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STATUTORY INSTRUMENTS

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**2010 No. 60 (L. 2)**

**SENIOR COURTS OF ENGLAND AND WALES  
MAGISTRATES' COURTS,  
ENGLAND AND WALES**

**The Criminal Procedure Rules 2010**

*Made* - - - - *11th January 2010*  
*Laid before Parliament* *29th January 2010*  
*Coming into force* - - *5th April 2010*

The Criminal Procedure Rule Committee—

- (a) revokes the Criminal Procedure Rules 2005(1) and makes the following Rules under section 69 of the Courts Act 2003(2), after consulting in accordance with section 72(1) (a) of that Act; and
- (b) in making the Rules listed in the first column of this table, exercises also the powers listed in the corresponding entry in the second column—

<i>Rule</i>	<i>Power</i>
5.7	Section 145(1)(c) of the Magistrates' Courts Act 1980(3)
Part 6, sections 1, 2 and 3	Paragraph 10 of Schedule 5, paragraph 4 of Schedule 6, and paragraph 5 of Schedule 6A to the Terrorism Act 2000(4)
Part 6, sections 1, 2 and 4	Sections 351(2), 362(2), 369(2) and 375(1) of the Proceeds of Crime Act 2002(5)
6.26	Section 74(3) of the Senior Courts Act 1981(6)

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- (1) [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](#).
- (2) [2003 c. 39](#); section 69 was amended by sections 15(1) and 146 of, and paragraphs 308 and 332 of Schedule 4 and Part 2 of Schedule 18 to, the Constitutional Reform Act [2005 \(c. 4\)](#).
- (3) [1980 c. 43](#).
- (4) [2000 c. 11](#); 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. Paragraph 4 of Schedule 6 was amended by section 109(1) of, and paragraph 390 of Schedule 8 to, the Courts Act [2003 \(c. 39\)](#). 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 \(c. 24\)](#).
- (5) [2002 c. 29](#).
- (6) [1981 c. 54](#); section 74(3) was amended by article 3 of, and paragraphs 11 and 12(c) of the Schedule to, [S.I. 2004/2035](#). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act [2005 \(c. 4\)](#).

*Status:* This is the original version (as it was originally made).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

<i>Rule</i>	<i>Power</i>
10.4	Paragraph 4 of Schedule 2 to the Criminal Procedure and Investigations Act 1996 <sup>(7)</sup>
33.4	Section 81 of the Police and Criminal Evidence Act 1984 <sup>(8)</sup> and section 20(3) of the Criminal Procedure and Investigations Act 1996 <sup>(9)</sup>
34.3	Section 132(4) of the Criminal Justice Act 2003 <sup>(10)</sup>
57.7, 61.6, 61.8 and 61.9	Section 91 of the Proceeds of Crime Act 2002 <sup>(11)</sup>
63.10	Sections 73(2) and 74(2), (3) and (4) of the Senior Courts Act 1981 <sup>(12)</sup>
76.6	Section 52 of the Senior Courts Act 1981 <sup>(13)</sup>

These rules may be cited as the Criminal Procedure Rules 2010 and shall come into force on 5th April 2010.

## PART 1

### THE OVERRIDING OBJECTIVE

#### Contents of this Part

The overriding objective	rule 1.1
The duty of the participants in a criminal case	rule 1.2
The application by the court of the overriding objective	rule 1.3

#### 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;

- (7) 1996 c. 25; paragraph 4 of Schedule 2 was amended by section 109(1) of, and paragraph 380 of Schedule 8 to, the Courts Act 2003 (c. 39). Schedule 2 is repealed by paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (8) 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).
- (9) 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).
- (10) 2003 c. 44.
- (11) 2002 c. 29; section 91 was amended by section 109(1) of, and paragraph 410 of Schedule 8 to, the Courts Act 2003 (c. 39).
- (12) 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(2) and (3) was amended by article 3 of, and paragraphs 11 and 12(c) of the Schedule to, S.I. 2004/2035.
- (13) 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).

- (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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#### **Contents of this Part**

When the Rules apply	rule 2.1
Definitions	rule 2.2
References to Acts of Parliament and to Statutory Instruments	rule 2.3
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## When the Rules apply

- 2.1.—**(1) In general, the Criminal Procedure Rules apply—
- (a) in all criminal cases in magistrates' courts and in the Crown Court; and
  - (b) in all cases in the criminal division of the Court of Appeal.
- (2) If a rule applies only in one or two of those courts, the rule makes that clear.
- (3) The Rules apply on and after 5th April, 2010, but unless the court otherwise directs they do not affect—
- (a) a right or duty existing under The Criminal Procedure Rules 2005; or
  - (b) the application of Part 29, Part 34 or Part 35 of The Criminal Procedure Rules 2005 in a case in which an application or notice under the Part concerned has been served before that date.

*[Note. The rules replaced by the first Criminal Procedure Rules (The Criminal Procedure Rules 2005) were revoked when those Rules came into force by provisions of the Courts Act 2003, The Courts Act 2003 (Consequential Amendments) Order 2004(14) and The Courts Act 2003 (Commencement No. 6 and Savings) Order 2004(15). The first Criminal Procedure Rules reproduced the substance of all the rules they replaced.]*

## 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 Consolidated Criminal Practice Direction, as amended; and
  - '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(16).
- (2) Definitions of some other expressions are in the rules in which they apply.

## 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(17) that Act is called 'the 1996 Act'; and after a reference to The Criminal Procedure and Investigations Act

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(14) S.I. 2004/2035.

(15) S.I. 2004/2066.

(16) 1996 c. 25; section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

(17) 1996 c. 25.

1996 (Defence Disclosure Time Limits) Regulations 1997(18) those Regulations are called ‘the 1997 Regulations’.

## The glossary

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

## Representatives

**2.5.**—(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 party is a corporation;
- (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) Anyone with a prosecutor’s authority to do so may, on that 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(19); or
- (b) issue a written charge and requisition under section 29 of the Criminal Justice Act 2003(20).

*[Note. See also section 122 of the Magistrates’ Courts Act 1980(21). A party’s legal representative must be entitled to act as such under section 27 or 28 of the Courts and Legal Services Act 1990(22).]*

*Section 33(6) of the Criminal Justice Act 1925(23), section 46 of the Magistrates’ Courts Act 1980(24) and Schedule 3 to that Act(25) provide for the representation of a corporation.*

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

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(18) S.I. 1997/684.

(19) 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) and sections 31, 331 and 332 of, and Schedule 7 and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 331 of, and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act (c. 44), with effect from a date to be appointed.

(20) 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).

(21) 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).

(22) 1990 c. 41; section 27 was amended by sections 42, 43 and 106 of, and paragraphs 4 and 6 of Schedule 6 and Part II of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and article 9 of, and paragraph 8(1) of Schedule 2 to, S.I. 2003/1887; section 28 was amended by sections 40, 42, 43 and 106 of, and paragraphs 4 and 7 of Schedule 6 and Part II of Schedule 15 to, the Access to Justice Act 1999 (c. 22). Sections 27 and 28 are repealed by sections 208 and 210 of, and paragraphs 83 and 84 of Schedule 21 and Schedule 23 to, the Legal Services Act 2007 (c. 29), with effect from a date to be appointed.

(23) 1925 c. 86.

(24) 1980 c. 43.

(25) 1980 c. 43; Schedule 3 was amended, in relation to proceedings begun on or after 1 April 1997, by section 47 of, and paragraph 13 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and, generally, by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53). It is amended by section 41 of, and paragraph 51 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

## PART 3

### CASE MANAGEMENT

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#### Contents of this Part

The scope of this Part	rule 3.1
The duty of the court	rule 3.2
The duty of the parties	rule 3.3
Case progression officers and their duties	rule 3.4
The court's case management powers	rule 3.5
Application to vary a direction	rule 3.6
Agreement to vary a time limit fixed by a direction	rule 3.7
Case preparation and progression	rule 3.8
Readiness for trial or appeal	rule 3.9
Conduct of a trial or an appeal	rule 3.10
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#### The scope of this Part

**3.1.** This Part applies 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.

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

#### 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 an individual responsible for progressing that case; and
  - (b) tell other parties and the court who he is and how to contact him.
- (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
  - (b) make sure the parties know who he is and how to contact him.
- (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 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 will be unavailable, appoint a substitute to fulfil his 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 without a hearing;
  - (f) fix, postpone, bring forward, extend or cancel 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 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 3.10.

*The court may make a costs order under—*

- (a) *section 19 of the Prosecution of Offences Act 1985(26), 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(27), 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;*
- (c) *section 19B of that Act(28), 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(29) and section 20(3) of the Criminal Procedure and Investigations Act 1996(30) (advance disclosure of expert evidence);*
- (b) *section 11(5) of the Criminal Procedure and Investigations Act 1996(31) (faults in disclosure by accused);*
- (c) *section 132(5) of the Criminal Justice Act 2003(32) (failure to give notice of hearsay evidence).]*

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(26) 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) and section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52). It is further amended by sections 6 and 148 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), with effect from a date to be appointed.

(27) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(28) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

(29) 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).

(30) 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).

(31) 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).

(32) 2003 c. 44.



### **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 his absence; or
  - (c) circumstances have changed.
- (2) A party who applies to vary a direction must—
- (a) apply as soon as practicable after he becomes aware of the grounds for doing so; and
  - (b) give as much notice to the other parties as the nature and urgency of his 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 he doubts the condition in paragraph (1)(a) is satisfied.

### **Case preparation and progression**

- 3.8.**—(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 a trial in the Crown Court, the court must conduct a plea and case management hearing unless the circumstances make that unnecessary.
- (4) In order to prepare for the trial, the court must take every reasonable step to encourage and to facilitate the attendance of witnesses when they are needed.

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

- 3.9.**—(1) This rule applies to a party’s preparation for trial or appeal, and in this rule and rule 3.10 trial includes any hearing at which evidence will be introduced.
- (2) In fulfilling his duty under rule 3.3, each party must—
- (a) comply with directions given by the court;

- (b) take every reasonable step to make sure his 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.
- (3) The court may require a party to give a certificate of readiness.

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

#### **3.10.** In order to manage a trial or an appeal—

- (a) the court must establish, with the active assistance of the parties, what disputed issues they intend to explore; and
- (b) the court may require a party to identify—
  - (i) which witnesses that party wants to give oral evidence,
  - (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,
  - (viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal, and
  - (ix) what timetable that party proposes and expects to follow.

*[Note. See also rule 3.5.]*

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

**3.11.**—(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.

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

#### **Criminal Procedure Rules**

*Parts 10.4 and 27.4: reminders of right to object to written evidence being read at trial*

*Part 12.2: time for first appearance of accused sent for trial*

*Part 13: dismissal of charges transferred or sent to the Crown Court*

*Part 14: the indictment*

*Part 15: preparatory hearings in serious fraud and other complex, serious or lengthy cases in the Crown Court*

*Part 21: initial details of the prosecution case*

*Part 22: disclosure*

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

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

*Part 39: trial on indictment*

### **Regulations**

*The Prosecution of Offences (Custody Time Limits) Regulations 1987***(33)**

*The Criminal Justice Act 1987 (Notice of Transfer) Regulations 1988***(34)**

*The Criminal Justice Act 1991 (Notice of Transfer) Regulations 1992***(35)**

*The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997***(36)**

*The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005***(37)**

### **Provisions of Acts of Parliament**

*Sections 5, 10 and 18, Magistrates' Courts Act 1980***(38)**: powers to adjourn hearings

*Sections 128 and 129, Magistrates' Courts Act 1980***(39)**: remand in custody by magistrates' courts

*Part 1, Criminal Procedure and Investigations Act 1996***(40)**: disclosure

*Schedule 2, Criminal Procedure and Investigations Act 1996***(41)**: use of witness statements at trial

*Section 2, Administration of Justice (Miscellaneous Provisions) Act 1933***(42)**: procedural conditions for trial in the Crown Court

*Section 6, Magistrates' Courts Act 1980***(43)**: committal for trial

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**(33)** S.I. 1987/299.

**(34)** S.I. 1988/1691.

**(35)** S.I. 1992/1670, amended by S.I. 1998/461.

**(36)** S.I. 1997/684.

**(37)** S.I. 2005/902.

**(38)** 1980 c. 43; section 5 was amended by section 59 of, and paragraph 1(a) of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. 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) and section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and is further amended by paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

**(39)** 1980 c. 43; section 128 was amended by section 59 of, 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) and paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 129 is amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

**(40)** 1996 c. 25.

**(41)** 1996 c. 25; Schedule 2 was amended by section 109(1) of, and paragraph 380 of Schedule 8 to, the Courts Act 2003 (c. 39) and is repealed by paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

**(42)** 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Supreme Court 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) and paragraph 1 of the Schedule to, S.I. 2004/2035.

**(43)** 1980 c. 43; section 6 was amended by section 170(1) of, and paragraphs 65 and 66 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6(1)(a) of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), paragraph 4 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraphs 95 and 96 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 202 of Schedule 8 to, the Courts Act 2003 (c. 39),

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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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*Section 4, Criminal Justice Act 1987(44); section 53, Criminal Justice Act 1991(45); section 51 and (so far as it is in force) section 51A, Crime and Disorder Act 1998(46): other procedures by which a case reaches the Crown Court*

*Section 7, Criminal Justice Act 1987(47); 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(48): proof by written witness statement.]*

## PART 4

### SERVICE OF DOCUMENTS

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#### Contents of this Part

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Documents that must be served only by handing them over, leaving or posting them	rule 4.7
Service by person in custody	rule 4.8
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and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

- (44) 1987 c. 38; section 4 was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 65 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37) and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22). It is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (45) 1991 c. 53; section 53 was amended by paragraph 49 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 93 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 47 of Schedule 4 to, the Access to Justice Act 1999 (c. 22). It is repealed by section 332 of, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (46) 1998 c. 37; section 51 is substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed and that amendment is in force for certain purposes; S.I. 2005/950. It was amended by 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) for certain purposes, and will be inserted for remaining purposes with effect from a date to be appointed. It was amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38).
- (47) 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) and section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25). It has been further amended by sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), for certain purposes, with effect from 24 July 2006, and for remaining purposes from a date to be appointed.
- (48) 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 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and regulation 9 of, and paragraph 4 of Schedule 5 to S.I. 2001/1090. It is amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 65, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39) and sections 41 and 332 of, and paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

Date of service	rule 4.10
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### When this Part applies

**4.1.** The rules in this Part apply to the service of every document in a case to which these Rules apply, subject to any special rules in other legislation (including other Parts of these Rules) or in the Practice Direction.

### Methods of service

**4.2.** 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.

### 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 17 or under, 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.

*[Note. Certain 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(49).]*

### Service by leaving or posting a document

**4.4.—**(1) A document may be served by 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

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(49) 2002 c. 38.

- (f) the Registrar of Criminal Appeals is the Criminal Appeal 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(50) (service of summons, etc. in Scotland and Northern Ireland);*
- (b) *section 1139(4) of the Companies Act 2006(51) (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(52) (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 through a document exchange**

**4.5.** A document may be served by document exchange (DX) where—

- (a) the writing paper of the person to be served gives a DX box number; and
- (b) that person has not refused to accept service by DX.

#### **Service by fax, e-mail or other electronic means**

**4.6.—**(1) A document may be served by fax, e-mail or other electronic means where—

- (a) the person to be served has given a fax, e-mail or other electronic address; and
- (b) that person has not refused to accept service by that means.

(2) 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 only by handing them over, leaving or posting them**

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

- (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(53);
- (c) a notice of registration under section 71(6) of that Act(54);

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(50) 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).

(51) 2006 (c. 46).

(52) 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).

(53) 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).

(54) 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).

- (d) a notice of discontinuance under section 23(4) of the Prosecution of Offences Act 1985<sup>(55)</sup>;
  - (e) notice under rule 37.3(1) of the date, time and place to which the trial of an information has been adjourned, where it was adjourned in the defendant's absence;
  - (f) a notice of fine or forfeited recognizance required by rule 52.1(1);
  - (g) notice under section 86 of the Magistrates' Courts Act 1980<sup>(56)</sup> of a revised date to attend a means inquiry;
  - (h) notice of a hearing to review the postponement of the issue of a warrant of commitment under section 77(6) of the Magistrates' Courts Act 1980<sup>(57)</sup>;
  - (i) a copy of the minute of a magistrates' court order required by rule 52.7(1);
  - (j) an invitation to make observations or attend a hearing under rule 53.1(2) on the review of a compensation order under section 133 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(58)</sup>;
  - (k) any notice or document served under Part 19.
- (3) An application under rule 62.3 for the court to punish for 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).

### **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.

### **Service by another method**

**4.9.**—(1) The court may allow service of a document by a method other than those described in rules 4.3 to 4.6 and in rule 4.8.

- (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—

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<sup>(55)</sup> 1985 c. 23.

<sup>(56)</sup> 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48).

<sup>(57)</sup> 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).

<sup>(58)</sup> 2000 c. 6. Section 133 was amended by section 456 of, and paragraphs 1 and 37 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

- (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 the addressee's DX or at a correspondent DX;
- (d) in the case of a document transmitted by fax, e-mail or other 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 court computer system 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 fax, e-mail or other 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 shall be used as appropriate in connection with the rules to which they apply.

### Magistrates' courts forms in Welsh

**5.2.—(1)** Subject to the provisions of this rule, the Welsh language forms set out in the Practice Direction or forms to the like effect may be used in connection with proceedings in magistrates' courts in Wales.

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

(3) When only a Welsh form set out in the Practice Direction accompanying this rule, or only the corresponding English form, is used in connection with proceedings in magistrates' courts in Wales, there shall be added the following words in Welsh and English:

“Darperir y ddogfen hon yn Gymraeg / Saesneg os bydd arnoch ei heisiau. Dylech wneud cais yn ddi-oed i (Glerc Llys yr Ynadon) (rhodder yma'r cyfeiriad) ... ..

This document will be provided in Welsh / English if you require it. You should apply immediately to (the Justices' Clerk to the Magistrates' Court) (address) ... ..

(If a person other than a justices' clerk is responsible for sending or giving the document, insert that person's name instead.)

(4) The justices' clerk or other person responsible for the service of a form bearing the additional words set out in paragraph (3) above shall, if any person upon whom the form is served so requests, provide him with the corresponding English or Welsh form.

(5) In this rule any reference to serving a document shall include the sending, giving or other delivery of it.

(6) In the case of a discrepancy between an English and Welsh text the English text shall prevail.

### Signature of magistrates' courts forms by justices' clerk

**5.3.—(1)** Subject to paragraph (2) below, where any form prescribed by these Rules contains provision for signature by a justice of the peace only, the form shall have effect as if it contained provision in the alternative for signature by the justices' clerk.

(2) This rule shall not apply to any form of information, complaint, statutory declaration or warrant, other than a warrant of commitment or of distress.

(3) In this rule where a signature is required on a form or warrant other than an arrest, remand or commitment warrant, an electronic signature incorporated into the document will satisfy this requirement.

## SECTION 2: COURT RECORDS

### Magistrates' court register

- 5.4.—**(1) A magistrates' court officer shall keep a register in which there shall be entered—
- (a) a minute or memorandum of every adjudication of the court; and
  - (b) a minute or memorandum of every other proceeding or thing required by these Rules or any other enactment to be so entered.
- (2) The register may be stored in electronic form on the court computer system and entries in the register shall include, where relevant, the following particulars—
- (a) the name of the informant, complainant or applicant;
  - (b) the name and date of birth (if known) of the defendant or respondent;
  - (c) the nature of offence, matter of complaint or details of the application;
  - (d) the date of offence or matter of complaint;
  - (e) the plea or consent to order; and
  - (f) the minute of adjudication.
- (3) Particulars of any entry relating to a decision about bail, or the reasons for any such decision, or the particulars of any certificate granted under section 5(6A) of the Bail Act 1976<sup>(59)</sup>, may be made in a record separate from that in which the entry recording the decision itself is made; but any such separate record shall be regarded as forming part of the register.
- (4) Where, by virtue of section 128(3A) of the Magistrates' Courts Act 1980<sup>(60)</sup>, an accused gives his consent to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) or 18(4)<sup>(61)</sup> of that Act, the court shall cause the consent of the accused, and the date on which it was notified to the court, to be entered in the register.
- (5) Where any consent mentioned in paragraph (4) is withdrawn, the court shall cause the withdrawal of the consent and the date on which it was notified to the court to be entered in the register.
- (6) On the summary trial of an information, the accused's plea shall be entered in the register.
- (7) Where a court tries any person summarily in any case in which he may be tried summarily only with his consent, the court shall cause his consent to be entered in the register and, if the consent is signified by a person representing him in his absence, the court shall cause that fact also to be entered in the register.
- (8) Where a person is charged before a magistrates' court with an offence triable either way, the court shall cause the entry in the register to show whether he was present when the proceedings for determining the mode of trial were conducted; and, if they were conducted in his absence, whether

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<sup>(59)</sup> 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, in relation to certain cases, by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). It is further amended by sections 41 and 331 of, and 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), with effect from a date to be appointed.

