public from sexual harm from the defendant, or
  - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.
- (6) This rule does not apply to an application for an interim anti-social behaviour order.
- (7) Where the prosecutor wants the court to make an anti-social behaviour order or a criminal behaviour order, the rules about special measures directions in Part 29 (Measures to assist a witness or defendant to give evidence) apply, but—
  - (a) the prosecutor must apply when serving a notice under paragraph (2); and
  - (b) the time limits in rule 29.3(a) do not apply.

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

*Under section 8 of the Serious Crime Act 2007 a serious crime prevention order may be made only on an application by the Director of Public Prosecutions or the Director of the Serious Fraud Office. See also paragraphs 2, 7 and 13 of Schedule 2 to the 2007 Act.*

*Section 107 of the Sexual Offences Act 2003(654) describes the content and effect of a sexual offences prevention order.*

*Under section 11 of the Crime and Disorder Act 1998(655), on an application for an anti-social behaviour order the court may give a special measures direction under the Youth Justice and Criminal Evidence Act 1999. Under section 31 of the Anti-social Behaviour, Crime and Policing Act 2014(656) the court may give such a direction on an application for a criminal behaviour order.*

*If a party relies on hearsay evidence, see also rules 50.6, 50.7, and 50.8.]*

### **Evidence to assist the court: special rules**

- 50.4.**—(1) This rule applies where the court can make on its own initiative—
- (a) a football banning order;
  - (b) a restraining order;
  - (c) an anti-social behaviour order; or
  - (d) a drinking banning order.
- (2) A party who wants the court to take account of evidence not already introduced must—
- (a) serve notice in writing on—
    - (i) the court officer, and
    - (ii) every other party,
 as soon as practicable (without waiting for the verdict); and

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(654) 2003 c. 42.

(655) 1998 c. 37; section 11 was inserted by section 143 of the Serious Organised Crime and Police Act 2005 (c. 15) and amended by paragraph 72 of Schedule 21 and Part 3 of Schedule 23 to the Coroners and Justice Act 2009 (c. 25).

(656) 2014 c. 12; section 31 comes into force on a date to be appointed.



- (b) in the notice, identify that evidence; and
- (c) attach any written statement containing such evidence.

*[Note. If a party relies on hearsay evidence, see also rules 50.6, 50.7, and 50.8.]*

### **Application to vary or revoke behaviour order**

**50.5.**—(1) The court may vary or revoke a behaviour order if—

- (a) the legislation under which it is made allows the court to do so; and
- (b) one of the following applies—
  - (i) the prosecutor,
  - (ii) the person to whom the order is directed,
  - (iii) any other person mentioned in the order,
  - (iv) the relevant authority or responsible officer,
  - (v) the relevant Chief Officer of Police, or
  - (vi) the Director of Public Prosecutions.

(2) A person applying under this rule must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining—
  - (i) what material circumstances have changed since the order was made, and
  - (ii) why the order should be varied or revoked as a result; and
- (b) serve the application on—
  - (i) the court officer,
  - (ii) as appropriate, the prosecutor or defendant, and
  - (iii) any other person listed in paragraph (1)(b), if the court so directs.

(3) A party who wants the court to take account of any particular evidence before making its decision must, as soon as practicable—

- (a) serve notice in writing on—
  - (i) the court officer,
  - (ii) as appropriate, the prosecutor or defendant, and
  - (iii) any other person listed in paragraph (1)(b) on whom the court directed the application to be served; and
- (b) in that notice identify the evidence and attach any written statement that has not already been served.

(4) The court may decide an application under this rule with or without a hearing.

(5) But the court must not—

- (a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or
- (b) allow an application under this rule unless everyone required to be served, by this rule or by the court, has had at least 14 days in which to make representations, including representations about whether there should be a hearing.

(6) The court officer must—

- (a) serve the application on any person, if the court so directs; and

- (b) give notice of any hearing to—
  - (i) the applicant, and
  - (ii) any person required to be served, by this rule or by the court.

*[Note. The legislation that gives the court power to make a behaviour order may limit the circumstances in which it may be varied or revoked and may require a hearing.*

*If a party relies on hearsay evidence, see also rules 50.6, 50.7 and 50.8.]*

### **Notice of hearsay evidence**

**50.6.**—(1) A party who wants to introduce hearsay evidence must—

- (a) serve a notice in writing on—
  - (i) the court officer, and
  - (ii) every other party directly affected; and
- (b) in that notice—
  - (i) explain that it is a notice of hearsay evidence,
  - (ii) identify that evidence,
  - (iii) identify the person who made the statement which is hearsay, or explain why if that person is not identified, and
  - (iv) explain why that person will not be called to give oral evidence.

(2) A party may serve one notice under this rule in respect of more than one notice and more than one witness.

*[Note. For the time within which to serve a notice of hearsay evidence, see rule 50.3(2) to (4), rule 50.4(2) and rule 50.5(3). See also the requirement in section 2 of the Civil Evidence Act 1995 for reasonable and practicable notice of a proposal to introduce hearsay evidence.*

*Rules 50.6, 50.7 and 50.8 broadly correspond with rules 3, 4 and 5 of the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(657), which apply in civil proceedings in magistrates' courts. Rule 3 of the 1999 Rules however includes a time limit, which may be varied by the court, or a justices' clerk, of 21 days before the date fixed for the hearing, for service of a hearsay notice.]*

### **Cross-examination of maker of hearsay statement**

**50.7.**—(1) This rule applies where a party wants the court's permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

- (2) The party who wants to cross-examine that person must—
  - (a) apply in writing, with reasons, not more than 7 days after service of the notice of hearsay evidence; and
  - (b) serve the application on—
    - (i) the court officer,
    - (ii) the party who served the hearsay evidence notice, and
    - (iii) every party on whom the hearsay evidence notice was served.
- (3) The court may decide an application under this rule with or without a hearing.
- (4) But the court must not—

- (a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or
- (b) allow an application under this rule unless everyone served with the application has had at least 7 days in which to make representations, including representations about whether there should be a hearing.

*[Note. See also section 3 of the Civil Evidence Act 1995.]*

### **Credibility and consistency of maker of hearsay statement**

**50.8.**—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

- (2) The party who wants to challenge the credibility or consistency of that person must—
  - (a) serve a written notice of intention to do so on—
    - (i) the court officer, and
    - (ii) the party who served the notice of hearsay evidence  
not more than 7 days after service of that hearsay evidence notice; and
  - (b) in the notice, identify any statement or other material on which that party relies.
- (3) The party who served the hearsay notice—
  - (a) may call that person to give oral evidence instead; and
  - (b) if so, must serve a notice of intention to do so on—
    - (i) the court officer, and
    - (ii) every party on whom the hearsay notice was served  
not more than 7 days after service of the notice under paragraph (2).

*[Note. Section 5(2) of the Civil Evidence Act 1995 describes the procedure for challenging the credibility of the maker of a statement of which hearsay evidence is introduced. See also section 6 of that Act. The 1995 Act does not allow the introduction of evidence of a previous inconsistent statement otherwise than in accordance with sections 5, 6 and 7 of the Criminal Procedure Act 1865(658).]*

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

- 50.9.** The court may—
- (a) shorten a time limit or extend it (even after it has expired);
  - (b) allow a notice or application to be given in a different form, or presented orally.

## **PART 51**

*[Note. There are no rules in this Part.]*

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**(658)** 1865 c. 18; section 6 was amended by section 10 of the Decimal Currency Act 1969 (c. 19), section 119 of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), section 90 of, and paragraph 3 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 109 of, and paragraph 47 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 331 and 332 of, and paragraph 79 of Schedule 36 to, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

## PART 52

### ENFORCEMENT OF FINES AND OTHER ORDERS FOR PAYMENT

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#### Contents of this Part

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*[Note. Part 18 contains rules about warrants for arrest, detention or imprisonment, including such warrants issued for failure to pay fines, etc.*

*Part 37 contains rules about the procedure on sentencing in a magistrates' court.*

*Part 42 contains rules about the exercise of a magistrates' court's powers to enforce an order made by another court.]*

#### When this Part applies

- 52.1.**—(1) This Part applies where a magistrates' court can enforce payment of—
- (a) a fine, or a sum that legislation requires the court to treat as a fine; or
  - (b) any other sum that a court has ordered to be paid—
    - (i) on a conviction, or
    - (ii) on the forfeiture of a surety.
- (2) Rules 52.7 to 52.9 apply where the court, or a fines officer, issues a warrant that requires someone to—
- (a) take control of goods or money belonging to the defendant;
  - (b) remove and sell any such goods; and
  - (c) pay any such money, and any proceeds of such a sale, to the court officer towards payment of a sum to which this Part applies.
- (3) In this Part—
- (a) 'defendant' means anyone liable to pay a sum to which this Part applies;
  - (b) 'payment terms' means by when, and by what (if any) instalments, such a sum must be paid.

*[Note. For the means by which a magistrates' court may enforce payment, see—*

- (a) *Part 3 of the Magistrates' Courts Act 1980*(659); and
- (b) *Schedule 5 to the Courts Act 2003*(660)and the *Fines Collection Regulations 2006*(661).

*Under that Schedule and those Regulations, some enforcement powers may be exercised by a fines officer.*

*In some legislation, including the 1980 and 2003 Acts, a warrant to which this Part applies was described as 'a warrant of distress'. In the Tribunals, Courts and Enforcement Act 2007*(662), *such a warrant is described as 'a warrant of control'.]*

### **Exercise of court's powers**

**52.2.** The court must not exercise its enforcement powers unless—

- (a) the court officer has served on the defendant any collection order or other notice of—
  - (i) the obligation to pay,
  - (ii) the payment terms, and
  - (iii) how and where the defendant must pay; and
- (b) the defendant has failed to comply with the payment terms.

*[Note. See section 76 of the Magistrates' Courts Act 1980*(663); *and paragraphs 12 and 13 of Schedule 5 to the Courts Act 2003*(664).]

### **Duty to give receipt**

**52.3.—**(1) This rule applies where the defendant makes a payment to—

- (a) the court officer specified in an order or notice served under rule 52.2;
  - (b) another court officer;
  - (c) any—
    - (i) custodian of the defendant,
    - (ii) supervisor appointed to encourage the defendant to pay, or
    - (iii) responsible officer appointed under a community sentence or a suspended sentence of imprisonment; or
  - (d) a person executing a warrant to which rule 18.6 (warrants for arrest, detention or imprisonment that cease to have effect on payment) or this Part applies.
- (2) The person receiving the payment must—
- (a) give the defendant a receipt; and
  - (b) as soon as practicable transmit the payment to the court officer specified in an order or notice served under rule 52.2, if the recipient is not that court officer.

*[Note. For the effect of payment to a person executing a warrant to which—*

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(659) 1980 c. 43.

(660) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737. It is further amended by section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.

(661) S.I. 2006/501.

(662) 2007 c. 15.

(663) 1980 c. 43.

(664) 2003 c. 39; paragraph 13 was amended by articles 2, 4 and 15 of S.I. 2006/1737.

- (a) rule 18.6 applies, see that rule and sections 79(665) and 125(1)(666) of the Magistrates' Courts Act 1980;
- (b) this Part applies, see rule 52.8(5).

*For the circumstances in which the court may appoint a person to supervise payment, see section 88 of the 1980 Act(667).]*

### **Appeal against decision of fines officer**

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

- (a) a collection order is in force;
  - (b) a fines officer makes a decision under one of these paragraphs of Schedule 5 to the Courts Act 2003(668)—
    - (i) paragraph 22 (Application to fines officer for variation of order or attachment of earnings order, etc.),
    - (ii) paragraph 31(669) (Application to fines officer for variation of reserve terms), or
    - (iii) paragraph 37(670) (Functions of fines officer in relation to defaulters: referral or further steps notice); and
  - (c) the defendant wants to appeal against that decision.
- (2) Unless the court otherwise directs, the defendant must—
- (a) appeal in writing not more than 10 business days after the decision;
  - (b) serve the appeal on the court officer; and
  - (c) in the appeal—
    - (i) explain why a different decision should be made, and
    - (ii) specify the decision that the defendant proposes.
- (3) Where the court determines an appeal, the general rule is that it must do so at a hearing.

*[Note. Under paragraph 12 of Schedule 5 to the Courts Act 2003, where a collection order is in force the court's powers to deal with the defendant's liability to pay the sum for which that order was made are subject to the provisions of that Schedule and to fines collection regulations.*

*For the circumstances in which a defendant may appeal against a decision to which this rule applies, see paragraphs 23, 32 and 37(9) of Schedule 5 to the 2003 Act(671). The time limit for appeal is prescribed by those paragraphs. It may be neither extended nor shortened.]*

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(665) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(666) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 62(3), 86 and 146 of and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(667) 1980 c. 43; section 88 was amended by paragraph 53 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraph 68 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 62 of, and paragraphs 45 and 54 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15). It is further amended by paragraphs 58 and 64 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

(668) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737. It is further amended by section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.

(669) 2003 c. 39; paragraph 31 was amended by articles 2, 4 and 20 of S.I. 2006/1737.

(670) 2003 c. 39; paragraph 37 was amended by articles 2, 4 and 25(a) and (b) of S.I. 2006/1737.

(671) 2003 c. 39; paragraph 32 was amended by articles 2, 4 and 24(b) of S.I. 2006/1737.

### **Application to reduce a fine or vary payment terms**

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

- (a) no collection order is in force; and
- (b) the defendant wants the court to—
  - (i) reduce the amount of a fine, or
  - (ii) vary payment terms.

(2) Unless the court otherwise directs, the defendant must—

- (a) apply in writing;
- (b) serve the application on the court officer; and
- (c) in the application, explain—
  - (i) what relevant circumstances have not yet been considered by the court, and
  - (ii) why the fine should be reduced, or the payment terms varied.

*[Note. See sections 75, 85 and 85A of the Magistrates' Courts Act 1980(672) and section 165 of the Criminal Justice Act 2003(673).]*

### **Claim to avoid fine after penalty notice**

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

- (a) a chief officer of police serves on the magistrates' court officer a certificate registering, for enforcement as a fine, a sum payable by a defendant after failure to comply with a penalty notice; and
- (b) the court or a fines officer enforces the fine.

(2) A defendant who claims not to be the person to whom the penalty notice was issued must, unless the court otherwise directs—

- (a) make that claim in writing; and
- (b) serve it on the court officer.

(3) The court officer must—

- (a) notify the chief officer of police by whom the certificate was registered; and
- (b) refer the case to the court.

(4) Where such a claim is made—

- (a) the general rule is that the court must adjourn the enforcement for 28 days and fix a hearing; but
- (b) the court may make a different order.

(5) At any such hearing, the chief officer of police must introduce any evidence to contradict the defendant's claim.

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**(672)** 1980 c. 43; section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17). Section 85 was substituted by section 61 of the Criminal Justice Act 1988 (c. 33) and amended by section 55 of, and paragraph 10(2) of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), section 109(1) of, and paragraph 222 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). It is further amended by paragraphs 25 and 28 of Schedule 32 to the Criminal Justice Act 2003 (c. 44) and section 26 of the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed. Section 85A was inserted by section 51(1) of the Criminal Justice Act 1982 (c. 48).

**(673)** 2003 c. 44.

[Note. See section 10 of the Criminal Justice and Police Act 2001(674).

For the circumstances in which a sum may be registered for enforcement as a fine after failure to comply with a penalty notice, see sections 8 and 9 of the 2001 Act(675).]

### **Information to be included in a warrant to take goods, etc.**

**52.7.**—(1) A warrant must identify—

- (a) each person to whom it is directed;
- (b) the defendant against whom it was issued;
- (c) the sum for which it was issued and the reason that sum is owed;
- (d) the court or fines officer who issued it, unless that is otherwise recorded by the court officer; and
- (e) the court office for the court or fines officer who issued it.

(2) A person to whom a warrant is directed must record on it the date and time at which it is received.

(3) A warrant that contains an error is not invalid, as long as—

- (a) it was issued in respect of a lawful decision by the court or fines officer; and
- (b) it contains enough information to identify that decision.

[Note. See sections 78 and 125ZA of the Magistrates' Courts Act 1980(676).]

### **Execution of a warrant to take goods, etc.**

**52.8.**—(1) A warrant may be executed by—

- (a) any person to whom it is directed; or
- (b) anyone authorised to do so by section 125 (warrants), 125A (civilian enforcement officers) or 125B (execution by approved enforcement agency) of the Magistrates' Courts Act 1980(677).

(2) The person who executes a warrant must—

- (a) explain, in terms the defendant can understand—
  - (i) the order or decision that the warrant was issued to enforce,
  - (ii) the sum for which the warrant was issued, and
  - (iii) any extra sum payable in connection with the execution of the warrant;
- (b) show the defendant the warrant, if that person has it;
- (c) if the defendant asks—

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(674) 2001 c. 16; section 10 was amended by paragraphs 1 and 10 of Schedule 23 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(675) 2001 c. 16; section 8 was amended by section 109(1) of, and paragraph 399 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 9 was amended by section 109(1) of, and paragraph 400(1) (2) (3) and (4) of Schedule 8 to, the Courts Act 2003 (c. 39).

(676) 1980 c. 43; section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48) and paragraph 219 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22) and amended by articles 46 and 52 of S.I. 2006/1737 and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128 and section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(677) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 62(3), 86 and 146 of and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).



- (i) arrange for the defendant to see the warrant, if that person does not have it, and
  - (ii) show the defendant any written statement of that person's authority required by section 125A or 125B of the 1980 Act; and
  - (d) clearly mark any goods that are taken under the warrant, unless that person removes those goods at once.
- (3) These goods must not be taken under the warrant—
- (a) clothes or bedding used by the defendant or by anyone living with the defendant;
  - (b) tools, books, vehicles or other equipment that the defendant needs to use in the defendant's employment, business or vocation, unless the defendant is a corporation.
- (4) Unless the court otherwise directs, or the defendant otherwise agrees, if the person who executes the warrant takes household goods they must not be removed until the day of sale.
- (5) The warrant no longer has effect if—
- (a) there is paid to the person executing it the sum for which it was issued and any extra sum payable in connection with its execution;
  - (b) those sums are offered to, but refused by, that person; or
  - (c) that person—
    - (i) is shown a receipt given under rule 52.3 for the sum for which the warrant was issued, and
    - (ii) is paid any extra sum payable in connection with its execution.

*[Note. Under section 125 of the Magistrates' Courts Act 1980, a warrant issued by a magistrates' court may be executed by any person to whom it is directed or by any constable acting within that constable's police area.*

*Certain warrants issued by a magistrates' court may be executed anywhere in England and Wales by a civilian enforcement officer, under section 125A of the 1980 Act; or by an approved enforcement agency, under section 125B of the Act. In either case, the person executing the warrant must, if the defendant asks, show a written statement indicating: that person's name; the authority or agency by which that person is employed, or in which that person is a director or partner; that that person is authorised to execute warrants; and, where section 125B applies, that the agency is registered as one approved by the Lord Chancellor.*

*See also section 125D of the 1980 Act(678), under which—*

- (a) *a warrant to which section 125A applies may be executed by any person entitled to execute it, even though it is not in that person's possession at the time; and*
- (b) *certain other warrants, including any warrant to which this Part applies, may be executed by a constable, even though it is not in that constable's possession at the time.]*

### **Sale of goods taken under a warrant**

- 52.9.**—(1) Unless the court otherwise directs or the defendant otherwise agrees, goods taken under a warrant must be sold—
- (a) at public auction; and
  - (b) as soon as reasonably practicable after the expiry of 5 business days from the date of execution of the warrant.
- (2) After a sale, the person who executed the warrant must, as soon as reasonably practicable—

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(678) 1980 c. 43; section 125D was inserted by section 96 of the Access to Justice Act 1999 (c. 22) and amended by sections 62 and 146 of, and paragraphs 45 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (a) collect the proceeds of sale;
- (b) deduct any sum payable in connection with the execution of the warrant;
- (c) pay the court officer specified in an order or notice served under rule 52.2 the sum for which the warrant was issued;
- (d) pay any balance remaining to the defendant; and
- (e) deliver an account of those deductions and payments to the court officer.

### **Financial penalties imposed in other European Union member States**

**52.10.**—(1) This rule applies where the Lord Chancellor gives the court officer a request to enforce a financial penalty imposed in another European Union member State.

- (2) The court officer must serve on the defendant—
  - (a) notice of the request for enforcement, and of its effect;
  - (b) a copy of—
    - (i) the certificate requesting enforcement, and
    - (ii) the decision requiring payment to which that certificate relates; and
  - (c) notice that the procedure set out in this rule applies.
- (3) A defendant who wants the court to refuse enforcement must—
  - (a) serve notice of objection on the court officer;
  - (b) unless the court otherwise directs, serve that notice not more than 14 days after service of notice of the request; and
  - (c) in the notice of objection—
    - (i) identify each ground for refusal on which the defendant relies,
    - (ii) summarise any relevant facts not already included in the certificate and decision served with the notice of the request, and
    - (iii) identify any other document that the defendant thinks the court will need to determine the request (and serve any such document with the notice).
- (4) The court—
  - (a) may determine a request for enforcement—
    - (i) at a hearing, which must be in public unless the court otherwise directs, or
    - (ii) without a hearing; but
  - (b) must not allow enforcement unless the defendant has had at least 14 days in which to serve notice of objection.
- (5) Paragraphs (2) and (3) do not apply if, on receipt of the request, the court decides that a ground for refusal applies.
- (6) The court officer must serve on the Lord Chancellor notice of the court’s decision.

*[Note. Under section 84 of the Criminal Justice and Immigration Act 2008(679)—*

- (a) *the Lord Chancellor may receive—*
  - (i) *a certificate issued in another European Union member State, requesting enforcement of a financial penalty to which applies the Framework Decision of the Council of the European Union 2005/214/JHA, as amended by Council Framework*

*Decision 2009/299/JHA, on the application of the principle of mutual recognition to financial penalties; and*

- (ii) *the decision requiring payment of the penalty to which that certificate relates; and*
- (b) *the Lord Chancellor must then give the court officer—*
  - (i) *that certificate and that decision, and*
  - (ii) *a notice stating whether the Lord Chancellor thinks that any of the grounds for refusal of the request apply, and giving reasons for that opinion.*

*Under section 85 of the 2008 Act—*

- (a) *the court must then decide whether it is satisfied that any of the grounds for refusal of the request apply; and*
- (b) *if the court is not so satisfied, then the decision requiring payment may be enforced as if the penalty concerned were a sum that the court itself had ordered to be paid on convicting the defendant.*

*The grounds for refusal are listed in Schedule 19 to the 2008 Act, paraphrasing the grounds set out in the Framework Decision.*

*See also sections 91 and 92 of the 2008 Act.]*

## PART 53

*[Note. There are no rules in this Part.]*

## PART 54

*[Note. There are no rules in this Part.]*

## PART 55

### ROAD TRAFFIC PENALTIES

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#### Contents of this Part

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Application to remove a disqualification from driving	rule 55.1
Information to be supplied on order for endorsement of driving record, etc.	rule 55.2
Statutory declaration to avoid fine after fixed penalty notice	rule 55.3
Application for declaration about a course or programme certificate decision	rule 55.4
Appeal against recognition of foreign driving disqualification	rule 55.5

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*[Note. Part 37 contains rules about the general procedure on sentencing in a magistrates' court.]*

#### **Application to remove a disqualification from driving**

**55.1.—(1)** This rule applies where, on application by the defendant, the court can remove a disqualification from driving.

- (2) A defendant who wants the court to exercise that power must—
- (a) apply in writing, no earlier than the date on which the court can exercise the power;
  - (b) serve the application on the court officer; and
  - (c) in the application—
    - (i) specify the disqualification that the defendant wants the court to remove, and
    - (ii) explain why.
- (3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

*[Note. For the circumstances in which the court may remove a disqualification from driving imposed under section 34 or 35 of the Road Traffic Offenders Act 1988(680), see section 42 of the Act(681). The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.]*

### **Information to be supplied on order for endorsement of driving record, etc.**

- 55.2.**—(1) This rule applies where the court—
- (a) convicts the defendant of an offence involving obligatory endorsement, and orders there to be endorsed on the defendant’s driving record (and on any counterpart licence, if other legislation requires)—
    - (i) particulars of the conviction,
    - (ii) particulars of any disqualification from driving that the court imposes, and
    - (iii) the penalty points to be attributed to the offence;
  - (b) disqualifies the defendant from driving for any other offence; or
  - (c) suspends or removes a disqualification from driving.
- (2) The court officer must, as soon as practicable, serve on the Secretary of State notice that includes details of—
- (a) where paragraph (1)(a) applies—
    - (i) the local justice area in which the court is acting,
    - (ii) the dates of conviction and sentence,
    - (iii) the offence, and the date on which it was committed,
    - (iv) the sentence, and
    - (v) the date of birth, and sex, of the defendant, where those details are available;
  - (b) where paragraph (1)(b) applies—
    - (i) the date and period of the disqualification,
    - (ii) the power exercised by the court;

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**(680)** 1988 c. 53; section 34 was amended by section 29(1), (2) and (3) of the Road Traffic Act 1991 (c. 40), section 3(2) of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165(1) of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25(2) of the Road Safety Act 2006 (c. 49), article 2(1)(b) of S.I. 2007/3480 and paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 177(1) of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) and section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22), with effect from a date to be appointed.

**(681)** 1988 c. 53; section 42 was amended by regulations 2(2) and 3 and paragraph 9 of Schedule 2 to, S.I. 1990/144, section 48 of, and paragraph 98 of Schedule 4 to, the Road Traffic Act 1991 (c. 40) and section 9(6) of, and paragraphs 2 and 8 of Schedule 2 to, the Road Safety Act 2006 (c. 49). It is further amended by sections 10(12) and 59 of, and paragraphs 30 and 40 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49) and by paragraph 90 of Schedule 21 to the Coroners and Justice Act 2009 (c. 25), with effect from dates to be appointed.

- (c) where paragraph (1)(c) applies—
  - (i) the date and period of the disqualification,
  - (ii) the date and terms of the order for its suspension or removal,
  - (iii) the power exercised by the court, and
  - (iv) where the court suspends the disqualification pending appeal, the court to which the defendant has appealed.

[Note. See sections 39(3), 42(5), 44A, 47 and 97A of the Road Traffic Offenders Act 1988(682).

Under section 25 of the 1988 Act(683), the court may order a defendant to disclose his or her date of birth, and sex, where that is not apparent (for example, where the defendant is convicted in his or her absence). Under section 27 of the 1988 Act(684), and under sections 146(4) and 147(5) of the Powers of Criminal Courts (Sentencing) Act 2000(685), the court may order a defendant to produce his or her driving licence, if not already produced.

For the circumstances in which the court—

- (a) must usually order endorsement, see sections 9, 44 and 96 of, and Schedule 2 to, the 1988 Act(686);
- (b) may, and in some cases must, order disqualification from driving under the 1988 Act, see sections 26, 34, 35 and 36 of that Act(687);

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(682) 1988 c. 53; section 42(5) was amended by section 9(6) of, and paragraphs 2 and 8 of Schedule 2 to, the Road Safety Act 2006 (c. 49). Section 44A was inserted by section 9(1) and (3) of the Road Safety Act 2006 (c. 49). Section 97A was inserted by section 8 of the Road Safety Act 2006 (c. 49).

(683) 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).

(684) 1988 c. 53; section 27 was amended by regulations 2(2) and 3 and paragraph 3 of Schedule 2 to S.I. 1990/144, section 48 of, and paragraph 91 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), paragraphs 140 and 144 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 120 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 16(5) of the Child Support, Pensions and Social Security Act 2000 (c. 19), and paragraph 313 of Schedule 8 to the Courts Act 2003 (c. 39). Section 27 is further amended by section 304 of, and paragraphs 52 and 53 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), section 10 of, and paragraphs 30 and 33 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49) and section 58(1) of, and Part 4 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24), with effect from a date to be appointed.

(685) 2000 c. 6; section 146(4) was amended by section 91(1) of, and paragraphs 72 and 73 of Schedule 5, and Schedule 6 to, the Crime (International Co-operation) Act 2003 (c. 32). Section 147(5) was amended by section 91 of, and paragraphs 72 and 74 of Schedule 5, and Schedule 6 to, the Crime (International Co-operation) Act 2003 (c. 32). It is further amended by section 10(12) and 59 of, and paragraphs 71 and 73(1) and (2) of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(686) 1988 c. 53; section 44 was amended by regulations 2(2) and 3 and paragraph 10 of Schedule 2 to, S.I. 1990/144 and section 9(1) and (2)(a) of the Road Safety Act 2006 (c. 49). It is further amended by sections 10 and 59 of, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(687) 1988 c. 53; section 26 was substituted by section 25 of the Road Traffic Act 1991 (c. 40) and amended by paragraph 119 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 140 and 143 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 2 of Schedule 2 to S.I. 1996/1974, paragraph 312(b) of Schedule 8 to the Courts Act 2003 (c. 39) and paragraphs 32 and 34 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32). Section 26 is further amended by sections 10 and 59 of, and paragraphs 30 and 32 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 34 was amended by section 29(1), (2) and (3) of the Road Traffic Act 1991 (c. 40), section 3(2) of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165(1) of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25(2) of the Road Safety Act 2006 (c. 49), article 2(1)(b) of S.I. 2007/3480 and paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 177(1) of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) and section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22), with effect from a date to be appointed. Section 35 was amended by section 48 of, and paragraph 95(1), (3), (4), (5), (6) and (7) of Schedule 4 to, the Road Traffic Act 1991 (c. 40), and section 165(1) of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by section 177(1) of, and 90(1) and (6) of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

- (c) *may order disqualification from driving under the 2000 Act, see sections 146 and 147 of that Act(688);*
- (d) *may suspend a disqualification from driving pending appeal, see sections 39 and 40 of the 1988 Act(689)(Part 63 (Appeal to the Crown Court) and Part 64 (Appeal to the High Court by case stated) contain relevant rules);*
- (e) *may remove a disqualification from driving imposed under section 34 or 35 of the 1988 Act, see section 42 of that Act (rule 55.1 applies).]*

### **Statutory declaration to avoid fine after fixed penalty notice**

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

- (a) a chief officer of police, or the Secretary of State, serves on the magistrates' court officer a certificate registering, for enforcement as a fine, a sum payable by a defendant after failure to comply with a fixed penalty notice;
- (b) the court officer notifies the defendant of the registration; and
- (c) the defendant makes a statutory declaration with the effect that—
  - (i) the fixed penalty notice, or any associated notice sent to the defendant as owner of the vehicle concerned, and
  - (ii) the registration and any enforcement proceedings
 become void.

(2) The defendant must serve that statutory declaration not more than 21 days after service of notice of the registration, unless the court extends that time limit.

(3) The court officer must—

- (a) serve a copy of the statutory declaration on the person by whom the certificate was registered;
- (b) cancel any endorsement on the defendant's driving record (and on any counterpart licence, if other legislation requires); and
- (c) notify the Secretary of State of any such cancellation.

*[Note. See sections 72(1), (6), (6A), 73(1) and 74(2) of the Road Traffic Offenders Act 1988(690).*

*For the circumstances in which—*

- (a) *a sum may be registered for enforcement as a fine after failure to comply with a fixed penalty notice, see sections 54, 55, 62, 63, 64, 70 and 71 of the 1988 Act(691);*

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**(688)** 2000 c. 6; section 146 was amended by section 91(1) of, and paragraphs 72 and 73 of Schedule 5, and Schedule 6 to, the Crime (International Co-operation) Act 2003 (c. 32), paragraphs 90 and 120 of Schedule 32 to the Criminal Justice Act 2003 (c. 44), section 148(1) of, and paragraphs 40 and 47 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 3 and 6 of Schedule 19, and paragraphs 9 and 13 of Schedule 26, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**(689)** 1988 c. 53; section 40 was amended by sections 40 and 59 of, and paragraph 50 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

**(690)** 1988 c. 53; section 72(1) was amended by paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22).

**(691)** 1988 c. 53; section 54 was amended by regulations 2(2) and 3 of, and paragraph 15 of Schedule 2 to, S.I. 1990/144, sections 48 and 83 of, and paragraph 103 of Schedule 4 and Schedule 8 to, the Road Traffic Act 1991 (c. 40), sections 76 and 108 of the Police Reform Act 2002 (c. 30) and sections 5, 9(6) and 59 of, and paragraphs 1, 3 and 9 of Schedule 1 to, and paragraphs 2 and 14 of Schedule 2 to, the Road Safety Act 2006 (c. 49). It is further amended by sections 10(1) and (3) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 62 was amended by section 5 of, and paragraphs 1 and 7 of Schedule 1 to, the Road Safety Act 2006 (c. 49). Section 63 was amended by section 5 of, and paragraphs 1 and 8 of Schedule 1 to, the Road Safety Act 2006 (c. 49). Section 70 was amended by section 109 of, and paragraph 316 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 5, 9(6) and 59 of, and paragraphs 1 and 12 of Schedule 1, paragraphs 2 and 21 of Schedule 2 and paragraph 7 to, the Road Safety Act 2006 (c. 49). Section 71 was amended by section 63 of, and paragraph 25(1) of Schedule 3 to, the Vehicle Excise and Registration Act 1994 (c. 22), sections 90(1) and 106 of, and paragraphs 140

- (b) *the registration may become void on the making of a statutory declaration by the defendant, see sections 72 and 73 of the 1988 Act(692).]*

### **Application for declaration about a course or programme certificate decision**

- 55.4.**—(1) This rule applies where the court can declare unjustified—
- (a) a course provider’s failure or refusal to give a certificate of the defendant’s satisfactory completion of an approved course; or
  - (b) a programme provider’s giving of a certificate of the defendant’s failure fully to participate in an approved programme.
- (2) A defendant who wants the court to exercise that power must—
- (a) apply in writing, not more than 28 days after—
    - (i) the date by which the defendant was required to complete the course, or
    - (ii) the giving of the certificate of failure fully to participate in the programme;
  - (b) serve the application on the court officer; and
  - (c) in the application, specify the course or programme and explain (as applicable)—
    - (i) that the course provider has failed to give a certificate,
    - (ii) where the course provider has refused to give a certificate, why the defendant disagrees with the reasons for that decision, or
    - (iii) where the programme provider has given a certificate, why the defendant disagrees with the reasons for that decision.
- (3) The court officer must serve a copy of the application on the course or programme provider.
- (4) The court must not determine the application unless the defendant, and the course or programme provider, each has had an opportunity to make representations at a hearing (whether or not either in fact attends).

