

## SCHEDULE 1

### RSC ORDER 79

#### CRIMINAL PROCEEDINGS

##### **Estreat of recognizances**

**Rule 8.**—(1) No recognizance acknowledged in or removed into the Queen’s Bench Division shall be estreated without the order of a judge.

(2) Every application to estreat a recognizance in the Queen’s Bench Division must be made by claim form and will be heard by a judge sitting in private and must be supported by a witness statement or affidavit showing in what manner the breach has been committed and proving that the claim form was duly served.

(2A) When it issues the claim form the court will fix a date for the hearing of the application.

(3) A claim form under this rule must be served at least 2 clear days before the day named therein for the hearing.

(4) On the hearing of the application the judge may, and if requested by any party shall, direct any issue of fact in dispute to be tried by a jury.

(5) If it appears to the judge that a default has been made in performing the conditions of the recognizance, the judge may order the recognizance to be estreated.

##### **Bail**

**Rule 9.**—(1) Subject to the provisions of this rule, every application to the High Court in respect of bail in any criminal proceeding—

(a) where the defendant is in custody, must be made by claim form to a judge sitting in private to show cause why the defendant should not be granted bail;

(b) where the defendant has been admitted to bail, must be made by claim form to a judge sitting in private to show cause why the variation in the arrangements for bail proposed by the applicant should not be made.

(2) Subject to paragraph (5), the claim form (in Form No. 97 or 97A in the relevant practice direction) must, at least 24 hours before the day named therein for the hearing, be served—

(a) where the application was made by the defendant, on the prosecutor and on the Director of Public Prosecutions, if the prosecution is being carried on by him;

(b) where the application was made by the prosecutor or a constable under section 3 (8) of the Bail Act 1976(1), on the defendant.

(3) Subject to paragraph (5), every application must be supported by witness statement or affidavit.

(4) Where a defendant in custody who desires to apply for bail is unable through lack of means to instruct a solicitor, he may give notice in writing to the judge sitting in private stating his desire to apply for bail and requesting that the official solicitor shall act for him in the application, and the judge may, if he thinks fit, assign the official solicitor to act for the applicant accordingly.

(5) Where the official solicitor has been so assigned the judge may, if he thinks fit, dispense with the requirements of paragraphs (1) to (3) and deal with the application in a summary manner.

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(1) 1976 c. 63; section 3(8) was amended by the Criminal Law Act 1977 (c. 45), section 65(4), schedule 12.

*Status: This is the original version (as it was originally made).*

(6) Where the judge sitting in private by whom an application for bail in criminal proceedings is heard grants the defendant bail, the order must be in Form No. 98 in the relevant Practice Direction and a copy of the order shall be transmitted forthwith—

- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the clerk of the court which committed the defendant.

(6A) The recognizance of any surety required as a condition of bail granted as aforesaid may, where the defendant is in a prison or other place of detention, be entered into before the governor or keeper of the prison or place as well as before the persons specified in section 8 (4) of the Bail Act 1976.

(6B) Where under section 3 (5) or (6) of the Bail Act 1976(2) a judge sitting in private imposes a requirement to be complied with before a person's release on bail, the judge may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.

(7) A person who in pursuance of an order for the grant of bail made by a judge under this rule proposes to enter into a recognizance or give security must, unless the judge otherwise directs, give notice (in Form No. 100 in the relevant Practice Direction) to the prosecutor at least 24 hours before he enters into the recognizance or complies with the requirements as aforesaid.

(8) Where in pursuance of such an order as aforesaid a recognizance is entered into or requirement complied with before any person, it shall be the duty of that person to cause the recognizance or, as the case may be, a statement of the requirement complied with to be transmitted forthwith—

- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the clerk of the court which committed the defendant

and a copy of such recognizance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the defendant is detained, unless the recognizance was entered into or the requirement complied with before such governor or keeper.

(10) An order by the judge sitting in private varying the arrangements under which the defendant has been granted bail shall be in Form 98A in the relevant practice direction and a copy of the order shall be transmitted forthwith—

- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the clerk of the court which committed the defendant.

(11) Where in pursuance of an order of a judge sitting in private or of a Crown Court a person is released on bail in any criminal proceeding pending the determination of an appeal to the High Court or House of Lords or an application for an order of certiorari, then, upon the abandonment of the appeal or application, or upon the decision of the High Court or House of Lords being given, any justice (being a justice acting for the same petty sessions area as the magistrates' court by which that person was convicted or sentenced) may issue process for enforcing the decision in respect of which such appeal or application was brought or, as the case may be, the decision of the High Court or House of Lords.

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(2) 1976 c. 63; section 3(6) was amended by the Criminal Justice and Public Order Act 1994 (c. 33), sections 27(2), 168(3), schedule 11.

(12) If an applicant to the High Court in any criminal proceedings is refused bail by a judge sitting in private, the applicant shall not be entitled to make a fresh application for bail to any other judge or to a Divisional Court.

(13) The record required by section 5 of the Bail Act 1976(3) to be made by the High Court shall be made by including in the file relating to the case in question a copy of the relevant order of the Court and shall contain the particulars set out in Form No. 98 or 98A in the relevant Practice Direction, whichever is appropriate, except that in the case of a decision to withhold bail the record shall be made by inserting a statement of the decision on the Court's copy of the relevant claim form and including it in the file relating to the case in question.

(14) In the case of a person whose return or surrender is sought under the Extradition Act 1989(4), this rule shall apply as if references to the defendant were references to that person and references to the prosecutor were references to the State seeking the return or surrender of that person.

#### **Issue of witness summonses, etc.**

**Rule 10.**—(1) A witness summons under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(5) may be issued out of the Crown Office or a district registry.

A witness summons under the said section 2 must be in Form No. 101 or 103 in the relevant Practice Direction, whichever is appropriate.

(2) An application under section 2 (2) of the said Act for a direction that a witness summons shall be of no effect shall be brought by claim form, and the application shall be heard and determined in private.

#### **Application for warrant to arrest witness**

**Rule 11.**—(1) An application to a judge of the High Court under section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(6) for the issue of a warrant to arrest a witness and bring him before the court before which he is required to attend must be made by claim form supported by witness statement or affidavit, and the application may be heard and determined either in public or private.

(2) A claim form by which such an application is made need not be served on the person sought to be arrested unless the judge otherwise directs.

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(3) 1976 c. 63; section 5 was amended by the Criminal Justice Act 1982 (c. 48), section 60; and by the Criminal Law Act 1977 (c. 45), section 65(4), schedule 12; and by the Criminal Justice and Public Order Act 1994 (c. 33), section 27(4), schedule 3, paragraph 1.

(4) 1989 c. 33.

(5) 1965 c. 69; section 2 was amended by the Courts Act 1971 (c. 23), section 56(1), schedule 8, paragraph 45(2).

(6) 1965 c. 69; Section 4 was amended by the Courts Act 1971 (c. 23), section 56(1), schedule 8, Part II, paragraph 45(4); and by the Criminal Procedure and Investigations Act 1996 (c. 25), sections 65, 80, schedule 5.