<sup>(60)</sup> 1980 c. 43; section 128(3A) was inserted by section 59 of, and paragraph 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and amended by section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 and sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25); and is further amended by sections 41 and 332 of, and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

<sup>(61)</sup> 1980 c. 43; section 5 was amended by section 59 of, and paragraph 1(a) of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 18(4) was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48).

they were so conducted by virtue of section 18(3) of the 1980 Act (disorderly conduct on his part) or by virtue of section 23(1) of that Act<sup>(62)</sup> (consent signified by person representing him).

(9) In any case to which section 22 of the 1980 Act<sup>(63)</sup> (certain offences triable either way to be tried summarily if value involved is small) applies, the court shall cause its decision as to the value involved or, as the case may be, the fact that it is unable to reach such a decision to be entered in the register.

(10) Where a court has power under section 53(3) of the 1980 Act to make an order with the consent of the defendant without hearing evidence, the court shall cause any consent of the defendant to the making of the order to be entered in the register.

(11) In the case of conviction or dismissal, the register shall clearly show the nature of the offence of which the accused is convicted or, as the case may be, the nature of the offence charged in the information that is dismissed.

(12) An entry of a conviction in the register shall state the date of the offence.

(13) Where a court is required under section 130(3) of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(64)</sup> to give reasons for not making a compensation order the court shall cause the reasons given to be entered in the register.

(14) Where a court passes a custodial sentence, the court shall cause a statement of whether it obtained and considered a pre-sentence report before passing sentence to be entered in the register.

(15) Every register shall be open to inspection during reasonable hours by any justice of the peace, or any person authorised in that behalf by a justice of the peace or the Lord Chancellor.

(16) A record of summary conviction or order made on complaint required for an appeal or other legal purpose may be in the form of certified extract from the court register.

(17) Such part of the register as relates to proceedings in a youth court may be recorded separately and stored in electronic form on the court computer system.

## **Registration of endorsement of licence under section 57 of the Road Traffic Offenders Act 1988**

**5.5.** A magistrates' court officer or justices' clerk who, as a fixed penalty clerk within the meaning of section 69(4) of the Road Traffic Offenders Act 1988<sup>(65)</sup>, endorses a driving licence under section 57(3) or (4) of that Act<sup>(66)</sup> (endorsement of licences without hearing) shall register the particulars of the endorsement in a record separate from the register kept under rule 5.4; but any such record shall be regarded as forming part of the register.

## **Registration of certificate issued under section 70 of the Road Traffic Offenders Act 1988**

**5.6.** A magistrates' court officer shall register receipt of a registration certificate issued under section 70 of the Road Traffic Offenders Act 1988<sup>(67)</sup> (sum payable in default of fixed penalty to

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<sup>(62)</sup> 1980 c. 43; section 23(1) was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 2000 (c. 41).

<sup>(63)</sup> 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).

<sup>(64)</sup> 2000 c. 6.

<sup>(65)</sup> 1988 c. 53; section 69(4) was amended by section 48 of, and paragraph 105 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), section 109 of, and paragraph 315 of Schedule 8 to, the Courts Act 2003 (c. 39), and section 9 of, and paragraphs 2 and 20 of Schedule 2 to, the Road Safety Act 2006 (c. 49).

<sup>(66)</sup> 1988 c. 53; section 57(3) and (4) was amended by regulations 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).

<sup>(67)</sup> 1988 c. 53; 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).

be enforced as a fine) in a record separate from the register kept under rule 5.4; but any such record shall be regarded as forming part of the register.

### **Proof of proceedings in magistrates' courts**

**5.7.** The register of a magistrates' court, or an extract from the register certified by the magistrates' court officer as a true extract, shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register.

*[Note. For the requirement to keep a register, see rule 5.4.]*

## **PART 6**

### **INVESTIGATION ORDERS**

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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<sup>(68)</sup>,
    - (ii) an explanation order, under paragraphs 10 and 13 of Schedule 5 to the 2000 Act<sup>(69)</sup>,
    - (iii) a customer information order, under paragraphs 1 and 4 of Schedule 6 to the 2000 Act<sup>(70)</sup>;
  - (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<sup>(71)</sup>.
- (2) Sections 2 and 4 of this Part apply where, for the purposes of a confiscation investigation or a money laundering investigation, a Crown Court judge can make, and the Crown Court can vary or discharge—

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<sup>(68)</sup> 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.

<sup>(69)</sup> 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.

<sup>(70)</sup> 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).

<sup>(71)</sup> 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).

- (a) a production order, under sections 345 and 351 of the Proceeds of Crime Act 2002<sup>(72)</sup>;
  - (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<sup>(73)</sup>;
  - (d) a customer information order, under sections 363 and 369 of the 2002 Act<sup>(74)</sup>;
  - (e) an account monitoring order, under sections 370 and 375 of the 2002 Act<sup>(75)</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>(76)</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.

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

- (a) *under the Terrorism Act 2000—*
  - (i) *an order requiring a person to produce, give access to, or state the location of material sought in a terrorist investigation,*
  - (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) *under the Proceeds of Crime Act 2002—*
  - (i) *a production order, requiring a person to produce or give access to material sought in a confiscation or money laundering investigation,*
  - (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.*

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<sup>(72)</sup> 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).

<sup>(73)</sup> 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).

<sup>(74)</sup> 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).

<sup>(75)</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>(76)</sup> 2009 c. 25.

- (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.*

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

*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(77), a High Court judge, a Circuit judge, a Recorder and a District Judge (Magistrates' Courts) each may act as a Crown Court judge.*

*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.]*

## **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;
- (b) 'applicant' means any person who can apply for an order to which this Part applies; and
- (c) 'respondent' means a person against whom such an order is sought or made.

## *SECTION 2: GENERAL RULES*

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

#### **6.3.—(1) The court must determine an application for an order—**

- (a) at a hearing (which will be in private unless the court otherwise directs); and
- (b) in the applicant's presence.

(2) The court must not determine such an application in the absence of the respondent or any 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, or
  - (iii) it would prejudice the investigation to adjourn or postpone the application so as to allow the absentee to attend.

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(77) 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). 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).

- (3) The court may determine an application to vary or discharge an order—
  - (a) at a hearing (which will be in private unless the court otherwise directs), or without a hearing; and
  - (b) in the absence of—
    - (i) the applicant,
    - (ii) the respondent,
    - (iii) any other person affected by the order.

#### **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.

#### **Custody of documents**

- 6.5. 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.

### **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. Under rules 6.3 and 6.4, the court may—*

- (a) exercise its powers in a respondent's absence; and*
- (b) dispense with a requirement for service.*



*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 will receive, 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(78).*

*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.]*

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(78) 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).

#### 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 the subject of the confiscation or money laundering 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. Under rules 6.3 and 6.4, the court may—*

- (a) exercise its powers in a respondent's absence; and*
- (b) dispense with a requirement for service.*

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

*See also the code of practice for those exercising functions as officers and investigators issued under section 377 of the 2002 Act(79), and the code of practice for prosecutors and others issued under section 377A of that Act(80).]*

##### **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;

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(79) 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).

(80) 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).

- (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*(**81**). 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.

The applicant for a production order must be an ‘appropriate officer’ as defined by section 378(1), (4) and (5) of the 2002 Act(**82**).]

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

**6.16.** An applicant who wants the court to make an order to grant entry 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.

[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.

An order to grant entry may be made only in aid of a production order.]

### **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.

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(81) 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).

(82) 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 sections 357, 358 and 361 of the Proceeds of Crime Act 2002(83). 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.*

*Under section 357(2) of the 2002 Act, a disclosure order may not be made in relation to a money laundering investigation.*

*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(84). 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.]*

### **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(85). 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.]*

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(83) 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).

(84) 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.

(85) 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).

### **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
  - (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 will receive, 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<sup>(86)</sup>; or
- (b) an account monitoring order made under section 370 of that Act.

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<sup>(86)</sup> 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27).

(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 will 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 will 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<sup>(87)</sup>;
- (e) say if the applicant intends to appeal should the court refuse the order;

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(87) 2009 c. 25.



- (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(88).]

## PART 7

### STARTING A PROSECUTION IN A MAGISTRATES' COURT

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#### Contents of this Part

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(89);
- (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(90); or
- (c) a person who is in custody is charged with an offence.

(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—

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(88) 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).

(89) 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) and sections 31, 331 and 332 of, and Schedule 7 and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 331 of, and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act (c. 44), with effect from a date to be appointed).

(90) 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).

- (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(91) 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(92).]*

## **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
  - (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

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(91) 2003 c. 44; section 30 was amended by article 3 of, and paragraphs 45 and 46 of the Schedule to [S.I. 2004/2035](#).

(92) 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), sections 5, 304 and 331 of, and paragraph 44 of Schedule 32, and paragraph 5 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 23 of, and paragraphs 1 and 3 of Schedule 1 to, the Drugs Act 2005 (c. 17).

(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<sup>(93)</sup> and section 30(5) of the Criminal Justice Act 2003<sup>(94)</sup>.*

*Part 2 contains rules allowing someone with a prosecutor's authority, on that 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 in a magistrates' court). Rule 44.2(2) (Application by responsible officer) applies rules 7.2 to 7.4 to the procedure with which that rule deals.*

*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—

- (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; and
- (c) identify the person under whose authority it is issued.

(4) A summons may be contained in the same document as an information.

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<sup>(93)</sup> 1980 c. 43.

<sup>(94)</sup> 2003 c. 44.

- (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(95) 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(96) allows, and in some cases requires, the court to summon the parent or guardian of a defendant under 18.]*

## PART 8

### OBJECTING TO THE DISCONTINUANCE OF PROCEEDINGS IN A MAGISTRATES' COURT

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#### Contents of this Part

Time for objecting	rule 8.1
Form of Notice	rule 8.2
Duty of Director of Public Prosecutions	rule 8.3
Duty of magistrates' court	rule 8.4

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(95) 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).  
(96) 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).

### Time for objecting

**8.1.** The period within which an accused person may give notice under section 23(7) of the Prosecution of Offences Act 1985<sup>(97)</sup> that he wants proceedings against him to continue is 35 days from the date when the proceedings were discontinued under that section.

*[Note. For the equivalent procedure in the Crown Court, see section 23A of the 1985 Act.]*

### Form of notice

**8.2.** Notice under section 23(3), (4) or (7) of the Prosecution of Offences Act 1985<sup>(98)</sup> shall be given in writing and shall contain sufficient particulars to identify the particular offence to which it relates.

### Duty of Director of Public Prosecutions

**8.3.** On giving notice under section 23(3) or (4) of the Prosecution of Offences Act 1985 the Director of Public Prosecutions shall inform any person who is detaining the accused person for the offence in relation to which the notice is given that he has given such notice and of the effect of the notice.

### Duty of magistrates' court

**8.4.** On being given notice under section 23(3) of the Prosecution of Offences Act 1985 in relation to an offence for which the accused person has been granted bail by a court, a magistrates' court officer shall inform—

- (a) any sureties of the accused; and
- (b) any persons responsible for securing the accused's compliance with any conditions of bail

that he has been given such notice and of the effect of the notice.

## PART 9

*[Note. There are no rules in this Part.]*

## PART 10

### COMMITTAL FOR TRIAL

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#### Contents of this Part

Restrictions on reports of committal proceedings	rule 10.1
Committal for trial without consideration of the evidence	rule 10.2
Consideration of evidence at committal proceedings	rule 10.3
Objection to committal statements being read at trial	rule 10.4
Material to be sent to court of trial	rule 10.5

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<sup>(97)</sup> 1985 c. 23; section 23(7) was amended by paragraph 290 of Schedule 8 to the Courts Act 2003 (c. 39).

<sup>(98)</sup> 1985 c. 23; section 23(3) was amended by paragraph 290 of Schedule 8 to the Courts Act 2003 (c. 39).

## Restrictions on reports of committal proceedings

**10.1.**—(1) Except in a case where evidence is, with the consent of the accused, to be tendered in his absence under section 4(4)(b) of the Magistrates' Courts Act 1980<sup>(99)</sup> (absence caused by ill health), a magistrates' court acting as examining justices shall before admitting any evidence explain to the accused the restrictions on reports of committal proceedings imposed by section 8 of that Act and inform him of his right to apply to the court for an order removing those restrictions.

(2) Where a magistrates' court has made an order under section 8(2) of the 1980 Act<sup>(100)</sup> removing restrictions on the reports of committal proceedings, such order shall be entered in the register.

(3) Where the court adjourns any such proceedings to another day, the court shall, at the beginning of any adjourned hearing, state that the order has been made.

*[Note. On the coming into force of Schedule 3 to the Criminal Justice Act 2003<sup>(101)</sup>, committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998<sup>(102)</sup>, in the same way as cases triable only on indictment.]*

## Committal for trial without consideration of the evidence

**10.2.**—(1) This rule applies to committal proceedings where the accused has a solicitor acting for him in the case and where the court has been informed that all the evidence falls within section 5A(2) of the Magistrates' Courts Act 1980<sup>(103)</sup>.

(2) A magistrates' court inquiring into an offence in committal proceedings to which this rule applies shall cause the charge to be written down, if this has not already been done, and read to the accused and shall then ascertain whether he wishes to submit that there is insufficient evidence to put him on trial by jury for the offence with which he is charged.

(3) If the court is satisfied that the accused or, as the case may be, each of the accused does not wish to make such a submission as is referred to in paragraph (2) it shall, after receiving any written evidence falling within section 5A(3) of the 1980 Act, determine whether or not to commit the accused for trial without consideration of the evidence, and where it determines not to so commit the accused it shall proceed in accordance with rule 10.3.

*[Note. On the coming into force of Schedule 3 to the Criminal Justice Act 2003, committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998, in the same way as cases triable only on indictment.]*

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<sup>(99)</sup> 1980 c. 43; section 4(4)(b) was amended by paragraph 25 of Schedule 18 to the Courts and Legal Services Act 1990 (c. 41) and paragraph 2 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25). It is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

<sup>(100)</sup> 1980 c. 43; section 8(2) was amended by sections 1 of the Criminal Justice (Amendment) Act 1981 (c. 27). Section 8 is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

<sup>(101)</sup> 2003 c. 44.

<sup>(102)</sup> 1998 c. 37; section 51 is substituted, and section 51A inserted, by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. The substitution and insertion are in force for certain purposes, S.I. 2005/950. Section 51 is amended by 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).

<sup>(103)</sup> 1980 c. 43; section 5A was inserted by paragraph 3 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.



### Consideration of evidence at committal proceedings

**10.3.**—(1) This rule does not apply to committal proceedings where under section 6(2) of the Magistrates' Courts Act of 1980(**104**) a magistrates' court commits a person for trial without consideration of the evidence.

- (2) A magistrates' court inquiring into an offence as examining justices, having ascertained—
- (a) that the accused has no legal representative acting for him in the case; or
  - (b) that the accused's legal representative has requested the court to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence with which he is charged, as the case may be,

shall permit the prosecutor to make an opening address to the court, if he so wishes, before any evidence is tendered.

(3) After such opening address, if any, the court shall cause evidence to be tendered in accordance with sections 5B(4), 5C(4), 5D(5) and 5E(3) of the 1980 Act(**105**), that is to say by being read out aloud, except where the court otherwise directs or to the extent that it directs that an oral account be given of any of the evidence.

(4) The court may view any exhibits produced before the court and may take possession of them.

(5) After the evidence has been tendered the court shall hear any submission which the accused may wish to make as to whether there is sufficient evidence to put him on trial by jury for any indictable offence.

(6) The court shall permit the prosecutor to make a submission—

- (a) in reply to any submission made by the accused in pursuance of paragraph (5); or
- (b) where the accused has not made any such submission but the court is nevertheless minded not to commit him for trial.

(7) After hearing any submission made in pursuance of paragraph (5) or (6) the court shall, unless it decides not to commit the accused for trial, cause the charge to be written down, if this has not already been done, and, if the accused is not represented by counsel or a solicitor, shall read the charge to him and explain it in ordinary language.

*[Note. On the coming into force of Schedule 3 to the Criminal Justice Act 2003, committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998, in the same way as cases triable only on indictment.]*

### Objection to committal statements being read at trial

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

- (a) a written statement is admitted as evidence in committal proceedings;
- (b) under Schedule 2 to the Criminal Procedure and Investigations Act 1996(**106**), the statement may be introduced in evidence at trial; and
- (c) a party wants to object to that.

(2) Such a party must serve notice of objection—

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(**104**) 1980 c. 43; section 6(2) was amended by paragraph 4 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25).

(**105**) 1980 c. 43; sections 5B to 5E were inserted by paragraph 3 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and are repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**106**) 1996 c. 25; Schedule 2 was amended by section 109(1) of, and paragraph 380 of Schedule 8 to, the Courts Act 2003 (c. 39) and is repealed by paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.



- (a) on each other party and on the Crown Court officer;
  - (b) not more than 14 days after the defendant is committed for trial.
- (3) A prosecutor who introduces a written statement in committal proceedings must serve with it on the defendant a notice—
- (a) of the right to object, and of the time limit; and
  - (b) that if the defendant does not object, the prosecutor may decide not to call the witness to give evidence in person at trial, but to rely on the written statement instead.
- (4) The magistrates' court that commits the defendant for trial must remind the defendant of that right to object.
- (5) The Crown Court may extend the time limit under this rule, even after it has expired.

*[Note. Under Schedule 2 to the Criminal Procedure and Investigations Act 1996, the written statement of a witness that has been admitted in evidence in committal proceedings may be introduced in evidence at trial, instead of the witness giving evidence in person, if—*

- (a) *no party objects within the time prescribed by Criminal Procedure Rules, and*
- (b) *the other conditions specified by that Schedule are met.]*

### **Material to be sent to court of trial**

**10.5.**—(1) As soon as practicable after the committal of any person for trial, and in any case within 4 days from the date of his committal (not counting Saturdays, Sundays, Good Friday, Christmas Day or Bank Holidays), the magistrates' court officer shall, subject to the provisions of section 7 of the Prosecution of Offences Act 1985(**107**) (which relates to the sending of documents and things to the Director of Public Prosecutions), send to the Crown Court officer—

- (a) the information, if it is in writing;
- (b)
  - (i) the evidence tendered in accordance with section 5A of the Magistrates' Courts Act 1980 and, where any of that evidence consists of a copy of a deposition or documentary exhibit which is in the possession of the court, any such deposition or documentary exhibit, and
  - (ii) a certificate to the effect that that evidence was so tendered;
- (c) any notification by the prosecutor under section 5D(2) of the 1980 Act regarding the admissibility of a statement under section 23 or 24 of the Criminal Justice Act 1988(**108**) (first hand hearsay; business documents);
- (d) a copy of the record made in pursuance of section 5 of the Bail Act 1976(**109**) relating to the grant or withholding of bail in respect of the accused on the occasion of the committal;

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(**107**) 1985 c. 23; section 7 was amended paragraph 287 of Schedule 8 to the Courts Act 2003 (c. 39).

(**108**) 1988 c. 33; sections 23 and 24 were amended by paragraph 28 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and section 67 of, and paragraphs 15 and 16 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23); section 24 was further amended by paragraphs 13 and 14 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32); both sections are repealed by section 136(a) of, and Part 6 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(**109**) 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) and paragraph 48 of Schedule 3 to, and Parts 2 and 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). The amendments in Schedule 3 of the 2003 Act are in force in relation to certain cases only. It is further amended by sections 41, 331 and 332 of, and 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) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27), with effect from dates to be appointed.