*[Note. For the circumstances in which the court may reduce a road traffic penalty on condition that the defendant attend an approved course, or take part in an approved programme, see sections 30A, 34A and 34D of the Road Traffic Offenders Act 1988(693).*

*Under sections 30B, 34B and 34E of the 1988 Act(694), the court that made the order, or the defendant’s local magistrates’ court, on application by the defendant may review a course or*

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and 150(1) and (2) of Schedule 13, and table 7 of Schedule 15 to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 317(1) and (2) of Schedule 8 to, the Courts Act 2003 (c. 39) and section 9(6) of, and paragraphs 2 and 22 of Schedule 2 to, the Road Safety Act 2006 (c. 49).

**(692)** 1988 c. 53; section 72 was amended by regulations 2(2) and 3 of, and paragraph 20 of Schedule 2 to S.I. 1990/144, section 90 of, and paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and sections 5 and 9 of, and paragraphs 1 and 13 of Schedule 1 and paragraphs 2 and 23 of Schedule 2 to, the Road Safety Act 2006 (c. 49). It is further amended by sections 10 and 59 of, and paragraphs 30 and 50 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 73 was amended by section 90 of, and paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and sections 5 and 59 of, and paragraphs 1 and 14 of Schedule 1 and Schedule 7 to, the Road Safety Act 2006 (c. 49).

**(693)** 1988 c. 53; section 30A is inserted by section 34(1) and (3) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 34A was inserted by section 30 of the Road Traffic Act 1991 (c. 40). It is amended by section 177(1) and (2) of, and paragraphs 30 and 90(1) and (3) of Schedule 21 and paragraphs 30 and 31 of Schedule 22 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed. Section 34D is inserted by section 15(1) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. It is amended by section 177(1) of, and paragraph 90(1) and (5) of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

**(694)** 1988 c. 53; section 30B is inserted by section 34(1) and (3) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 34B was inserted by section 30 of the Road Traffic Act 1991 (c. 40) and amended by paragraphs 140, 145 and 146 of Schedule 13 and Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22). Section 34B is substituted by section 35 of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 34E is inserted by section 15(1) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

*programme provider's decision that the defendant has not completed the course satisfactorily, or has not participated fully in the programme.]*

### **Appeal against recognition of foreign driving disqualification**

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

- (a) a Minister gives a disqualification notice under section 57 of the Crime (International Co-operation) Act 2003(**695**); and
- (b) the person to whom it is given wants to appeal under section 59 of the Act(**696**) to a magistrates' court.

(2) That person ('the appellant') must serve an appeal notice on—

- (a) the court officer, at a magistrates' court in the local justice area in which the appellant lives; and
- (b) the Minister, at the address given in the disqualification notice.

(3) The appellant must serve the appeal notice within the period for which section 59 of the 2003 Act provides.

(4) The appeal notice must—

- (a) attach a copy of the disqualification notice;
- (b) explain which of the conditions in section 56 of the 2003 Act(**697**) is not met, and why section 57 of the Act therefore does not apply; and
- (c) include any application to suspend the disqualification, under section 60 of the Act(**698**).

(5) The Minister may serve a respondent's notice, and must do so if—

- (a) the Minister wants to make representations to the court; or
- (b) the court so directs.

(6) The Minister must—

- (a) unless the court otherwise directs, serve any such respondent's notice not more than 14 days after—
  - (i) the appellant serves the appeal notice, or
  - (ii) a direction to do so;
- (b) in any such respondent's notice—
  - (i) identify the grounds of opposition on which the Minister relies,
  - (ii) summarise any relevant facts not already included in the disqualification and appeal notices, and
  - (iii) identify any other document that the Minister thinks the court will need to decide the appeal (and serve any such document with the notice).

(7) Where the court determines an appeal, the general rule is that it must do so at a hearing (which must be in public, unless the court otherwise directs).

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(**695**)2003 c. 32; section 57 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed.

(**696**)2003 c. 32; section 59 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 59 was amended by article 2 of, and paragraph 97 of the Schedule to, S.I. 2005/886.

(**697**)2003 c. 32; section 56 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed.

(**698**)2003 c. 32; section 60 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 60 was amended by section 40(4) of, and paragraph 79 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).



- (8) The court officer must serve on the Minister—
- (a) notice of the outcome of the appeal;
  - (b) notice of any suspension of the disqualification; and
  - (c) the appellant’s driving licence, if surrendered to the court officer.

*[Note. Section 56 of the Crime (International Co-operation) Act 2003 sets out the conditions for recognition in the United Kingdom of a foreign driving disqualification, and provides that section 57 of the Act applies where they are met. Under section 57, the appropriate Minister may, and in some cases must, give the person concerned notice that he or she is disqualified in the UK, too, and for what period.*

*Under section 59 of the 2003 Act, that person may appeal to a magistrates’ court. If the court is satisfied that section 57 of the Act does not apply in that person’s case, the court must allow the appeal and notify the Minister. Otherwise, it must dismiss the appeal.*

*The time limit for appeal under section 59 of the 2003 Act is the end of the period of 21 days beginning with the day on which the Minister gives the notice under section 57. That period may be neither extended nor shortened.*

*Under section 60 of the 2003 Act, the court may suspend the disqualification, on such terms as it thinks fit.*

*Under section 63 of the 2003 Act(699), it is an offence for a person to whom the Minister gives a notice under section 57 not to surrender any licence that he or she holds, within the same period as for an appeal.]*

## PART 56

### CONFISCATION PROCEEDINGS UNDER THE CRIMINAL JUSTICE ACT 1988 AND THE DRUG TRAFFICKING ACT 1994

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#### Contents of this Part

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Statements, etc. relevant to making confiscation orders	rule 56.1
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Application to the Crown Court for increase in term of imprisonment in default of payment	rule 56.5
Drug trafficking – compensation on acquittal in the Crown Court	rule 56.6

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(699)2003 c. 32; section 63 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 63 is amended by sections 10(12) and 59 of, and paragraphs 74 and 75 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

### Statements, etc. relevant to making confiscation orders

**56.1.**—(1) Where a prosecutor or defendant—

- (a) tenders to a magistrates' court any statement or other document under section 73 of the Criminal Justice Act 1988(**700**) in any proceedings in respect of an offence listed in Schedule 4 to that Act; or
- (b) tenders to the Crown Court any statement or other document under section 11 of the Drug Trafficking Act 1994(**701**) or section 73 of the 1988 Act in any proceedings in respect of a drug trafficking offence or in respect of an offence to which Part VI of the 1988 Act applies,

he must serve a copy as soon as practicable on the defendant or the prosecutor, as the case may be.

(2) Any statement tendered by the prosecutor to the magistrates' court under section 73 of the 1988 Act or to the Crown Court under section 11(1) of the 1994 Act or section 73(1A) of the 1988 Act shall include the following particulars—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is made and the date on which it was made;
- (c) where the statement is not tendered immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred; and
- (d) such information known to the prosecutor as is relevant to the determination as to whether or not the defendant has benefited from drug trafficking or relevant criminal conduct and to the assessment of the value of his proceeds of drug trafficking or, as the case may be, benefit from relevant criminal conduct.

(3) Where, in accordance with section 11(7) of the 1994 Act or section 73(1C) of the 1988 Act, the defendant indicates the extent to which he accepts any allegation contained within the prosecutor's statement, if he indicates the same in writing to the prosecutor, he must serve a copy of that reply on the court officer.

(4) Expressions used in this rule shall have the same meanings as in the 1994 Act or, where appropriate, the 1988 Act.

*[Note. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003, but they continue to have effect in respect of proceedings for offences committed before that date.]*

### Postponed determinations

**56.2.**—(1) Where an application is made by the defendant or the prosecutor –

- (a) to a magistrates' court under section 72A(5)(a) of the Criminal Justice Act 1988(**702**) asking the court to exercise its powers under section 72A(4) of that Act; or
- (b) to the Crown Court under section 3(5)(a) of the Drug Trafficking Act 1994(**703**) asking the Court to exercise its powers under section 3(4) of that Act, or under section 72A(5)(a) of the 1988 Act asking the court to exercise its powers under section 72A(4) of the 1988 Act,

the application must be made in writing and a copy must be served on the prosecutor or the defendant, as the case may be.

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**(700)** 1988 c. 33; section 73 and Schedule 4 were repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

**(701)** 1994 c. 37; section 11 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

**(702)** 1988 c. 33; section 72A was inserted by section 28 of the Criminal Justice Act 1993 (c. 36) and repealed, with savings, by sections 456 and 457 of, and paragraphs 1 and 17 of Schedule 11, and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

**(703)** 1994 c. 37; section 3 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(2) A party served with a copy of an application under paragraph (1) shall, within 28 days of the date of service, notify the applicant and the court officer, in writing, whether or not he proposes to oppose the application, giving his reasons for any opposition.

(3) After the expiry of the period referred to in paragraph (2), the court shall determine whether an application under paragraph (1) is to be dealt with—

- (a) without a hearing; or
- (b) at a hearing at which the parties may be represented.

*[Note. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003, but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Confiscation orders - revised assessments**

**56.3.**—(1) Where the prosecutor makes an application under section 13, 14 or 15 of the Drug Trafficking Act 1994(**704**) or section 74A, 74B or 74C of the Criminal Justice Act 1988(**705**), the application must be in writing and a copy must be served on the defendant.

(2) The application must include the following particulars—

- (a) the name of the defendant;
- (b) the date on which and the place where any relevant conviction occurred;
- (c) the date on which and the place where any relevant confiscation order was made or, as the case may be, varied;
- (d) the grounds on which the application is made; and
- (e) an indication of the evidence available to support the application.

*[Note. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003, but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Application to the Crown Court to discharge or vary order to make material available**

**56.4.**—(1) Where an order under section 93H of the Criminal Justice Act 1988(**706**) (order to make material available) or section 55 of the Drug Trafficking Act 1994(**707**) (order to make material available) has been made by the Crown Court, any person affected by it may apply in writing to the court officer for the order to be discharged or varied, and on hearing such an application a circuit judge may discharge the order or make such variations to it as he thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, he shall give a copy of the application, not later than 48 hours before the making of the application—

- (a) to a constable at the police station specified in the order; or
  - (b) to the office of the appropriate officer who made the application, as specified in the order,
- in either case together with a notice indicating the time and place at which the application for discharge or variation is to be made.

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(704) 1994 c. 37; sections 13, 14 and 15 were repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(705) 1988 c. 33; sections 74A, 74B and 74C were inserted by the Proceeds of Crime Act 1995 (c. 11), sections 5, 6 and 7 respectively, and repealed, with savings by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(706) 1988 c. 33; section 93H was inserted by section 11 of the Proceeds of Crime Act 1995 (c. 11) and repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(707) 1994 c. 37; section 55 was amended by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29) and by paragraph 364 of Schedule 8 to the Courts Act 2003 (c. 39).

(3) A circuit judge may direct that paragraph (2) need not be complied with if he is satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(4) In this rule:

‘constable’ includes a person commissioned by the Commissioners for Her Majesty’s Revenue and Customs;

‘police station’ includes a place for the time being occupied by Her Majesty’s Revenue and Customs.

*[Note. The relevant provision of the 1988 Act was repealed on 24th February 2003, but it continues to have effect in respect of proceedings for offences committed before that date.]*

### **Application to the Crown Court for increase in term of imprisonment in default of payment**

**56.5.**—(1) This rule applies to applications made, or that have effect as made, to the Crown Court under section 10 of the Drug Trafficking Act 1994(**708**) and section 75A of the Criminal Justice Act 1988(**709**) (interest on sums unpaid under confiscation orders).

(2) Notice of an application to which this rule applies to increase the term of imprisonment or detention fixed in default of payment of a confiscation order by a person (‘the defendant’) shall be made by the prosecutor in writing to the court officer.

(3) A notice under paragraph (2) shall—

- (a) state the name and address of the defendant;
- (b) specify the grounds for the application;
- (c) give details of the enforcement measures taken, if any; and
- (d) include a copy of the confiscation order.

(4) On receiving a notice under paragraph (2), the court officer shall—

- (a) forthwith send to the defendant and the magistrates’ court required to enforce payment of the confiscation order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(**710**), a copy of the said notice; and
- (b) notify in writing the applicant and the defendant of the date, time and place appointed for the hearing of the application.

(5) Where the Crown Court makes an order pursuant to an application mentioned in paragraph (1) above, the court officer shall send forthwith a copy of the order—

- (a) to the applicant;
- (b) to the defendant;
- (c) where the defendant is at the time of the making of the order in custody, to the person having custody of him; and
- (d) to the magistrates’ court mentioned in paragraph (4)(a).

*[Note. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003, but they continue to have effect in respect of proceedings for offences committed before that date.]*

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(708) 1994 c. 37; section 10 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(709) 1988 c. 33; section 75A was inserted by section 9 of the Proceeds of Crime Act 1995 (c. 11) and repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(710) 2000 c. 6; section 140 was amended by paragraphs 74 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 69 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4). It is further amended by sections 74 and 75 of, and paragraphs 160 and 194 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

## **Drug trafficking – compensation on acquittal in the Crown Court**

**56.6.** Where a Crown Court cancels a confiscation order under section 22(2) of the Drug Trafficking Act 1994(711), the court officer shall serve notice to that effect on the High Court and on the magistrates' court which has responsibility for enforcing the order.

*[Note. The relevant provision of the 1994 Act was repealed on 24th March 2003, but it continues to have effect in respect of proceedings for offences committed before that date.]*

## **PART 57**

### **PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE TO ALL PROCEEDINGS**

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#### **Contents of this Part**

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#### **Interpretation**

**57.1.** In this Part and in Parts 58, 59, 60 and 61:

‘document’ means anything in which information of any description is recorded;

‘hearsay evidence’ means evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(712);

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(711) 1994 c. 37; section 22 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29).

(712) 1995 c. 38.

‘restraint proceedings’ means proceedings under sections 42 and 58(2) and (3) of the Proceeds of Crime Act 2002(713);

‘receivership proceedings’ means proceedings under sections 48, 49, 50, 51, 54(4), 59(2) and (3), 62 and 63 of the 2002 Act(714);

‘witness statement’ means a written statement signed by a person which contains the evidence, and only that evidence, which that person would be allowed to give orally; and

words and expressions used have the same meaning as in Part 2 of the 2002 Act.

### Calculation of time

**57.2.**—(1) This rule shows how to calculate any period of time for doing any act which is specified by this Part and Parts 58, 59, 60 and 61 for the purposes of any proceedings under Part 2 of the Proceeds of Crime Act 2002 or by an order of the Crown Court in restraint proceedings or receivership proceedings.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule ‘clear days’ means that in computing the number of days—

(a) the day on which the period begins; and

(b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

(4) Where the specified period is five days or less and includes a day which is not a business day that day does not count.

### Court office closed

**57.3.** When the period specified by this Part or Parts 58, 59, 60 and 61, or by an order of the Crown Court under Part 2 of the Proceeds of Crime Act 2002, for doing any act at the court office falls on a day on which the office is closed, that act shall be in time if done on the next day on which the court office is open.

### Application for registration of Scottish or Northern Ireland order

**57.4.**—(1) This rule applies to an application for registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002(715).

(2) The application may be made without notice.

(3) The application must be in writing and may be supported by a witness statement which must—

(a) exhibit the order or a certified copy of the order; and

(b) to the best of the witness’s ability, give full details of the realisable property located in England and Wales in respect of which the order was made and specify the person holding that realisable property.

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(713)2002 c. 29; section 42 was amended by sections 74(2) and 92 of, and paragraphs 1 and 23 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27). Section 58(2) was amended by section 62(3) of, and paragraphs 142 and 143 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(714)2002 c. 29; section 49 was amended by section 82(1) of the Serious Crime Act (c. 27). Section 59(2) was amended by section 62(3) of, and paragraphs 142 and 144 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 62 was amended by section 74 of, and paragraphs 1 and 29 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 63 was amended by section 74 of, and paragraphs 1 and 30 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(715)S.I. 2002/3133.

- (4) If the court registers the order, the applicant must serve notice of the registration on—
  - (a) any person who holds realisable property to which the order applies; and
  - (b) any other person whom the applicant knows to be affected by the order.
- (5) The permission of the Crown Court under rule 57.13 is not required to serve the notice outside England and Wales.

### **Application to vary or set aside registration**

**57.5.**—(1) An application to vary or set aside registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 may be made to the Crown Court by—

- (a) any person who holds realisable property to which the order applies; and
- (b) any other person affected by the order.
- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application must be served on the person who applied for registration at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.
- (5) No property in England and Wales may be realised in pursuance of the order before the Crown Court has decided the application.

### **Register of orders**

**57.6.**—(1) The Crown Court must keep, under the direction of the Lord Chancellor, a register of the orders registered under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002.

(2) The register must include details of any variation or setting aside of a registration under rule 57.5 and of any execution issued on a registered order.

(3) If the person who applied for registration of an order which is subsequently registered notifies the Crown Court that the court which made the order has varied or discharged the order, details of the variation or discharge, as the case may be, must be entered in the register.

### **Statements of truth**

**57.7.**—(1) Any witness statement required to be served by this Part or by Parts 58, 59, 60 or 61 must be verified by a statement of truth contained in the witness statement.

(2) A statement of truth is a declaration by the person making the witness statement to the effect that the witness statement is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(3) The statement of truth must be signed by the person making the witness statement.

(4) If the person making the witness statement fails to verify the witness statement by a statement of truth, the Crown Court may direct that it shall not be admissible as evidence.

### **Use of witness statements for other purposes**

**57.8.**—(1) Except as provided by this rule, a witness statement served in proceedings under Part 2 of the Proceeds of Crime Act 2002 may be used only for the purpose of the proceedings in which it is served.

- (2) Paragraph (1) does not apply if and to the extent that—
- (a) the witness gives consent in writing to some other use of it;
  - (b) the Crown Court gives permission for some other use; or
  - (c) the witness statement has been put in evidence at a hearing held in public.

### **Expert evidence**

**57.9.**—(1) A party to proceedings under Part 2 of the Proceeds of Crime Act 2002 who wishes to adduce expert evidence (whether of fact or opinion) in the proceedings must, as soon as practicable—

- (a) serve on the other parties a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) serve on any party who requests it in writing, a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, give the requesting party a reasonable opportunity to examine)—
  - (i) the record of any observation, test, calculation or other procedure on which the finding or opinion is based, and
  - (ii) any document or other thing or substance in respect of which the observation, test, calculation or other procedure mentioned in paragraph (1)(b)(i) has been carried out.

(2) A party may serve notice in writing waiving his right to be served with or given any of the matters mentioned in paragraph (1) and, in particular, may agree that the statement mentioned in paragraph (1)(a) may be given to him orally and not served in writing.

(3) If a party who wishes to adduce expert evidence in proceedings under Part 2 of the 2002 Act fails to comply with this rule he may not adduce that evidence in those proceedings without the leave of the court, except where rule 57.10 applies.

### **Exceptions to procedure for expert evidence**

**57.10.**—(1) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with rule 57.9 might lead to the intimidation, or attempted intimidation, of any person on whose evidence he intends to rely in the proceedings, or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements in relation to that evidence, unless the Crown Court orders otherwise.

(2) Where, in accordance with paragraph (1), a party considers that he is not obliged to comply with the requirements imposed by rule 57.9 with regard to any evidence in relation to any other party, he must serve notice in writing on that party stating—

- (a) that the evidence is being withheld; and
- (b) the reasons for withholding the evidence.

### **Service of documents**

**57.11.**—(1) Rule 32.1 (notice required to accompany process served outside the United Kingdom and translations) shall not apply in restraint proceedings and receivership proceedings.

(2) An order made in restraint proceedings or receivership proceedings may be enforced against the defendant or any other person affected by it notwithstanding that service of a copy of the order has not been effected in accordance with Part 4 of these Rules if the Crown Court is satisfied that the person had notice of the order by being present when the order was made.



### Service outside the jurisdiction

**57.12.**—(1) Where this Part requires a document to be served on someone who is outside England and Wales, it may be served outside England and Wales with the permission of the Crown Court.

(2) Where a document is to be served outside England and Wales it may be served by any method permitted by the law of the country in which it is to be served.

(3) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the document is to be served which is against the law of that country.

(4) Where this Part requires a document to be served a certain period of time before the date of a hearing and the recipient does not appear at the hearing, the hearing must not take place unless the Crown Court is satisfied that the document has been duly served.

### Certificates of service

**57.13.**—(1) Where this Part requires that the applicant for an order in restraint proceedings or receivership proceedings serve a document on another person, the applicant must lodge a certificate of service with the Crown Court within seven days of service of the document.

(2) The certificate must state—

(a) the method of service;

(b) the date of service; and

(c) if the document is served under rule 4.9, such other information as the court may require when making the order permitting service by an alternative method.

(3) Where a document is to be served by the Crown Court in restraint proceedings and receivership proceedings and the court is unable to serve it, the court must send a notice of non-service stating the method attempted to the party who requested service.

### External requests and orders

**57.14.**—(1) The rules in this Part and in Parts 59 to 61 and 71 to 73 apply with the necessary modifications to proceedings under The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**716**) in the same way that they apply to corresponding proceedings under Part 2 of the Proceeds of Crime Act 2002(**717**).

(2) This table shows how provisions of the 2005 Order correspond with provisions of the 2002 Act.

<i>Article of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005</i>	<i>Section of the Proceeds of Crime Act 2002</i>
8	41
9	42
10	43
11	44
15	48
16	49
17	58

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(716)S.I. 2005/3181.  
(717)2002 c. 29.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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<i>Article of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005</i>	<i>Section of the Proceeds of Crime Act 2002</i>
23	31
27	50
28	51
41	62
42	63
44	65
45	66

## PART 58

### PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE ONLY TO CONFISCATION PROCEEDINGS

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### Statements in connection with confiscation orders

**58.1.**—(1) When the prosecutor is required, under section 16 of the Proceeds of Crime Act 2002(**718**), to give a statement to the Crown Court, the prosecutor must also, as soon as practicable, serve a copy of the statement on the defendant.

(2) Any statement given to the Crown Court by the prosecutor under section 16 of the 2002 Act must, in addition to the information required by the 2002 Act, include the following information—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is made and the date on which it is made; and
- (c) where the statement is not given to the Crown Court immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred.

(3) Where, under section 17 of the 2002 Act, the Crown Court orders the defendant to indicate the extent to which he accepts each allegation in a statement given by the prosecutor, the defendant must indicate this in writing to the prosecutor and must give a copy to the Crown Court.

(4) Where the Crown Court orders the defendant to give to it any information under section 18 of the 2002 Act, the defendant must provide the information in writing and must, as soon as practicable, serve a copy of it on the prosecutor.

### Postponement of confiscation proceedings

**58.2.** The Crown Court may grant a postponement under section 14(1)(b) of the Proceeds of Crime Act 2002 without a hearing.

### Application for reconsideration

**58.3.**—(1) This rule applies where the prosecutor makes an application under section 19, 20 or 21 of the Proceeds of Crime Act 2002(**719**).

(2) The application must be in writing and give details of—

- (a) the name of the defendant;
- (b) the date on which and the place where any relevant conviction occurred;
- (c) the date on which and the place where any relevant confiscation order was made or varied;
- (d) the grounds for the application; and
- (e) an indication of the evidence available to support the application.

(3) The application must be lodged with the Crown Court.

(4) The application must be served on the defendant at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

### Application for new calculation of available amount

**58.4.**—(1) This rule applies where the prosecutor or a receiver makes an application under section 22 of the Proceeds of Crime Act 2002(**720**) for a new calculation of the available amount.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be lodged with the Crown Court.

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(**718**)2002 c. 29; section 16 was amended by paragraph 5 of Schedule 8 to the Serious Crime Act 2007 (c. 27).

(**719**)2002 c. 29; sections 19, 20 and 21 were amended by section 74(2) of, and paragraph 1 and paragraphs 8, 9 and 10 respectively, of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**720**)2002 c. 29; section 22 was amended by section 74(2) of, and paragraph 11 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

- (4) The application and any witness statement must be served on—
- (a) the defendant;
  - (b) the receiver, if the prosecutor is making the application and a receiver has been appointed under section 50 of the 2002 Act; and
  - (c) the prosecutor, if the receiver is making the application,
- at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Variation of confiscation order due to inadequacy of available amount**

**58.5.**—(1) This rule applies where the defendant or a receiver makes an application under section 23 of the Proceeds of Crime Act 2002(**721**) for the variation of a confiscation order.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the prosecutor;
  - (b) the defendant, if the receiver is making the application; and
  - (c) the receiver, if the defendant is making the application and a receiver has been appointed under section 50 of the 2002 Act,

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Application by magistrates' court officer to discharge confiscation order**

**58.6.**—(1) This rule applies where a magistrates' court officer makes an application under section 24 or 25 of the Proceeds of Crime Act 2002(**722**) for the discharge of a confiscation order.

- (2) The application must be in writing and give details of—
  - (a) the confiscation order;
  - (b) the amount outstanding under the order; and
  - (c) the grounds for the application.
- (3) The application must be served on—
  - (a) the defendant;
  - (b) the prosecutor; and
  - (c) any receiver appointed under section 50 of the 2002 Act.

(4) The Crown Court may determine the application without a hearing unless a person listed in paragraph (3) indicates, within seven days after the application was served on him, that he would like to make representations.

(5) If the Crown Court makes an order discharging the confiscation order, the court must, at once, send a copy of the order to—

- (a) the magistrates' court officer who applied for the order;
- (b) the defendant;
- (c) the prosecutor; and

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(721)2002 c. 29; section 23 was amended by section 74(2) of, and paragraph 12 of Schedule 8 to, the Serious Crime Act 2007 (c. 27). (722)2002 c. 29; sections 24 and 25 were amended by section 109(1) of, and paragraphs 406(a) and 406(b), respectively, of Schedule 8 to, the Courts Act 2003 (c. 39).

- (d) any receiver appointed under section 50 of the 2002 Act.

#### **Application for variation of confiscation order made against an absconder**

**58.7.**—(1) This rule applies where the defendant makes an application under section 29 of the Proceeds of Crime Act 2002 for the variation of a confiscation order made against an absconder.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made against an absconder under section 6 of the 2002 Act as applied by section 28 of the 2002 Act;
- (b) the circumstances in which the defendant ceased to be an absconder;
- (c) the defendant's conviction of the offence or offences concerned; and
- (d) the reason why he believes the amount required to be paid under the confiscation order was too large.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

#### **Application for discharge of confiscation order made against an absconder**

**58.8.**—(1) This rule applies if the defendant makes an application under section 30 of the Proceeds of Crime Act 2002 for the discharge of a confiscation order.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made under section 28 of the 2002 Act;
- (b) the date on which the defendant ceased to be an absconder;
- (c) the acquittal of the defendant if he has been acquitted of the offence concerned; and
- (d) if the defendant has not been acquitted of the offence concerned—
  - (i) the date on which the defendant ceased to be an absconder,
  - (ii) the date on which the proceedings taken against the defendant were instituted and a summary of steps taken in the proceedings since then, and
  - (iii) any indication given by the prosecutor that he does not intend to proceed against the defendant.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) If the Crown Court orders the discharge of the confiscation order, the court must serve notice on the magistrates' court responsible for enforcing the order.

### **Application for increase in term of imprisonment in default**

**58.9.**—(1) This rule applies where the prosecutor makes an application under section 39(5) of the Proceeds of Crime Act 2002(723) to increase the term of imprisonment in default of payment of a confiscation order.

- (2) The application must be made in writing and give details of—
  - (a) the name and address of the defendant;
  - (b) the confiscation order;
  - (c) the grounds for the application; and
  - (d) the enforcement measures taken, if any.
- (3) On receipt of the application, the court must—
  - (a) at once, send to the defendant and the magistrates' court responsible for enforcing the order, a copy of the application; and
  - (b) fix a time, date and place for the hearing and notify the applicant and the defendant of that time, date and place.
- (4) If the Crown Court makes an order increasing the term of imprisonment in default, the court must, at once, send a copy of the order to—
  - (a) the applicant;
  - (b) the defendant;
  - (c) where the defendant is in custody at the time of the making of the order, the person having custody of the defendant; and
  - (d) the magistrates' court responsible for enforcing the order.

### **Compensation – general**

**58.10.**—(1) This rule applies to an application for compensation under section 72 of the Proceeds of Crime Act 2002.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the person alleged to be in default; and
  - (b) the person or authority by whom the compensation would be payable under section 72(9) or 302(7A)(724) of the 2002 Act (or if the compensation is payable out of a police fund under section 72(9)(a) or 302(7A), the chief officer of the police force concerned),
 at least seven days before the date fixed by the court for hearing the application, unless the Crown Court directs otherwise.

### **Compensation – confiscation order made against absconder**

**58.11.**—(1) This rule applies to an application for compensation under section 73 of the Proceeds of Crime Act 2002.

- (2) The application must be in writing and supported by a witness statement which must give details of—

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(723)2002 c. 29; section 39(5) was amended by section 74(2) of, and paragraphs 1 and 21(2) of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(724)2002 c. 29; paragraph (7A) was inserted by section 79 of, and paragraphs 1 and 11 of Schedule 11 to, the Serious Crime Act 2007 (c. 27).

- (a) the confiscation order made under section 28 of the 2002 Act;
  - (b) the variation or discharge of the confiscation order under section 29 or 30 of the 2002 Act;
  - (c) the realisable property to which the application relates; and
  - (d) the loss suffered by the applicant as a result of the confiscation order.
- (3) The application and witness statement must be lodged with the Crown Court.
- (4) The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

### **Payment of money in bank or building society account in satisfaction of confiscation order**

**58.12.**—(1) An order under section 67 of the Proceeds of Crime Act 2002(725) requiring a bank or building society to pay money to a magistrates’ court officer (‘a payment order’) shall—

- (a) be directed to the bank or building society in respect of which the payment order is made;
- (b) name the person against whom the confiscation order has been made;
- (c) state the amount which remains to be paid under the confiscation order;
- (d) state the name and address of the branch at which the account in which the money ordered to be paid is held and the sort code of that branch, if the sort code is known;
- (e) state the name in which the account in which the money ordered to be paid is held and the account number of that account, if the account number is known;
- (f) state the amount which the bank or building society is required to pay to the court officer under the payment order;
- (g) give the name and address of the court officer to whom payment is to be made; and
- (h) require the bank or building society to make payment within a period of seven days beginning on the day on which the payment order is made, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances.

(2) In this rule ‘confiscation order’ has the meaning given to it by section 88(6) of the Proceeds of Crime Act 2002.

## **PART 59**

### **PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE ONLY TO RESTRAINT PROCEEDINGS**

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#### **Contents of this Part**

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Application for restraint order or ancillary order	rule 59.1
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Application for discharge or variation of restraint or ancillary order	
by a person affected by the order	rule 59.3

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(725)2002 c. 29; section 67 was amended by section 109 of, and paragraph 409 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 74 of, and paragraph 33 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

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Application for variation of restraint or ancillary order	
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Application for discharge of restraint or ancillary order	
by the person who applied for the order	rule 59.5
Application to punish for contempt of court	rule 59.6

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### Application for restraint order or ancillary order

**59.1.**—(1) This rule applies where the prosecutor, or an accredited financial investigator, makes an application under section 42 of the Proceeds of Crime Act 2002(**726**) for—

- (a) a restraint order, under section 41(1) of the 2002 Act; or
- (b) an ancillary order, under section 41(7) of that Act, for the purpose of ensuring that a restraint order is effective.

(2) The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) An application for a restraint order must be in writing and supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) to the best of the witness' ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
- (c) include the proposed terms of the order.

