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## SCHEDULES

### SCHEDULE 1

#### COMMITTAL PROCEEDINGS

#### PART I

#### MAGISTRATES' COURTS ACT 1980

##### *Introduction*

- 1 The <sup>M1</sup>Magistrates' Courts Act 1980 shall be amended as mentioned in this Part of this Schedule.

##### **Marginal Citations**

**M1** 1980 c. 43.

##### *Amendments*

- 2 (1) Section 4 (general nature of committal proceedings) shall be amended as follows.
- (2) The following subsection shall be substituted for subsection (3)—
- “(3) Subject to subsection (4) below, evidence tendered before examining justices shall be tendered in the presence of the accused.”
- (3) In subsection (4) for the word “given” (in each place) there shall be substituted “tendered”.
- 3 The following sections shall be inserted after section 5—

##### **“5A Evidence which is admissible.**

- (1) Evidence falling within subsection (2) below, and only that evidence, shall be admissible by a magistrates' court inquiring into an offence as examining justices.
- (2) Evidence falls within this subsection if it—
- is tendered by or on behalf of the prosecutor, and
  - falls within subsection (3) below.
- (3) The following evidence falls within this subsection—
- written statements complying with section 5B below;
  - the documents or other exhibits (if any) referred to in such statements;

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- (c) depositions complying with section 5C below;
  - (d) the documents or other exhibits (if any) referred to in such depositions;
  - (e) statements complying with section 5D below;
  - (f) documents falling within section 5E below.
- (4) In this section “document” means anything in which information of any description is recorded.

### **5B Written statements.**

- (1) For the purposes of section 5A above a written statement complies with this section if—
- (a) the conditions falling within subsection (2) below are met, and
  - (b) such of the conditions falling within subsection (3) below as apply are met.
- (2) The conditions falling within this subsection are that—
- (a) the statement purports to be signed by the person who made it;
  - (b) the statement contains a declaration by that person to the effect that it 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;
  - (c) before the statement is tendered in evidence a copy of the statement is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.
- (3) The conditions falling within this subsection are that—
- (a) if the statement is made by a person under 18 years old, it gives his age;
  - (b) if it is made by a person who cannot read it, it is read to him before he signs it and is accompanied by a declaration by the person who so read the statement to the effect that it was so read;
  - (c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c) above is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.
- (4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.
- (5) Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.
- (6) In this section “document” means anything in which information of any description is recorded.

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### **5C Depositions.**

- (1) For the purposes of section 5A above a deposition complies with this section if—
  - (a) a copy of it is sent to the prosecutor under section 97A(9) below,
  - (b) the condition falling within subsection (2) below is met, and
  - (c) the condition falling within subsection (3) below is met, in a case where it applies.
- (2) The condition falling within this subsection is that before the magistrates' court begins to inquire into the offence concerned as examining justices a copy of the deposition is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.
- (3) The condition falling within this subsection is that, if the deposition refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2) above is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.
- (4) So much of any deposition as is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any deposition as is not read aloud.
- (5) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this section shall be treated as if it had been produced as an exhibit and identified in court by the person whose evidence is taken as the deposition.
- (6) In this section “document” means anything in which information of any description is recorded.

### **5D Statements.**

- (1) For the purposes of section 5A above a statement complies with this section if the conditions falling within subsections (2) to (4) below are met.
- (2) The condition falling within this subsection is that, before the committal proceedings begin, the prosecutor notifies the magistrates' court and each of the other parties to the proceedings that he believes—
  - (a) that the statement might by virtue of section 23 or 24 of the <sup>M2</sup>Criminal Justice Act 1988 (statements in certain documents) be admissible as evidence if the case came to trial, and
  - (b) that the statement would not be admissible as evidence otherwise than by virtue of section 23 or 24 of that Act if the case came to trial.
- (3) The condition falling within this subsection is that—
  - (a) the prosecutor's belief is based on information available to him at the time he makes the notification,
  - (b) he has reasonable grounds for his belief, and
  - (c) he gives the reasons for his belief when he makes the notification.