- (e) any recognizance entered into by any person as surety for the accused together with a statement of any enlargement thereof under section 129(4) of the 1980 Act;
- (f) a list of the exhibits produced in evidence before the justices or treated as so produced;
- (g) such of the exhibits referred to in paragraph (1)(f) as have been retained by the justices;
- (h) the names and addresses of any interpreters engaged for the defendant for the purposes of the committal proceedings, together with any telephone numbers at which they can be readily contacted, and details of the languages or dialects in connection with which they have been so engaged;
- (i) if the committal was under section 6(2) of the 1980 Act (committal for trial without consideration of the evidence), a statement to that effect;
- (j) if the magistrates' court has made an order under section 8(2) of the 1980 Act (removal of restrictions on reports of committal proceedings), a statement to that effect;
- (k) the certificate of the examining justices as to the costs of the prosecution under the Costs in Criminal Cases (General) Regulations 1986<sup>(110)</sup>;
- (l) if any person under the age of 18 is concerned in the committal proceedings, a statement whether the magistrates' court has given a direction under section 39 of the Children and Young Persons Act 1933<sup>(111)</sup> (prohibition of publication of certain matter in newspapers);
- (m) a copy of any representation order previously made in the case;
- (n) a copy of any application for a representation order previously made in the case which has been refused; and
- (o) any documents relating to an appeal by the prosecution against the granting of bail.

(2) The period of 4 days specified in paragraph (1) may be extended in relation to any committal for so long as the Crown Court officer directs, having regard to the length of any document mentioned in that paragraph or any other relevant circumstances.

*[Note. On the coming into force of Schedule 3 to the Criminal Justice Act 2003, committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998, in the same way as cases triable only on indictment.]*

## PART 11

### TRANSFER FOR TRIAL OF SERIOUS FRAUD CASES OR CASES INVOLVING CHILDREN

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#### Contents of this Part

Interpretation of this Part	rule 11.1
Transfer on bail	rule 11.2
Notice where person removed to hospital	rule 11.3
Variation of arrangements for bail	rule 11.4

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<sup>(110)</sup> S.I. 1986/1335.

<sup>(111)</sup> 1933 c. 12; section 39 was amended by sections 57 and 64 of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48) and it is 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.

Documents to be sent to the Crown Court

rule 11.5

### Interpretation of this Part

**11.1.**—(1) In this Part, ‘notice of transfer’ means a notice referred to in section 4(1) of the Criminal Justice Act 1987(**112**) or section 53(1) of the Criminal Justice Act 1991(**113**).

(2) Where this Part requires a document to be given or sent, or a notice to be communicated in writing, it may, with the consent of the addressee, be sent by electronic communication.

(3) Electronic communication means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

- (a) by means of an electronic communications network (within the meaning of the Communications Act 2003(**114**)); or
- (b) by other means but while in an electronic form.

*[Note. See also sections 4 and 5 of the Criminal Justice Act 1987 and section 53 of, and Schedule 6 to, the Criminal Justice Act 1991. On the coming into force of Schedule 3 to the Criminal Justice Act 2003(**115**), those provisions will be replaced with sections 51B and 51C of the Crime and Disorder Act 1998(**116**), which are to similar effect. For the duties of the prosecuting authority see The Criminal Justice Act 1987 (Notice of Transfer) Regulations 1988(**117**) and The Criminal Justice Act 1991 (Notice of Transfer) Regulations 1992(**118**).]*

### Transfer on bail

**11.2.**—(1) Where a person in respect of whom notice of transfer has been given—

- (a) is granted bail under section 5(3) or (7A) of the Criminal Justice Act 1987(**119**) by the magistrates’ court to which notice of transfer was given; or
  - (b) is granted bail under paragraph 2(1) or (7) of Schedule 6 to the Criminal Justice Act 1991(**120**) by the magistrates’ court to which notice of transfer was given,
- the magistrates’ court officer shall give notice thereof in writing to the governor of the prison or remand centre to which the said person would have been committed by that court if he had been committed in custody for trial.

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(**112**) 1987 c. 38; section 4(1) was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22). Section 4 is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**113**) 1991 c. 53; section 53(1) was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**114**) 2003 c. 21.

(**115**) 2003 c. 44.

(**116**) 1998 c. 37; sections 51B and C are to be substituted, together with sections 51, 51A and 51D, for section 51 as originally enacted, by section 41 of, and paragraphs 15 and 18 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed: see the Criminal Justice Act 2003, s 336(3). Section 51B(9)(c) was amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11).

(**117**) S.I. 1988/1691.

(**118**) S.I. 1992/1670, amended by SI 1998/461.

(**119**) 1987 c. 38; section 5(7A) was inserted by section 144 of the Criminal Justice Act 1988 (c. 33). Section 5 is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**120**) 1991 c. 53; paragraph 2(1) of Schedule 6 was amended by section 168(2) of, and paragraph 71 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). Schedule 6 is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(2) Where notice of transfer is given under section 4(1) of the 1987 Act in respect of a corporation the magistrates' court officer shall give notice thereof to the governor of the prison to which would be committed a male over 21 committed by that court in custody for trial.

*[Note. For bail generally, see Part 19.]*

### **Notice where person removed to hospital**

**11.3.** Where a transfer direction has been given by the Secretary of State under section 47 or 48 of the Mental Health Act 1983(121) in respect of a person remanded in custody by a magistrates' court and, before the direction ceases to have effect, notice of transfer is given in respect of that person, the magistrates' court officer shall give notice thereof in writing—

- (a) to the governor of the prison to which that person would have been committed by that court if he had been committed in custody for trial; and
- (b) to the managers of the hospital where he is detained.

### **Variation of arrangements for bail**

**11.4.—(1)** A person who intends to make an application to a magistrates' court under section 3(8) of the Bail Act 1976(122) as that subsection has effect under section 3(8A) of that Act shall give notice thereof in writing to the magistrates' court officer, and to the designated authority or the defendant, as the case may be, and to any sureties concerned.

(2) Where, on an application referred to in paragraph (1), a magistrates' court varies or imposes any conditions of bail, the magistrates' court officer shall send to the Crown Court officer a copy of the record made in pursuance of section 5 of the 1976 Act relating to such variation or imposition of conditions.

### **Documents to be sent to the Crown Court**

**11.5.** As soon as practicable after a magistrates' court to which notice of transfer has been given has discharged the functions reserved to it under section 4(1) of the Criminal Justice Act 1987 or section 53(3) of the Criminal Justice Act 1991(123), the magistrates' court officer shall send to the Crown Court officer—

- (a) a list of the names, addresses and occupations of the witnesses;
- (b) a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to the grant of withholding of bail in respect of the accused;
- (c) any recognizance entered into by any person as surety for the accused together with a statement of any enlargement thereof;
- (d) a copy of any representation order previously made in the case; and

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(121) 1983 c. 20; section 47 was amended by sections 49(3) and 56(2) of, and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43), section 58 of, and paragraph 18 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and sections 1, 4 and 55 of, and paragraphs 1 and 10 of Schedule 1 and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12). Section 48 was amended by section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41), the Statute Law (Repeals) Act 2004 (c. 14) and section 5 of, and paragraphs 1 and 11 of Schedule 1 to the Mental Health Act 2007 (c. 12). It is further amended by Part II of Schedule 7 and paragraphs 72 and 73 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(122) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and is further amended by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), commenced in part and for certain purposes only, the remainder to take effect from a date to be appointed.

(123) 1991 c. 53; section 53(3) was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 47 of Schedule 4 to the Access to Justice Act 1999 (c. 22). It is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

- (e) a copy of any application for a representation order previously made in the case which has been refused.

## PART 12

### SENDING FOR TRIAL

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#### Contents of this Part

Documents to be sent to the Crown Court	rule 12.1
Time for first appearance of accused sent for trial	rule 12.2

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#### Documents to be sent to the Crown Court

**12.1.**—(1) As soon as practicable after any person is sent for trial (pursuant to section 51 of the Crime and Disorder Act 1998(**124**)), and in any event within 4 days from the date on which he is sent (not counting Saturdays, Sundays, Good Friday, Christmas Day or Bank Holidays), the magistrates' court officer shall, subject to section 7 of the Prosecution of Offences Act 1985(**125**) (which relates to the sending of documents and things to the Director of Public Prosecutions), send to the Crown Court officer—

- (a) the information, if it is in writing;
- (b) the notice required by section 51(7) of the 1998 Act;
- (c) a copy of the record made in pursuance of section 5 of the Bail Act 1976(**126**) relating to the granting or withholding of bail in respect of the accused on the occasion of the sending;
- (d) any recognizance entered into by any person as surety for the accused together with any enlargement thereof under section 129(4) of the Magistrates' Courts Act 1980(**127**);
- (e) the names and addresses of any interpreters engaged for the defendant for the purposes of the appearance in the magistrates' court, together with any telephone numbers at which they can be readily contacted, and details of the languages or dialects in connection with which they have been so engaged;
- (f) if any person under the age of 18 is concerned in the proceedings, a statement whether the magistrates' court has given a direction under section 39 of the Children and Young Persons Act 1933(**128**) (prohibition of publication of certain matter in newspapers);

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(**124**) 1998 c. 37; section 51 is substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed and that amendment is in force for certain purposes; S.I. 2005/950. It was amended by paragraph 1 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4).

(**125**) 1985 c. 23; section 7 was amended paragraph 287 of Schedule 8 to the Courts Act 2003 (c. 39).

(**126**) 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) and paragraph 48 of Schedule 3 to, and Parts 2 and 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). The amendments in Schedule 3 of the 2003 Act are in force in relation to certain cases only. It is further amended by sections 41, 331 and 332 of, and 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) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27), with effect from dates to be appointed.

(**127**) 1980 c. 43; section 129(4) is amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect, a date to be appointed.

(**128**) 1933 c. 12; section 39 was amended by sections 57 and 64 of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48) and it is 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.

- (g) a copy of any representation order previously made in the case;
- (h) a copy of any application for a representation order previously made in the case which has been refused; and
- (i) any documents relating to an appeal by the prosecution against the granting of bail.

(2) The period of 4 days specified in paragraph (1) may be extended in relation to any sending for trial for so long as the Crown Court officer directs, having regard to any relevant circumstances.

*[Note. See also section 51 of the Crime and Disorder Act 1998. On the coming into force of Schedule 3 to the Criminal Justice Act 2003(129), section 51 of the 1998 Act will apply to either way as well as indictable only offences, and section 51A will extend the section 51 procedure to children and young persons(130). For the procedure governing the service of evidence by the prosecution where an accused is sent for trial, see The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2000(131).]*

### **Time for first appearance of accused sent for trial**

**12.2.** A Crown Court officer to whom notice has been given under section 51(7) of the Crime and Disorder Act 1998, shall list the first Crown Court appearance of the person to whom the notice relates in accordance with any directions given by the magistrates' court.

## **PART 13**

### **DISMISSAL OF CHARGES TRANSFERRED OR SENT TO THE CROWN COURT**

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

Interpretation of this Part	rule 13.1
Written notice of oral application for dismissal	rule 13.2
Written application for dismissal	rule 13.3
Prosecution reply	rule 13.4
Determination of applications for dismissal	rule 13.5

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#### **Interpretation of this Part**

##### **13.1.** In this Part—

‘notice of transfer’ means a notice referred to in section 4(1) of the Criminal Justice Act 1987(132) or section 53(1) of the Criminal Justice Act 1991(133); and

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(129) 2003 c. 44.

(130) 1998 c. 37; section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) for certain purposes, and will be inserted for remaining purposes with effect from a date to be appointed. It was amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38).

(131) S.I. 2000/3305.

(132) 1987 c. 38; section 4(1) was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22). Section 4 is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(133) 1991 c. 53; section 53(1) was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.



‘the prosecution’ means the authority by or on behalf of whom notice of transfer was given under the 1987 or 1991 Acts, or the authority by or on behalf of whom documents were served under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998(134).

[Note. See also section 6 of the Criminal Justice Act 1987, section 53 of, and Schedule 6 to, the Criminal Justice Act 1991 and sections 51 and 52 of, and Schedule 3 to, the Crime and Disorder Act 1998.]

### Written notice of oral application for dismissal

**13.2.**—(1) Where notice of transfer has been given under the Criminal Justice Act 1987 or the Criminal Justice Act 1991, or a person has been sent for trial under the Crime and Disorder Act 1998, and the person concerned proposes to apply orally—

- (a) under section 6(1) of the 1987 Act(135);
- (b) under paragraph 5(1) of Schedule 6 to the 1991 Act(136); or
- (c) under paragraph 2(1) of Schedule 3 to the 1998 Act(137)

for any charge in the case to be dismissed, he shall give notice of his intention in writing to the Crown Court officer at the place specified by the notice of transfer under the 1987 or 1991 Acts or the notice given under section 51(7) of the 1998 Act as the proposed place of trial. Notice of intention to make an application under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(2) Notice of intention to make an application shall be given—

- (a) in the case of an application to dismiss charges transferred under the 1987 Act, not later than 28 days after the day on which notice of transfer was given;
- (b) in the case of an application to dismiss charges transferred under the 1991 Act, not later than 14 days after the day on which notice of transfer was given; and
- (c) in the case of an application to dismiss charges sent under the 1998 Act, not later than 14 days after the day on which the documents were served under paragraph 1 of Schedule 3 to that Act,

and a copy of the notice shall be given at the same time to the prosecution and to any person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.

(3) The time for giving notice may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (4).

(4) An application for an extension of time for giving notice shall be made in writing to the Crown Court officer, and a copy thereof shall be given at the same time to the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such an application made in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(5) The Crown Court officer shall give notice in the form set out in the Practice Direction of the judge’s decision on an application under paragraph (3)—

- (a) to the applicant for dismissal;
- (b) to the prosecution; and

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(134) 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 is further amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(135) 1987 c. 38; section 6 was substituted by section 144(5) of the Criminal Justice Act 1988 (c. 33) and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(136) 1991 c. 53; Schedule 6 is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(137) 1998 c. 37; paragraph 2(1) of Schedule 3 is amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

- (c) to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.
- (6) A notice of intention to make an application under section 6(1) of the 1987 Act, paragraph 5(1) of Schedule 6 to the 1991 Act or paragraph 2(1) of Schedule 3 to the 1998 Act shall be accompanied by a copy of any material on which the applicant relies and shall—
  - (a) specify the charge or charges to which it relates;
  - (b) state whether the leave of the judge is sought under section 6(3) of the 1987 Act, paragraph 5(4) of Schedule 6 to the 1991 Act or paragraph 2(4) of Schedule 3 to the 1998 Act<sup>(138)</sup> to adduce oral evidence on the application, indicating what witnesses it is proposed to call at the hearing; and
  - (c) in the case of a transfer under the 1991 Act, confirm in relation to each such witness that he is not a child to whom paragraph 5(5) of Schedule 6 to that Act applies.
- (7) Where leave is sought from the judge for oral evidence to be given on an application, notice of his decision, indicating what witnesses are to be called if leave is granted, shall be given in writing by the Crown Court officer to the applicant for dismissal, the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Notice of a decision in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.
- (8) Where an application for dismissal under section 6(1) of the 1987 Act, paragraph 5(1) of Schedule 6 to the 1991 Act or paragraph 2(1) of Schedule 3 to the 1998 Act is to be made orally, the Crown Court officer shall list the application for hearing before a judge of the Crown Court and the prosecution shall be given the opportunity to be represented at the hearing.

### **Written application for dismissal**

- 13.3.**—(1) Application may be made for dismissal under section 6(1) of the Criminal Justice Act 1987, paragraph 5(1) of Schedule 6 to the Criminal Justice Act 1991 or paragraph 2(1) of Schedule 3 to the Crime and Disorder Act 1998 without an oral hearing. Such an application shall be in writing, and in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.
- (2) The application shall be sent to the Crown Court officer and shall be accompanied by a copy of any statement or other document, and identify any article, on which the applicant for dismissal relies.
  - (3) A copy of the application and of any accompanying documents shall be given at the same time to the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.
  - (4) A written application for dismissal shall be made—
    - (a) not later than 28 days after the day on which notice of transfer was given under the 1987 Act;
    - (b) not later than 14 days after the day on which notice of transfer was given under the 1991 Act; or
    - (c) not later than 14 days after the day on which documents required by paragraph 1 of Schedule 3 to the 1998 Act were served

unless the time for making the application is extended, either before or after it expires, by the Crown Court; and rule 13.2(4) and (5) shall apply for the purposes of this paragraph as if references therein to giving notice of intention to make an oral application were references to making a written application under this rule.

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<sup>(138)</sup> 1998 c. 37; paragraph 2(4) of Schedule 3 is repealed by paragraphs 15 and 20 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.



### **Prosecution reply**

**13.4.**—(1) Not later than seven days from the date of service of notice of intention to apply orally for the dismissal of any charge contained in a notice of transfer or based on documents served under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998, the prosecution may apply to the Crown Court under section 6(3) of the Criminal Justice Act 1987, paragraph 5(4) of Schedule 6 to the Criminal Justice Act 1991 or paragraph 2(4) of Schedule 3 to the 1998 Act for leave to adduce oral evidence at the hearing of the application, indicating what witnesses it is proposed to call.

(2) Not later than seven days from the date of receiving a copy of an application for dismissal under rule 13.3, the prosecution may apply to the Crown Court for an oral hearing of the application.

(3) An application under paragraph (1) or (2) shall be served on the Crown Court officer in writing and, in the case of an application under paragraph (2), shall state whether the leave of the judge is sought to adduce oral evidence and, if so, shall indicate what witnesses it is proposed to call. Where leave is sought to adduce oral evidence under paragraph 5(4) of Schedule 6 to the 1991 Act, the application should confirm in relation to each such witness that he is not a child to whom paragraph 5(5) of that Schedule applies. Such an application in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(4) Notice of the judge's determination upon an application under paragraph (1) or (2), indicating what witnesses (if any) are to be called shall be served in writing by the Crown Court officer on the prosecution, on the applicant for dismissal and on any other party to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such a notice in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(5) Where, having received the material specified in rule 13.2 or, as the case may be, rule 13.3, the prosecution proposes to adduce in reply thereto any written comments or any further evidence, the prosecution shall serve any such comments, copies of the statements or other documents outlining the evidence of any proposed witnesses, copies of any further documents and, in the case of an application to dismiss charges transferred under the 1991 Act, copies of any video recordings which it is proposed to tender in evidence, on the Crown Court officer not later than 14 days from the date of receiving the said material, and shall at the same time serve copies thereof on the applicant for dismissal and any other person to whom the notice of transfer relates or with whom the applicant is jointly charged. In the case of a defendant acting in person, copies of video recordings need not be served but shall be made available for viewing by him.

(6) The time for—

- (a) making an application under paragraph (1) or (2) above; or
- (b) serving any material on the Crown Court officer under paragraph (5) above

may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (7) below.

(7) An application for an extension of time under paragraph (6) above shall be made in writing and shall be served on the Crown Court officer, and a copy thereof shall be served at the same time on to the applicant for dismissal and on any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such an application in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

### **Determination of applications for dismissal**

**13.5.**—(1) A judge may grant leave for a witness to give oral evidence on an application for dismissal notwithstanding that notice of intention to call the witness has not been given in accordance with the foregoing provisions of this Part.

(2) Where an application for dismissal is determined otherwise than at an oral hearing, the Crown Court officer shall as soon as practicable, send to all the parties to the case written notice of the

outcome of the application. Such a notice in proceedings under the 1987 and 1991 Acts shall be in the form set out in the Practice Direction.

## PART 14

### THE INDICTMENT

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#### Contents of this Part

Service and signature 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(139) and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(140).]*

#### Service and signature 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) sign, and add the date of receipt on, the indictment; 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.*

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(139) 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).

(140) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Supreme Court 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) and paragraph 1 of the Schedule to, S.I. 2004/2035.