(4) An application for an ancillary order must be in writing and supported by a witness statement which must—

- (a) give the grounds for, and full details of, the application;
- (b) include, if appropriate—
  - (i) any request for an order for disclosure of documents to which rule 61.9 applies (rules applicable to restraint and receivership proceedings: disclosure and inspection of documents),
  - (ii) the identity of any person whom the applicant wants the court to examine about the extent or whereabouts of realisable property,
  - (iii) a list of the main questions that the applicant wants to ask any such person, and
  - (iv) a list of any documents to which the applicant wants to refer such a person; and
- (c) include the proposed terms of the order.

(5) An application for a restraint order and an application for an ancillary order may (but need not) be made at the same time and contained in the same documents.

(6) An application by an accredited financial investigator must include a statement that, under section 68 of the 2002 Act(**727**), the applicant has authority to apply.

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**(726)**2002 c. 29; section 42 was amended by sections 74(2) and 92 of, and paragraphs 1 and 23 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

**(727)**2002 c. 29; section 68 was amended by section 50 of the Commissioners for Revenue and Customs Act 2005 (c. 11).



### **Restraint and ancillary orders**

**59.2.**—(1) The Crown Court may make a restraint order subject to exceptions, including, but not limited to, exceptions for reasonable living expenses and reasonable legal expenses, and for the purpose of enabling any person to carry on any trade, business or occupation.

(2) But the Crown Court must not make an exception for legal expenses where this is prohibited by section 41(4) of the Proceeds of Crime Act 2002.

(3) An exception to a restraint order may be made subject to conditions.

(4) The Crown Court must not require the applicant for a restraint order to give any undertaking relating to damages sustained as a result of the restraint order by a person who is prohibited from dealing with realisable property by the restraint order.

(5) The Crown Court may require the applicant for a restraint order to give an undertaking to pay the reasonable expenses of any person, other than a person who is prohibited from dealing with realisable property by the restraint order, which are incurred in complying with the restraint order.

(6) An order must include a statement that disobedience of the order, either by a person to whom the order is addressed, or by another person, may be contempt of court and the order must include details of the possible consequences of being held in contempt of court.

(7) Unless the Crown Court otherwise directs, an order made without notice has effect until the court makes an order varying or discharging it.

(8) The applicant for an order must—

- (a) serve copies of the order and of the witness statement made in support of the application on the defendant and any person who is prohibited by the order from dealing with realisable property; and
- (b) notify any person whom the applicant knows to be affected by the order of its terms.

### **Application for discharge or variation of restraint or ancillary order by a person affected by the order**

**59.3.**—(1) This rule applies where a person affected by a restraint order makes an application to the Crown Court under section 42(3) of the Proceeds of Crime Act 2002 to discharge or vary the restraint order or any ancillary order made under section 41(7) of the Act.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be lodged with the Crown Court.

(4) The application and any witness statement must be served on the person who applied for the restraint order and any person who is prohibited from dealing with realisable property by the restraint order (if he is not the person making the application) at least two days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

### **Application for variation of restraint or ancillary order by the person who applied for the order**

**59.4.**—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to the Crown Court to vary the restraint order or any ancillary order made under section 41(7) of the 2002 Act (including where the court has already made a restraint order and the applicant is seeking to vary the order in order to restrain further realisable property).

(2) The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) The application must be in writing and must be supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) where the application is for the inclusion of further realisable property in a restraint order give full details, to the best of the witness's ability, of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
- (c) where the application is to vary an ancillary order, include, if appropriate—
  - (i) any request for an order for disclosure of documents to which rule 61.9 applies (rules applicable to restraint and receivership proceedings: disclosure and inspection of documents),
  - (ii) the identity of any person whom the applicant wants the court to examine about the extent or whereabouts of realisable property,
  - (iii) a list of the main questions that the applicant wants to ask any such person, and
  - (iv) a list of any documents to which the applicant wants to refer such a person; and
- (d) include the proposed terms of the variation.

(4) An application by an accredited financial investigator must include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on any person who is prohibited from dealing with realisable property by the restraint order at least 2 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the variation of a restraint or ancillary order, the applicant must serve copies of the order and of the witness statement made in support of the application on—

- (a) the defendant;
- (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the variation); and
- (c) any other person whom the applicant knows to be affected by the order.

#### **Application for discharge of restraint or ancillary order by the person who applied for the order**

**59.5.**—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to discharge the order or any ancillary order made under section 41(7) of the 2002 Act.

(2) The application may be made without notice.

(3) The application must be in writing and must state the grounds for the application.

(4) If the court makes an order for the discharge of a restraint or ancillary order, the applicant must serve copies of the order on—

- (a) the defendant;
- (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the discharge); and
- (c) any other person whom the applicant knows to be affected by the order.

### Application to punish for contempt of court

**59.6.**—(1) This rule applies where a person is accused of disobeying—

- (a) a restraint order; or
- (b) an ancillary order made for the purpose of ensuring that a restraint order is effective.

(2) An applicant who wants the Crown Court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

*[Note. The Crown Court has inherent power to punish for contempt of court a person who disobeys its order: see section 45 of the Senior Courts Act 1981(728).]*

## PART 60

### PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE ONLY TO RECEIVERSHIP PROCEEDINGS

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#### Contents of this Part

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Application for appointment of a management or an enforcement receiver	rule 60.1
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Sums in the hands of receivers	rule 60.4
Security	rule 60.5
Remuneration	rule 60.6
Accounts	rule 60.7
Non-compliance by receiver	rule 60.8

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#### Application for appointment of a management or an enforcement receiver

**60.1.**—(1) This rule applies to an application for the appointment of a management receiver under section 48(1) of the Proceeds of Crime Act 2002(729) and an application for the appointment of an enforcement receiver under section 50(1) of the 2002 Act.

(2) The application may be made without notice if—

- (a) the application is joined with an application for a restraint order under rule 59.1;
- (b) the application is urgent; or
- (c) there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

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(728)1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).  
(729)2002 c. 29.

(3) The application must be in writing and must be supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) give full details of the proposed receiver;
- (c) to the best of the witness' ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
- (d) where the application is made by an accredited financial investigator, include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply; and
- (e) if the proposed receiver is not a person falling within section 55(8) of the 2002 Act(730) and the applicant is asking the court to allow the receiver to act—
  - (i) without giving security, or
  - (ii) before he has given security or satisfied the court that he has security in place, explain the reasons why that is necessary.

(4) Where the application is for the appointment of an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be lodged with the Crown Court and served on—

- (a) the defendant;
- (b) any person who holds realisable property to which the application relates; and
- (c) any other person whom the applicant knows to be affected by the application,

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the appointment of a receiver, the applicant must serve copies of the order and of the witness statement made in support of the application on—

- (a) the defendant;
- (b) any person who holds realisable property to which the order applies; and
- (c) any other person whom the applicant knows to be affected by the order.

### **Application for conferral of powers on a management receiver or an enforcement receiver**

**60.2.**—(1) This rule applies to an application for the conferral of powers on a management receiver under section 49(1) of the Proceeds of Crime Act 2002 or an enforcement receiver under section 51(1) of the 2002 Act.

(2) The application may be made without notice if the application is to give the receiver power to take possession of property and—

- (a) the application is joined with an application for a restraint order under rule 59.1;
- (b) the application is urgent; or
- (c) there are reasonable grounds for believing that giving notice would cause the dissipation of the property which is the subject of the application.

(3) The application must be made in writing and supported by a witness statement which must—

- (a) give the grounds for the application;

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(730)2002 c. 29; section 55(8) was amended by section 51(1) and (2) of the Policing and Crime Act 2009 (c. 26).

- (b) give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
  - (c) where the application is made by an accredited financial investigator, include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply; and
  - (d) where the application is for power to start, carry on or defend legal proceedings in respect of the property, explain—
    - (i) what proceedings are concerned, in what court, and
    - (ii) what powers the receiver will ask that court to exercise.
- (4) Where the application is for the conferral of powers on an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.
- (5) The application and witness statement must be lodged with the Crown Court.
- (6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on—
- (a) the defendant;
  - (b) any person who holds realisable property in respect of which a receiver has been appointed or in respect of which an application for a receiver has been made;
  - (c) any other person whom the applicant knows to be affected by the application; and
  - (d) the receiver (if one has already been appointed),
- at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.
- (7) If the court makes an order for the conferral of powers on a receiver, the applicant must serve copies of the order on—
- (a) the defendant;
  - (b) any person who holds realisable property in respect of which the receiver has been appointed; and
  - (c) any other person whom the applicant knows to be affected by the order.

### **Applications for discharge or variation of receivership orders, and applications for other orders**

**60.3.**—(1) This rule applies to applications under section 62(3) of the Proceeds of Crime Act 2002 for orders (by persons affected by the action of receivers) and applications under section 63(1) of the 2002 Act<sup>(731)</sup> for the discharge or variation of orders relating to receivers.

- (2) The application must be made in writing and lodged with the Crown Court.
- (3) The application must be served on the following persons (except where they are the person making the application)—
  - (a) the person who applied for appointment of the receiver;
  - (b) the defendant;
  - (c) any person who holds realisable property in respect of which the receiver has been appointed;
  - (d) the receiver; and
  - (e) any other person whom the applicant knows to be affected by the application,

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<sup>(731)</sup>2002 c. 29; section 63(1) was amended by section 74(2) of, and paragraphs 1 and 30 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If the court makes an order for the discharge or variation of an order relating to a receiver under section 63(2) of the 2002 Act, the applicant must serve copies of the order on any persons whom he knows to be affected by the order.

### **Sums in the hands of receivers**

**60.4.**—(1) This rule applies where the amount payable under a confiscation order has been fully paid and any sums remain in the hands of an enforcement receiver.

(2) The receiver must make an application to the Crown Court for directions as to the distribution of the sums in his hands.

(3) The application and any evidence which the receiver intends to rely on in support of the application must be served on—

(a) the defendant; and

(b) any other person who held (or holds) interests in any property realised by the receiver, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If any of the provisions listed in paragraph (5) (provisions as to the vesting of funds in a trustee in bankruptcy) apply, then the Crown Court must make a declaration to that effect.

(5) These are the provisions—

(a) section 31B of the Bankruptcy (Scotland) Act 1985(**732**);

(b) section 306B of the Insolvency Act 1986(**733**); and

(c) article 279B of The Insolvency (Northern Ireland) Order 1989(**734**).

### **Security**

**60.5.**—(1) This rule applies where the Crown Court appoints a receiver under section 48 or 50 of the Proceeds of Crime Act 2002 and the receiver is not a person falling within section 55(8) of the 2002 Act(**735**) (and it is immaterial whether the receiver is a permanent or temporary member of staff or on secondment from elsewhere).

(2) The Crown Court may direct that before the receiver begins to act, or within a specified time, he must either—

(a) give such security as the Crown Court may determine; or

(b) file with the Crown Court and serve on all parties to any receivership proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(3) The Crown Court may terminate the appointment of a receiver if he fails to—

(a) give the security; or

(b) satisfy the court as to the security he has in force,

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(**732**) 1985 c. 66; section 31B was inserted by section 456 of, and paragraphs 1 and 15 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29) and amended by section 226 of, and Schedule 6 to, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(**733**) 1986 c. 45; section 306B was inserted by section 456 of, and paragraphs 1 and 16 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

(**734**) S.I. 1989/2405 (N.I. 19); article 279B was inserted by section 456 of, and paragraph 20(3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

(**735**) 2002 c. 29; section 55(8) was amended by section 51(1) and (2) of the Policing and Crime Act 2009 (c. 26).

by the date specified.

### **Remuneration**

**60.6.**—(1) This rule applies where the Crown Court appoints a receiver under section 48 or 50 of the Proceeds of Crime Act 2002 and the receiver is not a person falling within section 55(8) of the 2002 Act (and it is immaterial whether the receiver is a permanent or temporary member of staff or on secondment from elsewhere).

(2) The receiver may only charge for his services if the Crown Court—

- (a) so directs; and
- (b) specifies the basis on which the receiver is to be remunerated.

(3) Unless the Crown Court orders otherwise, in determining the remuneration of the receiver, the Crown Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—

- (a) the time properly given by him and his staff to the receivership;
- (b) the complexity of the receivership;
- (c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;
- (d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and
- (e) the value and nature of the subject matter of the receivership.

(4) The Crown Court may refer the determination of a receiver's remuneration to be ascertained by the taxing authority of the Crown Court and rules 76.11 to 76.14 shall have effect as if the taxing authority was ascertaining costs.

(5) A receiver appointed under section 48 of the 2002 Act is to receive his remuneration by realising property in respect of which he is appointed, in accordance with section 49(2)(d) of the 2002 Act.

(6) A receiver appointed under section 50 of the 2002 Act is to receive his remuneration by applying to the magistrates' court officer for payment under section 55(4)(b) of the 2002 Act **(736)**.

### **Accounts**

**60.7.**—(1) The Crown Court may order a receiver appointed under section 48 or 50 of the Proceeds of Crime Act 2002 to prepare and serve accounts.

(2) A party to receivership proceedings served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) Any party to receivership proceedings may, within 14 days of being served with the accounts, serve notice on the receiver—

- (a) specifying any item in the accounts to which he objects;
- (b) giving the reason for such objection; and
- (c) requiring the receiver within 14 days of receipt of the notice, either—
  - (i) to notify all the parties who were served with the accounts that he accepts the objection, or
  - (ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he must at the same time lodge with the Crown Court—

- (a) the accounts; and
- (b) a copy of the notice served on him under this section of the rule.

(5) If the receiver fails to comply with paragraph (3)(c) of this rule, any party to receivership proceedings may apply to the Crown Court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts the court must certify the result.

#### **Non-compliance by receiver**

**60.8.**—(1) If a receiver appointed under section 48 or 50 of the Proceeds of Crime Act 2002 fails to comply with any rule, practice direction or direction of the Crown Court, the Crown Court may order him to attend a hearing to explain his non-compliance.

- (2) At the hearing, the Crown Court may make any order it considers appropriate, including—
- (a) terminating the appointment of the receiver;
  - (b) reducing the receiver’s remuneration or disallowing it altogether; and
  - (c) ordering the receiver to pay the costs of any party.

## PART 61

### PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE TO RESTRAINT AND RECEIVERSHIP PROCEEDINGS

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### Distress and forfeiture

**61.1.**—(1) This rule applies to applications under sections 58(2) and (3) and 59(2) and (3) of the Proceeds of Crime Act 2002(737) for leave of the Crown Court to levy distress against property or exercise a right of forfeiture by peaceable re-entry in relation to a tenancy, in circumstances where the property or tenancy is the subject of a restraint order or a receiver has been appointed in respect of the property or tenancy.

(2) The application must be made in writing to the Crown Court.

(3) The application must be served on—

- (a) the person who applied for the restraint order or the order appointing the receiver; and
- (b) any receiver appointed in respect of the property or tenancy,

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

### Joining of applications

**61.2.** An application for the appointment of a management receiver or enforcement receiver under rule 60.1 may be joined with—

- (a) an application for a restraint order under rule 59.1; and
- (b) an application for the conferral of powers on the receiver under rule 60.2.

### Applications to be dealt with in writing

**61.3.** Applications in restraint proceedings and receivership proceedings are to be dealt with without a hearing, unless the Crown Court orders otherwise.

### Business in chambers

**61.4.** Restraint proceedings and receivership proceedings may be heard in chambers.

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(737)2002 c. 29; section 58(2) was amended by section 62(3) of, and paragraphs 142 and 143 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

### Power of court to control evidence

**61.5.**—(1) When hearing restraint proceedings and receivership proceedings, the Crown Court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

(3) The court may limit cross-examination in restraint proceedings and receivership proceedings.

### Evidence of witnesses

**61.6.**—(1) The general rule is that, unless the Crown Court orders otherwise, any fact which needs to be proved in restraint proceedings or receivership proceedings by the evidence of a witness is to be proved by their evidence in writing.

(2) Where evidence is to be given in writing under this rule, any party may apply to the Crown Court for permission to cross-examine the person giving the evidence.

(3) If the Crown Court gives permission under paragraph (2) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

### Witness summons

**61.7.**—(1) Any party to restraint proceedings or receivership proceedings may apply to the Crown Court to issue a witness summons requiring a witness to—

- (a) attend court to give evidence; or
- (b) produce documents to the court.

(2) Rule 28.3 applies to an application under this rule as it applies to an application under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(738).

### Hearsay evidence

**61.8.** Section 2(1) of the Civil Evidence Act 1995(739) (duty to give notice of intention to rely on hearsay evidence) does not apply to evidence in restraint proceedings and receivership proceedings.

### Disclosure and inspection of documents

**61.9.**—(1) This rule applies where, in the course of restraint proceedings or receivership proceedings, an issue arises as to whether property is realisable property.

(2) The Crown Court may make an order for disclosure of documents.

(3) Part 31 of the Civil Procedure Rules 1998(740) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

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(738) 1965 c. 69; section 2 was substituted, together with sections 2 A to 2E, by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39), paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15) and paragraph 33 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).

(739) 1995 c. 38.

(740) S.I. 1998/3132; amending instruments relevant to this Part are S.I. 2000/221 and 2001/4015.

### **Court documents**

**61.10.**—(1) Any order which the Crown Court issues in restraint proceedings or receivership proceedings must—

- (a) state the name and judicial title of the person who made it;
- (b) bear the date on which it is made; and
- (c) be sealed by the Crown Court.

(2) The Crown Court may place the seal on the order—

- (a) by hand; or
- (b) by printing a facsimile of the seal on the order whether electronically or otherwise.

(3) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

### **Consent orders**

**61.11.**—(1) This rule applies where all the parties to restraint proceedings or receivership proceedings agree the terms in which an order should be made.

(2) Any party may apply for a judgment or order in the terms agreed.

(3) The Crown Court may deal with an application under paragraph (2) without a hearing.

(4) Where this rule applies—

- (a) the order which is agreed by the parties must be drawn up in the terms agreed;
- (b) it must be expressed as being 'By Consent'; and
- (c) it must be signed by the legal representative acting for each of the parties to whom the order relates or by the party if he is a litigant in person.

(5) Where an application is made under this rule, then the requirements of any other rule as to the procedure for making an application do not apply.

### **Slips and omissions**

**61.12.**—(1) The Crown Court may at any time correct an accidental slip or omission in an order made in restraint proceedings or receivership proceedings.

(2) A party may apply for a correction without notice.

### **Supply of documents from court records**

**61.13.**—(1) No document relating to restraint proceedings or receivership proceedings may be supplied from the records of the Crown Court for any person to inspect or copy unless the Crown Court grants permission.

(2) An application for permission under paragraph (1) must be made on notice to the parties to the proceedings.

### **Disclosure of documents in criminal proceedings**

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

- (a) proceedings for an offence have been started in the Crown Court and the defendant has not been either convicted or acquitted on all counts; and
- (b) an application for a restraint order under section 42(1) of the Proceeds of Crime Act 2002 has been made.

(2) The judge presiding at the proceedings for the offence may be supplied from the records of the Crown Court with documents relating to restraint proceedings and any receivership proceedings.

(3) Such documents must not otherwise be disclosed in the proceedings for the offence.

### **Preparation of documents**

**61.15.**—(1) Every order in restraint proceedings or receivership proceedings must be drawn up by the Crown Court unless—

- (a) the Crown Court orders a party to draw it up;
- (b) a party, with the permission of the Crown Court, agrees to draw it up; or
- (c) the order is made by consent under rule 61.10.

(2) The Crown Court may direct that—

- (a) an order drawn up by a party must be checked by the Crown Court before it is sealed; or
- (b) before an order is drawn up by the Crown Court, the parties must lodge an agreed statement of its terms.

(3) Where an order is to be drawn up by a party—

- (a) he must lodge it with the Crown Court no later than seven days after the date on which the court ordered or permitted him to draw it up so that it can be sealed by the Crown Court; and
- (b) if he fails to lodge it within that period, any other party may draw it up and lodge it.

(4) Nothing in this rule shall require the Crown Court to accept a document which is illegible, has not been duly authorised, or is unsatisfactory for some other similar reason.

### **Change of solicitor**

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

- (a) a party for whom a solicitor is acting in restraint proceedings or receivership proceedings wants to change his solicitor;
- (b) a party, after having represented himself in such proceedings, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
- (c) a party, after having been represented by a solicitor in such proceedings, intends to act in person.

(2) Where this rule applies, the party or his solicitor (where one is acting) must—

- (a) lodge notice of the change at the Crown Court; and
- (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former solicitor.

(3) The notice lodged at the Crown Court must state that notice has been served as required by paragraph (2)(b).

### **Application by solicitor for declaration that solicitor has ceased to act**

**61.17.**—(1) A solicitor may apply to the Crown Court for an order declaring that he has ceased to be the solicitor acting for a party to restraint proceedings or receivership proceedings.

(2) Where an application is made under this rule—

- (a) notice of the application must be given to the party for whom the solicitor is acting, unless the Crown Court directs otherwise; and

(b) the application must be supported by evidence.

(3) Where the Crown Court makes an order that a solicitor has ceased to act, the solicitor must serve a copy of the order on every party to the proceedings.

#### **Application by other party for declaration that solicitor has ceased to act**

**61.18.**—(1) Where—

(a) a solicitor who has acted for a party to restraint proceedings or receivership proceedings—

- (i) has died,
- (ii) has become bankrupt,
- (iii) has ceased to practise, or
- (iv) cannot be found, and

(b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 61.16,

any other party may apply to the Crown Court for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the proceedings.

(2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the Crown Court directs otherwise.

(3) Where the Crown Court makes an order under this rule, the applicant must serve a copy of the order on every other party to the proceedings.

#### **Order for costs**

**61.19.**—(1) This rule applies where the Crown Court is deciding whether to make an order for costs in restraint proceedings or receivership proceedings.

(2) The court has discretion as to—

- (a) whether costs are payable by one party to another;
- (b) the amount of those costs; and
- (c) when they are to be paid.

(3) If the court decides to make an order about costs—

- (a) the general rule is that the unsuccessful party must be ordered to pay the costs of the successful party; but
- (b) the court may make a different order.

(4) In deciding what order (if any) to make about costs, the court must have regard to all of the circumstances, including—

- (a) the conduct of all the parties; and
- (b) whether a party has succeeded on part of an application, even if he has not been wholly successful.

(5) The orders which the court may make include an order that a party must pay—

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;

- (f) costs relating only to a distinct part of the proceedings; and
  - (g) interest on costs from or until a certain date, including a date before the making of an order.
- (6) Where the court would otherwise consider making an order under paragraph (5)(f), it must instead, if practicable, make an order under paragraph (5)(a) or (c).
- (7) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

*[Note. See section 52 of the Senior Courts Act 1981(741).]*

### **Assessment of costs**

**61.20.**—(1) Where the Crown Court has made an order for costs in restraint proceedings or receivership proceedings it may either—

- (a) make an assessment of the costs itself; or
- (b) order assessment of the costs under rule 76.11.

(2) In either case, the Crown Court or the assessing authority, as the case may be, must—

- (a) only allow costs which are proportionate to the matters in issue; and
- (b) resolve any doubt which it may have as to whether the costs were reasonably incurred or reasonable and proportionate in favour of the paying party.

(3) The Crown Court or the assessing authority, as the case may be, is to have regard to all the circumstances in deciding whether costs were proportionately or reasonably incurred or proportionate and reasonable in amount.

(4) In particular, the Crown Court or the assessing authority must give effect to any orders which have already been made.

(5) The Crown Court or the assessing authority must also have regard to—

- (a) the conduct of all the parties, including in particular, conduct before, as well as during, the proceedings;
- (b) the amount or value of the property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the application; and
- (g) the place where and the circumstances in which work or any part of it was done.

### **Time for complying with an order for costs**

**61.21.** A party to restraint proceedings or receivership proceedings must comply with an order for the payment of costs within 14 days of—

- (a) the date of the order if it states the amount of those costs;
- (b) if the amount of those costs is decided later under rule 76.11, the date of the assessing authority's decision; or
- (c) in either case, such later date as the Crown Court may specify.

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(741) 1981 c. 54; section 52 was amended by section 31 of, and Part II of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23), section 4 of the Courts and Legal Services Act 1990 (c. 41), article 3 and paragraphs 11 and 12(a) of the Schedule to S.I. 2004/2035 and section 59 of, and paragraph 26 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

### **Application of costs rules**

**61.22.** Rules 61.19, 61.20 and 61.21 do not apply to the assessment of costs in proceedings to the extent that section 11 of the Access to Justice Act 1999 applies and provisions made under that Act make different provision.

## **PART 62**

### **CONTEMPT OF COURT**

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#### **Contents of this Part**

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## SECTION 1: GENERAL RULES

### When this Part applies

**62.1.**—(1) This Part applies where the court can deal with a person for conduct—

- (a) in contempt of court; or
  - (b) in contravention of the legislation to which rules 62.5 and 62.9 refer.
- (2) In this Part, ‘respondent’ means any such person.

*[Note. For the court’s powers to punish for contempt of court, see the notes to rules 62.5 and 62.9.]*

### Exercise of court’s power to deal with contempt of court

**62.2.**—(1) The court must determine at a hearing—

- (a) an enquiry under rule 62.8;
  - (b) an allegation under rule 62.9.
- (2) The court must not proceed in the respondent’s absence unless—
- (a) the respondent’s behaviour makes it impracticable to proceed otherwise; or
  - (b) the respondent has had at least 14 days’ notice of the hearing, or was present when it was arranged.
- (3) If the court hears part of an enquiry or allegation in private, it must announce at a hearing in public—
- (a) the respondent’s name;
  - (b) in general terms, the nature of any conduct that the respondent admits, or the court finds proved; and
  - (c) any punishment imposed.

### Notice of suspension of imprisonment by Court of Appeal or Crown Court

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

- (a) the Court of Appeal or the Crown Court suspends an order of imprisonment for contempt of court; and
  - (b) the respondent is absent when the court does so.
- (2) The respondent must be served with notice of the terms of the court’s order—
- (a) by any applicant under rule 62.9; or
  - (b) by the court officer, in any other case.

*[Note. By reason of sections 15 and 45 of the Senior Courts Act 1981(742), the Court of Appeal and the Crown Court each has an inherent power to suspend imprisonment for contempt of court, on conditions, or for a period, or both.]*

### Application to discharge an order for imprisonment

**62.4.**—(1) This rule applies where the court can discharge an order for a respondent’s imprisonment for contempt of court.

- (2) A respondent who wants the court to discharge such an order must—



- (a) apply in writing, unless the court otherwise directs, and serve any written application on—
  - (i) the court officer, and
  - (ii) any applicant under rule 62.9 on whose application the respondent was imprisoned;
- (b) in the application—
  - (i) explain why it is appropriate for the order for imprisonment to be discharged, and
  - (ii) give details of any appeal, and its outcome; and
- (c) ask for a hearing, if the respondent wants one.

*[Note. By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power to discharge an order for a respondent's imprisonment for contempt of court in failing to comply with a court order.]*

*Under section 97(4) of the Magistrates' Courts Act 1980(743), a magistrates' court can discharge an order for imprisonment if the respondent gives evidence.*

*Under section 12(4) of the Contempt of Court Act 1981(744), a magistrates' court can discharge an order for imprisonment made under that section.]*

## SECTION 2: CONTEMPT OF COURT BY OBSTRUCTION, DISRUPTION, ETC.

### Initial procedure on obstruction, disruption, etc.

- 62.5.**—(1) This rule applies where the court observes, or someone reports to the court—
- (a) in the Court of Appeal or the Crown Court, obstructive, disruptive, insulting or intimidating conduct, in the courtroom or in its vicinity, or otherwise immediately affecting the proceedings;
  - (b) in the Crown Court, a contravention of—
    - (i) section 3 of the Criminal Procedure (Attendance of Witnesses) Act 1965(745) (disobeying a witness summons);
    - (ii) section 20 of the Juries Act 1974(746) (disobeying a jury summons);
    - (iii) section 8 of the Contempt of Court Act 1981(747) (obtaining details of a jury's deliberations, etc.);
  - (c) in a magistrates' court, a contravention of—
    - (i) section 97(4) of the Magistrates' Courts Act 1980 (refusing to give evidence), or
    - (ii) section 12 of the Contempt of Court Act 1981(748) (insulting or interrupting the court, etc.);

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(743) 1980 c. 43; section 97(4) was amended by sections 13 and 14 of, and paragraph 7 of Schedule 2 to, the Contempt of Court Act 1981 (c. 47) and section 17 of, and paragraph 6 of Schedule 3 and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53).

(744) 1981 c. 49.

(745) 1965 c. 69; section 3 was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and sections 65 and 66 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(746) 1974 c. 23; section 20 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 170(1) of, and paragraph 46 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), paragraph 28 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and paragraphs 1 and 14 of Schedule 33 to, the Criminal Justice Act 2003 (c. 44).

(747) 1981 c. 49.

(748) 1981 c. 49; section 12 was amended by section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 17(3) of, and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53); section 65(3) and (4) of, and paragraph 6(4) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36) and section 165 of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

- (d) a contravention of section 9 of the Contempt of Court Act 1981(749) (without the court's permission, recording the proceedings, etc.);
  - (e) any other conduct with which the court can deal as, or as if it were, a criminal contempt of court, except failure to surrender to bail under section 6 of the Bail Act 1976(750).
- (2) Unless the respondent's behaviour makes it impracticable to do so, the court must—
- (a) explain, in terms the respondent can understand (with help, if necessary)—
    - (i) the conduct that is in question,
    - (ii) that the court can impose imprisonment, or a fine, or both, for such conduct,
    - (iii) (where relevant) that the court has power to order the respondent's immediate temporary detention, if in the court's opinion that is required,
    - (iv) that the respondent may explain the conduct,
    - (v) that the respondent may apologise, if he or she so wishes, and that this may persuade the court to take no further action, and
    - (vi) that the respondent may take legal advice; and
  - (b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if he or she so wishes, apologise.
- (3) The court may then—
- (a) take no further action in respect of that conduct;
  - (b) enquire into the conduct there and then; or
  - (c) postpone that enquiry (if a magistrates' court, only until later the same day).

*[Note. The conduct to which this rule applies is sometimes described as 'criminal' contempt of court.*

*By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for contempt of court for the conduct listed in paragraph (1)(a), (b), (d) or (e). See also section 14 of the Contempt of Court Act 1981(751).*

*Under section 97(4) of the Magistrates' Courts Act 1980, and under sections 12 and 14 of the Contempt of Court Act 1981, a magistrates' court can imprison (for a maximum of 1 month), or fine (to a maximum of £2,500), or both, a respondent who contravenes a provision listed in paragraph (1)(c) or (d). Section 12(1) of the 1981 Act allows the court to deal with any person who—*

- (a) *wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or*
- (b) *wilfully interrupts the proceedings of the court or otherwise misbehaves in court.*

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(749) 1981 c. 49.

(750) 1976 c. 63; section 6 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 109 of, and paragraph 184 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 15 of, and paragraph 48(1), (4) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).

(751) 1981 c. 49; section 14 was amended by section 65(1) of, and paragraphs 59 and 60 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 57 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 17(3) of, and Parts 1 and V of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 65(3) and (4) of, and paragraph 6(5) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36), section 165(1) of, and paragraph 84 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1(4) of, and paragraph 19 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 17 of, and paragraph 52 of Schedule 9 and paragraph 53 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22). It is further amended by sections 6(2) and 149 of, and paragraph 25 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

Under section 89 of the Powers of Criminal Courts (Sentencing) Act 2000(752), no respondent who is under 21 may be imprisoned for contempt of court. Under section 108 of that Act(753), a respondent who is at least 18 but under 21 may be detained if the court is of the opinion that no other method of dealing with him or her is appropriate. Under section 14(2A) of the Contempt of Court Act 1981(754), a respondent who is under 17 may not be ordered to attend an attendance centre.

Under section 258 of the Criminal Justice Act 2003(755), a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.

Under sections 14, 15 and 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(756), the respondent may receive advice and representation in “proceedings for contempt committed, or alleged to have been committed, by an individual in the face of the court”.

By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power temporarily to detain a respondent, for example to restore order, when dealing with obstructive, disruptive, insulting or intimidating conduct. Under section 12(2) of the Contempt of Court Act 1981(757), a magistrates’ court can temporarily detain a respondent until later the same day on a contravention of that section.

Part 19 contains rules about bail.]

## Review after temporary detention

**62.6.**—(1) This rule applies in a case in which the court has ordered the respondent’s immediate temporary detention for conduct to which rule 62.5 applies.

- (2) The court must review the case—
  - (a) if a magistrates’ court, later the same day;
  - (b) if the Court of Appeal or the Crown Court, no later than the next business day.
- (3) On the review, the court must—
  - (a) unless the respondent is absent, repeat the explanations required by rule 62.5(2)(a); and
  - (b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if he or she so wishes, apologise.
- (4) The court may then—
  - (a) take no further action in respect of the conduct;
  - (b) if a magistrates’ court, enquire into the conduct there and then; or

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(752) 2000 c. 6; section 89 was amended by paragraph 74(1) and (3) of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and is further amended by section 74 of, and paragraphs 160 and 180 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

(753) 2000 c. 6; section 108 is repealed by sections 74 and 75 of, and paragraphs 160 and 188 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(754) 1981 c. 49; section 14 was amended by section 65(1) of, and paragraphs 59 and 60 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 57 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 17(3) of, and Parts 1 and V of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 65(3) and (4) of, and paragraph 6(5) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36), section 165(1) of, and paragraph 84 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1(4) of, and paragraph 19 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 17 of, and paragraph 52 of Schedule 9 and paragraph 53 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22). It is further amended by sections 6(2) and 149 of, and paragraph 25 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

(755) 2003 c. 44; section 258 was amended by article 3(1) and (12) of S.I. 2005/643 and sections 117 and 121 of, and paragraphs 1 and 5 of Schedule 17 and paragraphs 1 and 8 of Schedule 20 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 34(1) and (5) of the Police and Justice Act 2006 (c. 4), with effect from a date to be appointed.