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- (4) The condition falling within this subsection is that when the court or a party is notified as mentioned in subsection (2) above a copy of the statement is given, by or on behalf of the prosecutor, to the court or the party concerned.
- (5) So much of any statement as is in writing and is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

#### **5E Other documents.**

- (1) The following documents fall within this section—
  - (a) any document which by virtue of any enactment is evidence in proceedings before a magistrates' court inquiring into an offence as examining justices;
  - (b) any document which by virtue of any enactment is admissible, or may be used, or is to be admitted or received, in or as evidence in such proceedings;
  - (c) any document which by virtue of any enactment may be considered in such proceedings;
  - (d) any document whose production constitutes proof in such proceedings by virtue of any enactment;
  - (e) any document by the production of which evidence may be given in such proceedings by virtue of any enactment.
- (2) In subsection (1) above—
  - (a) references to evidence include references to prima facie evidence;
  - (b) references to any enactment include references to any provision of this Act.
- (3) So much of any document as is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) below or the court otherwise directs, be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any document as is not read aloud.
- (4) In this section “document” means anything in which information of any description is recorded.

#### **5F Proof by production of copy.**

- (1) Where a statement, deposition or document is admissible in evidence by virtue of section 5B, 5C, 5D or 5E above it may be proved by the production of—
  - (a) the statement, deposition or document, or
  - (b) a copy of it or the material part of it.
- (2) Subsection (1)(b) above applies whether or not the statement, deposition or document is still in existence.
- (3) It is immaterial for the purposes of this section how many removes there are between a copy and the original.

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- (4) In this section “copy”, in relation to a statement, deposition or document, means anything onto which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly.”

#### Marginal Citations

M2 1988 c. 33.

- 4 In section 6 (discharge or committal for trial) the following subsections shall be substituted for subsections (1) and (2)—

“(1) A magistrates’ court inquiring into an offence as examining justices shall on consideration of the evidence—

- (a) commit the accused for trial if it is of opinion that there is sufficient evidence to put him on trial by jury for any indictable offence;
- (b) discharge him if it is not of that opinion and he is in custody for no other cause than the offence under inquiry;

but the preceding provisions of this subsection have effect subject to the provisions of this and any other Act relating to the summary trial of indictable offences.

(2) If a magistrates’ court inquiring into an offence as examining justices is satisfied that all the evidence tendered by or on behalf of the prosecutor falls within section 5A(3) above, it may commit the accused for trial for the offence without consideration of the contents of any statements, depositions or other documents, and without consideration of any exhibits which are not documents, unless—

- (a) the accused or one of the accused has no legal representative acting for him in the case, or
- (b) a legal representative for the accused or one of the accused, as the case may be, has requested the court to consider a submission that there is insufficient evidence to put that accused on trial by jury for the offence;

and subsection (1) above shall not apply to a committal for trial under this subsection.”

- 5 (1) Section 25 (change from summary trial to committal proceedings) shall be amended as follows.

(2) In subsections (2) and (6) for the words “may adjourn the hearing without remanding the accused” there shall be substituted “ shall adjourn the hearing. ”

(3) The following subsection shall be inserted after subsection (7)—

“(8) If the court adjourns the hearing under subsection (2) or (6) above it may (if it thinks fit) do so without remanding the accused.”

- 6 Section 28 (using in summary trial evidence given in committal proceedings) shall be omitted.

- 7 In section 97 (summons to witness and warrant for his arrest) in subsection (1)—

- (a) the words “at an inquiry into an indictable offence by a magistrates’ court for that commission area or” shall be omitted;

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- (b) for the words “such a court” there shall be substituted “a magistrates’ court for that commission area”.