*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(141). Under section 51D of that Act(142) 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(143), and The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(144), deal with the service of prosecution evidence in a case sent 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. See also direction IV.35 of the Practice Direction.*

*The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968(145) (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003(146) (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.*

*When it comes into force, Schedule 3 to the Criminal Justice Act 2003 will abolish committal for trial under section 6 of the Magistrates' Courts Act 1980(147), and transfer for trial under section 4 of the Criminal Justice Act 1987(148) (serious fraud cases) or under section 53 of the Criminal Justice Act 1991(149) (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'—

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- (141) 1998 c. 37; section 51 is substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed and that amendment is in force for certain purposes; S.I. 2005/950. It was amended by 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) for certain purposes, and will be inserted for remaining purposes with effect from a date to be appointed. It was amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38).
- (142) 1998 c. 37; section 51D was inserted by section 41 of, and 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). It was commenced, in part, on 4th April 2005 by article 2 of, and paragraph 29 of Schedule 1 to, S.I. 2005/950.
- (143) 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 is further amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (144) S.I. 2005/902.
- (145) 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).
- (146) 2003 c. 44.
- (147) 1980 c. 43; section 6 was amended by section 170(1) of, and paragraphs 65 and 66 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6(1)(a) of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), paragraph 4 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraphs 95 and 96 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 202 of Schedule 8 to, the Courts Act 2003 (c. 39), and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (148) 1987 c. 38; section 4 was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 65 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37) and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22). It is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (149) 1991 c. 53; section 53 was amended by paragraph 49 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 93 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 47 of Schedule 4 to, the Access to Justice Act 1999 (c. 22). It is repealed by section 332 of, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

- (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(150)(specified summary offences founded on that evidence).]*

## PART 15

### PREPARATORY HEARINGS IN CASES OF SERIOUS FRAUD AND OTHER COMPLEX, SERIOUS OR LENGTHY CASES IN THE CROWN COURT

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#### Contents of this Part

Application for a preparatory hearing	rule 15.1
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Representations concerning an application	rule 15.3
Determination of an application	rule 15.4

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(150) 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 section 41 of, and paragraph 60 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). It is further amended by sections 41 and 332 of, and paragraph 60 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

Orders for disclosure by prosecution or defence

rule 15.5

**Application for a preparatory hearing**

**15.1.**—(1) A party who wants the court to order a preparatory hearing under section 7(2) of the Criminal Justice Act 1987(**151**) or under section 29(4) of the Criminal Procedure and Investigations Act 1996(**152**) must—

- (a) apply in the form set out in the Practice Direction;
- (b) include a short explanation of the reasons for applying; and
- (c) serve the application on the court officer and all other parties.

(2) A prosecutor who wants the court to order that—

- (a) the trial will be conducted without a jury under section 43 or section 44 of the Criminal Justice Act 2003(**153**); or
- (b) the trial of some of the counts included in the indictment will be conducted without a jury under section 17 of the Domestic Violence, Crime and Victims Act 2004(**154**),

must apply under this rule for a preparatory hearing, whether or not the defendant has applied for one.

*[Note. See also sections 7 to 9A of the Criminal Justice Act 1987 (cases of serious or complex fraud) and sections 29 to 32 of the Criminal Procedure and Investigations Act 1996 (other complex, serious or lengthy cases).*

*For the provisions governing applications for the trial to be conducted without a jury, see sections 43 to 48 of the Criminal Justice Act 2003 (trials without a jury in serious or complex fraud cases or where there is a danger of jury tampering). For the rules governing an appeal under section 47 of that Act, see rule 65.11 (appeal against order following discharge of jury because of jury tampering).]*

**Time for applying for a preparatory hearing**

**15.2.**—(1) A party who applies under rule 15.1 must do so not more than 28 days after—

- (a) the committal of the defendant;
- (b) the consent to the preferment of a bill of indictment in relation to the case;
- (c) the service of a notice of transfer; or
- (d) where a person is sent for trial, the service of copies of the documents containing the evidence on which the charge or charges are based.

(2) A prosecutor who applies under rule 15.1 because he wants the court to order a trial without a jury under section 44 of the Criminal Justice Act 2003 (jury tampering) must do so as soon as reasonably practicable where the reasons do not arise until after that time limit has expired.

(3) The court may extend the time limit, even after it has expired.

*[Note. A notice of transfer may be served under section 4 of the Criminal Justice Act 1987 (serious or complex fraud cases), or under section 53 of the Criminal Justice Act 1991(**155**) (certain cases involving children).*

(151) 1987 c. 38.

(152) 1996 c. 25; section 29(4) is amended by section 16 of the Terrorism Act 2006 (c. 11).

(153) 2003 c. 44; section 43 will take effect on a date to be appointed.

(154) 2004 c. 28.

(155) 1991 c. 53; section 53 was amended by paragraph 49 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 93 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 47 of Schedule 4 to, the Access to Justice Act 1999 (c. 22). It is repealed by section 332 of, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

*A person is sent for trial under section 51 of the Crime and Disorder Act 1998<sup>(156)</sup> (indictable-only offences sent for trial) or (so far as it is in force) under section 51A of the Crime and Disorder Act 1998 (certain cases involving children). As to the service of prosecution evidence in such a case, see paragraph 1 of Schedule 3 to the 1998 Act and The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005<sup>(157)</sup>].*

### **Representations concerning an application**

**15.3.**—(1) A party who wants to make written representations concerning an application made under rule 15.1 must—

- (a) do so within 7 days of receiving a copy of that application; and
- (b) serve those representations on the court officer and all other parties.

(2) A defendant who wants to oppose an application for an order that the trial will be conducted without a jury under section 43 or section 44 of the Criminal Justice Act 2003 must serve written representations under this rule, including a short explanation of the reasons for opposing that application.

*[Note. The grounds on which a judge may allow or refuse an application for an order that the trial will be conducted without a jury under section 43 or 44 of the Criminal Justice Act 2003 are set out in those sections of that Act].*

### **Determination of an application**

**15.4.**—(1) Where an application has been made under rule 15.1(2), the court must hold a preparatory hearing.

(2) Other applications made under rule 15.1 should normally be determined without a hearing.

(3) The court officer must serve on the parties in the case, in the form set out in the Practice Direction—

- (a) notice of the determination of an application made under rule 15.1; and
- (b) an order for a preparatory hearing made by the court of its own initiative, including one that the court is required to make.

*[Note. Section 45 of the Criminal Justice Act 2003<sup>(158)</sup> provides that an application by the prosecution for an order that the trial will be conducted without a jury must be determined at a preparatory hearing and the parties to the preparatory hearing must be given an opportunity to make representations with respect to that application.]*

### **Orders for disclosure by prosecution or defence**

**15.5.**—(1) Any disclosure order under section 9 of the Criminal Justice Act 1987, or section 31 of the Criminal Procedure and Investigations Act 1996, must identify any documents that are required to be prepared and served by the prosecutor under that order.

(2) A disclosure order under either of those sections does not require a defendant to disclose who will give evidence, except to the extent that disclosure is required—

- (a) by section 6A(2) of the 1996 Act (disclosure of alibi); or
- (b) by Part 33 of these Rules (disclosure of expert evidence).

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<sup>(156)</sup> 1998 c. 37; section 51 is substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed and that amendment is in force for certain purposes; S.I. 2005/950. It was amended by paragraph 1 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4).

<sup>(157)</sup> S.I. 2005/902.

<sup>(158)</sup> 2003 c. 44; section 45(8) was repealed by section 37(5) of, and Schedule 3 to, the Terrorism Act 2006 (c. 11).

(3) The court officer must serve notice of the order, in the relevant form set out in the Practice Direction, on the parties.

*[Note. Under section 9(4) of the Criminal Justice Act 1987 or section 31(4) of the Criminal Procedure and Investigations Act 1996, the judge can 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 to understand, to prepare a list of agreed facts, and to amend the case statement as directed by the judge following representations from the defence.*

*Under section 9(5) of the 1987 Act or section 31(6), (7) and (9) of the 1996 Act, the judge can require the defence to give notice of any objection to the prosecution case statement, to give notice stating the extent of agreement with the prosecution as to documents and other matters and the reason for any disagreement.]*

## PART 16

### RESTRICTIONS ON REPORTING AND PUBLIC ACCESS

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Application for a reporting direction under	
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Variation or revocation of direction under	
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### **Application for a reporting direction under section 46(6) of the Youth Justice and Criminal Evidence Act 1999**

**16.1.**—(1) An application for a reporting direction made by a party to any criminal proceedings, in relation to a witness in those proceedings, must be made in the form set out in the Practice Direction or orally under rule 16.3.

(2) If an application for a reporting direction is made in writing, the applicant shall send that application to the court officer and copies shall be sent at the same time to every other party to those proceedings.

*[Note. Section 46 of the Youth Justice and Criminal Evidence Act 1999(159) applies to adult witnesses the quality of whose evidence, or whose co-operation, is likely to be diminished if their identity is made public. For reporting restrictions generally, see direction I.3 in the Practice Direction.]*

### **Opposing an application for a reporting direction under section 46(6) of the Youth Justice and Criminal Evidence Act 1999**

**16.2.**—(1) If an application for a reporting direction is made in writing, any party to the proceedings who wishes to oppose that application must notify the applicant and the court officer in writing of his opposition and give reasons for it.

(2) A person opposing an application must state in the written notification whether he disputes that the—

- (a) witness is eligible for protection under section 46 of the Youth Justice and Criminal Evidence Act 1999; or
- (b) granting of protection would be likely to improve the quality of the evidence given by the witness or the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case.

(3) The notification under paragraph (1) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 16.6.

### **Urgent action on an application under section 46(6) of the Youth Justice and Criminal Evidence Act 1999**

**16.3.**—(1) The court may give a reporting direction under section 46 of the Youth Justice and Criminal Evidence Act 1999 in relation to a witness in those proceedings, notwithstanding that the five business days specified in rule 16.2(3) have not expired if—

- (a) an application is made to it for the purposes of this rule; and
- (b) it is satisfied that, due to exceptional circumstances, it is appropriate to do so.

(2) Any party to the proceedings may make the application under paragraph (1) whether or not an application has already been made under rule 16.1.

(3) An application under paragraph (1) may be made orally or in writing.

(4) If an application is made orally, the court may hear and take into account representations made to it by any person who in the court's view has a legitimate interest in the application before it.

(5) The application must specify the exceptional circumstances on which the applicant relies.



### **Excepting direction under section 46(9) of the Youth Justice and Criminal Evidence Act 1999**

**16.4.**—(1) An application for an excepting direction under section 46(9) of the Youth Justice and Criminal Evidence Act 1999 (a direction dispensing with restrictions imposed by a reporting direction) may be made by—

- (a) any party to those proceedings; or
  - (b) any person who, although not a party to the proceedings, is directly affected by a reporting direction given in relation to a witness in those proceedings.
- (2) If an application for an excepting direction is made, the applicant must state why—
- (a) the effect of a reporting direction imposed places a substantial and unreasonable restriction on the reporting of the proceedings; and
  - (b) it is in the public interest to remove or relax those restrictions.

(3) An application for an excepting direction may be made in writing, pursuant to paragraph (4), at any time after the commencement of the proceedings in the court or orally at a hearing of an application for a reporting direction.

(4) If the application for an excepting direction is made in writing it must be in the form set out in the Practice Direction and the applicant shall send that application to the court officer and copies shall be sent at the same time to every party to those proceedings.

(5) Any person served with a copy of an application for an excepting direction who wishes to oppose it, must notify the applicant and the court officer in writing of his opposition and give reasons for it.

(6) The notification under paragraph (5) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 16.6.

### **Variation or revocation of a reporting or excepting direction under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.5.**—(1) An application for the court to—

- (a) revoke a reporting direction; or
- (b) vary or revoke an excepting direction,

may be made to the court at any time after the commencement of the proceedings in the court.

(2) An application under paragraph (1) may be made by a party to the proceedings in which the direction was issued, or by a person who, although not a party to those proceedings, is in the opinion of the court directly affected by the direction.

(3) An application under paragraph (1) must be made in writing and the applicant shall send that application to the officer of the court in which the proceedings commenced, and at the same time copies of the application shall be sent to every party or, as the case may be, every party to the proceedings.

(4) The applicant must set out in his application the reasons why he seeks to have the direction varied or, as the case may be, revoked.

(5) Any person served with a copy of an application who wishes to oppose it, must notify the applicant and the court officer in writing of his opposition and give reasons for it.

(6) The notification under paragraph (5) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 16.6.

### **Application for an extension of time in proceedings under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.6.**—(1) An application may be made in writing to extend the period of time for notification under rule 16.2(3), rule 16.4(6) or rule 16.5(6) before that period has expired.

(2) An application must be accompanied by a statement setting out the reasons why the applicant is unable to give notification within that period.

(3) An application must be sent to the court officer and a copy of the application must be sent at the same time to the applicant.

### **Decision of the court on an application under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.7.**—(1) The court may—

(a) determine any application made under rules 16.1 and rules 16.3 to 16.6 without a hearing; or

(b) direct a hearing of any application.

(2) The court officer shall notify all the parties of the court's decision as soon as reasonably practicable.

(3) If a hearing of an application is to take place, the court officer shall notify each party to the proceedings of the time and place of the hearing.

(4) A court may hear and take into account representations made to it by any person who in the court's view has a legitimate interest in the application before it.

### **Proceedings sent or transferred to the Crown Court with direction under section 46 of the Youth Justice and Criminal Evidence Act 1999 in force**

**16.8.** Where proceedings in which reporting directions or excepting directions have been ordered are sent or transferred from a magistrates' court to the Crown Court, the magistrates' court officer shall forward copies of all relevant directions to the Crown Court officer at the place to which the proceedings are sent or transferred.

### **Hearings in camera and applications under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.9.** If in any proceedings, a prosecutor or defendant has served notice under rule 16.10 of his intention to apply for an order that all or part of a trial be held in camera, any application under this Part relating to a witness in those proceedings need not identify the witness by name and date of birth.

### **Application to hold a Crown Court trial in camera**

**16.10.**—(1) Where a prosecutor or a defendant intends to apply for an order that all or part of a trial be held in camera for reasons of national security or for the protection of the identity of a witness or any other person, he shall not less than 7 days before the date on which the trial is expected to begin serve a notice in writing to that effect on the Crown Court officer and the prosecutor or the defendant as the case may be.

(2) On receiving such notice, the court officer shall forthwith cause a copy thereof to be displayed in a prominent place within the precincts of the Court.

(3) An application by a prosecutor or a defendant who has served such a notice for an order that all or part of a trial be heard in camera shall, unless the Court orders otherwise, be made in camera,

after the defendant has been arraigned but before the jury has been sworn and, if such an order is made, the trial shall be adjourned until whichever of the following shall be appropriate—

- (a) 24 hours after the making of the order, where no application for leave to appeal from the order is made; or
- (b) after the determination of an application for leave to appeal, where the application is dismissed; or
- (c) after the determination of the appeal, where leave to appeal is granted.

*[Note. As to the procedure for appealing against an order, see rule 67.2.]*

### **Crown Court hearings in chambers**

**16.11.**—(1) The criminal jurisdiction of the Crown Court specified in the following paragraph may be exercised by a judge of the Crown Court sitting in chambers.

(2) The said jurisdiction is—

- (a) hearing applications for bail;
- (b) issuing a summons or warrant;
- (c) hearing any application relating to procedural matters preliminary or incidental to criminal proceedings in the Crown Court, including applications relating to legal aid;
- (d) jurisdiction under rules 12.2 (listing first appearance of accused sent for trial), 28.2 (application for witness summons), 63.9(a) (extending time for appeal against decision of magistrates' court), and 64.6 (application to state case for consideration of High Court);
- (e) hearing an application under section 41(2) of the Youth Justice and Criminal Evidence Act 1999 (evidence of complainant's previous sexual history);
- (f) hearing applications under section 22(3) of the Prosecution of Offences Act 1985<sup>(160)</sup> (extension or further extension of custody time limit imposed by regulations made under section 22(1) of that Act);
- (g) hearing an appeal brought by an accused under section 22(7) of the 1985 Act against a decision of a magistrates' court to extend, or further extend, such a time limit, or brought by the prosecution under section 22(8) of the same Act against a decision of a magistrates' court to refuse to extend, or further extend, such a time limit;
- (h) hearing appeals under section 1 of the Bail (Amendment) Act 1993<sup>(161)</sup> (against grant of bail by magistrates' court); and
- (i) hearing appeals under section 16 of the Criminal Justice Act 2003<sup>(162)</sup> (against condition of bail imposed by magistrates' court).

*[Note. As to hearing restraint and receivership proceedings under the Proceeds of Crime Act 2002<sup>(163)</sup> in chambers, see rule 61.4.]*

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<sup>(160)</sup> 1985 c. 23; section 22(3) was substituted by section 43 of the Crime and Disorder Act 1998 (c. 37).

<sup>(161)</sup> 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) and section 42 of, and paragraph 28 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

<sup>(162)</sup> 2003 c. 44.

<sup>(163)</sup> 2002 c. 29.

## PART 17

### EXTRADITION

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#### Refusal to make an order of committal

**17.1.**—(1) Where a magistrates' court refuses to make an order of committal in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates and the state, country or colony seeking the surrender of that person immediately informs the court that it intends to make an application to the court to state a case for the opinion of the High Court, if the magistrates' court makes an order in accordance with section 10(2) of the Extradition Act 1989<sup>(164)</sup> releasing that person on bail, the court officer shall forthwith send a copy of that order to the Administrative Court Office.

(2) Where a magistrates' court refuses to make an order of committal in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates and the state, country or colony seeking his surrender wishes to apply to the court to state a case for the opinion of the High Court under section 10(1) of the 1989 Act, such application must be made to the magistrates' court within the period of 21 days following the day on which the court refuses to make the order of committal unless the court grants a longer period within which the application is to be made.

(3) Such an application shall be made in writing and shall identify the question or questions of law on which the opinion of the High Court is sought.

(4) Within 21 days after receipt of an application to state a case under section 10(1) of the 1989 Act, the magistrates' court officer shall send a draft case to the solicitor for the state, country or colony and to the person whose surrender is sought or his solicitor and shall allow each party 21 days within which to make representations thereon; within 21 days after the latest day on which such

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<sup>(164)</sup> 1989 c. 33; the whole Act was repealed by section 218(b) of, and Schedule 4 to, the Extradition Act 1989 (c. 41), with savings and territorial exceptions.

representations may be made the court of committal shall, after considering any such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case which the court officer shall forthwith send to the solicitor for the state, country or colony.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

#### **Notice of waiver**

**17.2.**—(1) A notice given under section 14 of, or paragraph 9 of Schedule 1 to, the Extradition Act 1989<sup>(165)</sup> (notice of waiver under the simplified procedure) shall be in the form set out in the Practice Direction or a form to the like effect.

(2) Such a notice shall be signed in the presence of the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the Act, a justice of the peace or a justices' clerk.

(3) Any such notice given by a person in custody shall be delivered to the Governor of the prison in whose custody he is.

(4) If a person on bail gives such notice he shall deliver it to, or send it by post in a registered letter or by recorded delivery service addressed to, the Secretary of State for the Home Department, c/o the Extradition Section, Home Office, 5<sup>th</sup> Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

#### **Notice of consent**

**17.3.**—(1) A person arrested in pursuance of a warrant under section 8 of or paragraph 5 of Schedule 1 to the Extradition Act 1989<sup>(166)</sup> may at any time consent to his return; and where such consent is given in accordance with the following provisions of this rule, the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the Act may order the committal for return of that person in accordance with section 14(2) of that Act or, as the case may be, paragraph 9(2) of Schedule 1 to the Act.

(2) A notice of consent for the purposes of this rule shall be given in the form set out in the Practice Direction and shall be signed in the presence of the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the 1989 Act.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

#### **Notice of consent (parties to 1995 Convention)**

**17.4.**—(1) This rule applies as between the United Kingdom and states other than the Republic of Ireland that are parties to the Convention drawn up on the basis of Article 31 of the Treaty on European Union on Simplified Extradition Procedures between the Member States of the European

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<sup>(165)</sup> 1989 c. 33; section 14 was amended by section 109(1) of, and paragraph 328 of Schedule 8 to, the Courts Act 2003 (c. 39); paragraph 9 of Schedule 1 was amended by section 109(1) of, and paragraph 329 of Schedule 8 to, the Courts Act 2003 (c. 39).

<sup>(166)</sup> 1989 c. 33; section 8 was amended by section 158(4) of the Criminal Justice and Public Order Act 1994 (c. 33), article 6(1) of, and paragraph 9 of Schedule 5 to, S.I. 1999/1750, section 78(2) of, and paragraphs 31 and 32 of Schedule 11 and Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 325 of Schedule 8 to, the Courts Act 2003 (c. 39); paragraph 5 of Schedule 1 was amended by section 78(2) of, and paragraphs 31 and 36 of Schedule 11 and Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 329 of Schedule 8 to, the Courts Act 2003 (c. 39).

Union, in relation to which section 14A of the Extradition Act 1989 applies by virtue of section 34A and Schedule 1A of that Act<sup>(167)</sup>.

(2) Notice of consent for the purposes of section 14A(3) of the 1989 Act shall be given in the form set out in the Practice Direction and shall be signed in the presence of the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of that Act.

(3) The Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the Act may order the committal for return of a person if he gives consent under section 14A of the 1989 Act in accordance with paragraph (2) above before he is committed under section 9 of that Act<sup>(168)</sup>.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Consent to early removal to Republic of Ireland**

**17.5.**—(1) A notice given under section 3(1)(a) of the Backing of Warrants (Republic of Ireland) Act 1965<sup>(169)</sup> (consent to surrender earlier than is otherwise permitted) shall be signed in the presence of a justice of the peace or a justices' clerk.