(756) 2012 c. 10.

(757) 1981 c. 49; section 12(2) was amended by Part 1 of Schedule 4 to the Criminal Justice Act 1991 (c. 53).

- (c) if the Court of Appeal or the Crown Court—
  - (i) enquire into the conduct there and then, or
  - (ii) postpone the enquiry, and order the respondent's release from such detention in the meantime.

### **Postponement of enquiry**

- 62.7.**—(1) This rule applies where the Court of Appeal or the Crown Court postpones the enquiry.
- (2) The court must arrange for the preparation of a written statement containing such particulars of the conduct in question as to make clear what the respondent appears to have done.
  - (3) The court officer must serve on the respondent—
    - (a) that written statement;
    - (b) notice of where and when the postponed enquiry will take place; and
    - (c) a notice that—
      - (i) reminds the respondent that the court can impose imprisonment, or a fine, or both, for contempt of court, and
      - (ii) warns the respondent that the court may pursue the postponed enquiry in the respondent's absence, if the respondent does not attend.

### **Procedure on enquiry**

- 62.8.**—(1) At an enquiry, the court must—
- (a) ensure that the respondent understands (with help, if necessary) what is alleged, if the enquiry has been postponed from a previous occasion;
  - (b) explain what the procedure at the enquiry will be; and
  - (c) ask whether the respondent admits the conduct in question.
- (2) If the respondent admits the conduct, the court need not receive evidence.
  - (3) If the respondent does not admit the conduct, the court must consider—
    - (a) any statement served under rule 62.7;
    - (b) any other evidence of the conduct;
    - (c) any evidence introduced by the respondent; and
    - (d) any representations by the respondent about the conduct.
  - (4) If the respondent admits the conduct, or the court finds it proved, the court must—
    - (a) before imposing any punishment for contempt of court, give the respondent an opportunity to make representations relevant to punishment;
    - (b) explain, in terms the respondent can understand (with help, if necessary)—
      - (i) the reasons for its decision, including its findings of fact, and
      - (ii) the punishment it imposes, and its effect; and
    - (c) if a magistrates' court, arrange for the preparation of a written record of those findings.
  - (5) The court that conducts an enquiry—
    - (a) need not include the same member or members as the court that observed the conduct; but
    - (b) may do so, unless that would be unfair to the respondent.

*SECTION 3: CONTEMPT OF COURT BY FAILURE TO COMPLY WITH COURT ORDER, ETC.*

**Initial procedure on failure to comply with court order, etc.**

- 62.9.**—(1) This rule applies where—
- (a) a party, or other person directly affected, alleges—
    - (i) in the Crown Court, a failure to comply with an order to which rule 6.13 or 6.22 (certain investigation orders), or 59.6 (restraint order or ancillary order), applies,
    - (ii) in the Court of Appeal or the Crown Court, any other conduct with which that court can deal as a civil contempt of court, or
    - (iii) in the Crown Court or a magistrates’ court, unauthorised use of disclosed prosecution material under section 17 of the Criminal Procedure and Investigations Act 1996(758);
  - (b) the court deals on its own initiative with conduct to which paragraph (1)(a) applies.
- (2) Such a party or person must—
- (a) apply in writing and serve the application on the court officer; and
  - (b) serve on the respondent—
    - (i) the application, and
    - (ii) notice of where and when the court will consider the allegation (not less than 14 days after service).
- (3) The application must—
- (a) identify the respondent;
  - (b) explain that it is an application for the respondent to be dealt with for contempt of court;
  - (c) contain such particulars of the conduct in question as to make clear what is alleged against the respondent; and
  - (d) include a notice warning the respondent that the court—
    - (i) can impose imprisonment, or a fine, or both, for contempt of court, and
    - (ii) may deal with the application in the respondent’s absence, if the respondent does not attend the hearing.
- (4) A court which acts on its own initiative under paragraph (1)(b) must—
- (a) arrange for the preparation of a written statement containing the same information as an application; and
  - (b) arrange for the service on the respondent of—
    - (i) that written statement, and
    - (ii) notice of where and when the court will consider the allegation (not less than 14 days after service).

*[Note. The conduct to which this rule applies is sometimes described as ‘civil’ contempt of court.*

*By reason of section 45 of the Senior Courts Act 1981(759), the Crown Court has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for conduct in contempt of court by failing to comply with a court order or an undertaking given to the court.*

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(758)1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).  
(759)1981 c. 54.

*Under section 18 of the Criminal Procedure and Investigations Act 1996(760)—*

- (a) *the Crown Court can imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both;*
- (b) *a magistrates' court can imprison (for a maximum of 6 months), or fine (to a maximum of £5,000), or both,*

*a person who uses disclosed prosecution material in contravention of section 17 of that Act. See also rule 22.8.*

*Under section 89 of the Powers of Criminal Courts (Sentencing) Act 2000, no respondent who is under 21 may be imprisoned for contempt of court. Under section 108 of that Act, a respondent who is at least 18 but under 21 may be detained if the court is of the opinion that no other method of dealing with him or her is appropriate. Under section 14(2A) of the Contempt of Court Act 1981, a respondent who is under 17 may not be ordered to attend an attendance centre.*

*Under section 258 of the Criminal Justice Act 2003, a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.*

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

*The rules in Part 4 require that an application under this rule must be served by handing it to the person accused of contempt of court unless the court otherwise directs.]*

### **Procedure on hearing**

- 62.10.**—(1) At the hearing of an allegation under rule 62.9, the court must—
- (a) ensure that the respondent understands (with help, if necessary) what is alleged;
  - (b) explain what the procedure at the hearing will be; and
  - (c) ask whether the respondent admits the conduct in question.
- (2) If the respondent admits the conduct, the court need not receive evidence.
- (3) If the respondent does not admit the conduct, the court must consider—
- (a) the application or written statement served under rule 62.9;
  - (b) any other evidence of the conduct;
  - (c) any evidence introduced by the respondent; and
  - (d) any representations by the respondent about the conduct.
- (4) If the respondent admits the conduct, or the court finds it proved, the court must—
- (a) before imposing any punishment for contempt of court, give the respondent an opportunity to make representations relevant to punishment;
  - (b) explain, in terms the respondent can understand (with help, if necessary)—
    - (i) the reasons for its decision, including its findings of fact, and
    - (ii) the punishment it imposes, and its effect; and
  - (c) in a magistrates' court, arrange for the preparation of a written record of those findings.

### **Introduction of written witness statement or other hearsay**

**62.11.**—(1) Where rule 62.9 applies, an applicant or respondent who wants to introduce in evidence the written statement of a witness, or other hearsay, must—

- (a) serve a copy of the statement, or notice of other hearsay, on—

- (i) the court officer, and
- (ii) the other party; and
- (b) serve the copy or notice—
  - (i) when serving the application under rule 62.9, in the case of an applicant, or
  - (ii) not more than 7 days after service of that application or of the court’s written statement, in the case of the respondent.

(2) Such service is notice of that party’s intention to introduce in evidence that written witness statement, or other hearsay, unless that party otherwise indicates when serving it.

(3) A party entitled to receive such notice may waive that entitlement.

*[Note. On an application under rule 62.9, hearsay evidence is admissible under the Civil Evidence Act 1995. Section 1(2) of the 1995 Act(761) defines hearsay as meaning ‘a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated’. Section 13 of the Act(762) defines a statement as meaning ‘any representation of fact or opinion, however made’.*

*Under section 2 of the 1995 Act(763), a party who wants to introduce hearsay in evidence must give reasonable and practicable notice, in accordance with procedure rules, unless the recipient waives that requirement.]*

#### **Content of written witness statement**

**62.12.**—(1) This rule applies to a written witness statement served under rule 62.11.

(2) Such a written witness statement must contain a declaration by the person making it that it is true to the best of that person’s knowledge and belief.

*[Note. By reason of sections 15 and 45 of the Senior Courts Act 1981(764), the Court of Appeal and the Crown Court each has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, for contempt of court a person who, in a written witness statement to which this rule applies, makes, or causes to be made, a false statement without an honest belief in its truth. See also section 14 of the Contempt of Court Act 1981(765).]*

#### **Content of notice of other hearsay**

**62.13.**—(1) This rule applies to a notice of hearsay, other than a written witness statement, served under rule 62.11.

- (2) Such a notice must—
  - (a) set out the evidence, or attach the document that contains it; and
  - (b) identify the person who made the statement that is hearsay.

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(761) 1995 c. 38.

(762) 1995 c. 38.

(763) 1995 c. 38.

(764) 1981 c. 54.

(765) 1981 c. 49; section 14 was amended by section 65(1) of, and paragraphs 59 and 60 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 57 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 17(3) of, and Parts 1 and V of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 65(3) and (4) of, and paragraph 6(5) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36), section 165(1) of, and paragraph 84 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1(4) of, and paragraph 19 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 17 of, and paragraph 52 of Schedule 9 and paragraph 53 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22). It is further amended by sections 6(2) and 149 of, and paragraph 25 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

### **Cross-examination of maker of written witness statement or other hearsay**

**62.14.**—(1) This rule applies where a party wants the court’s permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

(2) The party who wants to cross-examine that person must—

- (a) apply in writing, with reasons; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the party who served the hearsay.

(3) A respondent who wants to cross-examine such a person must apply to do so not more than 7 days after service of the hearsay by the applicant.

(4) An applicant who wants to cross-examine such a person must apply to do so not more than 3 days after service of the hearsay by the respondent.

(5) The court—

- (a) may decide an application under this rule without a hearing; but
- (b) must not dismiss such an application unless the person making it has had an opportunity to make representations at a hearing.

*[Note. See also section 3 of the Civil Evidence Act 1995(766).]*

### **Credibility and consistency of maker of written witness statement or other hearsay**

**62.15.**—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

(2) The party who wants to challenge the credibility or consistency of that person must—

- (a) serve a written notice of intention to do so on—
  - (i) the court officer, and
  - (ii) the party who served the hearsay; and
- (b) in it, identify any statement or other material on which that party relies.

(3) A respondent who wants to challenge such a person’s credibility or consistency must serve such a notice not more than 7 days after service of the hearsay by the applicant.

(4) An applicant who wants to challenge such a person’s credibility or consistency must serve such a notice not more than 3 days after service of the hearsay by the respondent.

(5) The party who served the hearsay—

- (a) may call that person to give oral evidence instead; and
- (b) if so, must serve a notice of intention to do so on—
  - (i) the court officer, and
  - (ii) the other party

as soon as practicable after service of the notice under paragraph (2).

*[Note. Section 5(2) of the Civil Evidence Act 1995(767) describes the procedure for challenging the credibility of the maker of a statement of which hearsay evidence is introduced. See also section 6 of that Act(768).]*

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(766)1995 c. 38.

(767)1995 c. 38.

(768)1995 c. 38.



*The 1995 Act does not allow the introduction of evidence of a previous inconsistent statement otherwise than in accordance with sections 5, 6 and 7 of the Criminal Procedure Act 1865(769).]*

### **Magistrates' courts' powers to adjourn, etc.**

**62.16.**—(1) This rule applies where a magistrates' court deals with unauthorised disclosure of prosecution material under sections 17 and 18 of the Criminal Procedure and Investigations Act 1996(770).

(2) The sections of the Magistrates' Courts Act 1980 listed in paragraph (3) apply as if in those sections—

- (a) 'complaint' and 'summons' each referred to an application or written statement under rule 62.9;
- (b) 'complainant' meant an applicant; and
- (c) 'defendant' meant the respondent.

(3) Those sections are—

- (a) section 51(771) (issue of summons on complaint);
- (b) section 54(772) (adjournment);
- (c) section 55(773) (non-appearance of defendant);
- (d) section 97(1)(774) (summons to witness);
- (e) section 121(1)(775) (constitution and place of sitting of court);
- (f) section 123(776) (defect in process).

(4) Section 127 of the 1980 Act(777) (limitation of time) does not apply.

*[Note. Under section 19(3) of the Criminal Procedure and Investigations Act 1996(778), Criminal Procedure Rules may contain provisions equivalent to those contained in Schedule 3 to the Contempt of Court Act 1981(779) (which allows magistrates' courts in cases of contempt of court to use certain powers such courts possess in other cases).]*

### **Court's power to vary requirements under Section 3**

**62.17.**—(1) The court may shorten or extend (even after it has expired) a time limit under rule 62.11, 62.14 or 62.15.

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

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

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(769) 1865 c. 18; section 6 was amended by section 10 of the Decimal Currency Act 1969 (c. 19), section 90 of, and paragraph 3 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 109 of, and paragraph 47 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 331 and 332 of, and paragraph 79 of Schedule 36 to, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 119 of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60) and article 90 of, and Schedule 7 to, S.I. 1989/1342, with effect from a date to be appointed.

(770) 1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(771) 1980 c. 43; section 51 was substituted by section 47(1) of the Courts Act 2003 (c. 39).

(772) 1980 c. 43.

(773) 1980 c. 43.

(774) 1980 c. 43; section 97(1) was substituted by section 169(2) of the Serious Organised Crime and Police Act 2005 (c. 15).

(775) 1980 c. 43.

(776) 1980 c. 43.

(777) 1980 c. 43.

(778) 1996 c. 25; section 19(3) was amended by section 109 of, and paragraph 377 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 15 of, and paragraph 251 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(779) 1981 c. 49; Schedule 3 has been amended but the amendment is not relevant to this rule.

## PART 63

### APPEAL TO THE CROWN COURT

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#### When this Part applies

**63.1.**—(1) This Part applies where—

- (a) a defendant wants to appeal under—
  - (i) section 108 of the Magistrates' Courts Act 1980**(780)**,
  - (ii) section 45 of the Mental Health Act 1983**(781)**,
  - (iii) paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000**(782)**, or paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003**(783)**,
  - (iv) section 10 of the Violent Crime Reduction Act 2006**(784)**,
  - (v) section 42 of the Counter Terrorism Act 2008**(785)**;
- (b) the Criminal Cases Review Commission refers a defendant's case to the Crown Court under section 11 of the Criminal Appeal Act 1995**(786)**;
- (c) a prosecutor wants to appeal under—

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**(780)** 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45).

**(781)** 1983 c. 20.

**(782)** 2000 c. 6.

**(783)** 2003 c. 44.

**(784)** 2006 c. 38.

**(785)** 2008 c. 28.

**(786)** 1995 c. 35.

- (i) section 14A(5A) of the Football Spectators Act 1989(787), or
- (ii) section 147(3) of the Customs and Excise Management Act 1979(788); or
- (d) a person wants to appeal under—
  - (i) section 1 of the Magistrates’ Courts (Appeals from Binding Over Orders) Act 1956(789),
  - (ii) section 12(5) of the Contempt of Court Act 1981(790),
  - (iii) regulation 3C or 3H of The Costs in Criminal Cases (General) Regulations 1986(791),
  - (iv) section 22 of the Football Spectators Act 1989(792), or
  - (v) section 10(4) or (5) of the Crime and Disorder Act 1998(793).
- (2) A reference to an ‘appellant’ in this Part is a reference to such a party or person.

*[Note. An appeal to the Crown Court is by way of re-hearing: see section 79(3) of the Senior Courts Act 1981(794). For the powers of the Crown Court on an appeal, see section 48 of that Act.*

*A defendant may appeal from a magistrates’ court to the Crown Court—*

- (a) *under section 108 of the Magistrates’ Courts Act 1980, against sentence after a guilty plea and after a not guilty plea against conviction, against a finding of guilt or against sentence;*
- (b) *under section 45 of the Mental Health Act 1983, where the magistrates’ court makes a hospital order or guardianship order without convicting the defendant;*
- (c) *under paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000, or under paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003, where the magistrates’ court revokes a community order and deals with the defendant in another way;*
- (d) *under section 10 of the Violent Crime Reduction Act 2006, where the magistrates’ court makes a drinking banning order;*
- (e) *under section 42 of the Counter Terrorism Act 2008, where the magistrates’ court decides that an offence has a terrorist connection.*

*See section 13 of the Criminal Appeal Act 1995(795) for the circumstances in which the Criminal Cases Review Commission may refer a conviction or sentence to the Crown Court.*

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(787) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(788) 1979 c. 2.

(789) 1956 c. 44; section 1 was amended by Part 1 of Schedule 7 to, the Criminal Justice Act 1967 (c. 80), Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and Schedule 9 to, the Magistrates’ Courts Act 1980 (c. 43).

(790) 1981 c. 49; section 12(5) was amended by section 165(1) of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(791) S.I. 1986/1335; regulation 3C was inserted by regulation 2 of The Costs in Criminal Cases (General) (Amendment) Regulations 1991 (SI 1991/789) and amended by regulation 5 of The Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408). Regulation 3H was inserted by regulation 7 of The Costs in Criminal Cases (General) (Amendment) Regulations 2004 (S.I. 2004/2408).

(792) 1989 c. 37; section 22 was amended by section 5 of the Football (Offences and Disorder) Act 1999 (c. 21), section 1 of, and paragraphs 9 – 11 and 17 of Schedule 2 to, the Football (Disorder) Act 2000 (c. 25) and section 109(1) and (3) of, and paragraph 335 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).

(793) 1998 c. 37; section 10(4) is amended by section 41(1) and (5) of the Crime and Security Act 2010 (c. 17), with effect from a date to be appointed.

(794) 1981 c. 54. The Act’s title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(795) 1995 c. 35; section 13 was amended by section 321 of, and paragraph 3 of Schedule 11 to, the Armed Forces Act 2006 (c.52).

*Under section 14A(5A) of the Football Spectators Act 1989, a prosecutor may appeal to the Crown Court against a failure by a magistrates' court to make a football banning order.*

*Under section 147(3) of the Customs and Excise Management Act 1979, a prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under any Act relating to customs or excise.*

*Under section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956, a person bound over to keep the peace or be of good behaviour by a magistrates' court may appeal to the Crown Court.*

*Under section 12(5) of the Contempt of Court Act 1981, a person detained, committed to custody or fined by a magistrates' court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court.*

*Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom a magistrates' court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court.*

*Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom a magistrates' court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court.*

*Under section 22 of the Football Spectators Act 1989, any person aggrieved by the decision of a magistrates' court making a football banning order may appeal to the Crown Court.*

*Under section 10(4) or (5) of the Crime and Disorder Act 1998, a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court.]*

### **Service of appeal notice**

- 63.2.**—(1) An appellant must serve an appeal notice on—
- (a) the magistrates' court officer; and
  - (b) every other party.
- (2) The appellant must serve the appeal notice—
- (a) as soon after the decision appealed against as the appellant wants; but
  - (b) not more than 21 days after—
    - (i) sentence or the date sentence is deferred, whichever is earlier, if the appeal is against conviction or against a finding of guilt,
    - (ii) sentence, if the appeal is against sentence, or
    - (iii) the order or failure to make an order about which the appellant wants to appeal, in any other case.
- (3) The appellant must serve with the appeal notice any application for the following, with reasons—
- (a) an extension of the time limit under this rule, if the appeal notice is late;
  - (b) bail pending appeal, if the appellant is in custody;
  - (c) the suspension of any disqualification imposed in the case, where the magistrates' court or the Crown Court can order such a suspension pending appeal.
- (4) Where both the magistrates' court and the Crown Court can suspend a disqualification pending appeal, an application for its suspension must indicate by which court the appellant wants the application determined.

*[Note. Under section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000(796), a magistrates' court may defer passing sentence for up to 6 months.*

*Under section 39 of the Road Traffic Offenders Act 1988(797), a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. Under section 40 of the 1988 Act(798), the appeal court may do so. See also rule 55.2.]*

### **Form of appeal notice**

**63.3.** The appeal notice must be in writing and must—

- (a) specify—
  - (i) the conviction or finding of guilt,
  - (ii) the sentence, or
  - (iii) the order, or the failure to make an order about which the appellant wants to appeal;
- (b) summarise the issues;
- (c) in an appeal against conviction—
  - (i) identify the prosecution witnesses whom the appellant will want to question if they are called to give oral evidence, and
  - (ii) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court;
- (d) in an appeal against a finding that the appellant insulted someone or interrupted proceedings in the magistrates' court, attach—
  - (i) the magistrates' court's written findings of fact, and
  - (ii) the appellant's response to those findings;
- (e) say whether the appellant has asked the magistrates' court to reconsider the case; and
- (f) include a list of those on whom the appellant has served the appeal notice.

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

*In some cases, a magistrates' court can reconsider a conviction, sentence or other order and make a fresh decision. See section 142 of the Magistrates' Courts Act 1980(799).*

*See also rule 3.11 (Conduct of a trial or an appeal).]*

### **Duty of magistrates' court officer**

**63.4.** The magistrates' court officer must—

- (a) as soon as practicable serve on the Crown Court officer—
  - (i) the appeal notice and any accompanying application served by the appellant,
  - (ii) details of the parties including their addresses,
  - (iii) a copy of each magistrates' court register entry relating to the decision under appeal and to any application for bail pending appeal, and
  - (iv) any report received for the purposes of sentencing;

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(796) 2000 c. 6.

(797) 1988 c. 53.

(798) 1988 c. 53; section 40 was amended by sections 40 and 59 of, and paragraph 50 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c.4).

(799) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

- (b) keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until—
  - (i) 6 weeks after the conclusion of those proceedings, or
  - (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks;
- (c) provide the Crown Court with any document, object or information for which the Crown Court officer asks, within such period as the Crown Court officer may require; and
- (d) arrange for the magistrates' court to hear as soon as practicable any application to that court under rule 63.2(3) (suspension of disqualification pending appeal).

#### **Duty of person keeping exhibit**

**63.5.** A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—

- (a) keep that exhibit until—
  - (i) 6 weeks after the conclusion of those proceedings, or
  - (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks, unless the magistrates' court or the Crown Court otherwise directs; and
- (b) provide the Crown Court with any such document or object for which the Crown Court officer asks, within such period as the Crown Court officer may require.

#### **Reference by the Criminal Cases Review Commission**

**63.6.—**(1) The Crown Court officer must, as soon as practicable, serve a reference by the Criminal Cases Review Commission on—

- (a) the appellant;
- (b) every other party; and
- (c) the magistrates' court officer.

(2) The appellant may serve an appeal notice on—

- (a) the Crown Court officer; and
- (b) every other party,

not more than 21 days later.

(3) The Crown Court must treat the reference as the appeal notice if the appellant does not serve an appeal notice.

#### **Hearings and decisions**

**63.7.—**(1) The Crown Court as a general rule must hear in public an appeal or reference to which this Part applies, but—

- (a) may order any hearing to be in private; and
- (b) where a hearing is about a public interest ruling, must hold that hearing in private.

(2) The Crown Court officer must give as much notice as reasonably practicable of every hearing to—

- (a) the parties;
- (b) any party's custodian; and
- (c) any other person whom the Crown Court requires to be notified.

- (3) The Crown Court officer must serve every decision on—
- (a) the parties;
  - (b) any other person whom the Crown Court requires to be served; and
  - (c) the magistrates' court officer and any party's custodian, where the decision determines an appeal.
- (4) But where a hearing or decision is about a public interest ruling, the Crown Court officer must not—
- (a) give notice of that hearing to; or
  - (b) serve that decision on,
- anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

*[Note. See also Part 22 (Disclosure).]*

### **Abandoning an appeal**

- 63.8.**—(1) The appellant—
- (a) may abandon an appeal without the Crown Court's permission, by serving a notice of abandonment on—
    - (i) the magistrates' court officer,
    - (ii) the Crown Court officer, and
    - (iii) every other partybefore the hearing of the appeal begins; but
  - (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.
- (2) A notice of abandonment must be signed by or on behalf of the appellant.
- (3) Where an appellant who is on bail pending appeal abandons an appeal—
- (a) the appellant must surrender to custody as directed by the magistrates' court officer; and
  - (b) any conditions of bail apply until then.

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

*Where an appellant abandons an appeal to the Crown Court, both the Crown Court and the magistrates' court have power to make a costs order against that appellant in favour of the respondent: see section 52 of the Senior Courts Act 1981(800) and section 109 of the Magistrates' Courts Act 1980(801). Part 76 contains rules about costs on abandoning an appeal.]*

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

- 63.9.** The Crown Court may—
- (a) shorten or extend (even after it has expired) a time limit under this Part;
  - (b) allow an appellant to vary an appeal notice that that appellant has served;

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**(800)** 1981 c. 54; section 52 was amended by section 31(5) of, and Part II of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23), section 4 of the Courts and Legal Services Act 1990 (c. 41), article 3 of, and paragraphs 11 and 12(a) of the Schedule to, S.I. 2004/2035, and section 59(5) of, and paragraph 26(1) and (2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

**(801)** 1980 c. 43; section 109(2) was amended by section 109(1) of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

- (c) direct that an appeal notice be served on any person;
- (d) allow an appeal notice or a notice of abandonment to be in a different form to one set out in the Practice Direction, or to be presented orally.

### Constitution of the Crown Court

#### 63.10. On the hearing of an appeal—

- (a) the general rule is that the Crown Court must comprise—
  - (i) a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate, and
  - (ii) no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal; and
- (b) if the appeal is from a youth court—
  - (i) each justice of the peace must be qualified to sit as a member of a youth court, and
  - (ii) the Crown Court must include a man and a woman; but
- (c) the Crown Court may include only one justice of the peace and need not include both a man and a woman if—
  - (i) the presiding judge decides that otherwise the start of the appeal hearing will be delayed unreasonably, or
  - (ii) one or more of the justices of the peace who started hearing the appeal is absent.

*[Note. See sections 73 and 74 of the Senior Courts Act 1981(802), section 45 of the Children and Young Persons Act 1933(803) and section 9 of the Courts Act 2003(804). Under section 8(1A) of the Senior Courts Act 1981(805), a qualifying judge advocate may not exercise the jurisdiction of the Crown Court on an appeal from a youth court.]*

## PART 64

### APPEAL TO THE HIGH COURT BY CASE STATED

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#### Contents of this Part

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When this Part applies	rule 64.1
Application to state a case	rule 64.2
Preparation of case stated	rule 64.3
Duty of justices' legal adviser	rule 64.4
Court's power to vary requirements under this Part	rule 64.5

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(802) 1981 c. 54; section 73(2) was amended by article 3 of, and paragraphs 11 and 12(b) of the Schedule to, S.I. 2004/2035. Section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12(c) of the Schedule to, S.I. 2004/2035 and section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(803) 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).

(804) 2003 c. 39.

(805) 1981 c. 54; section 8(1A) was inserted by paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18).



## When this Part applies

**64.1.** This Part applies where a person wants to appeal to the High Court by case stated—

- (a) under section 111 of the Magistrates' Courts Act 1980(**806**), against a decision of a magistrates' court; or
- (b) under section 28 of the Senior Courts Act 1981(**807**), against a decision of the Crown Court.

*[Note. Under section 111 of the Magistrates' Courts Act 1980, 'any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved'.*

*Under section 28 of the Senior Courts Act 1981, 'any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.'*

*Under section 28A of the 1981 Act(**808**), the High Court may 'reverse, affirm or amend the determination in respect of which the case has been stated; or remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court, and may make such other order ... as it thinks fit.' Under that section, the High Court also may send the case back for amendment, if it thinks fit.]*

## Application to state a case

**64.2.—**(1) A party who wants the court to state a case for the opinion of the High Court must—

- (a) apply in writing, not more than 21 days after the decision against which the applicant wants to appeal; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party.
- (2) The application must—
- (a) specify the decision in issue;
  - (b) specify the proposed question or questions of law or jurisdiction on which the opinion of the High Court will be asked;
  - (c) indicate the proposed grounds of appeal; and
  - (d) include or attach any application for the following, with reasons—
    - (i) if the application is to the Crown Court, an extension of time within which to apply to state a case,
    - (ii) bail pending appeal,

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(**806**) 1980 c. 43.

(**807**) 1981 c. 54; section 28 was amended by section 2 of, and paragraph 27 of Schedule 3 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), section 24 of, and paragraphs 21 and 22 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 199 of, and Schedule 7 to, the Licensing Act 2003 (c. 17) and section 356 of, and Schedule 17 to, the Gambling Act 2005 (c. 19). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**808**) 1981 c. 54; section 28A was inserted by section 1 of, and paragraph 9 of Schedule 2 to, the Statute Law (Repeals) Act 1993 (c. 50), and amended by section 61 of the Access to Justice Act 1999 (c. 22) and section 40 of, and paragraph 36 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

- (iii) the suspension of any disqualification imposed in the case, where the court can order such a suspension pending appeal.
- (3) A party who wants to make representations about the application must—
  - (a) serve the representations on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (b) do so not more than 14 days after service of the application.
- (4) The court may determine the application without a hearing.
- (5) If the court decides not to state a case, the court officer must serve on each party—
  - (a) notice of that decision; and
  - (b) the court’s written reasons for that decision, if not more than 21 days later the applicant asks for those reasons.

*[Note. The time limit for applying to a magistrates’ court to state a case is prescribed by section 111(2) of the Magistrates’ Courts Act 1980. It may be neither extended nor shortened.*

*Under section 39 of the Road Traffic Offenders Act 1988(809), a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. See also rule 55.2.*

*The Practice Direction sets out a form of application for use in connection with this rule.]*

### **Preparation of case stated**

- 64.3.**—(1) This rule applies where the court decides to state a case for the opinion of the High Court.
- (2) The court officer must serve on each party notice of—
    - (a) the decision to state a case, and
    - (b) any recognizance ordered by the court.
  - (3) Unless the court otherwise directs, not more than 21 days after the court’s decision to state a case—
    - (a) in a magistrates court, the court officer must serve a draft case on each party;
    - (b) in the Crown Court, the applicant must serve a draft case on the court officer and each other party.
  - (4) The draft case must—
    - (a) specify the decision in issue;
    - (b) specify the question(s) of law or jurisdiction on which the opinion of the High Court will be asked;
    - (c) include a succinct summary of—
      - (i) the nature and history of the proceedings,
      - (ii) the court’s relevant findings of fact, and
      - (iii) the relevant contentions of the parties;
    - (d) if a question is whether there was sufficient evidence on which the court reasonably could reach a finding of fact—

- (i) specify that finding, and
  - (ii) include a summary of the evidence on which the court reached that finding.
- (5) Except to the extent that paragraph (4)(d) requires, the draft case must not include an account of the evidence received by the court.
- (6) A party who wants to make representations about the content of the draft case, or to propose a revised draft, must—
- (a) serve the representations, or revised draft, on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (b) do so not more than 21 days after service of the draft case.
- (7) The court must state the case not more than 21 days after the time for service of representations under paragraph (6) has expired.
- (8) A case stated for the opinion of the High Court must—
- (a) comply with paragraphs (4) and (5); and
  - (b) identify—
    - (i) the court that stated it, and
    - (ii) the court office for that court.
- (9) The court officer must serve the case stated on each party.

*[Note. Under section 114 of the Magistrates' Courts Act 1980(810), a magistrates' court need not state a case until the person who applied for it has entered into a recognizance to appeal promptly to the High Court. The Crown Court has a corresponding inherent power.*

*Under section 121(6) of the 1980 Act, the magistrates' court which states a case need not include all the members of the court which took the decision questioned.*

*For the procedure on appeal to the High Court, see Part 52 of the Civil Procedure Rules 1998(811) and the associated Practice Direction.]*

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

- 64.4.**—(1) This rule applies—
- (a) only in a magistrates' court; and
  - (b) unless the court—
    - (i) includes a District Judge (Magistrates' Courts), and
    - (ii) otherwise directs.
- (2) A justices' legal adviser must—
- (a) give the court legal advice; and
  - (b) if the court so requires, assist it by—
    - (i) preparing and amending the draft case, and
    - (ii) completing the case stated.

**(810)** 1980 c. 43; section 114 was amended by section 90 of, and paragraphs 95 and 113 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 235 of Schedule 8 to, the Courts Act 2003 (c. 39).

**(811)** S.I. 1998/3132; Part 52 was inserted by S.I. 2000/221 and amended by paragraph 1 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) and S.I. 2003/2113, 2003/3361, 2006/3435, 2007/2204 and 2009/2092.

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

- 64.5.**—(1) The court may shorten or extend (even after it has expired) a time limit under this Part.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application, representations or draft case for which it is needed; and
  - (b) explain the delay.

*[Note. See also rule 64.2(2)(d)(i) and the note to rule 64.2.]*

## **PART 65**

### **APPEAL TO THE COURT OF APPEAL: GENERAL RULES**

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#### **Contents of this Part**

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#### **When this Part applies**

**65.1.**—(1) This Part applies to all the applications, appeals and references to the Court of Appeal to which Parts 66, 67, 68, 69, 70 and 74 apply.