8 The following section shall be inserted after section 97—

**“97A Summons or warrant as to committal proceedings.**

- (1) Subsection (2) below applies where a justice of the peace for any commission area is satisfied that—
- (a) any person in England or Wales is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings before a magistrates’ court inquiring into an offence as examining justices,
  - (b) the person will not voluntarily make the statement or produce the document or other exhibit, and
  - (c) the magistrates’ court mentioned in paragraph (a) above is a court for the commission area concerned.
- (2) In such a case the justice shall issue a summons directed to that person requiring him to attend before a justice at the time and place appointed in the summons to have his evidence taken as a deposition or to produce the document or other exhibit.
- (3) If a justice of the peace is satisfied by evidence on oath of the matters mentioned in subsection (1) above, and also that it is probable that a summons under subsection (2) above would not procure the result required by it, the justice may instead of issuing a summons issue a warrant to arrest the person concerned and bring him before a justice at the time and place specified in the warrant.
- (4) A summons may also be issued under subsection (2) above if the justice is satisfied that the person concerned is outside the British Islands, but no warrant may be issued under subsection (3) above unless the justice is satisfied by evidence on oath that the person concerned is in England or Wales.
- (5) If—
- (a) a person fails to attend before a justice in answer to a summons under this section,
  - (b) the justice is satisfied by evidence on oath that he is likely to be able to make a statement or produce a document or other exhibit as mentioned in subsection (1)(a) above,
  - (c) it is proved on oath, or in such other manner as may be prescribed, that he has been duly served with the summons and that a reasonable sum has been paid or tendered to him for costs and expenses, and
  - (d) it appears to the justice that there is no just excuse for the failure,
- the justice may issue a warrant to arrest him and bring him before a justice at a time and place specified in the warrant.
- (6) Where—

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- (a) a summons is issued under subsection (2) above or a warrant is issued under subsection (3) or (5) above, and
    - (b) the summons or warrant is issued with a view to securing that a person has his evidence taken as a deposition,

the time appointed in the summons or specified in the warrant shall be such as to enable the evidence to be taken as a deposition before a magistrates' court begins to inquire into the offence concerned as examining justices.
  - (7) If any person attending or brought before a justice in pursuance of this section refuses without just excuse to have his evidence taken as a deposition, or to produce the document or other exhibit, the justice may do one or both of the following—
    - (a) commit him to custody until the expiration of such period not exceeding one month as may be specified in the summons or warrant or until he sooner has his evidence taken as a deposition or produces the document or other exhibit;
    - (b) impose on him a fine not exceeding £2,500.
  - (8) A fine imposed under subsection (7) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
  - (9) If in pursuance of this section a person has his evidence taken as a deposition, the clerk of the justice concerned shall as soon as is reasonably practicable send a copy of the deposition to the prosecutor.
  - (10) If in pursuance of this section a person produces an exhibit which is a document, the clerk of the justice concerned shall as soon as is reasonably practicable send a copy of the document to the prosecutor.
  - (11) If in pursuance of this section a person produces an exhibit which is not a document, the clerk of the justice concerned shall as soon as is reasonably practicable inform the prosecutor of the fact and of the nature of the exhibit.”
- 9 Section 102 (written statements before examining justices) shall be omitted.
- 10 (1) Section 103 (evidence of children in certain committal proceedings) shall be amended as follows.
- (2) The following subsection shall be substituted for subsection (1)—
- “(1) In any proceedings before a magistrates' court inquiring as examining justices into an offence to which this section applies, a statement made in writing by or taken in writing from a child shall be admissible in evidence of any matter.”
- (3) Subsections (3) and (4) (exclusion of subsection (1) and of section 28) shall be omitted.
- 11 Section 105 (deposition of person dangerously ill may be given in evidence before examining justices) shall be omitted.
- 12 In section 106 (false written statements tendered in evidence) in subsection (1) for “tendered” there shall be substituted “ admitted ” and for “section 102” there shall be substituted “ section 5B ”.
- 13 In Schedule 3 the following shall be substituted for paragraph 2(a) (representative may make statement on behalf of corporation before examining justices)—

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“(a) make before examining justices such representations as could be made by an accused who is not a corporation;”.



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