(2) Any such notice given by a person in custody shall be delivered to the Governor of the prison in whose custody he is.

(3) If a person on bail gives such notice, he shall deliver it to, or send it by post in a registered letter or by recorded delivery service addressed to, the police officer in charge of the police station specified in his recognizance.

(4) Any such notice shall be attached to the warrant ordering the surrender of that person.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Bail pending removal to Republic of Ireland**

**17.6.**—(1) The person taking the recognizance of a person remanded on bail under section 2(1) or 4(3) of the Backing of Warrants (Republic of Ireland) Act 1965<sup>(170)</sup> shall furnish a copy of the recognizance to the police officer in charge of the police station specified in the recognizance.

(2) The court officer for a magistrates' court which ordered a person to be surrendered and remanded him on bail shall deliver to, or send by post in a registered letter or by recorded delivery service addressed to, the police officer in charge of the police station specified in the recognizance the warrant ordering the person to be surrendered.

(3) The court officer for a magistrates' court which refused to order a person to be delivered under section 2 of the 1965 Act but made an order in accordance with section 2A(2) of that Act<sup>(171)</sup> releasing that person on bail, upon the chief officer of police immediately informing the court that

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<sup>(167)</sup> 1989 c. 33; section 34A and Schedule 1A were inserted by regulation 2(1) of, and paragraph 1 of Schedule 9 to, S.I. 2002/419.

<sup>(168)</sup> 1989 c. 33; section 9 was amended by article 6(1) of, and paragraph 9 of Schedule 5 to, S.I. 1999/1750, section 158(5) of the Criminal Justice and Public Order Act 1994 (c. 33), section 78(2) of, and paragraphs 31 and 36 of Schedule 11 and Table (3) in Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 326 of Schedule 8 to, the Courts Act 2003 (c. 39).

<sup>(169)</sup> 1965 c. 45; this Act was repealed by section 218(a) of, and Schedule 4 to, the Extradition Act 2003 (c. 41).

<sup>(170)</sup> 1965 c. 45; section 4(3) was amended by section 159(4) of the Criminal Justice and Public Order Act 1994 (c. 33). The 1965 Act was repealed by Schedule 4 to, the Extradition Act 2003 (c. 41).

<sup>(171)</sup> 1965 c. 45; section 2 was amended by section 4 of, and paragraph 1 of Schedule 3 to, the Criminal Jurisdiction Act 1975 (c. 59), section 72 of the Criminal Justice Act 1993 (c. 36) and sections 159 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33). The 1965 Act was repealed by Schedule 4 to, the Extradition Act 2003 (c. 41).

he intended to make an application to the court to state a case for the opinion of the High Court, shall forthwith send a copy of that order to the Administrative Court Office.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Delivery of warrant issued in Republic of Ireland**

**17.7.**—(1) The court officer for a magistrates' court which ordered a person to be surrendered under section 2(1) of the Backing of Warrants (Republic of Ireland) Act 1965 shall deliver to, or send by post in a registered letter or by recorded delivery service addressed to—

- (a) if he is remanded in custody under section 5(1)(a) of the 1965 Act, the prison Governor to whose custody he is committed;
- (b) if he is remanded on bail under section 5(1)(b) of the 1965 Act<sup>(172)</sup>, the police officer in charge of the police station specified in the recognizance; or
- (c) if he is committed to the custody of a constable pending the taking from him of a recognizance under section 5(1) of the 1965 Act, the police officer in charge of the police station specified in the warrant of commitment,

the warrant of arrest issued by a judicial authority in the Republic of Ireland and endorsed in accordance with section 1 of the 1965 Act<sup>(173)</sup>.

(2) The Governor or police officer to whom the said warrant of arrest is delivered or sent shall arrange for it to be given to the member of the police force of the Republic into whose custody the person is delivered when the person is so delivered.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Verification of warrant etc. issued in Republic of Ireland**

**17.8.**—(1) A document purporting to be a warrant issued by a judicial authority in the Republic of Ireland shall, for the purposes of section 7(a) of the Backing of Warrants (Republic of Ireland) Act 1965, be verified by a certificate purporting to be signed by a judicial authority, a clerk of a court or a member of the police force of the Republic and certifying that the document is a warrant and is issued by a judge or justice of a court or a peace commissioner.

(2) A document purporting to be a copy of a summons issued by a judicial authority in the Republic shall, for the purposes of section 7(a) of the 1965 Act, be verified by a certificate purporting to be signed by a judicial authority, a clerk of a court or a member of the police force of the Republic and certifying that the document is a true copy of such a summons.

(3) A deposition purporting to have been made in the Republic, or affidavit or written statement purporting to have been sworn therein, shall, for the purposes of section 7(c) of the 1965 Act, be verified by a certificate purporting to be signed by the person before whom it was sworn and certifying that it was so sworn.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

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<sup>(172)</sup> 1965 c. 45; section 5(1)(b) was amended by sections 12 and 13 of, and paragraph 33 of Schedule 2 to, the Bail Act 1976 (c. 63). The 1965 Act was repealed by Schedule 4 to, the Extradition Act 2003 (c. 41).

<sup>(173)</sup> 1965 c. 45; section 1 was amended by section 109(1) of, and paragraph 119 of Schedule 8 to, the Courts Act 2003 (c. 39). The 1965 Act was repealed by Schedule 4 to, the Extradition Act 2003 (c. 41).

### **Application to state a case where court declines to order removal to Republic of Ireland**

**17.9.**—(1) Where a magistrates' court refuses to make an order in relation to a person under section 2 of the Backing of Warrants (Republic of Ireland) Act 1965, any application to the court under section 2A(1) of that Act to state a case for the opinion of the High Court on any question of law arising in the proceedings must be made to the court by the chief officer of police within the period of 21 days following the day on which the order was refused, unless the court grants a longer period within which the application is to be made.

(2) Such an application shall be made in writing and shall identify the question or questions of law on which the opinion of the High Court is sought.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Draft case where court declines to order removal to Republic of Ireland**

**17.10.** Within 21 days after receipt of an application to state a case under section 2A(1) of the Backing of Warrants (Republic of Ireland) Act 1965, the magistrates' court officer shall send a draft case to the applicant or his solicitor and to the person to whom the warrant relates or his solicitor and shall allow each party 21 days within which to make representations thereon; within 21 days after the latest day on which such representations may be made the court shall, after considering such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case which the court officer shall forthwith send to the applicant or his solicitor.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Forms for proceedings for removal to Republic of Ireland**

**17.11.** Where a requirement is imposed by the Backing of Warrants (Republic of Ireland) Act 1965 for the use of a form, and an appropriate form is contained in the Practice Direction, that form shall be used.

*[Note. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

## **PART 18**

### **WARRANTS**

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### Scope of this Part and interpretation

**18.1.**—(1) This Part applies to any warrant issued by a justice of the peace.

(2) Where a rule applies to some of those warrants and not others, it says so.

(3) In this Part, the ‘relevant person’ is the person against whom the warrant is issued.

*[Note. For the rules governing the issue and execution of a search warrant, see sections 15 and 16 of the Police and Criminal Evidence Act 1984(174). For those governing warrants of distress (warrants to enforce payments of fines etc.), see rule 52.8.]*

### Warrants must be signed

**18.2.** Every warrant under the Magistrates’ Courts Act 1980(175) must be signed by the justice issuing it, unless rule 5.3 permits the justices’ clerk to sign it.

### Warrants issued when the court office is closed

**18.3.**—(1) If a warrant is issued when the court office is closed, the applicant must—

- (a) serve on the court officer any information on which that warrant is issued; and
- (b) do so within 72 hours of that warrant being issued.

(2) In this rule, the court office is the office for the local justice area in which the justice is acting when he issues the warrant.

### Commitment to custody must be by warrant

**18.4.** A justice of the peace must issue a warrant of commitment when committing a person to—

- (a) a prison;
- (b) a young offender institution;
- (c) a remand centre;

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(174) 1984 c. 60; section 15 is 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). 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).

(175) 1980 c. 43.

- (d) detention at a police station under section 128(7) of the Magistrates' Courts Act 1980; or
- (e) customs detention under section 152 of the Criminal Justice Act 1988(176).

### **Terms of a warrant of arrest**

**18.5.** A warrant of arrest must require the persons to whom it is directed to arrest the relevant person.

### **Terms of a warrant of commitment or detention: general rules**

**18.6.—**(1) A warrant of commitment or detention must require—

- (a) the persons to whom it is directed to—
  - (i) arrest the relevant person, if he is at large,
  - (ii) take him to the prison or place specified in the warrant, and
  - (iii) deliver him with the warrant to the governor or keeper of that prison or place; and
- (b) the governor or keeper to keep the relevant person in custody at that prison or place—
  - (i) for as long as the warrant requires, or
  - (ii) until he is delivered, in accordance with the law, to the court or other proper place or person.

(2) Where the justice issuing a warrant of commitment or detention is aware that the relevant person is already detained in a prison or other place of detention, the warrant must be delivered to the governor or keeper of that prison or place.

*[Note. Rule 18.6(1) does not apply to a warrant committing a person to customs detention under section 152 of the Criminal Justice Act 1988; see rule 18.7(2). Where rule 18.12 applies (place of detention), the relevant person may be taken to a prison or other place which is not specified in the warrant.]*

### **Terms of a warrant committing a person to customs detention**

**18.7.—**(1) A warrant committing a person to customs detention under section 152 of the 1988 Act must—

- (a) be directed to the officers of Her Majesty's Revenue and Customs; and
  - (b) require those officers to keep the person committed in their custody, unless in the meantime he be otherwise delivered, in accordance with the law, to the court or other proper place or person, for a period (not exceeding 192 hours) specified in the warrant.
- (2) Rules 18.6(1), 18.10 and 18.12 do not apply where this rule applies.

### **Form of warrant where male aged 15 or 16 is committed**

**18.8.—**(1) This rule applies where a male aged 15 or 16 years is remanded or committed to—

- (a) local authority accommodation, with a requirement that he be placed and kept in secure accommodation;
- (b) a remand centre; or
- (c) a prison.

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(176) 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).

(2) The court must include in the warrant of commitment a statement of any declaration that is required in connection with that remand or committal.

*[Note. Section 23(4) of the Children and Young Persons Act 1969(177), as modified by section 98 of the Crime and Disorder Act 1998(178), allows a magistrates' court to remand or commit a boy, aged 15 or 16, to local authority secure accommodation, a remand centre or a prison in order to protect the public from serious harm. Section 23(4) of the 1969 Act requires the court to declare that the boy is one to whom section 23(5) of that Act, as modified by section 98(3) of the 1998 Act, applies (e.g. violent or sexual offence, history of absconding etc.).]*

### Information to be included in a warrant

**18.9.** A warrant of arrest, commitment or detention must contain the following information—

- (a) the name or a description of the relevant person; and
- (b) either—
  - (i) a statement of the offence with which the relevant person is charged,
  - (ii) a statement of the offence of which the person to be committed or detained was convicted; or
  - (iii) any other ground on which the warrant is issued.

### Persons who may execute a warrant

**18.10.** A warrant of arrest, commitment or detention may be executed by—

- (a) the persons to whom it is directed; or
- (b) by any of the following persons, whether or not it was directed to them—
  - (i) a constable for any police area in England and Wales, acting in his own police area, and
  - (ii) any person authorised under section 125A (civilian enforcement officers) or section 125B (approved enforcement agencies) of the Magistrates' Courts Act 1980(179).

*[Note. This rule does not apply to a warrant committing a person to customs detention under section 152 of the Criminal Justice Act 1988; see rule 18.7(2).]*

### Making an arrest under a warrant

**18.11.—(1)** The person executing a warrant of arrest, commitment or detention must, when arresting the relevant person—

- (a) either—
  - (i) show the warrant (if he has it with him) to the relevant person, or

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(177) 1969 c. 54; section 23(4) was amended by section 97 of the Crime and Disorder Act 1998 (c. 37) and section 201 of the Extradition Act 2003 (c. 41).

(178) 1998 c. 37; section 98 was amended by paragraph 7 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), paragraphs 38 and 39 of Schedule 7, and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), Part 4 of Schedule 5 to, the Children Act 2004 (c. 31), section 4 of the Criminal Defence Service Act 2006 (c. 9) and by article 3 of and paragraph 13 of S.I. 2008/912. It was also amended by section 210 of the Extradition Act 2003 (c. 41), except in relation to extradition proceedings on or before 31 December 2003).

(179) 1980 c. 43; section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22), articles 46 and 52 of S.I. 2006/1737, section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29) and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128. 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 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29).

- (ii) tell the relevant person where the warrant is and what arrangements can be made to let that person inspect it;
- (b) explain, in ordinary language, the charge and the reason for the arrest; and
- (c) (unless he is a constable in uniform) show documentary proof of his identity.

(2) If the person executing the warrant is one of the persons referred to in rule 18.10(b)(ii) (civilian enforcement officers or approved enforcement agencies), he must also show the relevant person a written statement under section 125A(4) or section 125B(4) of the Magistrates' Courts Act 1980, as appropriate.

### **Place of detention**

**18.12.**—(1) This rule applies to any warrant of commitment or detention.

(2) The person executing the warrant is required to take the relevant person to the prison or place of detention specified in the warrant.

(3) But where it is not immediately practicable to do so, or where there is some other good reason, the relevant person may be taken to any prison or place where he may be lawfully detained until such time when he can be taken to the prison or place specified in the warrant.

(4) If (and for as long as) the relevant person is detained in a place other than the one specified in the warrant, the warrant will have effect as if it specified the place where he is in fact being detained.

(5) The court must be kept informed of the prison or place where the relevant person is in fact being detained.

(6) The governor or keeper of the prison or place, to which the relevant person is delivered, must give a receipt on delivery.

*[Note. This rule does not apply to a warrant committing a person to customs detention under section 152 of the Criminal Justice Act 1988; see rule 18.7(2).]*

### **Duration of detention where bail is granted subject to pre-release conditions**

**18.13.**—(1) This rule applies where a magistrates' court—

- (a) grants bail to a person subject to conditions which must be met prior to release on bail; and
- (b) commits that person to custody until those conditions are satisfied.

(2) The warrant of commitment must require the governor or keeper of the prison or place of detention to bring the relevant person to court either before or at the end of a period of 8 clear days from the date the warrant was issued, unless section 128(3A) or section 128A of the Magistrates' Courts Act 1980 applies to permit a longer period.

### **Validity of warrants that contain errors**

**18.14.** A warrant of commitment or detention will not be invalidated on the ground that it contains an error, provided that the warrant—

- (a) is issued in relation to a valid—
  - (i) conviction, or
  - (ii) order requiring the relevant person to do, or to abstain from doing, something; and
- (b) it states that it is issued in relation to that conviction or order.

*[Note. Section 123 of the Magistrates' Courts Act 1980 applies in relation to any error in a warrant of arrest that is issued for the purpose of securing a person's attendance at court.]*

### **Circumstances in which a warrant will cease to have effect**

**18.15.**—(1) A warrant issued under any of the provisions listed in paragraph (2) will cease to have effect when—

- (a) the sum in respect of which the warrant is issued (together with the costs and charges of commitment, if any) is paid to the person who is executing the warrant;
- (b) that sum is offered to, but refused by, the person who is executing the warrant; or
- (c) a receipt for that sum given by—
  - (i) the court officer for the court which issued the warrant, or
  - (ii) the charging or billing authorityis produced to the person who is executing the warrant.

(2) Those provisions are—

- (a) section 76 (warrant to enforce fines and other sums);
- (b) section 83(1) and (2) (warrant to secure attendance of offender for purposes of section 82);
- (c) section 86(4) (warrant to arrest offender following failure to appear on day fixed for means inquiry);
- (d) section 136 (committal to custody overnight at police station),

of the Magistrates' Courts Act 1980.

(3) No person may execute, or continue to execute, a warrant that ceases to have effect under this rule.

### **Warrant endorsed for bail (record to be kept)**

**18.16.** A person executing a warrant of arrest that is endorsed for bail under section 117 of the Magistrates' Courts Act 1980 must—

- (a) make a record stating—
  - (i) the name of the person arrested,
  - (ii) the charge and the reason for the arrest,
  - (iii) the fact that the person is to be released on bail,
  - (iv) the date, time and place at which the person is required to appear before the court, and
  - (v) any other details which he considers to be relevant; and
- (b) after making the record—
  - (i) sign the record,
  - (ii) invite the person arrested to sign the record and, if they refuse, make a note of that refusal on the record,
  - (iii) make a copy of the record and give it to the person arrested, and
  - (iv) send the original record to the court officer for the court which issued the warrant.

## **PART 19**

### **BAIL IN MAGISTRATES' COURTS AND THE CROWN COURT**

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### Application to a magistrates' court to vary conditions of bail

**19.1.**—(1) An application under section 43B(1) of the Magistrates' Courts Act of 1980<sup>(180)</sup>, or section 47(1E) of the Police and Criminal Evidence Act 1984<sup>(181)</sup>, to vary conditions of police bail, shall—

- (a) be made in writing;
- (b) contain a statement of the grounds upon which it is made;
- (c) where the applicant has been bailed following charge, specify the offence with which he was charged and, in any other case, specify the offence under investigation;
- (d) specify, or be accompanied by a copy of the note of, the reasons given by the custody officer for imposing or varying the conditions of bail;
- (e) specify the name and address of any surety provided by the applicant before his release on bail to secure his surrender to custody; and
- (f) specify the address at which the applicant would reside, if the court imposed a condition of residence.

(2) Any such application shall be sent to the court officer for—

- (a) the magistrates' court appointed by the custody officer as the court before which the applicant has a duty to appear; or
- (b) if no such court has been appointed, a magistrates' court acting for the local justice area in which the police station at which the applicant was granted bail or at which the conditions of his bail were varied, as the case may be, is situated,

(3) The court officer to whom an application is sent under paragraph (2) above shall serve not less than 24 hours' notice in writing of the date, time and place fixed for the hearing of the application on—

- (a) the applicant;
- (b) the prosecutor or, if the applicant has not been charged, the chief officer of police or other investigator, together with a copy of the application; and
- (c) any surety in connection with bail in criminal proceedings granted to, or the conditions of which were varied by a custody officer in relation to, the applicant.

(4) The time fixed for the hearing shall be not later than 72 hours after receipt of the application. In reckoning for the purposes of this paragraph any period of 72 hours, no account shall be taken of Christmas Day, Boxing Day, Good Friday, any bank holiday, or any Saturday or Sunday.

(5) A party who wants a magistrates' court to vary or impose conditions of bail under section 3(8) of the Bail Act 1976<sup>(182)</sup>, must—

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

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<sup>(180)</sup> 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).

<sup>(181)</sup> 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).

<sup>(182)</sup> 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and is further amended by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), commenced in part and for certain purposes only, the remainder to take effect from a date to be appointed.

(ii) explain the reasons.

(6) If the magistrates' court hearing an application under section 43B(1) of the 1980 Act or section 47(1E) of the 1984 Act discharges or enlarges any recognizance entered into by any surety or increases or reduces the amount in which that person is bound, the court officer shall forthwith give notice thereof to the applicant and to any such surety.

(7) The court may—

- (a) vary or waive a time limit under paragraph (3) or (5) of this rule; and
- (b) allow a notice to be—
  - (i) in a different form to one set out in the Practice Direction, or
  - (ii) given orally.

*[Note. See also section 43B of the Magistrates' Courts Act 1980 and section 47 of the Police and Criminal Evidence Act 1984(183).*

*The Practice Direction sets out a form for use in connection with this rule.]*

### **Application to a magistrates' court to reconsider grant of police bail**

**19.2.**—(1) The appropriate court for the purposes of section 5B of the Bail Act 1976(184) in relation to the decision of a constable to grant bail shall be—

- (a) the magistrates' court appointed by the custody officer as the court before which the person to whom bail was granted has a duty to appear; or
- (b) if no such court has been appointed, a magistrates' court acting for the local justice area in which the police station at which bail was granted is situated.

(2) An application under section 5B(1) of the 1976 Act shall—

- (a) be made in writing;
- (b) contain a statement of the grounds on which it is made;
- (c) specify the offence which the proceedings in which bail was granted were connected with, or for;
- (d) specify the decision to be reconsidered (including any conditions of bail which have been imposed and why they have been imposed);
- (e) specify the name and address of any surety provided by the person to whom the application relates to secure his surrender to custody; and
- (f) contain notice of the powers available to the court under section 5B of the 1976 Act.