(2) In this Part and in those, unless the context makes it clear that something different is meant ‘court’ means the Court of Appeal or any judge of that court.

*[Note. See rule 2.2 for the usual meaning of ‘court’.*

*Under section 53 of the Senior Courts Act 1981(812), the criminal division of the Court of Appeal exercises jurisdiction in the appeals and references to which Parts 66, 67, 68, 69 and 70 apply.*

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(812) 1981 c. 54. The Act’s title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

*Under section 55 of that Act(813), the Court of Appeal must include at least two judges, and for some purposes at least three.*

*For the powers of the Court of Appeal that may be exercised by one judge of that court or by the Registrar, see sections 31, 31A, 31B, 31C and 44 of the Criminal Appeal Act 1968(814); section 49 of the Criminal Justice Act 2003(815); the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(816); the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(817); the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(818); and the power conferred by section 53(4) of the 1981 Act.]*

### **Case management in the Court of Appeal**

**65.2.**—(1) The court and the parties have the same duties and powers as under Part 3 (case management).

(2) The Registrar—

- (a) must fulfil the duty of active case management under rule 3.2; and
- (b) in fulfilling that duty may exercise any of the powers of case management under—
  - (i) rule 3.5 (the court’s general powers of case management),
  - (ii) rule 3.10(3) (requiring a certificate of readiness), and
  - (iii) rule 3.11 (requiring a party to identify intentions and anticipated requirements) subject to the directions of the court.

(3) The Registrar must nominate a case progression officer under rule 3.4.

### **Power to vary requirements**

**65.3.** The court or the Registrar may—

- (a) shorten a time limit or extend it (even after it has expired) unless that is inconsistent with other legislation;
- (b) allow a party to vary any notice that that party has served;

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**(813)** 1981 c. 54; section 55 was amended by section 170 of, and paragraph 80 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 52 of the Criminal Justice and Public Order Act 1994 (c. 33) and section 58 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). It is further amended by section 40 of, and paragraph 36 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

**(814)** 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), section 331 of, and paragraphs 86, 87 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 48 of the Police and Justice Act 2006 (c. 48) and section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed. Section 31A was inserted by section 6 of the Criminal Appeal Act 1995 (c. 35) and amended by sections 87 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 331 of, and paragraphs 86 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 31B was inserted by section 87 of the Courts Act 2003 (c. 39). Section 31C was inserted by section 87 of the Courts Act 2003 (c. 39) and amended by sections 47 and 149 of, and paragraphs 1 and 12 of Schedule 8 and part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). Section 44 was amended by section 24(2) of, and paragraph 11 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 170(1) of, and paragraphs 20 and 31 of the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4(2) of the Road Traffic (Consequential Provisions) Act 1988 (c. 54) and section 198(1), and paragraphs 38 and 41 of Schedule 6 to, the Licensing Act 2003 (c. 17).

**(815)** 2003 c. 44.

**(816)** S.I. 2005/2798.

**(817)** S.I. 2006/2135.

**(818)** S.I. 2008/1863.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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- (c) direct that a notice or application be served on any person;
- (d) allow a notice or application to be in a different form, or presented orally.

*[Note. The time limit for serving an appeal notice—*

- (a) *under section 18 of the Criminal Appeal Act 1968(819) on an appeal against conviction or sentence, and*
- (b) *under section 18A of that Act(820) on an appeal against a finding of contempt of court*

*may be extended but not shortened: see rule 68.2.*

*The time limit for serving an application for permission to refer a sentencing case under section 36 of the Criminal Justice Act 1988(821) may be neither extended nor shortened: see rule 70.2(2).*

*The time limits in rule 74.2 for applying to the Court of Appeal for permission to appeal or refer a case to the Supreme Court may be extended or shortened only as explained in the note to that rule.]*

#### **Application for extension of time**

**65.4.** A person who wants an extension of time within which to serve a notice or make an application must—

- (a) apply for that extension of time when serving that notice or making that application; and
- (b) give the reasons for the application for an extension of time.

#### **Renewing an application refused by a judge or the Registrar**

**65.5.—(1)** This rule applies where a party with the right to do so wants to renew—

- (a) to a judge of the Court of Appeal an application refused by the Registrar; or
- (b) to the Court of Appeal an application refused by a judge of that court.

**(2)** That party must—

- (a) renew the application in the form set out in the Practice Direction, signed by or on behalf of the applicant;
- (b) serve the renewed application on the Registrar not more than 14 days after—
  - (i) the refusal of the application that the applicant wants to renew; or
  - (ii) the Registrar serves that refusal on the applicant, if the applicant was not present in person or by live link when the original application was refused.

*[Note. The time limit of 14 days under this rule is reduced to 5 days where Parts 66, 67 or 69 apply: see rules 66.7, 67.10 and 69.7.*

*For the right to renew an application to a judge or to the Court of Appeal, see sections 31(3), 31C and 44 of the Criminal Appeal Act 1968, the Criminal Justice Act 2003 (Mandatory Life*

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**(819)** 1968 c. 19.

**(820)** 1968 c. 19; section 18A was inserted by section 170 of, and paragraphs 20 and 25 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

**(821)** 1988 c. 33; section 36 was amended by section 272 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 3 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), section 149 of, and Part 28 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 2 of Schedule 19 and paragraphs 4 and 5 of Schedule 26 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 46 of the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

*Sentences: Appeals in Transitional Cases) Order 2005(822), the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(823) and the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.*

*A party has no right under section 31C of the 1968 Act to renew to the Court of Appeal an application for procedural directions refused by a judge, but in some circumstances a case management direction might be varied: see rule 3.6.*

*If an applicant does not renew an application that a judge has refused, including an application for permission to appeal, the Registrar will treat it as if it had been refused by the Court of Appeal.*

*Under section 22 of the Criminal Appeal Act 1968(824), the Court of Appeal may direct that an appellant who is in custody is to attend a hearing by live link.]*

## Hearings

**65.6.**—(1) The general rule is that the Court of Appeal must hear in public—

- (a) an application, including an application for permission to appeal; and
- (b) an appeal or reference,

but it may order any hearing to be in private.

(2) Where a hearing is about a public interest ruling, that hearing must be in private unless the court otherwise directs.

(3) Where the appellant wants to appeal against an order restricting public access to a trial, the court—

- (a) may decide without a hearing—
  - (i) an application, including an application for permission to appeal, and
  - (ii) an appeal; but
- (b) must announce its decision on such an appeal at a hearing in public.

(4) Where the appellant wants to appeal or to refer a case to the Supreme Court, the court—

- (a) may decide without a hearing an application—
  - (i) for permission to appeal or to refer a sentencing case, or
  - (ii) to refer a point of law; but
- (b) must announce its decision on such an application at a hearing in public.

(5) A judge of the Court of Appeal and the Registrar may exercise any of their powers—

- (a) at a hearing in public or in private; or
- (b) without a hearing.

*[Note. For the procedure on an appeal against an order restricting public access to a trial, see Part 69.]*

## Notice of hearings and decisions

**65.7.**—(1) The Registrar must give as much notice as reasonably practicable of every hearing to—

- (a) the parties;

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**(822)**S.I. 2005/2798.

**(823)**S.I. 2006/2135.

**(824)**1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

- (b) any party's custodian;
  - (c) any other person whom the court requires to be notified; and
  - (d) the Crown Court officer, where Parts 66, 67 or 69 apply.
- (2) The Registrar must serve every decision on—
- (a) the parties;
  - (b) any other person whom the court requires to be served; and
  - (c) the Crown Court officer and any party's custodian, where the decision determines an appeal or application for permission to appeal.
- (3) But where a hearing or decision is about a public interest ruling, the Registrar must not—
- (a) give notice of that hearing to; or
  - (b) serve that decision on,
- anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

#### **Duty of Crown Court officer**

**65.8.**—(1) The Crown Court officer must provide the Registrar with any document, object or information for which the Registrar asks, within such period as the Registrar may require.

(2) Where someone may appeal to the Court of Appeal, the Crown Court officer must keep any document or object exhibited in the proceedings in the Crown Court, or arrange for it to be kept by some other appropriate person, until—

- (a) 6 weeks after the conclusion of those proceedings; or
- (b) the conclusion of any appeal proceedings that begin within that 6 weeks,

unless the court, the Registrar or the Crown Court otherwise directs.

(3) Where Part 66 applies (appeal to the Court of Appeal against ruling at preparatory hearing), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—

- (a) each order or ruling against which the appellant wants to appeal; and
- (b) the decision by the Crown Court judge on any application for permission to appeal.

(4) Where Part 67 applies (appeal to the Court of Appeal against ruling adverse to prosecution), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—

- (a) each ruling against which the appellant wants to appeal;
- (b) the decision by the Crown Court judge on any application for permission to appeal; and
- (c) the decision by the Crown Court judge on any request to expedite the appeal.

(5) Where Part 68 applies (appeal to the Court of Appeal about conviction or sentence), the Crown Court officer must as soon as practicable serve on the Registrar—

- (a) the appeal notice and any accompanying application that the appellant serves on the Crown Court officer;
- (b) any Crown Court judge's certificate that the case is fit for appeal;
- (c) the decision on any application at the Crown Court centre for bail pending appeal;
- (d) such of the Crown Court case papers as the Registrar requires; and
- (e) such transcript of the Crown Court proceedings as the Registrar requires.

(6) Where Part 69 applies (appeal to the Court of Appeal regarding reporting or public access) and an order is made restricting public access to a trial, the Crown Court officer must—



- (a) immediately notify the Registrar of that order, if the appellant has given advance notice of intention to appeal; and
- (b) as soon as practicable provide the applicant for that order with a transcript or note of the application.

*[Note. See also section 87(4) of the Senior Courts Act 1981(825) and rules 5.5 (recording and transcription of proceedings in the Crown Court), 65.9 (duty of person transcribing record of proceedings in the Crown Court) and 65.10 (duty of person keeping exhibit).]*

#### **Duty of person transcribing proceedings in the Crown Court**

**65.9.** A person who transcribes a recording of proceedings in the Crown Court under arrangements made by the Crown Court officer must provide the Registrar with any transcript for which the Registrar asks, within such period as the Registrar may require.

*[Note. See also section 32 of the Criminal Appeal Act 1968(826) and rule 5.5 (recording and transcription of proceedings in the Crown Court).]*

#### **Duty of person keeping exhibit**

**65.10.** A person who under arrangements made by the Crown Court officer keeps a document or object exhibited in the proceedings in the Crown Court must—

- (a) keep that exhibit until—
  - (i) 6 weeks after the conclusion of the Crown Court proceedings, or
  - (ii) the conclusion of any appeal proceedings that begin within that 6 weeks, unless the court, the Registrar or the Crown Court otherwise directs; and
- (b) provide the Registrar with any such document or object for which the Registrar asks, within such period as the Registrar may require.

*[Note. See also rule 65.8(2) (duty of Crown Court officer).]*

#### **Registrar’s duty to provide copy documents for appeal or reference**

**65.11.** Unless the court otherwise directs, for the purposes of an appeal or reference—

- (a) the Registrar must—
  - (i) provide a party with a copy of any document or transcript held by the Registrar for such purposes, or
  - (ii) allow a party to inspect such a document or transcript, on payment by that party of any charge fixed by the Treasury; but
- (b) the Registrar must not provide a copy or allow the inspection of—
  - (i) a document provided only for the court and the Registrar, or
  - (ii) a transcript of a public interest ruling or of an application for such a ruling.

*[Note. Section 21 of the Criminal Appeal Act 1968 requires the Registrar to collect, prepare and provide documents needed by the court.]*

### **Declaration of incompatibility with a Convention right**

- 65.12.**—(1) This rule applies where a party—
- (a) wants the court to make a declaration of incompatibility with a Convention right under section 4 of the Human Rights Act 1998(**827**); or
  - (b) raises an issue that the Registrar thinks may lead the court to make such a declaration.
- (2) The Registrar must serve notice on—
- (a) the relevant person named in the list published under section 17(1) of the Crown Proceedings Act 1947(**828**); or
  - (b) the Treasury Solicitor, if it is not clear who is the relevant person.
- (3) That notice must include or attach details of—
- (a) the legislation affected and the Convention right concerned;
  - (b) the parties to the appeal; and
  - (c) any other information or document that the Registrar thinks relevant.
- (4) A person who has a right under the 1998 Act to become a party to the appeal must—
- (a) serve notice on—
    - (i) the Registrar, and
    - (ii) the other parties,if that person wants to exercise that right; and
  - (b) in that notice—
    - (i) indicate the conclusion that that person invites the court to reach on the question of incompatibility, and
    - (ii) identify each ground for that invitation, concisely outlining the arguments in support.
- (5) The court must not make a declaration of incompatibility—
- (a) less than 21 days after the Registrar serves notice under paragraph (2); and
  - (b) without giving any person who serves a notice under paragraph (4) an opportunity to make representations at a hearing.

### **Abandoning an appeal**

- 65.13.**—(1) This rule applies where an appellant wants to—
- (a) abandon—
    - (i) an application to the court for permission to appeal, or
    - (ii) an appeal; or
  - (b) reinstate such an application or appeal after abandoning it.
- (2) The appellant—
- (a) may abandon such an application or appeal without the court’s permission by serving a notice of abandonment on—
    - (i) the Registrar, and
    - (ii) any respondent

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(**827**) 1998 c. 42; section 4 was amended by section 40 of, and paragraph 66 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 67 of, and paragraph 43 of Schedule 6 to, the Mental Capacity Act 2005 (c. 9).

(**828**) 1947 c. 44; section 17 was amended by article 3(2) of S.I. 1968/1656.

- before any hearing of the application or appeal; but
- (b) at any such hearing, may only abandon that application or appeal with the court's permission.
- (3) A notice of abandonment must be in the form set out in the Practice Direction, signed by or on behalf of the appellant.
- (4) On receiving a notice of abandonment the Registrar must—
- (a) date it;
  - (b) serve a dated copy on—
    - (i) the appellant,
    - (ii) the appellant's custodian, if any,
    - (iii) the Crown Court officer, and
    - (iv) any other person on whom the appellant or the Registrar served the appeal notice; and
  - (c) treat the application or appeal as if it had been refused or dismissed by the Court of Appeal.
- (5) An appellant who wants to reinstate an application or appeal after abandoning it must—
- (a) apply in writing, with reasons; and
  - (b) serve the application on the Registrar.

*[Note. The Court of Appeal has power only in exceptional circumstances to allow an appellant to reinstate an application or appeal that has been abandoned.]*

#### **Abandoning a ground of appeal or opposition**

- 65.14.**—(1) This rule applies where a party wants to abandon—
- (a) a ground of appeal identified in an appeal notice; or
  - (b) a ground of opposition identified in a respondent's notice.
- (2) Such a party must give written notice to—
- (a) the Registrar; and
  - (b) every other party,
- before any hearing at which that ground will be considered by the court.

## **PART 66**

### **APPEAL TO THE COURT OF APPEAL AGAINST RULING AT PREPARATORY HEARING**

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### When this Part applies

**66.1.**—(1) This Part applies where a party wants to appeal under—

- (a) section 9(11) of the Criminal Justice Act 1987(**829**) or section 35(1) of the Criminal Procedure and Investigations Act 1996(**830**); or
- (b) section 47(1) of the Criminal Justice Act 2003(**831**).

(2) A reference to an ‘appellant’ in this Part is a reference to such a party.

*[Note. Under section 9(11) of the Criminal Justice Act 1987 (which applies to serious or complex fraud cases) and under section 35(1) of the Criminal Procedure and Investigations Act 1996 (which applies to other complex, serious or long cases) a party may appeal to the Court of Appeal against an order made at a preparatory hearing in the Crown Court.*

*Under section 47(1) of the Criminal Justice Act 2003 a party may appeal to the Court of Appeal against an order in the Crown Court that because of jury tampering a trial will continue without a jury or that there will be a new trial without a jury.*

*Part 3 contains rules about preparatory hearings.*

*The rules in Part 65 also apply where this Part applies.]*

### Service of appeal notice

**66.2.**—(1) An appellant must serve an appeal notice on—

- (a) the Crown Court officer;
- (b) the Registrar; and
- (c) every party directly affected by the order or ruling against which the appellant wants to appeal.

(2) The appellant must serve the appeal notice not more than 5 business days after—

- (a) the order or ruling against which the appellant wants to appeal; or
- (b) the Crown Court judge gives or refuses permission to appeal.

### Form of appeal notice

**66.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.

(2) The appeal notice must—

- (a) specify each order or ruling against which the appellant wants to appeal;

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**(829)**1987 c. 38; section 9(11) was amended by sections 45 and 310 of the Criminal Justice Act 2003 (c. 44). The section 45 amendment is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

**(830)**1996 c. 25; section 35(1) was amended by section 45 of the Criminal Justice Act 2003 (c. 44). The amendment is in force for certain purposes, for remaining purposes it has effect from a date to be appointed. Section 35 was also amended by paragraphs 65 and 69 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

**(831)**2003 c. 44.

- (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
- (c) summarise the relevant facts;
- (d) identify any relevant authorities;
- (e) include or attach any application for the following, with reasons—
  - (i) permission to appeal, if the appellant needs the court’s permission,
  - (ii) an extension of time within which to serve the appeal notice,
  - (iii) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody;
- (f) include a list of those on whom the appellant has served the appeal notice; and
- (g) attach—
  - (i) a transcript or note of each order or ruling against which the appellant wants to appeal,
  - (ii) all relevant skeleton arguments considered by the Crown Court judge,
  - (iii) any written application for permission to appeal that the appellant made to the Crown Court judge,
  - (iv) a transcript or note of the decision by the Crown Court judge on any application for permission to appeal, and
  - (v) any other document or thing that the appellant thinks the court will need to decide the appeal.

*[Note. An appellant needs the court’s permission to appeal in every case to which this Part applies unless the Crown Court judge gives permission.]*

### **Crown Court judge’s permission to appeal**

**66.4.**—(1) An appellant who wants the Crown Court judge to give permission to appeal must—

- (a) apply orally, with reasons, immediately after the order or ruling against which the appellant wants to appeal; or
- (b) apply in writing and serve the application on—
  - (i) the Crown Court officer, and
  - (ii) every party directly affected by the order or rulingnot more than 2 business days after that order or ruling.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

*[Note. For the Crown Court judge’s power to give permission to appeal, see section 9(11) of the Criminal Justice Act 1987, section 35(1) of the Criminal Procedure and Investigations Act 1996 and section 47(2) of the Criminal Justice Act 2003.]*

### **Respondent’s notice**

**66.5.**—(1) A party on whom an appellant serves an appeal notice may serve a respondent’s notice, and must do so if—

- (a) that party wants to make representations to the court; or
  - (b) the court so directs.
- (2) Such a party must serve the respondent’s notice on—

- (a) the appellant;
  - (b) the Crown Court officer;
  - (c) the Registrar; and
  - (d) any other party on whom the appellant served the appeal notice.
- (3) Such a party must serve the respondent's notice not more than 5 business days after—
- (a) the appellant serves the appeal notice; or
  - (b) a direction to do so.
- (4) The respondent's notice must be in the form set out in the Practice Direction.
- (5) The respondent's notice must—
- (a) give the date on which the respondent was served with the appeal notice;
  - (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
  - (c) summarise any relevant facts not already summarised in the appeal notice;
  - (d) identify any relevant authorities;
  - (e) include or attach any application for the following, with reasons—
    - (i) an extension of time within which to serve the respondent's notice,
    - (ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody;
  - (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

### **Powers of Court of Appeal judge**

**66.6.** A judge of the Court of Appeal may give permission to appeal as well as exercising the powers given by other legislation (including these Rules).

*[Note. See section 31 of the Criminal Appeal Act 1968(832) and section 49 of the Criminal Justice Act 2003(833).]*

### **Renewing applications**

**66.7.** Rule 65.5 (renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

### **Right to attend hearing**

- 66.8.—**(1) A party who is in custody has a right to attend a hearing in public.
- (2) The court or the Registrar may direct that such a party is to attend a hearing by live link.

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**(832)**1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), section 331 of, and paragraphs 86, 87 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 48 of the Police and Justice Act 2006 (c. 48) and section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect a date to be appointed.

**(833)**2003 c. 44.

[Note. See rule 65.6 (hearings).]

## PART 67

### APPEAL TO THE COURT OF APPEAL AGAINST RULING ADVERSE TO PROSECUTION

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#### When this Part applies

**67.1.**—(1) This Part applies where a prosecutor wants to appeal under section 58(2) of the Criminal Justice Act 2003(**834**).

(2) A reference to an 'appellant' in this Part is a reference to such a prosecutor.

[Note. Under section 58(2) of the Criminal Justice Act 2003 a prosecutor may appeal to the Court of Appeal against a ruling in the Crown Court. See also sections 57 and 59 to 61 of the 2003 Act.

The rules in Part 65 also apply where this Part applies.]

#### Decision to appeal

**67.2.**—(1) An appellant must tell the Crown Court judge of any decision to appeal—

- (a) immediately after the ruling against which the appellant wants to appeal; or
- (b) on the expiry of the time to decide whether to appeal allowed under paragraph (2).

(2) If an appellant wants time to decide whether to appeal—

- (a) the appellant must ask the Crown Court judge immediately after the ruling; and
- (b) the general rule is that the judge must not require the appellant to decide there and then but instead must allow until the next business day.

*[Note. If the ruling against which the appellant wants to appeal is a ruling that there is no case to answer, the appellant may appeal against earlier rulings as well: see section 58(7) of the Criminal Justice Act 2003.*

*Under section 58(8) of the 2003 Act the appellant must agree that a defendant directly affected by the ruling must be acquitted if the appellant (a) does not get permission to appeal or (b) abandons the appeal.*

*The Crown Court judge may give permission to appeal and may expedite the appeal: see rules 67.5 and 67.6.]*

### **Service of appeal notice**

- 67.3.**—(1) An appellant must serve an appeal notice on—
- (a) the Crown Court officer;
  - (b) the Registrar; and
  - (c) every defendant directly affected by the ruling against which the appellant wants to appeal.
- (2) The appellant must serve the appeal notice not later than—
- (a) the next business day after telling the Crown Court judge of the decision to appeal, if the judge expedites the appeal; or
  - (b) 5 business days after telling the Crown Court judge of that decision, if the judge does not expedite the appeal.

*[Note. If the ruling against which the appellant wants to appeal is a public interest ruling, see rule 67.8.]*

### **Form of appeal notice**

- 67.4.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify each ruling against which the appellant wants to appeal;
  - (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
  - (c) summarise the relevant facts;
  - (d) identify any relevant authorities;
  - (e) include or attach any application for the following, with reasons—
    - (i) permission to appeal, if the appellant needs the court’s permission,
    - (ii) an extension of time within which to serve the appeal notice,
    - (iii) expedition of the appeal, or revocation of a direction expediting the appeal;
  - (f) include a list of those on whom the appellant has served the appeal notice;
  - (g) attach—
    - (i) a transcript or note of each ruling against which the appellant wants to appeal,
    - (ii) all relevant skeleton arguments considered by the Crown Court judge,
    - (iii) any written application for permission to appeal that the appellant made to the Crown Court judge,
    - (iv) a transcript or note of the decision by the Crown Court judge on any application for permission to appeal,



- (v) a transcript or note of the decision by the Crown Court judge on any request to expedite the appeal, and
- (vi) any other document or thing that the appellant thinks the court will need to decide the appeal; and
- (h) attach a form of respondent's notice for any defendant served with the appeal notice to complete if that defendant wants to do so.

*[Note. An appellant needs the court's permission to appeal unless the Crown Court judge gives permission: see section 57(4) of the Criminal Justice Act 2003. For 'respondent's notice' see rule 67.7.]*

### **Crown Court judge's permission to appeal**

**67.5.**—(1) An appellant who wants the Crown Court judge to give permission to appeal must—

- (a) apply orally, with reasons, immediately after the ruling against which the appellant wants to appeal; or
- (b) apply in writing and serve the application on—
  - (i) the Crown Court officer, and
  - (ii) every defendant directly affected by the ruling

on the expiry of the time allowed under rule 67.2 to decide whether to appeal.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

(3) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(4) The general rule is that the Crown Court judge must decide whether or not to give permission to appeal on the day that the application for permission is made.

*[Note. For the Crown Court judge's power to give permission to appeal, see section 57(4) of the Criminal Justice Act 2003.*

*Rule 67.5(3) does not apply where the appellant wants to appeal against a public interest ruling: see rule 67.8(5).]*

### **Expediting an appeal**

**67.6.**—(1) An appellant who wants the Crown Court judge to expedite an appeal must ask, giving reasons, on telling the judge of the decision to appeal.

(2) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(3) The Crown Court judge may revoke a direction expediting the appeal unless the appellant has served the appeal notice.

*[Note. For the Crown Court judge's power to expedite the appeal, see section 59 of the Criminal Justice Act 2003.*

*Rule 67.6(2) does not apply where the appellant wants to appeal against a public interest ruling: see rule 67.8(5).]*

### **Respondent's notice**

**67.7.**—(1) A defendant on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

- (a) the defendant wants to make representations to the court; or
  - (b) the court so directs.
- (2) Such a defendant must serve the respondent's notice on—
- (a) the appellant;
  - (b) the Crown Court officer;
  - (c) the Registrar; and
  - (d) any other defendant on whom the appellant served the appeal notice.
- (3) Such a defendant must serve the respondent's notice—
- (a) not later than the next business day after—
    - (i) the appellant serves the appeal notice, or
    - (ii) a direction to do soif the Crown Court judge expedites the appeal; or
  - (b) not more than 5 business days after—
    - (i) the appellant serves the appeal notice, or
    - (ii) a direction to do soif the Crown Court judge does not expedite the appeal.
- (4) The respondent's notice must be in the form set out in the Practice Direction.
- (5) The respondent's notice must—
- (a) give the date on which the respondent was served with the appeal notice;
  - (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
  - (c) summarise any relevant facts not already summarised in the appeal notice;
  - (d) identify any relevant authorities;
  - (e) include or attach any application for the following, with reasons—
    - (i) an extension of time within which to serve the respondent's notice,
    - (ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody;
  - (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

### **Public interest ruling**

**67.8.**—(1) This rule applies where the appellant wants to appeal against a public interest ruling.

(2) The appellant must not serve on any defendant directly affected by the ruling—

- (a) any written application to the Crown Court judge for permission to appeal; or
- (b) an appeal notice,

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

- (3) The appellant must not include in an appeal notice—
- (a) the material that was the subject of the ruling; or
  - (b) any indication of what sort of material it is,

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

- (4) The appellant must serve on the Registrar with the appeal notice an annex—
- (a) marked to show that its contents are only for the court and the Registrar;
  - (b) containing whatever the appellant has omitted from the appeal notice, with reasons; and
  - (c) if relevant, explaining why the appellant has not served the appeal notice.
- (5) Rules 67.5(3) and 67.6(2) do not apply.

*[Note. Rules 67.5(3) and 67.6(2) require the Crown Court judge to allow a defendant to make representations about (i) giving permission to appeal and (ii) expediting an appeal.]*

### **Powers of Court of Appeal judge**

- 67.9.** A judge of the Court of Appeal may—
- (a) give permission to appeal;
  - (b) revoke a Crown Court judge’s direction expediting an appeal; and
  - (c) where an appellant abandons an appeal, order a defendant’s acquittal, his release from custody and the payment of his costs,

as well as exercising the powers given by other legislation (including these Rules).

*[Note. See section 73 of the Criminal Justice Act 2003.]*

### **Renewing applications**

**67.10.** Rule 65.5 (renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

### **Right to attend hearing**

- 67.11.**—(1) A respondent who is in custody has a right to attend a hearing in public.
- (2) The court or the Registrar may direct that such a respondent is to attend a hearing by live link.

*[Note. See rule 65.6 (hearings).]*

## **PART 68**

### **APPEAL TO THE COURT OF APPEAL ABOUT CONVICTION OR SENTENCE**

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### When this Part applies

**68.1.**—(1) This Part applies where—

- (a) a defendant wants to appeal under—
  - (i) Part 1 of the Criminal Appeal Act 1968(**835**),
  - (ii) section 274(3) of the Criminal Justice Act 2003(**836**),
  - (iii) paragraph 14 of Schedule 22 to the Criminal Justice Act 2003(**837**), or
  - (iv) section 42 of the Counter Terrorism Act 2008(**838**);
- (b) the Criminal Cases Review Commission refers a case to the Court of Appeal under section 9 of the Criminal Appeal Act 1995(**839**);
- (c) a prosecutor wants to appeal to the Court of Appeal under section 14A(5A) of the Football Spectators Act 1989(**840**);
- (d) a party wants to appeal under section 74(8) of the Serious Organised Crime and Police Act 2005(**841**);
- (e) a person found in contempt of court wants to appeal under section 13 of the Administration of Justice Act 1960(**842**) and section 18A of the Criminal Appeal Act 1968(**843**); or
- (f) a person wants to appeal to the Court of Appeal under—

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(835) 1968 c. 19.

(836) 2003 c. 44; section 274 was amended by section 40 of, and paragraph 82 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(837) 2003 c. 44; paragraph 14 of Schedule 22 was amended by section 40 of, and paragraph 82 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(838) 2008 c. 28.

(839) 1995 c. 35; section 9 was amended by section 58 of, and paragraph 31 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(840) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(841) 2005 c. 15.

(842) 1960 c. 65; section 13 was amended paragraph 40 of Schedule 8 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Criminal Appeal Act 1968 (c. 19), paragraph 36 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), Schedule 7 to, the Supreme Court Act 1981 (c. 54), paragraph 25 of Schedule 2 to, the County Courts Act 1984 (c. 28), Schedule 15 to, the Access to Justice Act 1999 (c. 22), paragraph 13 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and paragraph 45 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).

(843) 1968 c. 19; section 18A was inserted by section 170 of, and paragraphs 20 and 25 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

- (i) section 24 of the Serious Crime Act 2007(**844**), or
- (ii) regulation 3C or 3H of The Costs in Criminal Cases (General) Regulations 1986(**845**).

(2) A reference to an ‘appellant’ in this Part is a reference to such a party or person.

*[Note. Under Part 1 (sections 1 to 32) of the Criminal Appeal Act 1968, a defendant may appeal against—*

- (a) a conviction (section 1 of the 1968 Act(**846**));
- (b) a sentence (sections 9 and 10 of the 1968 Act(**847**));
- (c) a verdict of not guilty by reason of insanity (section 12 of the 1968 Act);
- (d) a finding of disability (section 15 of the 1968 Act(**848**));
- (e) a hospital order, interim hospital order or supervision order under section 5 or 5A of the Criminal Procedure (Insanity) Act 1964(**849**)(section 16A of the 1968 Act(**850**)).

*See section 50 of the 1968 Act(**851**) for the meaning of ‘sentence’.*

*Under section 274(3) of the 2003 Act, a defendant sentenced to life imprisonment outside the United Kingdom, and transferred to serve the sentence in England and Wales, may appeal against the minimum term fixed by a High Court judge under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 or under section 269 of the 2003 Act.*

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**(844)** 2007 c. 27.

**(845)** S.I. 1986/1335; regulation 3C was inserted by regulation 2 of The Costs in Criminal Cases (General) (Amendment) Regulations 1991 (SI 1991/789) and amended by regulation 5 of The Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408). Regulation 3H was inserted by regulation 7 of The Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408).

**(846)** 1968 c. 19; section 1 was amended by section 154 of, and paragraph 71 of Schedule 7 to, the Magistrates’ Courts Act 1980 (c. 43), paragraph 44 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 1 of the Criminal Appeal Act 1995 (c. 35) and section 47 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

**(847)** 1968 c. 19; section 9 was amended by section 170 of, and paragraph 21 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 119 of, and paragraph 12 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 58 of the Access to Justice Act 1999 (c. 22) and section 271 of, and paragraph 44 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44). Section 10 was amended by section 56 of, and paragraph 57 of Schedule 8 to, the Courts Act 1971 (c. 23), section 77 of, and paragraph 23 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 22 of Schedule 15 and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 100 of, and paragraph 3 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120 of, and paragraph 13 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 58 of the Access to Justice Act 1999 (c. 22), section 67 of, and paragraph 4 of Schedule 4 and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), sections 304, 319 and 322 of, and paragraphs 7 and 8 of Schedule 32 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 6(2) of, and paragraph 4 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

**(848)** 1968 c. 19; section 15 was amended by section 7 of, and paragraph 2 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 1 of the Criminal Appeal Act 1995 (c. 35) and section 58 of, and paragraph 4 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and section 47 of, and paragraphs 1 and 5 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

**(849)** 1964 c. 84; section 5 was substituted, and section 5A inserted, by section 24 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 5A was amended by section 15 of the Mental Health Act 2007 (c. 12).

**(850)** 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

**(851)** 1968 c. 19; section 50 was amended by section 66 of the Criminal Justice Act 1982 (c. 48), sections 100 and 101 of, and paragraph 4 of Schedule 11 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), section 79 of, and Schedule 5 to, the Criminal Justice Act 1993 (c. 36), section 65 of, and Schedule 1 to, the Drug Trafficking Act 1994 (c. 37), section 7 of the Football (Offences and Disorder) Act 1999 (c. 21), section 24 of, and paragraph 3 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 30 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 456 of, and paragraphs 1 and 4 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 43), section 198 of, and paragraphs 38 and 42 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 52 of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 3 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 55 of, and paragraph 6 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), with effect from a date to be appointed.