(3) The court officer to whom an application is sent under paragraph (2) above shall serve notice in writing of the date, time and place fixed for the hearing of the application on—

- (a) the prosecutor who made the application;
- (b) the person to whom bail was granted, together with a copy of the application; and
- (c) any surety specified in the application.(4)

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(183) 1984 (c. 60); section 47 was amended by sections 27, 29 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 46 of the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 283 of Schedule 8 to, the Courts Act 2003 (c. 39), sections 12 and 28 of, and paragraphs 1 and 10 of Schedule 1, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44) and section 10 of, and paragraphs 1 and 6 of Schedule 6 of the Police and Justice Act 2006 (c. 48). It was also amended by section 46 of the Police and Justice Act 2006 (c. 48) for certain purposes; and is so amended for remaining purposes, with effect from a date to be appointed.

(184) 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).



(4) The time fixed for the hearing shall be not later than 72 hours after receipt of the application. In reckoning for the purpose of this paragraph any period of 72 hours, no account shall be taken of Christmas Day, Good Friday, any bank holiday or any Sunday.

(5) At the hearing of an application under section 5B of the 1976 Act the court shall consider any representations made by the person affected (whether in writing or orally) before taking any decision under that section with respect to him; and, where the person affected does not appear before the court, the court shall not take such a decision unless it is proved to the satisfaction of the court, on oath or in the manner set out by rule 4.11, that the notice required to be given under paragraph (3) of this rule was served on him before the hearing.

(6) Where the court proceeds in the absence of the person affected in accordance with paragraph (6)—

- (a) if the decision of the court is to vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally, the court officer shall notify the person affected;
- (b) if the decision of the court is to withhold bail, the order of the court under section 5B(5) (b) of the 1976 Act (surrender to custody) shall be signed by the justice issuing it or state his name and be authenticated by the signature of the clerk of the court.

#### **Notice of change of time for appearance before magistrates' court**

**19.3.** Where—

- (a) a person has been granted bail under the Police and Criminal Evidence Act 1984<sup>(185)</sup> subject to a duty to appear before a magistrates' court and the court before which he is to appear appoints a later time at which he is to appear; or
- (b) a magistrates' court further remands a person on bail under section 129 of the Magistrates' Courts Act 1980<sup>(186)</sup> in his absence,

it shall give him and his sureties, if any, notice thereof.

#### **Directions by a magistrates' court as to security, etc**

**19.4.** Where a magistrates' court, under section 3(5) or (6) of the Bail Act 1976<sup>(187)</sup>, imposes any requirement to be complied with before a person's release on bail, the court may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.

*[Note. See also section 3 of the Bail Act 1976. As to the estreatment of recognizances in magistrates' courts on failure to surrender see section 120 of the Magistrates' Courts Act 1980. For the procedure where a defendant fails to surrender, see also direction I.13 in the Practice Direction.]*

#### **Requirements to be complied with before release on bail granted by a magistrates' court**

**19.5.—(1)** Where a magistrates' court has fixed the amount in which a person (including any surety) is to be bound by a recognizance, the recognizance may be entered into—

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<sup>(185)</sup> 1984 c. 60.

<sup>(186)</sup> 1980 c. 43; section 129 is amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

<sup>(187)</sup> 1976 c. 63; section 3(5) was amended by sections 54 and 120 of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37).

- (a) in the case of a surety where the accused is in a prison or other place of detention, before the governor or keeper of the prison or place as well as before the persons mentioned in section 8(4)(a) of the Bail Act 1976<sup>(188)</sup>;
- (b) in any other case, before a justice of the peace, a justices' clerk, a magistrates' court officer, a police officer who either is of the rank of inspector or above or is in charge of a police station or, if the person to be bound is in a prison or other place of detention, before the governor or keeper of the prison or place; or
- (c) where a person other than a police officer is authorised under section 125A or 125B of the Magistrates' Courts Act 1980 to execute a warrant of arrest providing for a recognizance to be entered into by the person arrested (but not by any other person), before the person executing the warrant.

(2) The court officer for a magistrates' court which has fixed the amount in which a person (including any surety) is to be bound by a recognizance or, under section 3(5), (6) or (6A) of the 1976 Act<sup>(189)</sup> imposed any requirement to be complied with before a person's release on bail or any condition of bail shall issue a certificate showing the amount and conditions, if any, of the recognizance, or as the case may be, containing a statement of the requirement or condition of bail; and a person authorised to take the recognizance or do anything in relation to the compliance with such requirement or condition of bail shall not be required to take or do it without production of such a certificate as aforesaid.

(3) If any person proposed as a surety for a person committed to custody by a magistrates' court produces to the governor or keeper of the prison or other place of detention in which the person so committed is detained a certificate to the effect that he is acceptable as a surety, signed by any of the justices composing the court or the clerk of the court and signed in the margin by the person proposed as surety, the governor or keeper shall take the recognizance of the person so proposed.

(4) Where the recognizance of any person committed to custody by a magistrates' court or of any surety of such a person is taken by any person other than the court which committed the first-mentioned person to custody, the person taking the recognizance shall send it to the court officer for that court:

Provided that, in the case of a surety, if the person committed has been committed to the Crown Court for trial or under any of the enactments mentioned in rule 43.1(1), the person taking the recognizance shall send it to the Crown Court officer.

#### **Notice to governor of prison, etc, where release from custody is ordered by a magistrates' court**

**19.6.** Where a magistrates' court has, with a view to the release on bail of a person in custody, fixed the amount in which he or any surety of such a person shall be bound or, under section 3(5), (6) or (6A) of the Bail Act 1976, imposed any requirement to be complied with before his release or any condition of bail—

- (a) the magistrates' court officer shall give notice thereof to the governor or keeper of the prison or place where that person is detained by sending him such a certificate as is mentioned in rule 19.5(2); and
- (b) any person authorised to take the recognizance of a surety or do anything in relation to the compliance with such requirement shall, on taking or doing it, send notice thereof by post

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<sup>(188)</sup> 1976 c. 63; section 8(4) was amended by section 109(1) of, and paragraph 186 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).

<sup>(189)</sup> 1976 c. 63; section 3(5) was amended by sections 54 and 120 of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37). Section 3(6) was amended by sections 27 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 54 of the Crime and Disorder Act 1998 (c. 37), section 13 of, and Part 2 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 34 to Schedule 21 of, the Legal Services Act 2007 (c. 29). Section 3(6A) was inserted by section 34 of the Mental Health (Amendment) Act 1982 (c. 51).

to the said governor or keeper and, in the case of a recognizance of a surety, shall give a copy of the notice to the surety.

### **Release when notice received by governor of prison that recognizances have been taken or requirements complied with**

**19.7.** Where a magistrates' court has, with a view to the release on bail of a person in custody, fixed the amount in which he or any surety of such a person shall be bound or, under section 3(5) or (6) of the Bail Act 1976, imposed any requirement to be complied with before his release and given notice thereof in accordance with this Part to the governor or keeper of the prison or place where that person is detained, the governor or keeper shall, when satisfied that the recognizances of all sureties required have been taken and that all such requirements have been complied with, and unless he is in custody for some other cause, release him.

### **Notice from a magistrates' court of enlargement of recognizances**

**19.8.—(1)** If a magistrates' court before which any person is bound by a recognizance to appear enlarges the recognizance to a later time under section 129 of the Magistrates' Courts Act 1980 in his absence, it shall give him and his sureties, if any, notice thereof.

(2) If a magistrates' court, under section 129(4) of the 1980 Act, enlarges the recognizance of a surety for a person committed for trial on bail, it shall give the surety notice thereof.

*[Note. See also section 129 of the Magistrates' Courts Act 1980.]*

### **Further remand by a youth court**

**19.9.** Where a child or young person has been remanded, and the period of remand is extended in his absence in accordance with section 48 of the Children and Young Persons Act 1933(**190**), notice shall be given to him and his sureties (if any) of the date at which he will be required to appear before the court.

### **Notes of argument in magistrates' court bail hearings**

**19.10.** Where a magistrates' court hears full argument as to bail, the clerk of the court shall take a note of that argument.

### **Bail records to be entered in register of a magistrates' court**

**19.11.** Any record required by section 5 of the Bail Act 1976(**191**) to be made by a magistrates' court (together with any note of reasons required by section 5(4) to be included and the particulars set out in any certificate granted under section 5(6A)) shall be made by way of an entry in the register.

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(190) 1933 c. 12; section 48 was amended by section 79 of, and Schedule 9 to, the Criminal Justice Act 1948 (c. 58), section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55), section 64 of, and paragraph 12 of Schedule 3 and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 72, 79 and 83 of, and Schedules 6, 9 and 10 to, the Children and Young Persons Act 1969 (c. 54), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 75 of Schedule 8 to, the Courts Act 2003 (c. 39).

(191) 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) and paragraph 48 of Schedule 3 to, and Parts 2 and 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). The amendments in Schedule 3 of the 2003 Act are in force in relation to certain cases only. It is further amended by sections 41, 331 and 332 of, and 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) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27), with effect from dates to be appointed.

[Note. See also section 5 of the Bail Act 1976. For the general requirement to keep a register, see rule 5.4.]

### Notification of bail decision by a magistrate after arrest while on bail

**19.12.** Where a person who has been released on bail and is under a duty to surrender into the custody of a court is brought under section 7(4)(a) of the Bail Act 1976<sup>(192)</sup> before a justice of the peace, the justice shall cause a copy of the record made in pursuance of section 5 of that Act relating to his decision under section 7(5) of that Act<sup>(193)</sup> in respect of that person to be sent to the court officer for that court:

Provided that this rule shall not apply where the court is a magistrates' court acting for the same local justice area as that for which the justice acts.

[Note. See also section 7 of the Bail Act 1976.]

### Transfer of remand hearings

**19.13.—**(1) Where a magistrates' court, under section 130(1) of the Magistrates' Courts Act 1980<sup>(194)</sup>, orders that an accused who has been remanded in custody be brought up for any subsequent remands before an alternate magistrates' court, the court officer for the first-mentioned court shall, as soon as practicable after the making of the order and in any case within 2 days thereafter (not counting Sundays, Good Friday, Christmas Day or bank holidays), send to the court officer for the alternate court—

- (a) a statement indicating the offence or offences charged;
- (b) a copy of the record made by the first-mentioned court in pursuance of section 5 of the Bail Act 1976 relating to the withholding of bail in respect of the accused when he was last remanded in custody;
- (c) a copy of any representation order previously made in the same case;
- (d) a copy of any application for a representation order;
- (e) if the first-mentioned court has made an order under section 8(2) of the 1980 Act<sup>(195)</sup> (removal of restrictions on reports of committal proceedings), a statement to that effect.
- (f) a statement indicating whether or not the accused has a solicitor acting for him in the case and has consented to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) and 18(4) of the 1980 Act<sup>(196)</sup> together with a statement indicating whether or not that consent has been withdrawn;
- (g) a statement indicating the occasions, if any, on which the accused has been remanded under section 128(3A) of the 1980 Act<sup>(197)</sup> without being brought before the first-mentioned court; and

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<sup>(192)</sup> 1976 c. 63; section 7(4)(a) was amended by section 109 of, and paragraph 185 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).

<sup>(193)</sup> 1976 c. 63; section 7(5) was amended by section 198 of the Extradition Act 2003 (c. 41).

<sup>(194)</sup> 1980 c. 43; section 130(1) was amended by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and is further amended by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

<sup>(195)</sup> 1980 c. 43; section 8(2) was amended by sections 1 of the Criminal Justice (Amendment) Act 1981 (c. 27). Section 8 is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

<sup>(196)</sup> 1980 c. 43; section 5 was amended by section 59 of, and paragraph 1(a) of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 18(4) was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48).

<sup>(197)</sup> 1980 c. 43; section 128(3A) was inserted by section 59 of, and paragraph 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and amended by section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 and sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25); and is further

- (h) if the first-mentioned court remands the accused under section 128A(198) of the 1980 Act on the occasion upon which it makes the order under section 130(1) of that Act, a statement indicating the date set under section 128A(2) of that Act.

(2) Where the first-mentioned court is satisfied as mentioned in section 128(3A) of the 1980 Act, paragraph (1) shall have effect as if for the words ‘an accused who has been remanded in custody be brought up for any subsequent remands before’ there were substituted the words ‘applications for any subsequent remands of the accused be made to’.

(3) The court officer for an alternate magistrates’ court before which an accused who has been remanded in custody is brought up for any subsequent remands in pursuance of an order made as aforesaid shall, as soon as practicable after the order ceases to be in force and in any case within 2 days thereafter (not counting Sundays, Good Friday, Christmas Day or bank holidays), send to the court officer for the magistrates’ court which made the order—

- (a) a copy of the record made by the alternate court in pursuance of section 5 of the 1976 Act relating to the grant or withholding of bail in respect of the accused when he was last remanded in custody or on bail;
- (b) a copy of any representation order made by the alternate court;
- (c) a copy of any application for a representation order made to the alternate court;
- (d) if the alternate court has made an order under section 8(2) of the 1980 Act (removal of restrictions on reports of committal proceedings), a statement to that effect;
- (e) a statement indicating whether or not the accused has a solicitor acting for him in the case and has consented to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) and 18(4) of the 1980 Act together with a statement indicating whether or not that consent has been withdrawn; and
- (f) a statement indicating the occasions, if any, on which the accused has been remanded by the alternate court under section 128(3A) of the 1980 Act without being brought before that court.

(4) Where the alternate court is satisfied as mentioned in section 128(3A) of the 1980 Act paragraph (2) above shall have effect as if for the words ‘an accused who has been remanded in custody is brought up for any subsequent remands’ there shall be substituted the words ‘applications for the further remand of the accused are to be made’.

### Notice of further remand in certain cases

**19.14.** Where a transfer direction has been given by the Secretary of State under section 47 of the Mental Health Act 1983(199) in respect of a person remanded in custody by a magistrates’ court and the direction has not ceased to have effect, the court officer shall give notice in writing to the managers of the hospital where he is detained of any further remand under section 128 of the Magistrates’ Courts Act 1980.

### Cessation of transfer direction

**19.15.** Where a magistrates’ court directs, under section 52(5) of the Mental Health Act 1983(200), that a transfer direction given by the Secretary of State under section 48 of that Act in

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amended by sections 41 and 332 of, and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(198) 1980 c. 43; section 128A was inserted by section 155(1) of the Criminal Justice Act 1988 (c. 33) and amended by section 52(2) and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).

(199) 1983 c. 20; section 47 was amended by sections 49(3) and 56(2) of, and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43).

(200) 1983 c. 20; section 52(5) is amended by paragraph 55 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), for certain purposes, and by section 11 of the Mental Health Act 2007 (c. 12). It is further amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44), for remaining purposes, with effect from a date to be appointed.

respect of a person remanded in custody by a magistrates' court shall cease to have effect, the court officer shall give notice in writing of the court's direction to the managers of the hospital specified in the Secretary of State's direction and, where the period of remand has not expired or the person has been committed to the Crown Court for trial or to be otherwise dealt with, to the Governor of the prison to which persons of the sex of that person are committed by the court if remanded in custody or committed in custody for trial.

*[Note. As to the requirement to give notice to the prison governor and hospital authorities when a defendant subject to a transfer direction is transferred, committed or sent to the Crown Court for trial, see rules 11.3 and 19.20.]*

### **Lodging an appeal against a grant of bail by a magistrates' court**

**19.16.**—(1) Where the prosecution wishes to exercise the right of appeal, under section 1 of the Bail (Amendment) Act 1993(201), to a judge of the Crown Court against a decision to grant bail, the oral notice of appeal must be given to the justices' clerk and to the person concerned, at the conclusion of the proceedings in which such bail was granted and before the release of the person concerned.

(2) When oral notice of appeal is given, the justices' clerk shall announce in open court the time at which such notice was given.

(3) A record of the prosecution's decision to appeal and the time the oral notice of appeal was given shall be made in the register and shall contain the particulars set out.

(4) Where an oral notice of appeal has been given the court shall remand the person concerned in custody by a warrant of commitment.

(5) On receipt of the written notice of appeal required by section 1(5) of the 1993 Act, the court shall remand the person concerned in custody by a warrant of commitment, until the appeal is determined or otherwise disposed of.

(6) A record of the receipt of the written notice of appeal shall be made in the same manner as that of the oral notice of appeal under paragraph (3).

(7) If, having given oral notice of appeal, the prosecution fails to serve a written notice of appeal within the two hour period referred to in section 1(5) of the 1993 Act the justices' clerk shall, as soon as practicable, by way of written notice (served by a court officer) to the persons in whose custody the person concerned is, direct the release of the person concerned on bail as granted by the magistrates' court and subject to any conditions which it imposed.

(8) If the prosecution serves notice of abandonment of appeal on a court officer, the justices' clerk shall, forthwith, by way of written notice (served by the court officer) to the governor of the prison where the person concerned is being held, or the person responsible for any other establishment where such a person is being held, direct his release on bail as granted by the magistrates' court and subject to any conditions which it imposed.

(9) A court officer shall record the prosecution's failure to serve a written notice of appeal, or its service of a notice of abandonment.

(10) Where a written notice of appeal has been served on a magistrates' court officer, he shall provide as soon as practicable to a Crown Court officer a copy of that written notice, together with—

- (a) the notes of argument made by the court officer for the court under rule 19.10; and
- (b) a note of the date, or dates, when the person concerned is next due to appear in the magistrates' court, whether he is released on bail or remanded in custody by the Crown Court.

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(201) 1993 c. 26; section 1 was amended by sections 200 of, and Schedule 4 to, the Extradition Act 2003 (c. 41) and is further amended by section 18 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.



(11) References in this rule to ‘the person concerned’ are references to such a person within the meaning of section 1 of the 1993 Act.

**Crown Court procedure on appeal against grant of bail by a magistrates’ court**

**19.17.**—(1) This rule shall apply where the prosecution appeals under section 1 of the Bail (Amendment) Act 1993 against a decision of a magistrates’ court granting bail and in this rule, ‘the person concerned’ has the same meaning as in that Act.

(2) The written notice of appeal required by section 1(5) of the 1993 Act shall be in the form set out in the Practice Direction and shall be served on—

- (a) the magistrates’ court officer; and
- (b) the person concerned.

(3) The Crown Court officer shall enter the appeal and give notice of the time and place of the hearing to—

- (a) the prosecution;
- (b) the person concerned or his legal representative; and
- (c) the magistrates’ court officer.

(4) The person concerned shall not be entitled to be present at the hearing of the appeal unless he is acting in person or, in any other case of an exceptional nature, a judge of the Crown Court is of the opinion that the interests of justice require him to be present and gives him leave to be so.

(5) Where a person concerned has not been able to instruct a solicitor to represent him at the appeal, he may give notice to the Crown Court requesting that the Official Solicitor shall represent him at the appeal, and the court may, if it thinks fit, assign the Official Solicitor to act for the person concerned accordingly.

(6) At any time after the service of written notice of appeal under paragraph (2), the prosecution may abandon the appeal by giving notice in writing in the form set out in the Practice Direction.

(7) The notice of abandonment required by the preceding paragraph shall be served on—

- (a) the person concerned or his legal representative;
- (b) the magistrates’ court officer; and
- (c) the Crown Court officer.

(8) Any record required by section 5 of the Bail Act 1976 (together with any note of reasons required by subsection (4) of that section to be included) shall be made by way of an entry in the file relating to the case in question and the record shall include the following particulars, namely—

- (a) the effect of the decision;
- (b) a statement of any condition imposed in respect of bail, indicating whether it is to be complied with before or after release on bail; and
- (c) where bail is withheld, a statement of the relevant exception to the right to bail (as provided in Schedule 1 to the 1976 Act) on which the decision is based.

(9) The Crown Court officer shall, as soon as practicable after the hearing of the appeal, give notice of the decision and of the matters required by the preceding paragraph to be recorded to—

- (a) the person concerned or his legal representative;
- (b) the prosecution;
- (c) the police;
- (d) the magistrates’ court officer; and

- (e) the governor of the prison or person responsible for the establishment where the person concerned is being held.

(10) Where the judge hearing the appeal grants bail to the person concerned, the provisions of rule 19.18(9) (informing the Court of any earlier application for bail) and rule 19.22 (conditions attached to bail granted by the Crown Court) shall apply as if that person had applied to the Crown Court for bail.

(11) The notices required by paragraphs (3), (5), (7) and (9) of this rule may be served under rule 4.6 (service by fax, e-mail or other electronic means) and the notice required by paragraph (3) may be given by telephone.

### **Application to the Crown Court relating to bail**

**19.18.**—(1) This rule applies where an application to the Crown Court relating to bail is made otherwise than during the hearing of proceedings in the Crown Court.

(2) Subject to paragraph (7) below, notice in writing of intention to make such an application to the Crown Court shall, at least 24 hours before it is made, be given to the prosecutor and if the prosecution is being carried on by the Crown Prosecution Service, to the appropriate Crown Prosecutor or, if the application is to be made by the prosecutor or a constable under section 3(8) of the Bail Act 1976<sup>(202)</sup>, to the person to whom bail was granted.

(3) On receiving notice under paragraph (2), the prosecutor or appropriate Crown Public Prosecutor or, as the case may be, the person to whom bail was granted shall—

- (a) notify the Crown Court officer and the applicant that he wishes to be represented at the hearing of the application;
- (b) notify the Crown Court officer and the applicant that he does not oppose the application; or
- (c) give to the Crown Court officer, for the consideration of the Crown Court, a written statement of his reasons for opposing the application, at the same time sending a copy of the statement to the applicant.

(4) A notice under paragraph (2) shall be in the form set out in the Practice Direction or a form to the like effect, and the applicant shall give a copy of the notice to the Crown Court officer.

(5) Except in the case of an application made by the prosecutor or a constable under section 3(8) of the 1976 Act, the applicant shall not be entitled to be present on the hearing of his application unless the Crown Court gives him leave to be present.

(6) Where a person who is in custody or has been released on bail desires to make an application relating to bail and has not been able to instruct a solicitor to apply on his behalf under the preceding paragraphs of this rule, he may give notice in writing to the Crown Court of his desire to make an application relating to bail, requesting that the Official Solicitor shall act for him in the application, and the Court may, if it thinks fit, assign the Official Solicitor to act for the applicant accordingly.

(7) Where the Official Solicitor has been so assigned the Crown Court may, if it thinks fit, dispense with the requirements of paragraph (2) and deal with the application in a summary manner.

(8) Any record required by section 5 of the 1976 Act (together with any note of reasons required by section 5(4) to be included) shall be made by way of an entry in the file relating to the case in question and the record shall include the following particulars, namely—

- (a) the effect of the decision;
- (b) a statement of any condition imposed in respect of bail, indicating whether it is to be complied with before or after release on bail;

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<sup>(202)</sup> 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and is further amended by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), commenced in part and for certain purposes only, the remainder to take effect from a date to be appointed.



- (c) where conditions of bail are varied, a statement of the conditions as varied; and
- (d) where bail is withheld, a statement of the relevant exception to the right to bail (as provided in Schedule 1 to the 1976 Act) on which the decision is based.

(9) Every person who makes an application to the Crown Court relating to bail shall inform the Court of any earlier application to the High Court or the Crown Court relating to bail in the course of the same proceedings.

*[Note. As to applications for bail before committal for trial see also direction V.53, and for bail during trial see also direction III.25, in the Practice Direction.]*

### **Notice to governor of prison of committal on bail**

**19.19.**—(1) Where the accused is committed or sent for trial on bail, a magistrates' court officer shall give notice thereof in writing to the governor of the prison to which persons of the sex of the person committed or sent are committed or sent by that court if committed or sent in custody for trial and also, if the person committed or sent is under 21, to the governor of the remand centre to which he would have been committed or sent if the court had refused him bail.

(2) Where a corporation is committed or sent for trial, a magistrates' court officer shall give notice thereof to the governor of the prison to which would be committed or sent a man committed or sent by that court in custody for trial.

*[Note. For the equivalent provision where a defendant is transferred for trial, see rule 11.2.]*

*On the coming into force of Schedule 3 to the Criminal Justice Act 2003(203), committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998(204), in the same way as cases triable only on indictment.]*

### **Notices on committal of person subject to transfer direction**

**19.20.** Where a transfer direction has been given by the Secretary of State under section 48 of the Mental Health Act 1983(205) in respect of a person remanded in custody by a magistrates' court and, before the direction ceases to have effect, that person is committed or sent for trial, a magistrates' court officer shall give notice—

- (a) to the governor of the prison to which persons of the sex of that person are committed or sent by that court if committed or sent in custody for trial; and
- (b) to the managers of the hospital where he is detained.

*[Note. For the equivalent provision where a defendant is transferred for trial see rule 11.3. On the coming into force of Schedule 3 to the Criminal Justice Act 2003, committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998, in the same way as cases triable only on indictment.]*

### **Variation of arrangements for bail on committal to the Crown Court**

**19.21.** Where a magistrates' court has committed or sent a person on bail to the Crown Court for trial or under any of the enactments mentioned in rule 43.1(1) and subsequently varies any conditions of the bail or imposes any conditions in respect of the bail, the magistrates' court officer shall send

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(203) 2003 c. 44.

(204) 1998 c. 37.

(205) 1983 c. 20; section 48 was amended by section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41), the Statute Law (Repeals) Act 2004 (c. 14) and section 5 of, and paragraphs 1 and 11 of Schedule 1 to the Mental Health Act 2007 (c. 12). It is further amended by Part II of Schedule 7 and paragraphs 72 and 73 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

to the Crown Court officer a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such variation or imposition of conditions.

*[Note. See also section 5 of the Bail Act 1976.]*

*For the equivalent provision where a defendant is transferred to the Crown Court, see rule 11.4.*

*On the coming into force of Schedule 3 to the Criminal Justice Act 2003 committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998, in the same way as cases triable only on indictment.]*

### **Conditions attached to bail granted by the Crown Court**

**19.22.**—(1) Where the Crown Court grants bail, the recognizance of any surety required as a condition of bail may be entered into before an officer of the Crown Court or, where the person who has been granted bail is in a prison or other place of detention, 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.

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

(3) A person who, in pursuance of an order made by the Crown Court for the grant of bail, proposes to enter into a recognizance or give security must, unless the Crown Court otherwise directs, give notice to the prosecutor at least 24 hours before he enters into the recognizance or gives security as aforesaid.

(4) Where, in pursuance of an order of the Crown Court, a recognizance is entered into or any requirement imposed under section 3(5) or (6) of the 1976 Act is complied with (being a requirement to be complied with before a person's release on bail) before any person, it shall be his duty to cause the recognizance or, as the case may be, a statement of the requirement to be transmitted forthwith to the court officer; and a copy of the 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 person named in the order is detained, unless the recognizance was entered into or the requirement was complied with before such governor or keeper.

(5) Where, in pursuance of section 3(5) of the 1976 Act, security has been given in respect of a person granted bail with a duty to surrender to the custody of the Crown Court and either—

- (a) that person surrenders to the custody of the Court; or
- (b) that person having failed to surrender to the custody of the Court, the Court decides not to order the forfeiture of the security,

the court officer shall as soon as practicable give notice of the surrender to custody or, as the case may be, of the decision not to forfeit the security to the person before whom the security was given.

### **Estreat of recognizances in respect of person bailed to appear before the Crown Court**

**19.23.**—(1) Where a recognizance has been entered into in respect of a person granted bail to appear before the Crown Court and it appears to the Court that a default has been made in performing the conditions of the recognizance, other than by failing to appear before the Court in accordance with any such condition, the Court may order the recognizance to be estreated.

(2) Where the Crown Court is to consider making an order under paragraph (1) for a recognizance to be estreated, the court officer shall give notice to that effect to the person by whom the recognizance was entered into indicating the time and place at which the matter will be considered; and no such order shall be made before the expiry of 7 days after the notice required by this paragraph has been given.

*[Note. As to forfeiture of recognizances on failure to surrender, see rule 19.24.]*

### **Forfeiture of recognizances in respect of person bailed to appear before the Crown Court**

**19.24.**—(1) Where a recognizance is conditioned for the appearance of an accused before the Crown Court and the accused fails to appear in accordance with the condition, the Court shall declare the recognizance to be forfeited.

(2) Where the Crown Court declares a recognizance to be forfeited under paragraph (1), the court officer shall issue a summons to the person by whom the recognizance was entered into requiring him to appear before the Court at a time and place specified in the summons to show cause why the Court should not order the recognizance to be estreated.

(3) At the time specified in the summons the Court may proceed in the absence of the person by whom the recognizance was entered into if it is satisfied that he has been served with the summons.

*[Note. As to the estreat of recognizances on failure to comply with conditions of bail, see rule 19.23.]*

*For the procedure where a defendant fails to surrender see also direction I.13 in the Practice Direction.]*

### **Grant of bail subject to a condition of residence**

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

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

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

*[Note. Under section 4 of the Bail Act 1976(206), the general rule, subject to exceptions, is that a defendant must be granted bail. Schedule 1 to the Act sets out some of the exceptions. Paragraph 5 of that Schedule allows a court to withhold bail if satisfied that it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for it to take the decisions required by that Schedule.]*

### **Grant of bail subject to electronic monitoring requirements**

**19.26.**—(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) the offence or offences with which the defendant is charged,
  - (iii) details of the place at which the defendant's presence must be monitored,

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(206) 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) and 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).

- (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 name, 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(207), 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(208) set out conditions for imposing such requirements.*

*Under section 3AC of the 1976 Act(209), where the court imposes electronic monitoring requirements they must provide for the appointment of a monitor.]*

### **Grant of bail subject to accommodation or support requirements**

**19.27.**—(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—
    - (i) the defendant's name, and telephone number (if available),
    - (ii) the offence or offences 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 name, and the means by which the service provider may be contacted, and
    - (ii) the address of any accommodation in which the defendant must reside; 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.

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(207) 1976 c. 63; sub-section (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).

(208) 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). Section 3AB was inserted by section 51 of, and paragraphs 1 and 4 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(209) 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).

## PART 20

### CUSTODY TIME LIMITS

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#### Contents of this Part

Appeal to the Crown Court against decision in respect of a custody time limit	rule 20.1
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#### Appeal to the Crown Court against decision in respect of a custody time limit

**20.1.**—(1) This rule applies—

- (a) to any appeal brought by an accused, under section 22(7) of the Prosecution of Offences Act 1985(**210**), against a decision of a magistrates' court to extend, or further extend, a custody time limit imposed by regulations made under section 22(1) of the 1985 Act; and
- (b) to any appeal brought by the prosecution, under section 22(8) of the 1985 Act, against a decision of a magistrates' court to refuse to extend, or further extend, such a time limit.

(2) An appeal to which this rule applies shall be commenced by the appellant's giving notice in writing of appeal—

- (a) to the court officer for the magistrates' court which took the decision;
- (b) if the appeal is brought by the accused, to the prosecutor and, if the prosecution is to be carried on by the Crown Prosecution Service, to the appropriate Crown Prosecutor;
- (c) if the appeal is brought by the prosecution, to the accused; and
- (d) to the Crown Court officer.

(3) The notice of an appeal to which this rule applies shall state the date on which the custody time limit applicable to the case is due to expire and, if the appeal is brought by the accused under section 22(7) of the 1985 Act, the date on which the custody time limit would have expired had the court decided not to extend or further extend that time limit.

(4) On receiving notice of an appeal to which this rule applies, the Crown Court officer shall enter the appeal and give notice of the time and place of the hearing to—

- (a) the appellant;
- (b) the other party to the appeal; and
- (c) the court officer for the magistrates' court which took the decision.

(5) Without prejudice to the power of the Crown Court to give leave for an appeal to be abandoned, an appellant may abandon an appeal to which this rule applies by giving notice in writing to any person to whom notice of the appeal was required to be given by paragraph (2) of this rule not later than the third day preceding the day fixed for the hearing of the appeal:

Provided that, for the purpose of determining whether notice was properly given in accordance with this paragraph, there shall be disregarded any Saturday and Sunday and any day which is specified to be a bank holiday in England and Wales under section 1(1) of the Banking and Financial Dealings Act 1971(**211**).

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(**210**) 1985 c. 23; section 22(7) was amended by section 43(6) of the Crime and Disorder Act 1998 (c. 37).  
(**211**) 1971 c. 80.

*[Note. See also section 22 of the Prosecution of Offences Act 1985; and for the procedure for applying for an extension of a custody time limit, see The Prosecution of Offences (Custody Time Limits) Regulations 1987(212).]*

## PART 21

### INITIAL DETAILS OF THE PROSECUTION CASE

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#### Contents of this Part

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

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#### When this Part applies

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

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

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

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

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

*See the definitions contained in Schedule 1 to the Interpretation Act 1978(213). In some circumstances, the Crown Court can try an offence that usually can be tried only in a magistrates' court.*

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

#### Providing initial details of the prosecution case

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

- (a) serving those details on the court officer; and
- (b) making those details available to the defendant,

at, or before, the beginning of the day of the first hearing.

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(212) S.I. 1987/299.

(213) 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.

## Content of initial details

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

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

## PART 22

### DISCLOSURE

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#### Contents of this Part

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Prosecution disclosure	rule 22.2
Prosecutor's application for public interest ruling	rule 22.3
Defence disclosure	rule 22.4
Defendant's application for prosecution disclosure	rule 22.5
Review of public interest ruling	rule 22.6
Defendant's application to use disclosed material	rule 22.7
Unauthorised use of disclosed material	rule 22.8
Court's power to vary requirements under this Part	rule 22.9

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#### When this Part applies

**22.1.** 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(214) 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(215), 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.

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(214) 1996 c. 25.

(215) 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).

**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
  - (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) will 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 will receive, 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(216).*

*See also sections 16 and 19 of the 1996 Act(217).]*

## **Defence disclosure**

**22.4.** The defendant must serve any defence statement given under the Criminal Procedure and Investigations Act 1996 on—

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

*[Note. The Practice Direction sets out a form of defence statement. The defendant is not obliged to give a defence statement in a magistrates' court case.]*

## **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.

(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;

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(216) 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).

(217) 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).

- (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(218), 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.
- (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—

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(218) 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).

- (a) will 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 will receive, 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(219). 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—
- (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.

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(219) 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).

*[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(220).*

*See also section 19 of the 1996 Act.]*

### **Unauthorised use of disclosed material**

**22.8.**—(1) This rule applies where a person uses disclosed prosecution material in contravention of section 17 of the Criminal Procedure and Investigations Act 1996.

(2) The court may exercise its power to punish such a person for contempt of court—

(a) on an application by—

(i) the prosecutor, or

(ii) any person directly affected by the disclosure of the material; or

(b) on its own initiative.

(3) An applicant who wants the court to exercise that power must comply with the rules in Part 62 (Contempt of court).

(4) 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.

(5) The provisions of Schedule 3 to the Contempt of Court Act 1981(221) apply to a magistrates' court's exercise of the power to which this rule applies.

*[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.*

*Where Schedule 3 to the Contempt of Court Act 1981 applies, it modifies the provisions of the Magistrates' Courts Act 1980 to which it refers, so that the court can act on its own initiative against a person accused of contempt.]*

### **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 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—

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(220) 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).

(221) 1981 c. 49; Schedule 3 has been amended, but the amendment is not relevant to these rules.

- (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 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(222).*

*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(223) and The Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2005(224).*

### **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 practicable after the defendant pleads not guilty, and*
  - (ii) *in the Crown Court, as soon as 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 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(225) 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 practicable after the defendant pleads not guilty, or*

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(222) 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) and sections 41 and 332 of, and paragraph 66 (1) and (2)(b) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It is amended by section 9 of the Sexual Offences (Protected Material) Act 1997 (c. 39) and sections 41 and 332 of, and paragraph 66(1) and (2)(a) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. It has been further 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). Section 21 was amended by section 41 of, and paragraph 66 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).

(223) S.I. 1997/1033; this Order was revoked by S.I. 2005/985.

(224) S.I. 2005/985.

(225) 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 the Crown Court, as soon as 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*
  - (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***

The defendant's duty to serve a defence statement in a case in the Crown Court is imposed by section 5 of the 1996 Act(226). The defendant's opportunity to do so in a magistrates' court, and the duty to serve any such statement within the time prescribed, is provided for by section 6 of the Act.

The time for service of a defence statement is prescribed by section 12 of the 1996 Act and by The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(227). It is—

- (a) *in a magistrates' court, not more than 14 days after the prosecutor discloses material under section 3 of the 1996 Act, or serves notice that there is no such material to disclose;*
- (b) *in the Crown Court, not more than 14 days after—*
  - (i) *service of copies of the documents containing the evidence, in a case in which the defendant is sent for trial,*
  - (ii) *service of the draft indictment, in any other case, or*
  - (iii) *the prosecutor discloses material under section 3 of the 1996 Act, or serves notice that there is no such material to disclose**whichever of those three events happens last.*

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;*

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(226) 1996 c. 25; section 5 was amended by sections 331 and 332 of, and paragraphs 20 and 23 of Schedule 36 and Part 3 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) and sections 33 and 41 of, and paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) in respect of certain proceedings only. It is further amended by sections 33, 41, and 332 of, and paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(227) S.I. 1997/2680.

- (b) *section 6A of the 1996 Act(228), where the investigation began on or after 4<sup>th</sup> April, 2005. See also section 6E of the Act(229).*

*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—*
  - (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.*

*Under section 11 of the 1996 Act, 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; or*
- (d) at trial, introduces alibi evidence without having given in the defence statement—*
  - (i) particulars of the alibi, or*
  - (ii) the details of the alibi witness, or witnesses, required by the Act,*

*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.*

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**(228)** 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).

**(229)** 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).



## 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

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(230).

*[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

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(230) 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 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and regulation 9 of, and paragraph 4 of Schedule 5 to S.I. 2001/1090. It is amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 65, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39) and sections 41 and 332 of, and paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.



- (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 do so, serve a copy of the statement on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (b) at or before that hearing, serve the statement itself on the court officer.
- (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—
- (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.]*

## PART 28

### WITNESS SUMMONSES, WARRANTS AND ORDERS

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#### Contents of this Part

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(231). The Crown Court may do so under sections 2, 2D, 3 and 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(232). Either court may 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(233).]*

*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) section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965, or
    - (iii) 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

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(231) 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).

(232) 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) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15). It is further amended by sections 41 and 332 of, and paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) for limited purposes; and for remaining purposes, with effect from a date to be appointed.

(233) 1879 c. 11; section 6 has been amended; none is relevant to these rules.

- (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
- (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 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(234) and section 5B of the Magistrates' Courts Act 1980(235). Section 89 of the 1967 Act(236) 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.

(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(237), 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.]*

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(234) 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 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and regulation 9 of, and paragraph 4 of Schedule 5 to S.I. 2001/1090. It is amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 65, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39) and sections 41 and 332 of, and paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(235) 1980 c. 43; section 5B was inserted by section 47 of, and paragraph 3 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is amended by section 72(3) of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), with effect from a date to be appointed. It is repealed by sections 41 and 332 of, and paragraph 51(1) and (3) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(236) 1967 c. 80; section 89 was amended by section 154 of, and Schedule 9 to, the Magistrates' Courts Act 1980 (c. 43).

(237) 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).

### **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—
  - (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(238) 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) 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**

#### **Section 1: understanding and applying this Part**

When this Part applies	rule 29.1
Meaning of 'witness'	rule 29.2

#### **Section 2: general rules**

Making an application for a direction or order	rule 29.3
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

#### **Section 3: special measures directions**

Exercise of court's powers	rule 29.8
Special measures direction for a young witness	rule 29.9
Content of application for a special measures direction	rule 29.10

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(238) 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).

Application to vary or discharge a special measures direction	rule 29.11
Application containing information withheld from another party	rule 29.12
Representations in response	rule 29.13

#### **Section 4: defendant's evidence directions**

Exercise of court's powers	rule 29.14
Content of application for a defendant's evidence direction	rule 29.15
Application to vary or discharge a defendant's evidence direction	rule 29.16
Representations in response	rule 29.17

#### **Section 5: witness anonymity orders**

Exercise of court's powers	rule 29.18
Content and conduct of application for a witness anonymity order	rule 29.19
Duty of court officer to notify the Director of Public Prosecutions	rule 29.20
Application to vary or discharge a witness anonymity order	rule 29.21
Representations in response	rule 29.22

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### **SECTION 1: UNDERSTANDING AND APPLYING THIS PART**

#### **When this Part applies**

##### **29.1.—(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(239), 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(240)),
  - (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(241)),
  - (vi) questioning a witness through an intermediary (section 29 of the 1999 Act(242)),
  - (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(243);

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(239) 1999 c. 23.

(240) 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39).

(241) 1999 c. 23; section 27 was amended by paragraph 384 of Schedule 8 to the Courts Act 2003 (c. 39); it is further amended by paragraph 73 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 28 was amended by paragraph 384(c) of Schedule 8 to the Courts Act 2003 (c. 39).

(242) 1999 c. 23; section 29 was amended by paragraph 384(d) of Schedule 8 to the Courts Act 2003 (c. 39).