*Under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003 a defendant sentenced to life imprisonment may appeal against the minimum term fixed on review by a High Court judge in certain cases.*

*Under section 42 of the Counter Terrorism Act 2008 a defendant may appeal against a decision of the Crown Court that an offence has a terrorist connection.*

*See section 13 of the Criminal Appeal Act 1995(852) for the circumstances in which the Criminal Cases Review Commission may refer a conviction, sentence, verdict or finding to the Court of Appeal.*

*Under section 14A(5A) of the Football Spectators Act 1989 a prosecutor may appeal against a failure by the Crown Court to make a football banning order.*

*Under section 74(8) of the Serious Organised Crime and Police Act 2005 a prosecutor or defendant may appeal against a review by a Crown Court judge of a sentence that was reduced because the defendant assisted the investigator or prosecutor.*

*Under section 13 of the Administration of Justice Act 1960 a person in respect of whom an order or decision is made by the Crown Court in the exercise of its jurisdiction to punish for contempt of court may appeal to the Court of Appeal.*

*Under section 24 of the Serious Crime Act 2007 a person who is the subject of a serious crime prevention order, or the relevant applicant authority, may appeal to the Court of Appeal against a decision of the Crown Court in relation to that order. In addition, any person who was given an opportunity to make representations in the proceedings by virtue of section 9(4) of the Act may appeal to the Court of Appeal against a decision of the Crown Court to make, vary or not vary a serious crime prevention order.*

*Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom the Crown Court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985(853) and regulation 3B may appeal against that order to the Court of Appeal.*

*Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom the Crown Court makes a costs order under section 19B of the Prosecution of Offences Act 1985(854) and regulation 3F may appeal against that order to the Court of Appeal.*

*The rules in Part 65 also apply where this Part applies.]*

## **Service of appeal notice**

- 68.2.**—(1) The general rule is that an appellant must serve an appeal notice—
- (a) on the Crown Court officer at the Crown Court centre where there occurred—
    - (i) the conviction, verdict, or finding,
    - (ii) the sentence, or
    - (iii) the order, or the failure to make an order about which the appellant wants to appeal; and
  - (b) not more than—
    - (i) 28 days after that occurred, or

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(852) 1995 c. 35; section 13 was amended by section 321 of, and paragraph 3 of Schedule 11 to, the Armed Forces Act 2006 (c. 52).

(853) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(854) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

- (ii) 21 days after the order, in a case in which the appellant appeals against a wasted or third party costs order.
- (2) But an appellant must serve an appeal notice—
  - (a) on the Registrar instead where—
    - (i) the appeal is against a minimum term review decision under section 274(3) of, or paragraph 14 of Schedule 22 to, the Criminal Justice Act 2003, or
    - (ii) the Criminal Cases Review Commission refers the case to the court; and
  - (b) not more than 28 days after—
    - (i) the minimum term review decision about which the appellant wants to appeal, or
    - (ii) the Registrar serves notice that the Commission has referred a conviction.

*[Note. The time limit for serving an appeal notice (a) on an appeal under Part 1 of the Criminal Appeal Act 1968 and (b) on an appeal against a finding of contempt of court is prescribed by sections 18 and 18A of the Criminal Appeal Act 1968. It may be extended, but not shortened.*

*For service of a reference by the Criminal Cases Review Commission, see rule 68.5.]*

### **Form of appeal notice**

- 68.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify—
    - (i) the conviction, verdict, or finding,
    - (ii) the sentence, or
    - (iii) the order, or the failure to make an order about which the appellant wants to appeal;
  - (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
  - (c) identify the transcript that the appellant thinks the court will need, if the appellant wants to appeal against a conviction;
  - (d) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
  - (e) where the Criminal Cases Review Commission refers a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference;
  - (f) summarise the relevant facts;
  - (g) identify any relevant authorities;
  - (h) include or attach any application for the following, with reasons—
    - (i) permission to appeal, if the appellant needs the court’s permission,
    - (ii) an extension of time within which to serve the appeal notice,
    - (iii) bail pending appeal,
    - (iv) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
    - (v) the introduction of evidence, including hearsay evidence and evidence of bad character,
    - (vi) an order requiring a witness to attend court,
    - (vii) a direction for special measures for a witness,

- (viii) a direction for special measures for the giving of evidence by the appellant;
- (i) identify any other document or thing that the appellant thinks the court will need to decide the appeal.

*[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as 'leave to appeal'.*

*An appellant needs the court's permission to appeal in every case to which this Part applies, except where—*

- (a) *the Criminal Cases Review Commission refers the case;*
- (b) *the appellant appeals against—*
  - (i) *an order or decision made in the exercise of jurisdiction to punish for contempt of court, or*
  - (ii) *a wasted or third party costs order; or*
- (c) *the Crown Court judge certifies under sections 1(2)(a), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968(855), under section 81(1B) of the Senior Courts Act 1981(856), under section 14A(5B) of the Football Spectators Act 1989(857), or under section 24(4) of the Serious Crime Act 2007, that a case is fit for appeal.*

*A judge of the Court of Appeal may give permission to appeal under section 31 of the Criminal Appeal Act 1968(858).]*

### **Crown Court judge's certificate that case is fit for appeal**

**68.4.—**(1) An appellant who wants the Crown Court judge to certify that a case is fit for appeal must—

- (a) apply orally, with reasons, immediately after there occurs—
  - (i) the conviction, verdict, or finding,
  - (ii) the sentence, or
  - (iii) the order, or the failure to make an order about which the appellant wants to appeal; or
- (b) apply in writing and serve the application on the Crown Court officer not more than 14 days after that occurred.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

*[Note. The Crown Court judge may certify that a case is fit for appeal under sections 1(2)(b), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968, under section 81(1B) of*

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**(855)** 1968 c. 19; section 11(1A) was inserted by section 29 of the Criminal Justice Act 1982 (c. 48) and amended by section 47 of, and paragraphs 1 and 3 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

**(856)** 1981 c. 54; section 81(1B) was inserted by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

**(857)** 1989 c. 37; section 14A(5B) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

**(858)** 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), section 331 of, and paragraphs 86, 87 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 48 of the Police and Justice Act 2006 (c. 48) and section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.



*the Senior Courts Act 1981, under section 14A(5B) of the Football Spectators Act 1989 or under section 24(4) of the Serious Crime Act 2007.*

*See also rule 68.2 (service of appeal notice in all cases).]*

### **Reference by Criminal Cases Review Commission**

**68.5.**—(1) The Registrar must serve on the appellant a reference by the Criminal Cases Review Commission.

(2) The court must treat that reference as the appeal notice if the appellant does not serve such a notice under rule 68.2.

### **Respondent's notice**

**68.6.**—(1) The Registrar—

- (a) may serve an appeal notice on any party directly affected by the appeal; and
- (b) must do so if the Criminal Cases Review Commission refers a conviction, verdict, finding or sentence to the court.

(2) Such a party may serve a respondent's notice, and must do so if—

- (a) that party wants to make representations to the court; or
- (b) the court or the Registrar so directs.

(3) Such a party must serve the respondent's notice on—

- (a) the appellant;
- (b) the Registrar; and
- (c) any other party on whom the Registrar served the appeal notice.

(4) Such a party must serve the respondent's notice—

- (a) not more than 14 days after the Registrar serves—
  - (i) the appeal notice, or
  - (ii) a direction to do so; or
- (b) not more than 28 days after the Registrar serves notice that the Commission has referred a conviction.

(5) The respondent's notice must be in the form set out in the Practice Direction.

(6) The respondent's notice must—

- (a) give the date on which the respondent was served with the appeal notice;
- (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
- (c) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;
- (d) summarise any relevant facts not already summarised in the appeal notice;
- (e) identify any relevant authorities;
- (f) include or attach any application for the following, with reasons—
  - (i) an extension of time within which to serve the respondent's notice,
  - (ii) bail pending appeal,
  - (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody,

- (iv) the introduction of evidence, including hearsay evidence and evidence of bad character,
- (v) an order requiring a witness to attend court,
- (vi) a direction for special measures for a witness; and
- (g) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

*[Note. Part II of the Practice Direction sets out the circumstances in which the Registrar usually will serve a defendant's appeal notice on the prosecutor.]*

### **Adaptation of rules about introducing evidence**

**68.7.**—(1) The following Parts apply with such adaptations as the court or the Registrar may direct—

- (a) Part 29 (measures to assist a witness or defendant to give evidence);
  - (b) Part 34 (hearsay evidence);
  - (c) Part 35 (evidence of bad character); and
  - (d) Part 36 (evidence of a complainant's previous sexual behaviour).
- (2) But the general rule is that—
- (a) a respondent who opposes an appellant's application to which one of those Parts applies must do so in the respondent's notice, with reasons;
  - (b) an appellant who opposes a respondent's application to which one of those Parts applies must serve notice, with reasons, on—
    - (i) the Registrar, and
    - (ii) the respondent
 not more than 14 days after service of the respondent's notice; and
  - (c) the court or the Registrar may give directions with or without a hearing.

*[Note. An application to introduce evidence or for directions about evidence must be included in, or attached to, an appeal notice or a respondent's notice: see rule 68.3 and 68.6(6).]*

*Under section 23 of the Criminal Appeal Act 1968(859), the Court of Appeal may allow the introduction of evidence that was not introduced at trial.*

*See also Part 27 (witness statements) and Part 33 (expert evidence).]*

### **Application for bail pending appeal or retrial**

**68.8.**—(1) This rule applies where a party wants to make an application to the court about bail pending appeal or retrial.

- (2) That party must serve an application in the form set out in the Practice Direction on—
  - (a) the Registrar, unless the application is with the appeal notice; and
  - (b) the other party.

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**(859)** 1968 c. 19; section 23 was amended by sections 4 and 29 of, and paragraph 4 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 48 of the Police and Justice Act 2006 (c. 48) and section 47 of, and paragraphs 1 and 10 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(3) The court must not decide such an application without giving the other party an opportunity to make representations, including representations about any condition or surety proposed by the applicant.

*[Note. See section 19 of the Criminal Appeal Act 1968(860) and section 3(8) of the Bail Act 1976(861). An application about bail or about the conditions of bail may be made either by an appellant or respondent.*

*Under section 81(1) of the Senior Courts Act 1981(862), a Crown Court judge may grant bail pending appeal only (a) if that judge gives a certificate that the case is fit for appeal (see rule 68.4) and (b) not more than 28 days after the conviction or sentence against which the appellant wants to appeal.]*

### Conditions of bail pending appeal or retrial

**68.9.**—(1) This rule applies where the court grants a party bail pending appeal or retrial subject to any condition that must be met before that party is released.

(2) The court may direct how such a condition must be met.

(3) The Registrar must serve a certificate in the form set out in the Practice Direction recording any such condition and direction on—

- (a) that party;
- (b) that party’s custodian; and
- (c) any other person directly affected by any such direction.

(4) A person directly affected by any such direction need not comply with it until the Registrar serves that person with that certificate.

(5) Unless the court otherwise directs, if any such condition or direction requires someone to enter into a recognizance it must be—

- (a) in the form set out in the Practice Direction and signed before—
  - (i) the Registrar,
  - (ii) the custodian, or
  - (iii) someone acting with the authority of the Registrar or custodian;
- (b) copied immediately to the person who enters into it; and
- (c) served immediately by the Registrar on the appellant’s custodian or vice versa, as appropriate.

(6) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, surrender a document or take some other step—

- (a) that payment, document or step must be made, surrendered or taken to or before—
  - (i) the Registrar,

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**(860)** 1968 c. 19; section 19 was substituted by section 29 of the Criminal Justice Act 1982 (c. 48) and was amended by section 170 of, and paragraphs 20 and 26 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 22 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

**(861)** 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

**(862)** 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

- (ii) the custodian, or
  - (iii) someone acting with the authority of the Registrar or custodian;
- (b) the Registrar or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or step has been made, surrendered or taken, as appropriate.
- (7) The custodian must release the appellant where it appears that any condition ordered by the court has been met.
- (8) For the purposes of section 5 of the Bail Act 1976(863) (record of decision about bail), the Registrar must keep a copy of—
- (a) any certificate served under paragraph (3);
  - (b) a notice of hearing given under rule 65.7(1); and
  - (c) a notice of the court’s decision served under rule 65.7(2).
- (9) Where the court grants bail pending retrial the Registrar must serve on the Crown Court officer copies of the documents kept under paragraph (8).

### **Forfeiture of a recognizance given as a condition of bail**

- 68.10.**—(1) This rule applies where—
- (a) the court grants a party bail pending appeal or retrial; and
  - (b) the bail is subject to a condition that that party provides a surety to guarantee that he will surrender to custody as required; but
  - (c) that party does not surrender to custody as required.
- (2) The Registrar must serve notice on—
- (a) the surety; and
  - (b) the prosecutor,
- of the hearing at which the court may order the forfeiture of the recognizance given by that surety.
- (3) The court must not forfeit a surety’s recognizance—
- (a) less than 7 days after the Registrar serves notice under paragraph (2); and
  - (b) without giving the surety an opportunity to make representations at a hearing.

*[Note. If the purpose for which a recognizance is entered is not fulfilled, that recognizance may be forfeited by the court. If the court forfeits a surety’s recognizance, the sum promised by that person is then payable to the Crown.]*

### **Right to attend hearing**

- 68.11.** A party who is in custody has a right to attend a hearing in public unless—
- (a) it is a hearing preliminary or incidental to an appeal, including the hearing of an application for permission to appeal; or
  - (b) that party is in custody in consequence of—
    - (i) a verdict of not guilty by reason of insanity, or

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(863) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

- (ii) a finding of disability.

*[Note. See rule 65.6 (hearings) and section 22 of the Criminal Appeal Act 1968(864). There are corresponding provisions in the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(865), the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(866) and the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(867). Under section 22 of the 1968 Act and corresponding provisions in those Orders, the court may direct that an appellant who is in custody is to attend a hearing by live link.]*

### **Power to vary determination of appeal against sentence**

**68.12.**—(1) This rule applies where the court decides an appeal affecting sentence in a party's absence.

(2) The court may vary such a decision if it did not take account of something relevant because that party was absent.

(3) A party who wants the court to vary such a decision must—

- (a) apply in writing, with reasons;
- (b) serve the application on the Registrar not more than 7 days after—
  - (i) the decision, if that party was represented at the appeal hearing, or
  - (ii) the Registrar serves the decision, if that party was not represented at that hearing.

*[Note. Section 22(3) of the Criminal Appeal Act 1968 allows the court to sentence in an appellant's absence. There are corresponding provisions in the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 and in the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006.]*

### **Directions about re-admission to hospital on dismissal of appeal**

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

- (a) an appellant subject to—
  - (i) an order under section 37(1) of the Mental Health Act 1983(868) (detention in hospital on conviction), or
  - (ii) an order under section 5(2) of the Criminal Procedure (Insanity) Act 1964(869) (detention in hospital on finding of insanity or disability)

has been released on bail pending appeal; and

- (b) the court—
  - (i) refuses permission to appeal,
  - (ii) dismisses the appeal, or
  - (iii) affirms the order under appeal.

(2) The court must give appropriate directions for the appellant's—

- (a) re-admission to hospital; and
- (b) if necessary, temporary detention pending re-admission.

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(864) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

(865) S.I. 2005/2798.

(866) S.I. 2006/2135.

(867) S.I. 2008/1863.

(868) 1983 c. 20; section 37(1) was amended by section 55 of, and paragraph 12 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43) and section 304 of, and paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44).

(869) 1964 c. 84.

### Renewal or setting aside of order for retrial

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

- (a) a prosecutor wants a defendant to be arraigned more than 2 months after the court ordered a retrial under section 7 of the Criminal Appeal Act 1968(**870**); or
  - (b) a defendant wants such an order set aside after 2 months have passed since it was made.
- (2) That party must apply in writing, with reasons, and serve the application on—
- (a) the Registrar;
  - (b) the other party.

*[Note. Section 8(1) and (1A) of the Criminal Appeal Act 1968(**871**) set out the criteria for making an order on an application to which this rule applies.]*

## PART 69

### APPEAL TO THE COURT OF APPEAL REGARDING REPORTING OR PUBLIC ACCESS RESTRICTION

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#### Contents of this Part

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#### When this Part applies

**69.1.**—(1) This Part applies where a person directly affected by an order to which section 159(1) of the Criminal Justice Act 1988(**872**) applies wants to appeal against that order.

(2) A reference to an ‘appellant’ in this Part is a reference to such a party.

*[Note. Section 159(1) of the Criminal Justice Act 1988 gives a ‘person aggrieved’ (in this Part described as a person directly affected) a right of appeal to the Court of Appeal against a Crown Court judge’s order—*

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**(870)** 1968 c.19; section 7 was amended by sections 43 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33) and section 331 of, and paragraph 44 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

**(871)** 1968 c.19; section 8(1) was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and section 43 of the Criminal Justice Act 1988 (c. 33). Section 8(1A) was inserted by section 43(4) of the Criminal Justice Act 1988 (c. 33).

**(872)** 1988 c. 33; section 159(1) was amended by section 61 of the Criminal Procedure and Investigations Act 1996 (c. 25).

- (a) under section 4 or 11 of the Contempt of Court Act 1981<sup>(873)</sup>;
- (b) under section 58(7) of the Criminal Procedure and Investigations Act 1996<sup>(874)</sup>;
- (c) restricting public access to any part of a trial for reasons of national security or for the protection of a witness or other person; or
- (d) restricting the reporting of any part of a trial.

See also Part 16 (Reporting, etc. restrictions) and Part 29 (Measures to assist a witness or defendant to give evidence).

*The rules in Part 65 also apply where this Part applies.]*

### **Service of appeal notice**

- 69.2.**—(1) An appellant must serve an appeal notice on—
- (a) the Crown Court officer;
  - (b) the Registrar;
  - (c) the parties; and
  - (d) any other person directly affected by the order against which the appellant wants to appeal.
- (2) The appellant must serve the appeal notice not later than—
- (a) the next business day after an order restricting public access to the trial;
  - (b) 10 business days after an order restricting reporting of the trial.

### **Form of appeal notice**

- 69.3.**—(1) An appeal notice must be in the form set out in the Practice Direction.
- (2) The appeal notice must—
- (a) specify the order against which the appellant wants to appeal;
  - (b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
  - (c) summarise the relevant facts;
  - (d) identify any relevant authorities;
  - (e) include or attach, with reasons—
    - (i) an application for permission to appeal,
    - (ii) any application for an extension of time within which to serve the appeal notice,
    - (iii) any application for a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
    - (iv) any application for permission to introduce evidence, and
    - (v) a list of those on whom the appellant has served the appeal notice; and
  - (f) attach any document or thing that the appellant thinks the court will need to decide the appeal.

*[Note. An appellant needs the court's permission to appeal in every case to which this Part applies.*

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<sup>(873)</sup>1981 c. 49; section 4 was amended by section 57 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 16 of, and Schedule 2 to, the Defamation Act 1996 (c. 31), paragraph 53 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and the Statute Law (Repeals) Act 2004 (c. 14).

<sup>(874)</sup>1996 c. 25.

*A Court of Appeal judge may give permission to appeal under section 31(2B) of the Criminal Appeal Act 1968(875).]*

#### **Advance notice of appeal against order restricting public access**

**69.4.**—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.

(2) The appellant may serve advance written notice of intention to appeal against any such order that may be made.

(3) The appellant must serve any such advance notice—

(a) on—

(i) the Crown Court officer,

(ii) the Registrar,

(iii) the parties, and

(iv) any other person who will be directly affected by the order against which the appellant intends to appeal, if it is made; and

(b) not more than 5 business days after the Crown Court officer displays notice of the application for the order.

(4) The advance notice must include the same information (with the necessary adaptations) as an appeal notice.

(5) The court must treat that advance notice as the appeal notice if the order is made.

#### **Duty of applicant for order restricting public access**

**69.5.**—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.

(2) The party who applied for the order must serve on the Registrar—

(a) a transcript or note of the application for the order; and

(b) any other document or thing that that party thinks the court will need to decide the appeal.

(3) That party must serve that transcript or note and any such other document or thing as soon as practicable after—

(a) the appellant serves the appeal notice; or

(b) the order, where the appellant served advance notice of intention to appeal.

#### **Respondent's notice on appeal against reporting restriction**

**69.6.**—(1) This rule applies where the appellant wants to appeal against an order restricting the reporting of a trial.

(2) A person on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

(a) that person wants to make representations to the court; or

(b) the court so directs.

(3) Such a person must serve the respondent's notice on—

(a) the appellant;

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(875) 1968 c. 19; section 31(2B) was inserted by section 170 of, and paragraphs 20 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).



- (b) the Crown Court officer;
  - (c) the Registrar;
  - (d) the parties; and
  - (e) any other person on whom the appellant served the appeal notice.
- (4) Such a person must serve the respondent's notice not more than 3 business days after—
- (a) the appellant serves the appeal notice; or
  - (b) a direction to do so.
- (5) The respondent's notice must be in the form set out in the Practice Direction.
- (6) The respondent's notice must—
- (a) give the date on which the respondent was served with the appeal notice;
  - (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
  - (c) summarise any relevant facts not already summarised in the appeal notice;
  - (d) identify any relevant authorities;
  - (e) include or attach any application for the following, with reasons—
    - (i) an extension of time within which to serve the respondent's notice,
    - (ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody,
    - (iii) permission to introduce evidence; and
  - (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

### **Renewing applications**

**69.7.** Rule 65.5 (renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

### **Right to introduce evidence**

**69.8.** No person may introduce evidence without the court's permission.

*[Note. Section 159(4) of the Criminal Justice Act 1988 entitles the parties to give evidence, subject to procedure rules.]*

### **Right to attend hearing**

**69.9.—**(1) A party who is in custody has a right to attend a hearing in public of an appeal against an order restricting the reporting of a trial.

(2) The court or the Registrar may direct that such a party is to attend a hearing by live link.

*[Note. See rule 65.6 (hearings). The court must decide an application and an appeal without a hearing where the appellant wants to appeal against an order restricting public access to a trial: rule 65.6(3).]*

## PART 70

### REFERENCE TO THE COURT OF APPEAL OF POINT OF LAW OR UNDULY LENIENT SENTENCING

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#### Contents of this Part

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When this Part applies	rule 70.1
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#### When this Part applies

**70.1.** This Part applies where the Attorney General wants to—

- (a) refer a point of law to the Court of Appeal under section 36 of the Criminal Justice Act 1972~~(876)~~; or
- (b) refer a sentencing case to the Court of Appeal under section 36 of the Criminal Justice Act 1988~~(877)~~.

*[Note. Under section 36 of the Criminal Justice Act 1972, where a defendant is acquitted in the Crown Court the Attorney General may refer to the Court of Appeal a point of law in the case.*

*Under section 36 of the Criminal Justice Act 1988, if the Attorney General thinks the sentencing of a defendant in the Crown Court is unduly lenient he may refer the case to the Court of Appeal: but only if the sentence is one to which Part IV of the 1988 Act applies, and only if the Court of Appeal gives permission. See also section 35 of the 1988 Act~~(878)~~ and the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006~~(879)~~.*

*The rules in Part 65 also apply where this Part applies.]*

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~~(876)~~ 1972 c. 71; section 36 was amended by section 31 of, and paragraph 8 of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23) and section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

~~(877)~~ 1988 c. 33; section 36 was amended by section 272 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 3 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), section 149 of, and Part 28 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 2 of Schedule 19 and paragraphs 4 and 5 of Schedule 26 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 46 of the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

~~(878)~~ 1988 c. 33; section 35(3) was amended by section 168 of, and paragraph 34 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).

~~(879)~~ S.I. 2006/1116.

### **Service of notice of reference and application for permission**

**70.2.**—(1) The Attorney General must—

- (a) serve on the Registrar—
  - (i) any notice of reference, and
  - (ii) any application for permission to refer a sentencing case; and
- (b) with a notice of reference of a point of law, give the Registrar details of—
  - (i) the defendant affected,
  - (ii) the date and place of the relevant Crown Court decision, and
  - (iii) the relevant verdict and sentencing.

(2) The Attorney General must serve an application for permission to refer a sentencing case not more than 28 days after the last of the sentences in that case.

*[Note. The time limit for serving an application for permission to refer a sentencing case is prescribed by paragraph 1 of Schedule 3 to the Criminal Justice Act 1988. It may be neither extended nor shortened.]*

### **Form of notice of reference and application for permission**

**70.3.**—(1) A notice of reference and an application for permission to refer a sentencing case must be in the appropriate form set out in the Practice Direction, giving the year and number.

(2) A notice of reference of a point of law must—

- (a) specify the point of law in issue and indicate the opinion that the Attorney General invites the court to give;
- (b) identify each ground for that invitation, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
- (c) exclude any reference to the defendant's name and any other reference that may identify the defendant;
- (d) summarise the relevant facts; and
- (e) identify any relevant authorities.

(3) An application for permission to refer a sentencing case must—

- (a) give details of—
  - (i) the defendant affected,
  - (ii) the date and place of the relevant Crown Court decision, and
  - (iii) the relevant verdict and sentencing;
- (b) explain why that sentencing appears to the Attorney General unduly lenient, concisely outlining each argument in support; and
- (c) include the application for permission to refer the case to the court.

(4) A notice of reference of a sentencing case must—

- (a) include the same details and explanation as the application for permission to refer the case;
- (b) summarise the relevant facts; and
- (c) identify any relevant authorities.

(5) Where the court gives the Attorney General permission to refer a sentencing case, it may treat the application for permission as the notice of reference.

### **Registrar's notice to defendant**

- 70.4.**—(1) The Registrar must serve on the defendant—
- (a) a notice of reference;
  - (b) an application for permission to refer a sentencing case.
- (2) Where the Attorney General refers a point of law, the Registrar must give the defendant notice that—
- (a) the outcome of the reference will not make any difference to the outcome of the trial; and
  - (b) the defendant may serve a respondent's notice.
- (3) Where the Attorney General applies for permission to refer a sentencing case, the Registrar must give the defendant notice that—
- (a) the outcome of the reference may make a difference to that sentencing, and in particular may result in a more severe sentence; and
  - (b) the defendant may serve a respondent's notice.

### **Respondent's notice**

- 70.5.**—(1) A defendant on whom the Registrar serves a reference or an application for permission to refer a sentencing case may serve a respondent's notice, and must do so if—
- (a) the defendant wants to make representations to the court; or
  - (b) the court so directs.
- (2) Such a defendant must serve the respondent's notice on—
- (a) the Attorney General; and
  - (b) the Registrar.
- (3) Such a defendant must serve the respondent's notice—
- (a) where the Attorney General refers a point of law, not more than 28 days after—
    - (i) the Registrar serves the reference, or
    - (ii) a direction to do so;
  - (b) where the Attorney General applies for permission to refer a sentencing case, not more than 14 days after—
    - (i) the Registrar serves the application, or
    - (ii) a direction to do so.
- (4) Where the Attorney General refers a point of law, the respondent's notice must—
- (a) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the Attorney General's ground or reason to which each relates;
  - (b) summarise any relevant facts not already summarised in the reference;
  - (c) identify any relevant authorities; and
  - (d) include or attach any application for the following, with reasons—
    - (i) an extension of time within which to serve the respondent's notice,
    - (ii) permission to attend a hearing that the respondent does not have a right to attend,
    - (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.

(5) Where the Attorney General applies for permission to refer a sentencing case, the respondent's notice must—

- (a) say if the respondent wants to make representations at the hearing of the application or reference; and
- (b) include or attach any application for the following, with reasons—
  - (i) an extension of time within which to serve the respondent's notice,
  - (ii) permission to attend a hearing that the respondent does not have a right to attend,
  - (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.

#### **Variation or withdrawal of notice of reference or application for permission**

**70.6.**—(1) This rule applies where the Attorney General wants to vary or withdraw—

- (a) a notice of reference; or
- (b) an application for permission to refer a sentencing case.

(2) The Attorney General—

- (a) may vary or withdraw the notice or application without the court's permission by serving notice on—
  - (i) the Registrar, and
  - (ii) the defendantbefore any hearing of the reference or application; but
- (b) at any such hearing, may only vary or withdraw that notice or application with the court's permission.

#### **Right to attend hearing**

**70.7.**—(1) A respondent who is in custody has a right to attend a hearing in public unless it is a hearing preliminary or incidental to a reference, including the hearing of an application for permission to refer a sentencing case.

(2) The court or the Registrar may direct that such a respondent is to attend a hearing by live link.

*[Note. See rule 65.6 (hearings) and paragraphs 6 and 7 of Schedule 3 to the Criminal Justice Act 1988. Under paragraph 8 of that Schedule, the Court of Appeal may sentence in the absence of a defendant whose sentencing is referred.]*

#### **Anonymity of defendant on reference of point of law**

**70.8.** Where the Attorney General refers a point of law, the court must not allow anyone to identify the defendant during the proceedings unless the defendant gives permission.

## **PART 71**

### **APPEAL TO THE COURT OF APPEAL UNDER THE PROCEEDS OF CRIME ACT 2002: GENERAL RULES**

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#### **Contents of this Part**

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### Contents of this Part

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Extension of time	rule 71.1
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Hearing by single judge	rule 71.6
Determination by full court	rule 71.7
Notice of determination	rule 71.8
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Appeal to the Supreme Court	rule 71.10

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#### Extension of time

**71.1.**—(1) An application to extend the time limit for giving notice of application for leave to appeal under Part 2 of the Proceeds of Crime Act 2002(**880**) must—

- (a) be included in the notice of appeal; and
- (b) state the grounds for the application.

(2) The parties may not agree to extend any date or time limit set by this Part, Part 72 or Part 73, or by The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(**881**).

#### Other applications

**71.2.** Rule 68.3(2)(h) (form of appeal notice) applies in relation to an application—

- (a) by a party to an appeal under Part 2 of the Proceeds of Crime Act 2002 that, under article 7 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, a witness be ordered to attend or that the evidence of a witness be received by the Court of Appeal; or
- (b) by the defendant to be given leave by the court to be present at proceedings for which leave is required under article 6 of the 2003 Order,

as it applies in relation to applications under Part I of the Criminal Appeal Act 1968(**882**) and the form in which rule 68.3 requires notice to be given may be modified as necessary.

#### Examination of witness by court

**71.3.** Rule 65.7 (notice of hearings and decisions) applies in relation to an order of the court under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 to require a person to attend for examination as it applies in relation to such an order of the court under Part I of the Criminal Appeal Act 1968.

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(**880**)2002 c. 29.

(**881**)S.I. 2003/82.

(**882**)1968 c. 19.

### **Supply of documentary and other exhibits**

**71.4.** Rule 65.11 (Registrar’s duty to provide copy documents for appeal or reference) applies in relation to an appellant or respondent under Part 2 of the Proceeds of Crime Act 2002 as it applies in relation to an appellant and respondent under Part I of the Criminal Appeal Act 1968.

### **Registrar’s power to require information from court of trial**

**71.5.** The Registrar may require the Crown Court to provide the Court of Appeal with any assistance or information which they may require for the purposes of exercising their jurisdiction under Part 2 of the Proceeds of Crime Act 2002, The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, this Part or Parts 72 and 73.

### **Hearing by single judge**

**71.6.** Rule 65.6(5) (hearings) applies in relation to a judge exercising any of the powers referred to in article 8 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(**883**) or the powers in rules 72.2(3) and (4) (respondent’s notice), 73.2(2) (notice of appeal) and 73.3(6) (respondent’s notice), as it applies in relation to a judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968(**884**).

### **Determination by full court**

**71.7.** Rule 65.5 (renewing an application refused by a judge or the registrar) shall apply where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 8 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, or the power in rule 72.2(3) or (4) as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

### **Notice of determination**

**71.8.—(1)** This rule applies where a single judge or the Court of Appeal has determined an application or appeal under The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or under Part 2 of the Proceeds of Crime Act 2002.

(2) The Registrar must, as soon as practicable, serve notice of the determination on all of the parties to the proceedings.

(3) Where a single judge or the Court of Appeal has disposed of an application for leave to appeal or an appeal under section 31 of the 2002 Act(**885**), the registrar must also, as soon as practicable, serve the order on a court officer of the court of trial and any magistrates’ court responsible for enforcing any confiscation order which the Crown Court has made.

### **Record of proceedings and transcripts**

**71.9.** Rule 65.8(2)(a) and (b) (duty of Crown Court officer – arranging recording of proceedings in Crown Court and arranging transcription) and rule 65.9 (duty of person transcribing proceedings in the Crown Court) apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the Proceeds of Crime Act 2002 as they apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

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(883) S.I. 2003/82.

(884) 1968 c. 19; section 31(2) was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 29 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 87 of the Courts Act 2003 (c. 39) and section 48 of the Police and Justice Act 2006 (c. 48).

(885) 2002 c. 29; section 31 was amended by section 74 of, and paragraphs 1 and 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

### Appeal to the Supreme Court

**71.10.**—(1) An application to the Court of Appeal for leave to appeal to the Supreme Court under Part 2 of the Proceeds of Crime Act 2002 must be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the Supreme Court; or
- (b) in the form set out in the Practice Direction, in accordance with article 12 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 and served on the Registrar.

(2) The application may be abandoned at any time before it is heard by the Court of Appeal by serving notice in writing on the Registrar.

(3) Rule 65.6(5) (hearings) applies in relation to a single judge exercising any of the powers referred to in article 15 of the 2003 Order, as it applies in relation to a single judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

(4) Rule 65.5 (renewing an application refused by a judge or the Registrar) applies where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 15 of the 2003 Order as they apply where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(5) The form in which rule 65.5(2) requires an application to be made may be modified as necessary.

## PART 72

### APPEAL TO THE COURT OF APPEAL UNDER THE PROCEEDS OF CRIME ACT 2002: PROSECUTOR'S APPEAL REGARDING CONFISCATION

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#### Contents of this Part

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Notice of appeal	rule 72.1
Respondent's notice	rule 72.2
Amendment and abandonment of appeal	rule 72.3

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#### Notice of appeal

**72.1.**—(1) Where an appellant wishes to apply to the Court of Appeal for leave to appeal under section 31 of the Proceeds of Crime Act 2002(**886**), he must serve a notice of appeal in the form set out in the Practice Direction on—

- (a) the Crown Court officer; and
- (b) the defendant.

(2) When the notice of the appeal is served on the defendant, it must be accompanied by a respondent's notice in the form set out in the Practice Direction for the defendant to complete and a notice which—

- (a) informs the defendant that the result of an appeal could be that the Court of Appeal would increase a confiscation order already imposed on him, make a confiscation order itself or direct the Crown Court to hold another confiscation hearing;

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(886)2002 c. 29; section 31 was amended by section 74 of, and paragraphs 1 and 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).



- (b) informs the defendant of any right he has under article 6 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(887) to be present at the hearing of the appeal, although he may be in custody;
  - (c) invites the defendant to serve notice on the registrar if he wishes—
    - (i) to apply to the Court of Appeal for leave to be present at proceedings for which leave is required under article 6 of the 2003 Order, or
    - (ii) to present any argument to the Court of Appeal on the hearing of the application or, if leave is given, the appeal, and whether he wishes to present it in person or by means of a legal representative;
  - (d) draws to the defendant’s attention the effect of rule 71.4 (supply of documentary and other exhibits); and
  - (e) advises the defendant to consult a solicitor as soon as possible.
- (3) The appellant must provide a Crown Court officer with a certificate of service stating that he has served the notice of appeal on the defendant in accordance with paragraph (1) or explaining why he has been unable to effect service.

### **Respondent’s notice**

- 72.2.**—(1) This rule applies where a defendant is served with a notice of appeal under rule 72.1.
- (2) If the defendant wishes to oppose the application for leave to appeal, he must, not later than 14 days after the date on which he received the notice of appeal, serve on the Registrar and on the appellant a notice in the form set out in the Practice Direction—
- (a) stating the date on which he received the notice of appeal;
  - (b) summarising his response to the arguments of the appellant; and
  - (c) specifying the authorities which he intends to cite.
- (3) The time for giving notice under this rule may be extended by the Registrar, a single judge or by the Court of Appeal.
- (4) Where the Registrar refuses an application under paragraph (3) for the extension of time, the defendant shall be entitled to have his application determined by a single judge.
- (5) Where a single judge refuses an application under paragraph (3) or (4) for the extension of time, the defendant shall be entitled to have his application determined by the Court of Appeal.

### **Amendment and abandonment of appeal**

- 72.3.**—(1) The appellant may amend a notice of appeal served under rule 72.1 or abandon an appeal under section 31 of the Proceeds of Crime Act 2002—
- (a) without the permission of the Court at any time before the Court of Appeal have begun hearing the appeal; and
  - (b) with the permission of the Court after the Court of Appeal have begun hearing the appeal, by serving notice in writing on the Registrar.
- (2) Where the appellant serves a notice abandoning an appeal under paragraph (1), he must send a copy of it to—
- (a) the defendant;
  - (b) a court officer of the court of trial; and

(c) the magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

(3) Where the appellant serves a notice amending a notice of appeal under paragraph (1), he must send a copy of it to the defendant.

(4) Where an appeal is abandoned under paragraph (1), the application for leave to appeal or appeal shall be treated, for the purposes of section 85 of the 2002 Act (conclusion of proceedings), as having been refused or dismissed by the Court of Appeal.

## PART 73

### APPEAL TO THE COURT OF APPEAL UNDER POCA 2002: RESTRAINT OR RECEIVERSHIP ORDERS

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#### Contents of this Part

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Leave to appeal	rule 73.1
Notice of appeal	rule 73.2
Respondent's notice	rule 73.3
Amendment and abandonment of appeal	rule 73.4
Stay	rule 73.5
Striking out appeal notices and setting aside or imposing conditions on leave to appeal	rule 73.6
Hearing of appeals	rule 73.7

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#### Leave to appeal

**73.1.**—(1) Leave to appeal to the Court of Appeal under section 43 or section 65 of the Proceeds of Crime Act 2002(**888**) will only be given where—

- (a) the Court of Appeal considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(2) An order giving leave may limit the issues to be heard and be made subject to conditions.

#### Notice of appeal

**73.2.**—(1) Where an appellant wishes to apply to the Court of Appeal for leave to appeal under section 43 or 65 of the Proceeds of Crime Act 2002 Act, he must serve a notice of appeal in the form set out in the Practice Direction on the Crown Court officer.

(2) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the appellant must serve the notice of appeal, accompanied by a respondent's notice in the form set out in the Practice Direction for the respondent to complete, on—

- (a) each respondent;
- (b) any person who holds realisable property to which the appeal relates; and

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(888)2002 c. 29; section 65 was amended by section 74 of, and paragraphs 1 and 32 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(c) any other person affected by the appeal,  
as soon as practicable and in any event not later than 7 days after the notice of appeal is served on a Crown Court officer.

- (3) The appellant must serve the following documents with his notice of appeal—
- (a) four additional copies of the notice of appeal for the Court of Appeal;
  - (b) four copies of any skeleton argument;
  - (c) one sealed copy and four unsealed copies of any order being appealed;
  - (d) four copies of any witness statement or affidavit in support of the application for leave to appeal;
  - (e) four copies of a suitable record of the reasons for judgment of the Crown Court; and
  - (f) four copies of the bundle of documents used in the Crown Court proceedings from which the appeal lies.

(4) Where it is not possible to serve all of the documents referred to in paragraph (3), the appellant must indicate which documents have not yet been served and the reasons why they are not currently available.

(5) The appellant must provide a Crown Court officer with a certificate of service stating that he has served the notice of appeal on each respondent in accordance with paragraph (2) and including full details of each respondent or explaining why he has been unable to effect service.

### **Respondent's notice**

**73.3.**—(1) This rule applies to an appeal under section 43 or 65 of the Proceeds of Crime Act 2002.

- (2) A respondent may serve a respondent's notice on the Registrar.
- (3) A respondent who—
- (a) is seeking leave to appeal from the Court of Appeal; or
  - (b) wishes to ask the Court of Appeal to uphold the decision of the Crown Court for reasons different from or additional to those given by the Crown Court,

must serve a respondent's notice on the Registrar.

(4) A respondent's notice must be in the form set out in the Practice Direction and where the respondent seeks leave to appeal to the Court of Appeal it must be requested in the respondent's notice.

- (5) A respondent's notice must be served on the Registrar not later than 14 days after—
- (a) the date the respondent is served with notification that the Court of Appeal has given the appellant leave to appeal; or
  - (b) the date the respondent is served with notification that the application for leave to appeal and the appeal itself are to be heard together.

(6) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the respondent serving a respondent's notice must serve the notice on the appellant and any other respondent—

- (a) as soon as practicable; and
- (b) in any event not later than seven days,

after it is served on the Registrar.

### **Amendment and abandonment of appeal**

**73.4.**—(1) The appellant may amend a notice of appeal served under rule 73.2 or abandon an appeal under section 43 or 65 of the Proceeds of Crime Act 2002—

(a) without the permission of the Court at any time before the Court of Appeal have begun hearing the appeal; and

(b) with the permission of the Court after the Court of Appeal have begun hearing the appeal, by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice under paragraph (1), he must send a copy of it to each respondent.

### **Stay**

**73.5.** Unless the Court of Appeal or the Crown Court orders otherwise, an appeal under section 43 or 65 of the Proceeds of Crime Act 2002 shall not operate as a stay of any order or decision of the Crown Court.

### **Striking out appeal notices and setting aside or imposing conditions on leave to appeal**

**73.6.**—(1) The Court of Appeal may—

(a) strike out the whole or part of a notice of appeal served under rule 73.2; or

(b) impose or vary conditions upon which an appeal under section 43 or 65 of the Proceeds of Crime Act 2002 may be brought.

(2) The Court of Appeal will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party is present at the hearing at which leave to appeal was given, he may not subsequently apply for an order that the Court of Appeal exercise its powers under paragraph (1)(b).

### **Hearing of appeals**

**73.7.**—(1) This rule applies to appeals under section 43 or 65 of the Proceeds of Crime Act 2002.

(2) Every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(3) The Court of Appeal will allow an appeal where the decision of the Crown Court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

(4) The Court of Appeal may draw any inference of fact which it considers justified on the evidence.

(5) At the hearing of the appeal a party may not rely on a matter not contained in his notice of appeal unless the Court of Appeal gives permission.

## PART 74

### APPEAL OR REFERENCE TO THE SUPREME COURT

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#### Contents of this Part

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When this Part applies	rule 74.1
Application for permission or reference	rule 74.2
Determination of detention pending appeal, etc.	rule 74.3
Bail pending appeal	rule 74.4

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#### When this Part applies

74.1.—(1) This Part applies where—

- (a) a party wants to appeal to the Supreme Court after—
    - (i) an application to the Court of Appeal to which Part 41 applies (retrial following acquittal for serious offence), or
    - (ii) an appeal to the Court of Appeal to which applies Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing), Part 67 (appeal to the Court of Appeal against ruling adverse to prosecution), or Part 68 (appeal to the Court of Appeal about conviction or sentence); or
  - (b) a party wants to refer a case to the Supreme Court after a reference to the Court of Appeal to which Part 70 applies (reference to the Court of Appeal of point of law or unduly lenient sentencing).
- (2) A reference to an ‘appellant’ in this Part is a reference to such a party.

[Note. Under section 33 of the Criminal Appeal Act 1968(889), a party may appeal to the Supreme Court from a decision of the Court of Appeal on—

- (a) an application to the court under section 76 of the Criminal Justice Act 2003(890) (prosecutor’s application for retrial after acquittal for serious offence). See also Part 41.
- (b) an appeal to the court under—
  - (i) section 9 of the Criminal Justice Act 1987(891) or section 35 of the Criminal Procedure and Investigations Act 1996(892) (appeal against order at preparatory hearing). See also Part 66.

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(889) 1968 c. 19; section 33 was amended by section 152 of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54), section 15 of, and paragraph 3 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 36(1)(a) of the Criminal Procedure and Investigations Act 1996 (c. 25), section 456 of, and paragraphs 1 and 4 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29), sections 47, 68 and 81 of the Criminal Justice Act 2003 (c. 44), by section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and sections 74 and 92 of, and paragraph 144 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

(890) 2003 c. 44.

(891) 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 and 310 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, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by 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.

(892) 1996 c. 25; section 35(1) was amended by section 45 of the Criminal Justice Act 2003 (c. 44). The amendment is in force for certain purposes, for remaining purposes it has effect from a date to be appointed. Section 35 was also amended by paragraphs

- (ii) *section 47 of the Criminal Justice Act 2003(893)(appeal against order for non-jury trial after jury tampering.) See also Part 66.*
- (iii) *Part 9 of the Criminal Justice Act 2003(894)(prosecutor's appeal against adverse ruling). See also Part 67.*
- (iv) *Part 1 of the Criminal Appeal Act 1968(895)(defendant's appeal against conviction, sentence, etc.). See also Part 68.*

*Under section 13 of the Administration of Justice Act 1960(896), a person found to be in contempt of court may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under that section. See also Part 68.*

*Under article 12 of the Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005(897), a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003(898) (appeal against minimum term review decision). See also Part 68.*

*Under article 15 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(899), a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under section 74 of the Serious Organised Crime and Police Act 2005(900) (appeal against sentence review decision). See also Part 68.*

*Under section 24 of the Serious Crime Act 2007(901), a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to that court under that section (appeal about a serious crime prevention order). See also Part 68.*

*Under section 36(3) of the Criminal Justice Act 1972(902), the Court of Appeal may refer to the Supreme Court a point of law referred by the Attorney General to the court. See also Part 70.*

*Under section 36(5) of the Criminal Justice Act 1988(903), a party may refer to the Supreme Court a sentencing decision referred by the Attorney General to the court. See also Part 70.*

*Under section 33(3) of the Criminal Appeal Act 1968, there is no appeal to the Supreme Court—*

- (a) *from a decision of the Court of Appeal on an appeal under section 14A(5A) of the Football Spectators Act 1989(904)(prosecutor's appeal against failure to make football banning order). See Part 68.*

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65 and 69 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(893) 2003 c. 44; section 47 was amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(894) 2003 c. 44.

(895) 1968 c. 19.

(896) 1960 c. 65; section 13 was amended paragraph 40 of Schedule 8 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Criminal Appeal Act 1968 (c. 19), paragraph 36 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), Schedule 7 to, the Supreme Court Act 1981 (c. 54), paragraph 25 of Schedule 2 to, the County Courts Act 1984 (c. 28), Schedule 15 to, the Access to Justice Act 1999 (c. 22), paragraph 13 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and paragraph 45 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).

(897) S.I. 2005/2798.

(898) 2003 c. 44; paragraph 14 of Schedule 22 was amended by section 40 of, and paragraph 82 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(899) S.I. 2006/2135.

(900) 2005 c. 15.

(901) 2007 c. 27.

(902) 1972 c. 71; section 36(3) was amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(903) 1988 c. 33; section 36(5) was amended by section 40(4) of, and paragraph 48(1) and (2) of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(904) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

- (b) *from a decision of the Court of Appeal on an appeal under section 159(1) of the Criminal Justice Act 1988(905)(appeal about reporting or public access restriction). See Part 69.*

*The rules in Part 65 also apply where this Part applies.]*

### **Application for permission or reference**

**74.2.**—(1) An appellant must—

- (a) apply orally to the Court of Appeal—

- (i) for permission to appeal or to refer a sentencing case, or  
(ii) to refer a point of law

immediately after the court gives the reasons for its decision; or

- (b) apply in writing and serve the application on the Registrar and every other party not more than—

- (i) 14 days after the court gives the reasons for its decision if that decision was on a sentencing reference to which Part 70 applies (Attorney General’s reference of sentencing case), or  
(ii) 28 days after the court gives those reasons in any other case.

(2) An application for permission to appeal or to refer a sentencing case must—

- (a) identify the point of law of general public importance that the appellant wants the court to certify is involved in the decision; and  
(b) give reasons why—  
(i) that point of law ought to be considered by the Supreme Court, and  
(ii) the court ought to give permission to appeal.

(3) An application to refer a point of law must give reasons why that point ought to be considered by the Supreme Court.

(4) An application must include or attach any application for the following, with reasons—

- (a) an extension of time within which to make the application for permission or for a reference;  
(b) bail pending appeal;  
(c) permission to attend any hearing in the Supreme Court, if the appellant is in custody.

(5) A written application must be in the form set out in the Practice Direction.

*[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as ‘leave to appeal’.*

*Under the provisions listed in the note to rule 74.1, except section 36(3) of the Criminal Justice Act 1972 (Attorney General’s reference of point of law), an appellant needs permission to appeal or to refer a sentencing case. Under those provisions, the Court of Appeal must not give permission unless it first certifies that—*

- (a) *a point of law of general public importance is involved in the decision, and*  
(b) *it appears to the court that the point is one which the Supreme Court ought to consider.*

*If the Court of Appeal gives such a certificate but refuses permission, an appellant may apply for such permission to the Supreme Court.*

*Under section 36(3) of the Criminal Justice Act 1972 an appellant needs no such permission. The Court of Appeal may refer the point of law to the Supreme Court, or may refuse to do so.*

*For the power of the court or the Registrar to shorten or extend a time limit, see rule 65.3. The time limit in this rule—*

- (a) *for applying for permission to appeal under section 33 of the Criminal Appeal Act 1968 (28 days) is prescribed by section 34 of that Act(906). That time limit may be extended but not shortened by the court. But it may be extended on an application by a prosecutor only after an application to which Part 41 applies (retrial after acquittal for serious offence).*
- (b) *for applying for permission to refer a case under section 36(5) of the Criminal Justice Act 1988 (Attorney General's reference of sentencing decision: 14 days) is prescribed by paragraph 4 of Schedule 3 to that Act. That time limit may be neither extended nor shortened.*
- (c) *for applying for permission to appeal under article 12 of the Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005 (28 days) is prescribed by article 13 of that Order. That time limit may be extended but not shortened.*
- (d) *for applying for permission to appeal under article 15 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (28 days) is prescribed by article 16 of that Order. That time limit may be extended but not shortened.*

*For the power of the Court of Appeal to grant bail pending appeal to the Supreme Court , see—*

- (a) *section 36 of the Criminal Appeal Act 1968(907).*
- (b) *article 18 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(908).*

*For the right of an appellant in custody to attend a hearing in the Supreme Court, see—*

- (a) *section 38 of the Criminal Appeal Act 1968(909).*
- (b) *paragraph 9 of Schedule 3 to the Criminal Justice Act 1988(910).*
- (c) *article 15 of the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(911).*
- (d) *article 20 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(912).]*

### **Determination of detention pending appeal, etc.**

**74.3.** On an application for permission to appeal, the Court of Appeal must—

- (a) decide whether to order the detention of a defendant who would have been liable to be detained but for the decision of the court; and
- (b) determine any application for—
  - (i) bail pending appeal,
  - (ii) permission to attend any hearing in the Supreme Court, or

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(906) 1968 c. 19; section 34 was amended by section 88 of the Courts Act 2003 (c. 39), section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(907) 1968 c. 19; section 36 was amended by section 12 of, and paragraph 43 of Schedule 2 to, the Bail Act 1976 (c. 63), section 15 of, and paragraph 4 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 23 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 36 of the Criminal Procedure and Investigations Act 1996 (c. 25), sections 47 and 68 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(908) S.I. 2006/2135.

(909) 1968 c. 19; section 38 was amended by section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(910) 1988 c. 33; paragraph 9 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(911) S.I. 2005/2798.

(912) S.I. 2006/2135.



(iii) a representation order.

*[Note. For the liability of a defendant to be detained pending a prosecutor's appeal to the Supreme Court and afterwards, see—*

- (a) *section 37 of the Criminal Appeal Act 1968(913).*
- (b) *article 19 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(914).*

*For the grant of legal aid for proceedings in the Supreme Court, see sections 14, 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(915).]*

### **Bail pending appeal**

**74.4.** Rules 68.8 (Application for bail pending appeal or retrial), 68.9 (Conditions of bail pending appeal or re-trial) and 68.10 (Forfeiture of a recognizance given as a condition of bail) apply.

## **PART 75**

### **REQUEST TO THE EUROPEAN COURT FOR A PRELIMINARY RULING**

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#### **Contents of this Part**

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Submission of request	rule 75.3

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#### **When this Part applies**

**75.1.** This Part applies where the court can request the Court of Justice of the European Union ('the European Court') to give a preliminary ruling, under Article 267 of the Treaty on the Functioning of the European Union.

*[Note. Under Article 267, if a court of a Member State considers that a decision on the question is necessary to enable it to give judgment, it may request the European Court to give a preliminary ruling concerning—*

- (a) *the interpretation of the Treaty on European Union, or of the Treaty on the Functioning of the European Union;*
- (b) *the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.]*

#### **Preparation of request**

**75.2.—(1)** The court may—

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**(913)** 1968 c. 19; section 37 was amended by section 65(1) of, and paragraph 39 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 58(1) of, and paragraph 5 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 47 of, and paragraphs 1 and 13 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

**(914)** S.I. 2006/2135.

**(915)** 2012 c. 10.

- (a) make an order for the submission of a request—
  - (i) on application by a party, or
  - (ii) on its own initiative;
- (b) give directions for the preparation of the terms of such a request.
- (2) The court must—
  - (a) include in such a request—
    - (i) the identity of the court making the request,
    - (ii) the parties' identities,
    - (iii) a statement of whether a party is in custody,
    - (iv) a succinct statement of the question on which the court seeks the ruling of the European Court,
    - (v) a succinct statement of any opinion on the answer that the court may have expressed in any judgment that it has delivered,
    - (vi) a summary of the nature and history of the proceedings, including the salient facts and an indication of whether those facts are proved, admitted or assumed,
    - (vii) the relevant rules of national law,
    - (viii) a summary of the relevant contentions of the parties,
    - (ix) an indication of the provisions of European Union law that the European Court is asked to interpret, and
    - (x) an explanation of why a ruling of the European Court is requested;
  - (b) express the request in terms that can be translated readily into other languages; and
  - (c) set out the request in a schedule to the order.

### **Submission of request**

**75.3.**—(1) The court officer must serve the order for the submission of the request on the Senior Master of the Queen's Bench Division of the High Court.

- (2) The Senior Master must—
  - (a) submit the request to the European Court; but
  - (b) unless the court otherwise directs, postpone the submission of the request until—
    - (i) the time for any appeal against the order has expired, and
    - (ii) any appeal against the order has been determined.

## **PART 76**

### **COSTS**

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#### **Contents of this Part**

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### SECTION 1: GENERAL

#### When this Part applies

- 76.1.**—(1) This Part applies where the court can make an order about costs under—
- (a) Part II of the Prosecution of Offences Act 1985(**916**) and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986(**917**);
  - (b) section 109 of the Magistrates' Courts Act 1980(**918**);
  - (c) section 52 of the Senior Courts Act 1981(**919**) and rule 76.6 or rule 76.7;
  - (d) section 8 of the Bankers Books Evidence Act 1879(**920**);
  - (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(**921**);

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**(916)** 1985 c. 23.

**(917)** S.I. 1986/1335.

**(918)** 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

**(919)** 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

**(920)** 1879 c. 11.

**(921)** 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

- (f) section 36(5) of the Criminal Justice Act 1972(922);
  - (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988(923);
  - (h) section 14H(5) of the Football Spectators Act 1989(924);
  - (i) section 4(7) of the Dangerous Dogs Act 1991(925);
  - (j) Part 3 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(926); or
  - (k) Part 1 or 2 of the Extradition Act 2003(927).
- (2) In this Part, ‘costs’ means—
- (a) the fees payable to a legal representative;
  - (b) the disbursements paid by a legal representative; and
  - (c) any other expenses incurred in connection with the case.

*[Note. A costs order can be made under—*

- (a) *section 16 of the Prosecution of Offences Act 1985(928)(defence costs), for the payment out of central funds of a defendant’s costs (see rule 76.4);*
- (b) *section 17 of the Prosecution of Offences Act 1985(929)(prosecution costs), for the payment out of central funds of a private prosecutor’s costs (see rule 76.4);*
- (c) *section 18 of the Prosecution of Offences Act 1985(930)(award of costs against accused), for the payment by a defendant of another person’s costs (see rules 76.5 and 76.6);*
- (d) *section 19(1) of the Prosecution of Offences Act 1985(931)and regulation 3 of the Costs in Criminal Cases (General) Regulations 1986, for the payment by a party of another party’s costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party (see rule 76.8);*
- (e) *section 19A of the Prosecution of Offences Act 1985(932)(costs against legal representatives, etc.)—*
  - (i) *for the payment by a legal representative of a party’s costs incurred as a result of an improper, unreasonable or negligent act or omission by or on behalf of the representative, or*

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(922) 1972 c. 71; section 36(5) was amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(923) 1988 c. 33; paragraph 11 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 11 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(924) 1989 c. 37; section 14H was substituted, together with sections 14, 14A-14G and 14J, for existing sections 14-17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

(925) 1991 c. 65.

(926) S.I. 2008/1863.

(927) 2003 c. 41.

(928) 1985 c. 23; section 16 was amended by section 15 of, and paragraphs 14 and 15 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 150 of, and paragraph 103 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 7 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), sections 69 and 312 of, and paragraph 57 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44), section 58 of, and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 2 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(929) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(930) 1985 c. 23; section 18 was amended by section 15 of, and paragraph 16 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 26 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(931) 1985 c. 23.

(932) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

- (ii) *disallowing the payment to that representative of such costs (see rule 76.9);*
- (f) *section 19B of the Prosecution of Offences Act 1985(933)(provision for award of costs against third parties) and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986(934), for the payment by a person who is not a party of a party's costs where there has been serious misconduct by the non-party (see rule 76.10);*
- (g) *section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 76.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 76.6);*
- (h) *section 52 of the Senior Courts Act 1981 and—*
  - (i) *rule 76.6, for the payment by a party of another party's costs on an appeal to the Crown Court in any case not covered by (c) or (g),*
  - (ii) *rule 76.7, for the payment by a party of another party's costs on an application to the Crown Court about the breach or variation of a deferred prosecution agreement, or on an application to lift the suspension of a prosecution after breach of such an agreement;*
- (i) *section 8 of the Bankers Books Evidence Act 1879, for the payment of costs by a party or by the bank against which an application for an order is made (see rule 76.7);*
- (j) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965, for the payment by the applicant for a witness summons of the costs of a party who applies successfully under rule 28.7 to have it withdrawn (see rule 76.7);*
- (k) *section 36(5) of the Criminal Justice Act 1972 or Schedule 3, paragraph 11, of the Criminal Justice Act 1988, for the payment out of central funds of a defendant's costs on a reference by the Attorney General of—*
  - (i) *a point of law, or*
  - (ii) *an unduly lenient sentence**(see rule 76.4);*
- (l) *section 159(5) of the Criminal Justice Act 1988, for the payment by a person of another person's costs on an appeal about a reporting or public access restriction (see rule 76.6);*
- (m) *section 14H(5) of the Football Spectators Act 1989, for the payment by a defendant of another person's costs on an application to terminate a football banning order (see rule 76.7);*
- (n) *section 4(7) of the Dangerous Dogs Act 1991, for the payment by a defendant of another person's costs on an application to terminate a disqualification for having custody of a dog (see rule 76.7);*
- (o) *article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(935), corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 76.4);*
- (p) *article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 76.6);*
- (q) *article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19(1) of the 1985 Act (see rule 76.8);*

(933) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

(934) S.I. 1986/1335; regulation 3F was inserted by regulation 7 of S.I. 2004/2408 and amended by regulations 2 and 5 of S.I. 2008/2448.

(935) S.I. 2008/1863.

- (r) *article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19A of the 1985 Act (see rule 76.9);*
- (s) *article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19B of the 1985 Act (see rule 76.10);*
- (t) *section 60 or 133 of the Extradition Act 2003 (costs where extradition ordered) for the payment by a defendant of another person's costs; or*
- (u) *section 61 or 134 of the Extradition Act 2003(936)(costs where discharge ordered) for the payment out of central funds of a defendant's costs.*

*See also the Criminal Costs Practice Direction.*

*Part 68 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeals against costs orders made in the Crown Court under the legislation listed in (c) above.*

*Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against costs orders made under the legislation listed in (e) and (f) above.*

*As to costs in restraint or receivership proceedings under Part 2 of the Proceeds of Crime Act 2002(937), see rules 61.19 to 61.22.*

*A costs order can be enforced—*

- (a) *against a defendant, under section 41(1) or (3) of the Administration of Justice Act 1970(938);*
- (b) *against a prosecutor, under section 41(2) or (3) of the Administration of Justice Act 1970;*
- (c) *against a representative, under regulation 3D of the Costs in Criminal Cases (General) Regulations 1986(939) or article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; or*
- (d) *against a non-party, under regulation 3I of the Costs in Criminal Cases (General) Regulations 1986(940) or article 31 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(941).*

*See also section 58, section 150(1) and Part III of the Magistrates' Courts Act 1980(942) and Schedule 5 to the Courts Act 2003(943).]*

### **Costs orders: general rules**

**76.2.**—(1) The court must not make an order about costs unless each party and any other person directly affected—

- (a) is present; or
- (b) has had an opportunity—

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(936) 2003 c. 41; sections 61 and 134 were amended by paragraphs 12, 13 and 16 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(937) 2002 c. 29.

(938) 1970 c. 31; section 41(3) was amended by section 62 of, and paragraph 35 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). It is further amended by section 17 of, and paragraph 52 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22), with effect from a date to be appointed.

(939) S.I. 1986/1335; regulation 3D was inserted by article 2 of S.I. 1991/789 and amended by regulation 6 of S.I. 2004/2408.

(940) S.I. 1986/1335; regulation 3I was inserted by regulation 7 of S.I. 2004/2408.

(941) S.I. 2008/1863.

(942) 1980 c. 43; section 58 was amended by section 33 of, and paragraph 80 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42); a relevant amendment was made to section 150(1) by paragraph 250 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).

(943) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737. It is further amended by section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), with effect from a date to be appointed.

- (i) to attend, or
  - (ii) to make representations.
- (2) The court may make an order about costs—
  - (a) at a hearing in public or in private; or
  - (b) without a hearing.
- (3) In deciding what order, if any, to make about costs, the court must have regard to all the circumstances, including—
  - (a) the conduct of all the parties; and
  - (b) any costs order already made.
- (4) If the court makes an order about costs, it must—
  - (a) specify who must, or must not, pay what, to whom; and
  - (b) identify the legislation under which the order is made, where there is a choice of powers.
- (5) The court must give reasons if it—
  - (a) refuses an application for a costs order; or
  - (b) rejects representations opposing a costs order.
- (6) If the court makes an order for the payment of costs—
  - (a) the general rule is that it must be for an amount that is sufficient reasonably to compensate the recipient for costs—
    - (i) actually, reasonably and properly incurred, and
    - (ii) reasonable in amount; but
  - (b) the court may order the payment of—
    - (i) a proportion of that amount,
    - (ii) a stated amount less than that amount,
    - (iii) costs from or until a certain date only,
    - (iv) costs relating only to particular steps taken, or
    - (v) costs relating only to a distinct part of the case.
- (7) On an assessment of the amount of costs, relevant factors include—
  - (a) the conduct of all the parties;
  - (b) the particular complexity of the matter or the difficulty or novelty of the questions raised;
  - (c) the skill, effort, specialised knowledge and responsibility involved;
  - (d) the time spent on the case;
  - (e) the place where and the circumstances in which work or any part of it was done; and
  - (f) any direction or observations by the court that made the costs order.
- (8) If the court orders a party to pay costs to be assessed under rule 76.11, it may order that party to pay an amount on account.
- (9) An order for the payment of costs takes effect when the amount is assessed, unless the court exercises any power it has to order otherwise.

*[Note. Under the powers to which apply rule 76.8 (costs resulting from unnecessary or improper act, etc.) and rule 76.9 (costs against a legal representative), specified conduct must be established for such orders to be made.*

*The amount recoverable under a costs order may be affected by the legislation under which the order is made. See, for example, section 16A of the Prosecution of Offences Act 1985(944).*

*Under section 141 of the Powers of Criminal Courts (Sentencing) Act 2000(945) and section 75 of the Magistrates' Courts Act 1980(946), the Crown Court and magistrates' court respectively can allow time for payment, or payment by instalments.]*

### **Court's power to vary requirements under Sections 2, 3 and 4**

- 76.3.**—(1) The court may—
- (a) extend a time limit for serving an application or representations under section 2, 3 or 4 of this Part, even after it has expired; and
  - (b) consider an application or representations—
    - (i) made in a different form to one set out in the Practice Direction, or
    - (ii) made orally instead of in writing.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application or representations for which it is needed; and
  - (b) explain the delay.

### *SECTION 2: COSTS OUT OF CENTRAL FUNDS*

#### **Costs out of central funds**

- 76.4.**—(1) This rule applies where the court can order the payment of costs out of central funds.
- (2) In this rule, costs—
- (a) include—
    - (i) on an appeal, costs incurred in the court that made the decision under appeal, and
    - (ii) at a retrial, costs incurred at the initial trial and on any appeal; but
  - (b) do not include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the person who incurred the costs; or
  - (b) on its own initiative.
- (4) Where a person wants the court to make an order that person must—
- (a) apply as soon as practicable; and
  - (b) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or
  - (c) specify the amount claimed, if that person wants the court to assess the amount itself.
- (5) The general rule is that the court must make an order, but—
- (a) the court may decline to make a defendant's costs order if, for example—
    - (i) the defendant is convicted of at least one offence, or

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(944) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(945) 2000 c. 6.

(946) 1980 c. 43, section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17).



- (ii) the defendant's conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and
- (b) the court may decline to make a prosecutor's costs order if, for example, the prosecution was started or continued unreasonably.
- (6) If the court makes an order—
  - (a) the court may direct an assessment under, as applicable—
    - (i) Part III of The Costs in Criminal Cases (General) Regulations 1986(947), or
    - (ii) Part 3 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(948);
  - (b) the court may assess the amount itself in a case in which either—
    - (i) the recipient agrees the amount, or
    - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings;
  - (c) an order for the payment of a defendant's costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.
- (7) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.
- (8) If the court assesses the amount itself, it must do so subject to any restriction on the amount to be paid that is imposed by regulations made by the Lord Chancellor.

[Note. See also rule 76.2.

*An order for the payment of costs out of central funds can be made—*

- (a) *for a defendant—*
  - (i) *on acquittal,*
  - (ii) *where a prosecution does not proceed,*
  - (iii) *where the Crown Court allows any part of a defendant's appeal from a magistrates' court,*
  - (iv) *where the Court of Appeal allows any part of a defendant's appeal from the Crown Court,*
  - (v) *where the Court of Appeal decides a prosecutor's appeal under Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing) or Part 67 (appeal to the Court of Appeal against ruling adverse to prosecution),*
  - (vi) *where the Court of Appeal decides a reference by the Attorney General under Part 70 (reference to the Court of Appeal of point of law or unduly lenient sentence),*
  - (vii) *where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order; or*
  - (viii) *where the defendant is discharged under Part 1 or 2 of the Extradition Act 2003;*  
*(See section 16 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986(947); section 36(5) of the Criminal Justice Act 1972 and paragraph 11 of Schedule 3 to the Criminal Justice Act 1988; article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; and sections 61 and 134 of the Extradition Act 2003.)*

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(947) S.I. 1986/1335; relevant amending instruments are S.I. 1999/2096 and S.I. 2008/2448.

(948) S.I. 2008/1863.

(949) S.I. 1986/1335; regulation 14 was amended by regulations 2 and 11 of S.I. 2008/2448.

- (b) *for a private prosecutor, in proceedings in respect of an offence that must or may be tried in the Crown Court;*  
*(See section 17 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986.)*
- (c) *for a person adversely affected by a serious crime prevention order, where the Court of Appeal—*  
 (i) *allows an appeal by that person about that order, or*  
 (ii) *decides an appeal about that order by someone else.*  
*(See article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)*

*Where the court makes an order for the payment of a defendant's costs out of central funds—*

- (a) *the general rule is that the order may not require the payment of any amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative (including expert witness costs), but if the defendant is an individual then an order may require payment of such an amount in a case—*  
 (i) *in a magistrates' court, including in an extradition case,*  
 (ii) *in the Crown Court, on appeal from a magistrates' court,*  
 (iii) *in the Crown Court, where the defendant has been sent for trial, the High Court gives permission to serve a draft indictment or the Court of Appeal orders a retrial and the defendant has been found financially ineligible for legal aid, or*  
 (iv) *in the Court of Appeal, on an appeal against a verdict of not guilty by reason of insanity, or against a finding under the Criminal Procedure (Insanity) Act 1964(950), or on an appeal under section 16A of the Criminal Appeal Act 1968(951)(appeal against order made in cases of insanity or unfitness to plead); and*
- (b) *any such amount may not exceed an amount specified by regulations made by the Lord Chancellor.*  
*(See section 16A of the Prosecution of Offences Act 1985(952), sections 62A, 62B, 135A and 135B of the Extradition Act 2003(953) and regulations 4A and 7 of the Costs in Criminal Cases (General) Regulations 1986(954).)]*

### SECTION 3: PAYMENT OF COSTS BY ONE PARTY TO ANOTHER

#### Costs on conviction and sentence, etc.

**76.5.—(1)** This rule applies where the court can order a defendant to pay the prosecutor's costs if the defendant is—

- (a) convicted or found guilty;  
 (b) dealt with in the Crown Court after committal for sentence there;  
 (c) dealt with for breach of a sentence; or  
 (d) in an extradition case—

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(950) 1964 c. 84.

(951) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(952) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(953) 2003 c. 41; sections 62A and 62B were inserted by paragraphs 12 and 15 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and sections 135A and 135B were inserted by paragraphs 12 and 18 and Part 4 of that Schedule.

(954) S.I. 1986/1335; regulation 4A was inserted by regulations 4 and 5 of S.I. 2012/1804. Regulation 7 was substituted by regulations 4 and 6 of S.I. 2012/1804 and amended by S.I. 2013/2830.

- (i) ordered to be extradited, under Part 1 of the Extradition Act 2003,
  - (ii) sent for extradition to the Secretary of State, under Part 2 of that Act, or
  - (iii) unsuccessful on an appeal by the defendant to the High Court, or on an application by the defendant for permission to appeal from the High Court to the Supreme Court.
- (2) The court may make an order—
- (a) on application by the prosecutor; or
  - (b) on its own initiative.
- (3) Where the prosecutor wants the court to make an order—
- (a) the prosecutor must—
    - (i) apply as soon as practicable, and
    - (ii) specify the amount claimed; and
  - (b) the general rule is that the court must make an order if it is satisfied that the defendant can pay.
- (4) A defendant who wants to oppose an order must make representations as soon as practicable.
- (5) If the court makes an order, it must assess the amount itself.

[*Note. See—*

- (a) *rule 76.2;*
- (b) *section 18 of the Prosecution of Offences Act 1985(955) and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986; and*
- (c) *sections 60 and 133 of the Extradition Act 2003.*

*Under section 18(4) and (5) of the 1985 Act, if a magistrates' court—*

- (a) *imposes a fine, a penalty, forfeiture or compensation that does not exceed £5—*
  - (i) *the general rule is that the court will not make a costs order against the defendant, but*
  - (ii) *the court may do so;*
- (b) *fines a defendant under 18, no costs order against the defendant may be for more than the fine.*

*Part 68 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeal against a Crown Court costs order to which this rule applies.]*

## **Costs on appeal**

**76.6.—**(1) This rule—

- (a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal;
- (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal under—
  - (i) section 108 of the Magistrates' Courts Act 1980(956), or

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(955) 1985 c. 23; section 18 was amended by section 15 of, and paragraph 16 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 26 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(956) 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991

- (ii) section 45 of the Mental Health Act 1983(957).
- (2) In this rule, costs include—
- (a) costs incurred in the court that made the decision under appeal; and
  - (b) costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the person who incurred the costs; or
  - (b) on its own initiative.
- (4) A person who wants the court to make an order must—
- (a) apply as soon as practicable;
  - (b) notify each other party;
  - (c) specify—
    - (i) the amount claimed, and
    - (ii) against whom; and
  - (d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—
    - (i) apply in writing not more than 14 days later, and
    - (ii) serve the application on the appellant and on the Crown Court officer.
- (5) A party who wants to oppose an order must—
- (a) make representations as soon as practicable; and
  - (b) where the application was under paragraph (4)(d), serve written representations on the applicant, and on the Crown Court officer, not more than 7 days after it was served.
- (6) Where the application was under paragraph (4)(d), the Crown Court officer may—
- (a) submit it to the Crown Court; or
  - (b) serve it on the magistrates' court officer, for submission to the magistrates' court.
- (7) If the court makes an order, it may direct an assessment under rule 76.11, or assess the amount itself where—
- (a) the appellant abandons an appeal to the Crown Court;
  - (b) the Crown Court decides an appeal, except an appeal under—
    - (i) section 108 of the Magistrates' Courts Act 1980, or
    - (ii) section 45 of the Mental Health Act 1983; or
  - (c) the Court of Appeal decides an appeal to which Part 69 applies (appeal to the Court of Appeal regarding reporting or public access restriction).
- (8) If the court makes an order in any other case, it must assess the amount itself.

*[Note. See also rule 76.2.*

*A magistrates' court can order an appellant to pay a respondent's costs on abandoning an appeal to the Crown Court.*

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(c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45).

(957)1983 c. 20.

The Crown Court can order—

- (a) *the defendant to pay the prosecutor's costs on dismissing a defendant's appeal—*
  - (i) *against conviction or sentence, under section 108 of the Magistrates' Courts Act 1980, or*
  - (ii) *where the magistrates' court makes a hospital order or guardianship order without convicting the defendant, under section 45 of the Mental Health Act 1983; and*
- (b) *one party to pay another party's costs on deciding any other appeal to which Part 63 applies.*

The Court of Appeal can order—

- (a) *the defendant to pay another person's costs on dismissing a defendant's appeal or application to which Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing), Part 68 (appeal to the Court of Appeal about conviction or sentence) or Part 74 (appeal or reference to the Supreme Court) applies;*
- (b) *the defendant to pay another person's costs on allowing a prosecutor's appeal to which Part 67 (appeal to the Court of Appeal against ruling adverse to the prosecution) applies;*
- (c) *the appellant to pay another person's costs on dismissing an appeal or application by a person affected by a serious crime prevention order;*
- (d) *one party to pay another party's costs on deciding an appeal to which Part 69 (appeal to the Court of Appeal regarding reporting or public access restriction) applies.*

*See section 109 of the Magistrates' Courts Act 1980(958); section 52 of the Senior Courts Act 1981(959) (which allows rules of court to authorise the Crown Court to order costs); section 18 of the Prosecution of Offences Act 1985; section 159(5) of the Criminal Justice Act 1988(960); and article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(961).]*

### **Costs on an application**

**76.7.—**(1) This rule—

- (a) applies where the court can order a party to pay another person's costs in a case in which—
    - (i) the court decides an application for the production in evidence of a copy of a bank record,
    - (ii) a magistrates' court or the Crown Court decides an application to terminate a football banning order,
    - (iii) a magistrates' court or the Crown Court decides an application to terminate a disqualification for having custody of a dog,
    - (iv) the Crown Court allows an application to withdraw a witness summons, or
    - (v) the Crown Court decides an application relating to a deferred prosecution agreement under rule 12.5 (breach), rule 12.6 (variation) or rule 12.7 (lifting suspension of prosecution);
  - (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an application to that court under rule 12.5, 12.6 or 12.7.
- (2) The court may make an order—

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(958) 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

(959) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(960) 1988 c. 33.

(961) S.I. 2008/1863.

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.
- (3) A person who wants the court to make an order must—
  - (a) apply as soon as practicable;
  - (b) notify each other party; and
  - (c) specify—
    - (i) the amount claimed, and
    - (ii) against whom.
- (4) A party who wants to oppose an order must make representations as soon as practicable.
- (5) If the court makes an order, it may direct an assessment under rule 76.11, or assess the amount itself.

[*Note. See—*

- (a) *rule 76.2;*
- (b) *section 8 of the Bankers Books Evidence Act 1879(962);*
- (c) *section 14H(5) of the Football Spectators Act 1989(963);*
- (d) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(964); and*
- (e) *section 4(7) of the Dangerous Dogs Act 1991(965).*

*Section 52 of the Senior Courts Act 1981 allows rules of court to authorise the Crown Court to order costs.]*

#### **Costs resulting from unnecessary or improper act, etc.**

**76.8.**—(1) This rule applies where the court can order a party to pay another party’s costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party.

- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
  - (a) on application by the party who incurred such costs; or
  - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
  - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court officer (or, in the Court of Appeal, the Registrar), and
    - (ii) each other party;
  - (c) in that application specify—
    - (i) the party by whom costs should be paid,
    - (ii) the relevant act or omission,
    - (iii) the reasons why that act or omission meets the criteria for making an order,

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(962) 1879 c. 11.

(963) 1989 c. 37; section 14H was substituted, together with sections 14, 14A-14G and 14J, for existing sections 14-17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

(964) 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(965) 1991 c. 65.

- (iv) the amount claimed, and
  - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
- (a) identify the party against whom it proposes making the order; and
  - (b) specify—
    - (i) the relevant act or omission,
    - (ii) the reasons why that act or omission meets the criteria for making an order, and
    - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A party who wants to oppose an order must—
- (a) make representations as soon as practicable; and
  - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order, it must assess the amount itself.

[Note. See—

- (a) rule 76.2;
- (b) section 19(1) of the Prosecution of Offences Act 1985(966) and regulation 3 of the Costs in Criminal Cases (General) Regulations 1986(967); and
- (c) article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(968).

*Under regulation 3(5) of the 1986 Regulations, if a magistrates' court fines a defendant under 17, no costs order to which this rule applies may be for more than the fine.*

*The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.]*

#### SECTION 4: OTHER COSTS ORDERS

##### Costs against a legal representative

- 76.9.—(1) This rule applies where—
- (a) a party has incurred costs—
    - (i) as a result of an improper, unreasonable or negligent act or omission by a legal or other representative or representative's employee, or
    - (ii) which it has become unreasonable for that party to have to pay because of such an act or omission occurring after those costs were incurred; and
  - (b) the court can—
    - (i) order the representative responsible to pay such costs, or
    - (ii) prohibit the payment of costs to that representative.
- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the party who incurred such costs; or

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(966) 1985 c. 23.

(967) S.I. 1986/1335; regulation 3 was amended by regulations 2 and 3 of S.I. 2008/2448.

(968) S.I. 2008/1863.

- (b) on its own initiative.
- (4) A party who wants the court to make an order must—
  - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court officer (or, in the Court of Appeal, the Registrar),
    - (ii) the representative responsible,
    - (iii) each other party, and
    - (iv) any other person directly affected;
  - (c) in that application specify—
    - (i) the representative responsible,
    - (ii) the relevant act or omission,
    - (iii) the reasons why that act or omission meets the criteria for making an order,
    - (iv) the amount claimed, and
    - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
  - (a) identify the representative against whom it proposes making that order; and
  - (b) specify—
    - (i) the relevant act or omission,
    - (ii) the reasons why that act or omission meets the criteria for making an order, and
    - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A representative who wants to oppose an order must—
  - (a) make representations as soon as practicable; and
  - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
  - (a) the general rule is that it must do so without waiting until the end of the case, but it may postpone making the order; and
  - (b) it must assess the amount itself.
- (8) Instead of making an order, the court may make adverse observations about the representative’s conduct for use in an assessment where—
  - (a) a party’s costs are—
    - (i) to be met by legal aid, or
    - (ii) to be paid out of central funds; or
  - (b) there is to be an assessment under rule 76.11.

[Note. See—

- (a) *rule 76.2;*
- (b) *section 19A of the Prosecution of Offences Act 1985(969);*
- (c) *article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(970).*

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(969) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).  
 (970) S.I. 2008/1863.



*The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.*

*Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]*

### **Costs against a third party**

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

- (a) there has been serious misconduct by a person who is not a party; and
  - (b) the court can order that person to pay a party's costs.
- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the party who incurred the costs; or
  - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
  - (b) serve the application on—
    - (i) the court officer (or, in the Court of Appeal, the Registrar),
    - (ii) the person responsible,
    - (iii) each other party, and
    - (iv) any other person directly affected;
  - (c) in that application specify—
    - (i) the person responsible,
    - (ii) the relevant misconduct,
    - (iii) the reasons why the criteria for making an order are met,
    - (iv) the amount claimed, and
    - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
- (a) identify the person against whom it proposes making that order; and
  - (b) specify—
    - (i) the relevant misconduct,
    - (ii) the reasons why the criteria for making an order are met, and
    - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A person who wants to oppose an order must—
- (a) make representations as soon as practicable; and
  - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
- (a) the general rule is that it must do so at the end of the case, but it may do so earlier; and
  - (b) it must assess the amount itself.

*[Note. See—*

- (a) rule 76.2;
- (b) section 19B of the Prosecution of Offences Act 1985 and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986; and
- (c) article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

*The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.*

*Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]*

## SECTION 5: ASSESSMENT OF COSTS

### Assessment and re-assessment

- 76.11.**—(1) This rule applies where the court directs an assessment under—
- (a) rule 61.20 (Proceeds of Crime Act 2002 – rules applicable to restraint and receivership proceedings, assessment of costs);
  - (b) rule 76.6 (costs on appeal); or
  - (c) rule 76.7 (costs on an application).
- (2) The assessment must be carried out by the relevant assessing authority, namely—
- (a) the court officer, where the direction was given by a magistrates’ court or by the Crown Court; or
  - (b) the Registrar of Criminal Appeals, where the direction was given by the Court of Appeal.
- (3) The party in whose favour the court made the costs order (‘the applicant’) must—
- (a) apply for an assessment—
    - (i) in writing, in any form required by the assessing authority, and
    - (ii) not more than 3 months after the costs order; and
  - (b) serve the application on—
    - (i) the assessing authority, and
    - (ii) the party against whom the court made the costs order (‘the respondent’).
- (4) The applicant must—
- (a) summarise the work done;
  - (b) specify—
    - (i) each item of work done, giving the date, time taken and amount claimed,
    - (ii) any disbursements or expenses, including the fees of any advocate, and
    - (iii) any circumstances of which the applicant wants the assessing authority to take particular account; and
  - (c) supply—
    - (i) receipts or other evidence of the amount claimed, and
    - (ii) any other information or document for which the assessing authority asks, within such period as that authority may require.
- (5) A respondent who wants to make representations about the amount claimed must—
- (a) do so in writing; and

- (b) serve the representations on the assessing authority, and on the applicant, not more than 21 days after service of the application.
- (6) The assessing authority must—
  - (a) if it seems likely to help with the assessment, obtain any other information or document;
  - (b) resolve in favour of the respondent any doubt about what should be allowed; and
  - (c) serve the assessment on the parties.
- (7) Where either party wants the amount allowed re-assessed—
  - (a) that party must—
    - (i) apply to the assessing authority, in writing and in any form required by that authority,
    - (ii) serve the application on the assessing authority, and on the other party, not more than 21 days after service of the assessment,
    - (iii) explain the objections to the assessment,
    - (iv) supply any additional supporting information or document, and
    - (v) ask for a hearing, if that party wants one; and
  - (b) a party who wants to make representations about an application for re-assessment must—
    - (i) do so in writing,
    - (ii) serve the representations on the assessing authority, and on the other party, not more than 21 days after service of the application, and
    - (iii) ask for a hearing, if that party wants one;
  - (c) the assessing authority—
    - (i) must arrange a hearing, in public or in private, if either party asks for one,
    - (ii) subject to that, may re-assess the amount allowed with or without a hearing,
    - (iii) must re-assess the amount allowed on the initial assessment, taking into account the reasons for disagreement with that amount and any other representations,
    - (iv) may maintain, increase or decrease the amount allowed on the assessment,
    - (v) must serve the re-assessment on the parties, and
    - (vi) must serve written reasons on the parties, if not more than 21 days later either party asks for such reasons.
- (8) A time limit under this rule may be extended even after it has expired—
  - (a) by the assessing authority, or
  - (b) by the Senior Costs Judge, if the assessing authority declines to do so.

### **Appeal to a costs judge**

- 76.12.**—(1) This rule applies where—
- (a) the assessing authority has re-assessed the amount allowed under rule 76.11; and
  - (b) either party wants to appeal against that amount.
- (2) That party must—
- (a) serve an appeal notice on—
    - (i) the Senior Costs Judge,
    - (ii) the other party, and
    - (iii) the assessing authority

- not more than 21 days after service of the written reasons for the re-assessment;
- (b) explain the objections to the re-assessment;
  - (c) serve on the Senior Costs Judge with the appeal notice—
    - (i) the applications for assessment and re-assessment,
    - (ii) any other information or document considered by the assessing authority,
    - (iii) the assessing authority’s written reasons for the re-assessment, and
    - (iv) any other information or document for which a costs judge asks, within such period as the judge may require; and
  - (d) ask for a hearing, if that party wants one.
- (3) A party who wants to make representations about an appeal must—
- (a) serve representations in writing on—
    - (i) the Senior Costs Judge, and
    - (ii) the applicantnot more than 21 days after service of the appeal notice; and
  - (b) ask for a hearing, if that party wants one.
- (4) Unless a costs judge otherwise directs, the parties may rely only on—
- (a) the objections to the amount allowed on the initial assessment; and
  - (b) any other representations and material considered by the assessing authority.
- (5) A costs judge—
- (a) must arrange a hearing, in public or in private, if either party asks for one;
  - (b) subject to that, may determine an appeal with or without a hearing;
  - (c) may—
    - (i) consult the assessing authority,
    - (ii) consult the court which made the costs order, and
    - (iii) obtain any other information or document;
  - (d) must reconsider the amount allowed by the assessing authority, taking into account the objections to the re-assessment and any other representations;
  - (e) may maintain, increase or decrease the amount allowed on the re-assessment;
  - (f) may provide for the costs incurred by either party to the appeal; and
  - (g) must serve reasons for the decision on—
    - (i) the parties, and
    - (ii) the assessing authority.
- (6) A costs judge may extend a time limit under this rule, even after it has expired.

*[Note. The Criminal Costs Practice Direction sets out a form for use in connection with this rule.]*

### **Appeal to a High Court judge**

- 76.13.**—(1) This rule applies where—
- (a) a costs judge has determined an appeal under rule 76.12; and
  - (b) either party wants to appeal against the amount allowed.
- (2) A party who wants to appeal—

- (a) may do so only if a costs judge certifies that a point of principle of general importance was involved in the decision on the review; and
- (b) must apply in writing for such a certificate and serve the application on—
  - (i) the costs judge,
  - (ii) the other partynot more than 21 days after service of the decision on the review.
- (3) That party must—
  - (a) appeal to a judge of the High Court attached to the Queen’s Bench Division as if it were an appeal from the decision of a master under Part 52 of the Civil Procedure Rules 1998(971); and
  - (b) serve the appeal not more than 21 days after service of the costs judge’s certificate under paragraph (2).
- (4) A High Court judge—
  - (a) may extend a time limit under this rule even after it has expired;
  - (b) has the same powers and duties as a costs judge under rule 76.12; and
  - (c) may hear the appeal with one or more assessors.

[Note. See also section 70 of the Senior Courts Act 1981(972).]

#### **Application for an extension of time under Section 5**

- 76.14.** A party who wants an extension of time under rule 76.11, 76.12 or 76.13 must—
- (a) apply in writing;
  - (b) explain the delay; and
  - (c) attach the application, representations or appeal for which the extension of time is needed.

#### **Glossary**

*This glossary is a guide to the meaning of certain legal expressions as used in these rules.*

<b>Expression</b>	<b>Meaning</b>
<i>account monitoring order</i>	<i>an order requiring certain types of financial institution to provide certain information held by them relating to a customer for the purposes of an investigation;</i>
<i>action plan order</i>	<i>a type of community sentence requiring a child or young person to comply with a three month plan relating to his actions and whereabouts and to comply with the directions of a responsible officer (e.g. probation officer);</i>
<i>admissible evidence</i>	<i>evidence allowed in proceedings (not all evidence introduced by the parties may be allowable in court);</i>

(971) S.I. 1998/3132.

(972) 1981 c. 54. The Act’s title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

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<b>Expression</b>	<b>Meaning</b>
<i>adduce</i>	<i>to introduce (in evidence);</i>
<i>adjourn</i>	<i>to suspend or delay the hearing of a case;</i>
<i>affidavit</i>	<i>a written, sworn statement of evidence;</i>
<i>affirmation</i>	<i>a non-religious alternative to the oath sworn by someone about to give evidence in court or swearing a statement;</i>
<i>appellant</i>	<i>person who is appealing against a decision of the court;</i>
<i>arraign</i>	<i>to put charges to the defendant in open court in the Crown Court;</i>
<i>arraignment</i>	<i>the formal process of putting charges to the defendant in the Crown Court which consists of three parts: (1) calling him to the bar by name, (2) putting the charges to him by reading from the indictment and (3) asking him whether he pleads guilty or not guilty;</i>
<i>authorities</i>	<i>judicial decisions or opinions of authors of repute used as grounds of statements of law;</i>
<i>bill of indictment</i>	<i>a written accusation of a crime against one or more persons – a criminal trial in the Crown Court cannot start without a valid indictment;</i>
<i>case stated</i>	<i>an appeal to the High Court against the decision of a magistrates court on the basis that the decision was wrong in law or in excess of the magistrates' jurisdiction;</i>
<i>in chambers</i>	<i>non-trial hearing in private;</i>
<i>committal</i>	<i>sending someone to a court (usually from a magistrates' court to the Crown court) or to prison;</i>
<i>committal for sentence</i>	<i>procedure whereby a person convicted in a magistrates' court is sent to the Crown Court for sentencing when the sentencing powers of the magistrates' court are not considered sufficient;</i>
<i>compellable witness</i>	<i>a witness who can be forced to give evidence against an accused (not all witnesses are compellable);</i>
<i>compensation order</i>	<i>an order that a convicted person must pay compensation for loss or damage caused by the convicted person;</i>
<i>complainant</i>	<i>a person who makes a formal complaint. In relation to an offence of rape or other sexual offences the complainant is the person</i>

<b>Expression</b>	<b>Meaning</b>
	against whom the offence is alleged to have been committed;
<i>conditional discharge</i>	<i>an order which does not impose any immediate punishment on a person convicted of an offence, subject to the condition that he does not commit an offence in a specified period;</i>
<i>confiscation order</i>	<i>an order that private property be taken into possession by the state;</i>
<i>Convention right</i>	<i>a right under the European Convention on Human Rights;</i>
<i>costs</i>	<i>the expenses involved in a court case, including the fees of the solicitors and barristers and of the court;</i>
<i>counsel</i>	<i>a barrister;</i>
<i>cross examination</i>	<i>questioning of a witness by a party other than the party who called the witness;</i>
<i>custody time limit</i>	<i>the maximum period, as set down in statute, for which a person may be kept in custody before being brought to trial – these maximum periods may only be extended by an order of the judge;</i>
<i>customer information order</i>	<i>an order requiring a financial institution to provide certain information held by them relating to a customer for the purposes of an investigation into the proceeds of crime;</i>
<i>declaration of incompatibility</i>	<i>a declaration by a court that a piece of UK legislation is incompatible with the provisions of the European Convention on Human Rights;</i>
<i>deferred sentence</i>	<i>a sentence which is determined after a delay to allow the court to assess any change in the person's conduct or circumstances after his or her conviction;</i>
<i>deposition</i>	<i>written record of a witness' written evidence;</i>
<i>distress warrant</i>	<i>court order giving the power to seize goods from a debtor to pay his debts;</i>
<i>exhibit</i>	<i>a document or thing presented as evidence in court;</i>
<i>forfeiture by peaceable re-entry</i>	<i>the re-possession by a landlord of premises occupied by tenants;</i>
<i>guardianship order</i>	<i>an order appointing someone to take charge of a child's affairs and property;</i>

<b><i>Expression</i></b>	<b><i>Meaning</i></b>
<i>hearsay evidence</i>	<i>oral or written statements made by someone who is not a witness in the case but which the court is asked to accept as proving what they say. This expression is defined further by rule 34.1 for the purposes of Part 34, and by rule 57.1 for the purposes of Parts 57 - 61;</i>
<i>hospital order</i>	<i>an order that an offender be admitted to and detained in a specified hospital;</i>
<i>indictment</i>	<i>the document containing the formal charges against a defendant – a trial in the Crown Court cannot start without this;</i>
<i>informant</i>	<i>someone who lays an information;</i>
<i>information</i>	<i>statement by which a magistrate is informed of the offence for which a summons or warrant is required – the procedure by which this statement is brought to the magistrates' attention is known as laying an information;</i>
<i>intermediary</i>	<i>a person who asks a witness (particularly a child) questions posed by the cross-examining legal representative;</i>
<i>justice of the peace</i>	<i>a magistrate, either a lay justice, or a District Judge (Magistrates' Courts);</i>
<i>justices' clerk</i>	<i>post in the magistrates' court of person who has various powers and duties in a magistrates' court, including giving advice to the magistrates on law and procedure;</i>
<i>leave of the court</i>	<i>permission granted by the court;</i>
<i>leave to appeal</i>	<i>permission granted to appeal the decision of a court;</i>
<i>letter of request</i>	<i>letter issued to a foreign court asking a judge to take the evidence of some person within that court's jurisdiction;</i>
<i>to levy distress</i>	<i>to seize property from a debtor or a wrongdoer;</i>
<i>local justice area</i>	<i>an area established for the purposes of the administration of magistrates' courts;</i>
<i>mandatory order</i>	<i>order from the Divisional Court of the Queen's Bench Division ordering a body (such as a magistrates' court) to do something (such as rehear a case);</i>
<i>nominated court</i>	<i>a court nominated to take evidence pursuant to a request by a foreign court;</i>
<i>offence triable either way</i>	<i>an offence which may be tried either in the magistrates' court or in the Crown Court;</i>



<b>Expression</b>	<b>Meaning</b>
<i>in open court</i>	<i>in a courtroom which is open to the public;</i>
<i>order restricting discharge</i>	<i>an order restricting the discharge from hospital of patients who have been sent there for psychiatric treatment;</i>
<i>parenting order</i>	<i>an order which can be made in certain circumstances where a child has been convicted of an offence which may require parents of the offender to comply with certain requirements including attendance of counselling or guidance sessions;</i>
<i>party</i>	<i>a person or organisation directly involved in a criminal case, either as prosecutor or defendant</i>
<i>prefer, preferment</i>	<i>to bring or lay a charge or indictment;</i>
<i>preparatory hearing</i>	<i>a hearing forming part of the trial sometimes used in long and complex cases to settle various issues without requiring the jury to attend;</i>
<i>realisable property</i>	<i>property which can be sold for money.</i>
<i>receiver</i>	<i>a person appointed with certain powers in respect of the property and affairs of a person who has obtained such property in the course of criminal conduct and who has been convicted of an offence – there are various types or receiver (management receiver, director’s receiver, enforcement receiver);</i>
<i>receivership order</i>	<i>an order that a person’s assets be put into the hands of an official with certain powers and duties to deal with that property;</i>
<i>recognizance</i>	<i>formal undertaking to pay the crown a specified sum if an accused fails to surrender to custody;</i>
<i>register</i>	<i>the formal records kept by a magistrates’ court;</i>
<i>to remand</i>	<i>to send a person away when a case is adjourned until another date – the person may be remanded on bail (when he can leave, subject to conditions) or in custody;</i>
<i>reparation order</i>	<i>an order made against a child or young person who has been convicted of an offence, requiring him or her to make specific reparations to the victim or to the community at large;</i>
<i>representation order</i>	<i>an order authorising payment of legal aid for a defendant;</i>

<b>Expression</b>	<b>Meaning</b>
<i>requisition</i>	<i>a document issued under section 29 of the Criminal Justice Act 2003, requiring a person to appear before a magistrates' court to answer a written charge;</i>
<i>respondent</i>	<i>the other party (to the appellant) in a case which is the subject of an appeal;</i>
<i>restraint order</i>	<i>an order prohibiting a person from dealing with any realisable property held by him;</i>
<i>seal</i>	<i>a formal mark which the court puts on a document to indicate that the document has been issued by the court;</i>
<i>security</i>	<i>money deposited to ensure that the defendant attends court;</i>
<i>sending for trial</i>	<i>procedure whereby indictable offences are transferred to the Crown Court without the need for a committal hearing in the magistrates' court;</i>
<i>skeleton argument</i>	<i>a document prepared by a party or their legal representative, setting out the basis of the party's argument, including any arguments based on law – the court may require such documents to be served on the court and on the other party prior to a trial;</i>
<i>special measures</i>	<i>measures which can be put in place to provide protection and/or anonymity to a witness (e.g. a screen separating witness from the accused);</i>
<i>statutory declaration</i>	<i>a declaration made before a Commissioner for Oaths in a prescribed form;</i>
<i>to stay</i>	<i>to halt proceedings, apart from taking any steps allowed by the Rules or the terms of the stay - proceedings may be continued if a stay is lifted;</i>
<i>summons</i>	<i>a document signed by a magistrate after an information is laid before a him which sets out the basis of the accusation against the accused and the time and place when he must appear;</i>
<i>surety</i>	<i>a person who guarantees that a defendant will attend court;</i>
<i>suspended sentence</i>	<i>sentence which takes effect only if the offender commits another offence punishable with imprisonment within the specified period;</i>

<b>Expression</b>	<b>Meaning</b>
<i>supervision order</i>	<i>an order placing a person who has been given a suspended sentence under the supervision of a local officer;</i>
<i>tainted acquittal</i>	<i>an acquittal affected by interference with a witness or a juror;</i>
<i>taxing authority</i>	<i>a body which assesses costs;</i>
<i>territorial authority</i>	<i>the UK authority which has power to do certain things in connection with co-operation with other countries and international organisations in relation to the collection of or hearing of evidence etc;</i>
<i>transfer direction (mental health)</i>	<i>a direction that a person who is serving a sentence of imprisonment who is suffering from a mental disorder be transferred to a hospital and be detained there for treatment;</i>
<i>warrant of arrest</i>	<i>court order to arrest a person;</i>
<i>warrant of commitment</i>	<i>court order sending someone to prison;</i>
<i>warrant of detention</i>	<i>a court order authorising someone's detention;</i>
<i>wasted costs order</i>	<i>an order that a barrister or solicitor is not to be paid fees that they would normally be paid;</i>
<i>witness</i>	<i>a person who gives evidence, either by way of a written statement or orally in court;</i>
<i>witness summons</i>	<i>a document served on a witness requiring him or her to attend court to give evidence;</i>
<i>written charge</i>	<i>a document, issued by a public prosecutor under section 29 of the Criminal Justice Act 2003, which institutes criminal proceedings by charging a person with an offence;</i>
<i>youth court</i>	<i>magistrates' courts exercising jurisdiction over offences committed by, and other matters related to, children and young persons.</i>

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I allow these Rules, which shall come into force on 6th October 2014.

11th June 2014

*Chris Grayling*  
Lord Chancellor