(243) 1999 c. 23; section 20(6) is amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39).

- (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(244), or
  - (ii) through an intermediary, under sections 33BA and 33BB of the 1999 Act(245);
- (d) where the court can—
  - (i) make a witness anonymity order, under section 86 of the Coroners and Justice Act 2009(246), or
  - (ii) vary or discharge such an order, under section 91, 92 or 93 of the 2009 Act;
- (e) 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.]*

## 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—
  - (i) as soon as reasonably practicable, and in any event
  - (ii) not more than 14 days after the defendant pleads not guilty; 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) and rule 29.19 (content and conduct of application for a witness anonymity order).]*

*The Practice Direction sets out a form for use in connection with an application under rule 29.10 for 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

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(244) 1999 c. 23; section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).

(245) 1999 c. 23; sections 33BA and 33BB are inserted by section 104 of the Coroners and Justice Act 2009, with effect from a date to be appointed.

(246) 2009 c. 25.



- (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.]*

### **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(247), 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
  - (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 17 (under 18, when the Coroners and Justice Act 2009 comes into force), 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) *(when the Coroners and Justice Act 2009 comes into force) 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) *(when the Coroners and Justice Act 2009 comes into force) 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. (In the case of some sexual and other offences, until the Coroners and Justice Act 2009 comes into force this exception does not apply.)]*

### **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;

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(247) 1999 c. 23; sections 21 and 22 are amended by sections 98, 100 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

- (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 will receive, 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—
- (a) why the witness is not eligible for assistance; or
  - (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.
- (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 will 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<sup>(248)</sup>;
  - (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<sup>(249)</sup> or under section 39 of the Children and Young Persons Act 1933<sup>(250)</sup>,
    - (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<sup>(251)</sup>, 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

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<sup>(248)</sup>2009 c. 25.

<sup>(249)</sup>1999 c. 23.

<sup>(250)</sup>1933 c. 12; section 39 was amended by sections 57 and 64 of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48) and it is 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.

<sup>(251)</sup>2003 c. 44.

- (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 will receive, in the following sequence—
    - (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
    - (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.

### **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(252), 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 17 (under 18, when the Coroners and Justice Act 2009 comes into force); 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 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) (when the Coroners and Justice Act 2009 comes into force) 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, where the witness—*
  - (i) is under 17 (under 18, when the Coroners and Justice Act 2009 comes into force), or*
  - (ii) was under that age when interviewed**whether or not an application for a direction is made;*
- (b) (when the Coroners and Justice Act 2009 comes into force) under section 22A of the 1999 Act, 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, 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 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, 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).*

## **PART 30**

### **USE OF LIVE TELEVISION LINK OTHER THAN FOR VULNERABLE WITNESSES**

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

Overseas witness giving evidence in the Crown Court	rule 30.1
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#### **Overseas witness giving evidence in the Crown Court**

**30.1.**—(1) Any party may apply for leave under section 32(1) of the Criminal Justice Act 1988<sup>(253)</sup> for evidence to be given through a live television link by a witness who is outside the United Kingdom.

(2) An application under paragraph (1), and any matter relating thereto which, by virtue of the following provisions of this rule, falls to be determined by the Crown Court, may be dealt with in chambers by any judge of the Crown Court.

(3) An application under paragraph (1) shall be made by giving notice in writing, which shall be in the form set out in the Practice Direction.

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<sup>(253)</sup> 1988 c. 33; section 32(1) was amended by section 55 of the Criminal Justice Act 1991 (c. 53) and section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23).

(4) An application under paragraph (1) shall be made within 28 days after the date of the committal of the defendant or, as the case may be, of the giving of a notice of transfer under section 4(1)(c) of the Criminal Justice Act 1987(254), or of the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998(255), or of the preferring of a bill of indictment in relation to the case.

(5) The period of 28 days in paragraph (4) may be extended by the Crown Court, either before or after it expires, on an application made in writing, specifying the grounds of the application. The court officer shall notify all the parties of the decision of the Crown Court.

(6) The notice under paragraph (3) or any application under paragraph (5) shall be sent to the court officer and at the same time a copy thereof shall be sent by the applicant to every other party to the proceedings.

(7) A party who receives a copy of a notice under paragraph (3) shall, within 28 days of the date of the notice, notify the applicant and the court officer, in writing—

- (a) whether or not he opposes the application, giving his reasons for any such opposition; and
- (b) whether or not he wishes to be represented at any hearing of the application.

(8) After the expiry of the period referred to in paragraph (7), the Crown 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 applicant and such other party or parties as the court may direct may be represented;
- (c) and the court officer shall notify the applicant and, where necessary, the other party or parties, of the time and place of any such hearing.

(9) The court officer shall notify all the parties of the decision of the Crown Court in relation to an application under paragraph (1) and, where leave is granted, the notification shall state—

- (a) the country in which the witness will give evidence;
- (b) if known, the place where the witness will give evidence;
- (c) where the witness is to give evidence on behalf of the prosecutor, or where disclosure is required by section 5(7) of the Criminal Procedure and Investigations Act 1996(256) (alibi) or by rules under section 81 of the Police and Criminal Evidence Act 1984(257) (expert evidence), the name of the witness;
- (d) the location of the Crown Court at which the trial should take place; and
- (e) any conditions specified by the Crown Court in accordance with paragraph (10).

(10) The Crown Court dealing with an application under paragraph (1) may specify that as a condition of the grant of leave the witness should give the evidence in the presence of a specified person who is able and willing to answer under oath or affirmation any questions the trial judge may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

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(254) 1987 c. 38; section 4(1)(c) was amended by paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22). Section 4 is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(255) 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 is further amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(256) 1996 c. 25; section 5(7) was repealed by paragraphs 20 and 23 of Schedule 36 and Part 3 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(257) 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).

[Note. For the corresponding rule in the Court of Appeal, see rule 68.7.]

## PART 31

### RESTRICTION ON CROSS-EXAMINATION BY A DEFENDANT ACTING IN PERSON

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#### Contents of this Part

Restrictions on cross-examination of witness	rule 31.1
Appointment of legal representative by the court	rule 31.2
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**(258)**.

(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 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.

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**(258)** 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).

(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

Notice required to accompany process served outside the United Kingdom and translations	rule 32.1
Proof of service outside the United Kingdom	rule 32.2
Supply of copy of notice of request for assistance abroad	rule 32.3
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Record of proceedings to receive evidence before a nominated court	rule 32.5
Interpreter for the purposes of proceedings involving a television or telephone link	rule 32.6
Record of television link hearing before a nominated court	rule 32.7
Record of telephone link hearing before a nominated court	rule 32.8
Overseas record	rule 32.9
Overseas freezing orders	rule 32.10

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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(259) (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(260)) 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(**261**)).

- (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 keeping of a register by a magistrates' court, see rule 5.4]*

#### **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(**262**) 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 will consider the order no later than the next business day;

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(**261**) 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).

(**262**) 2003 c. 32.

- (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

Reference to expert	rule 33.1
Expert's duty to the court	rule 33.2
Content of expert's report	rule 33.3
Service of expert evidence	rule 33.4
Expert to be informed of service of report	rule 33.5
Pre-hearing discussion of expert evidence	rule 33.6
Court's power to direct that evidence is to be given by a single joint expert	rule 33.7
Instructions to a single joint expert	rule 33.8
Court's power to vary requirements under this Part	rule 33.9

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*[Note. For the use of an expert report as evidence, see section 30 of the Criminal Justice Act 1988(263).]*

#### Reference to expert

**33.1.** 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(264). It may be required also under section 11*

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(263) 1988 c. 33; section 30(4A) was inserted by section 47 of, and paragraph 32 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and is repealed by section 41 to, and paragraph 60(1) and (6) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(264) 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).

*of the Powers of Criminal Courts (Sentencing) Act 2000(265), under Part III of the Mental Health Act 1983(266) or under Part 12 of the Criminal Justice Act 2003(267). 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 objective, unbiased opinion on matters within his expertise.

(2) This duty overrides any obligation to the person from whom he receives instructions or by whom he is paid.

(3) This duty includes an obligation 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.

### **Content of expert's report**

**33.3.**—(1) 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,
  - (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 his own opinion;
- (g) if the expert is not able to give his opinion without qualification, state the qualification;
- (h) contain a summary of the conclusions reached;
- (i) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty; and
- (j) contain the same declaration of truth as a witness statement.

(2) Only sub-paragraphs (i) and (j) of rule 33.3(1) apply to a summary by an expert of his conclusions served in advance of that expert's report.

*[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(268) and section 5B of the Magistrates'*

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(265) 2000 c. 6.

(266) 1983 c. 20.

(267) 2003 c. 44.

(268) 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 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and regulation 9 of, and paragraph 4 of Schedule 5 to S.I. 2001/1090. It is amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act

*Courts Act 1980(269). A party who accepts another party's expert's conclusions may admit them as facts under section 10 of the Criminal Justice Act 1967(270). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the Criminal Justice Act 2003(271).]*

### Service of expert evidence

- 33.4.**—(1) A party who wants to introduce expert evidence must—
- (a) serve it on—
    - (i) the court officer, and
    - (ii) each other party;
  - (b) serve it—
    - (i) as soon as practicable, and in any event
    - (ii) with any application in support of which that party relies on that evidence; and
  - (c) 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.
- (2) A party may not introduce expert evidence if that party has not complied with this rule, unless—
- (a) every other party agrees; or
  - (b) the court gives permission.

*[Note. Under section 81 of the Police and Criminal Evidence Act 1984(272), and under section 20(3) of the Criminal Procedure and Investigations Act 1996(273), rules may—*

- (a) *require the disclosure of expert evidence before it is introduced as part of a party's case; and*
- (b) *prohibit its introduction without the court's permission, if it was not disclosed as required.]*

### 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.

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1969 (c. 54), section 65, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39) and sections 41 and 332 of, and paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(269) 1980 c. 43; section 5B was inserted by section 47 of, and paragraph 3 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is amended by section 72(3) of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), with effect from a date to be appointed. It is repealed by sections 41 and 332 of, and paragraph 51(1) and (3) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(270) 1967 c. 80.

(271) 2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.

(272) 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).

(273) 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).

### **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 7 of the Criminal Justice Act 1987(274); sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(275); and section 45 of the Courts Act 2003(276).]*

### **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) When a co-defendant gives instructions to the expert he must, at the same time, send a copy of the instructions to the other co-defendant(s).

(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—

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(274) 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) and section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25). It has been further amended by sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), for certain purposes, with effect from 24 July 2006, and for remaining purposes from a date to be appointed).

(275) 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).

(276) 2003 c. 39.

- (a) extend (even after it has expired) a time limit under this Part;
- (b) allow the introduction of expert evidence which omits a detail required by this Part.
- (2) A party who wants an extension of time must—
  - (a) apply when serving the expert evidence for which it is required; and
  - (b) explain the delay.

## PART 34

### HEARSAY EVIDENCE

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#### Contents of this Part

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

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#### When this Part applies

##### 34.1. This Part applies—

- (a) in a magistrates' court and in the Crown Court;
- (b) where a party wants to introduce hearsay evidence, within the meaning of section 114 of the Criminal Justice Act 2003(277).

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

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

*Under section 115 of the Act—*

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



### Notice to introduce hearsay evidence

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

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

(2) That party must—

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

(3) A prosecutor who wants to introduce such evidence must serve the notice not more than 14 days after the defendant pleads not guilty.

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

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

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

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

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

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

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

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

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

- (e) *section 127(278) (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,
    - (iii) any other objection to the application.
- (3) The court—
- (a) may determine an application—
    - (i) at a hearing, in public or in private, or
    - (ii) without a hearing;
  - (b) must not determine the application unless the party who served the notice—
    - (i) is present, or
    - (ii) has had a reasonable opportunity to respond;
  - (c) may adjourn the application; and
  - (d) may discharge or vary a determination where it can do so under—
    - (i) section 8B of the Magistrates’ Courts Act 1980(279) (ruling at pre-trial hearing in a magistrates’ court), or
    - (ii) section 9 of the Criminal Justice Act 1987(280), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(281) (ruling at preparatory or other pre-trial hearing in the Crown Court).

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(278) 2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.

(279) 1980 c. 43; section 8B was inserted by section 45(1) of, and Schedule 3 to, the Courts Act 2003 (c. 39) and is amended by sections 41 and 332 of, and paragraph 51 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(280) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45, 310 and 331 of, and paragraphs 18, 52 and 54 of Schedule 36, and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035 and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). The amendment made by

## Unopposed hearsay evidence

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

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

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

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

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

**34.5.**—(1) The court may—

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

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

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

# PART 35

## EVIDENCE OF BAD CHARACTER

### Contents of this Part

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

### When this Part applies

**35.1.** This Part applies—

- (a) in a magistrates' court and in the Crown Court;

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.

(281) 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).

- (b) where a party wants to introduce evidence of bad character, within the meaning of section 98 of the Criminal Justice Act 2003(282).

*[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; and

(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(283) (conviction in the United Kingdom or European Union); or*
- (b) section 7 of the Evidence Act 1851(284) (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(285), a party may admit a matter of fact.]*

### **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

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(283) 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).

(284) 1851 c. 99.

(285) 1967 c. 80.

- (d) may discharge or vary a determination where it can do so under—
  - (i) section 8B of the Magistrates' Courts Act 1980(286) (ruling at pre-trial hearing in a magistrates' court), or
  - (ii) section 9 of the Criminal Justice Act 1987(287), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(288) (ruling at preparatory or other pre-trial hearing in the Crown Court).

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

*See also rule 35.6 (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 14 days after the defendant pleads not guilty.
- (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—

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(286) 1980 c. 43; section 8B was inserted by section 45(1) of, and Schedule 3 to, the Courts Act 2003 (c. 39) and is amended by sections 41 and 332 of, and paragraph 51 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(287) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45, 310 and 331 of, and paragraphs 18, 52 and 54 of Schedule 36, and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035 and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). The amendment made by 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.

(288) 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).

- (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 application for use in connection with this rule.*

*See also rule 35.6 (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

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(289) 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(290), which among other things defines 'sexual behaviour' and 'sexual offence';*
- (b) *section 43(291), 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.

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(289) 1999 c. 23.

(290) 1999 c. 23; section 42(3)(c) was amended by section 41 of, and paragraph 73(1) and (3)(b) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). Section 42(3)(a) and (b) is repealed by section 41 of, and paragraph 73(1) and (3)(a) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(291) 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).



### **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<sup>(292)</sup> (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 7 of the Criminal Justice Act 1987<sup>(293)</sup>; sections 31 and 40 of the Criminal Procedure and Investigations Act 1996<sup>(294)</sup>; and section 45 of the Courts Act 2003<sup>(295)</sup>.]*

### **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—

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<sup>(292)</sup> 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).

<sup>(293)</sup> 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) and section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25). It has been further amended by sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), for certain purposes, with effect from 24 July 2006, and for remaining purposes from a date to be appointed.

<sup>(294)</sup> 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).

<sup>(295)</sup> 2003 c. 39.

- (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(296). 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.

## **PART 37**

### **TRIAL AND SENTENCE IN A MAGISTRATES' COURT**

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

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

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

#### **When this Part applies**

**37.1.—**(1) This Part applies in a magistrates' court where—

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

*[Note. A magistrates' court's powers to try an allegation of an offence are contained in section 2 of the Magistrates' Courts Act 1980(297) and, in relation to a defendant under 18, sections 45(298), 46(299) and 48(300) of the Children and Young Persons Act 1933, section 18 of the Children and Young Persons Act 1963(301), section 47 of the Crime and Disorder Act 1998(302) and section 9 of the Powers of Criminal Courts (Sentencing) Act 2000(303).*

*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(304) and The Justices of the Peace (Size and Chairmanship of Bench) Rules 2005(305), the court—*

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- (297) 1980 c. 43; section 2 was substituted by section 44 of the Courts Act 2003 (c. 39) and amended by section 41 of, and paragraph 51 of Schedule 3 to, the Criminal Justice 2003 (c. 44).
  - (298) 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).
  - (299) 1933 c. 12; section 46 was amended by section 46 of, and Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), section 72 of, and paragraph 4 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 154 of, and paragraph 6 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 109 of, and paragraph 74 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (300) 1933 c. 12; section 48 was amended by section 79 of, and Schedule 9 to, the Criminal Justice Act 1948 (c. 58), section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55), section 64 of, and paragraph 12 of Schedule 3 and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 72, 79 and 83 of, and Schedules 6, 9 and 10 to, the Children and Young Persons Act 1969 (c. 54), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 75 of Schedule 8 to, the Courts Act 2003 (c. 39).
  - (301) 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).
  - (302) 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.
  - (303) 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to S.I. 2005/886.
  - (304) 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).
  - (305) S.I. 2005/553.

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

*Under The Youth Courts (Constitution of Committees and Right to Preside) Rules 2007(306), 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(307), where two or more justices are present one may act on behalf of all.*

*Section 59 of the Children and Young Persons Act 1933(308) requires that—*

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

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

## General rules

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

- (a) the general rule is that the hearing must be in public; but
- (b) the court may exercise any power it has to—
  - (i) impose reporting restrictions,
  - (ii) withhold information from the public, or
  - (iii) order a hearing in private; and
- (c) unless the court otherwise directs, only the following may attend a hearing in a youth court—
  - (i) the parties and their legal representatives,
  - (ii) a defendant's parents, guardian or other supporting adult,
  - (iii) a witness,
  - (iv) anyone else directly concerned in the case, and

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(306) S.I. 2007/1611.

(307) 1980 c. 43; section 150 has been amended but none is relevant to the note to this rule.

(308) 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).

- (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(309) 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(310) (identification of any defendant or witness under 18);*
- (b) *section 4(2) of the Contempt of Court Act 1981(311) (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(312) (identification of an adult witness).*

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

- (a) *section 49 of the Children and Young Persons Act 1933(313) (identification of any defendant or witness under 18 involved in proceedings in a youth court);*

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**(309)** 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).

**(310)** 1933 c. 12; section 39 was amended by sections 57 and 64 of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48) and it is 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.

**(311)** 1981 c. 49.

**(312)** 1999 c. 23.

**(313)** 1933 c. 12; section 49 was amended by section 49 of the Criminal Justice and Public Order Act 1994 (c. 33), section 45 of the Crime (Sentences) Act 1997 (c. 43), section 119 of, and paragraph 1 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 2 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 304 of, and paragraph 2 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and sections 208 and 210 of, and paragraphs 15 and 19 of Schedule 21, and Schedule 23 to, the Legal Services Act 2007 (c. 29). It is 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), 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 sections 6 and 149 of, and paragraphs 1, 3 and 100 of Schedule 4 and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from dates to be appointed.

- (b) *section 1 of the Sexual Offences (Amendment) Act 1992*<sup>(314)</sup> (*identification of the complainant of a sexual offence*); and
- (c) *section 47 of the Youth Justice and Criminal Evidence Act 1999*<sup>(315)</sup> (*special measures direction or application for such a direction*).

*Under section 34A of the Children and Young Persons Act 1933*<sup>(316)</sup>, the court—

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

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

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

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

**37.3.**—(1) This rule applies—

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

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

(3) In the following sequence—

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

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<sup>(314)</sup> 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).

<sup>(315)</sup> 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).

<sup>(316)</sup> 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).



- (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(317).

Under section 37(3) of the Mental Health Act 1983(318), 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(319), 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.*

*Section 2 of the Criminal Procedure Act 1865(320) and section 3 of the Criminal Evidence Act 1898(321) 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.]*

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(317) 1980 c. 43.

(318) 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).

(319) 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.

(320) 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).

(321) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).

### 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;

(d) at any time while giving evidence, a witness may refer to a record of that witness' recollection of events, if other legislation so permits;

(e) the party who calls a witness, in examination-in-chief may ask that witness to adopt all or part of such a record as part of that witness' evidence, but only if—

- (i) the parties agree, and
- (ii) the court so permits;

(f) if the witness adopts any part of such a record—

- (i) that part must be read aloud, or
- (ii) with the court's permission, its contents may be summarised aloud.

(5) The justices' legal adviser or the court may—

(a) ask a witness questions; and in particular

(b) where the defendant is not represented, ask any question necessary in the defendant's interests.

*[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(322) 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(323).*

*Sections 1, 3, 5 and 6 of the Oaths Act 1978(324) 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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(322) 1999 c. 23.

(323) 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).

(324) 1978 c. 19.



*Act 1963(325) 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)(326);*
- (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(327), 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(328), 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(329), or by live link under section 32 of the Criminal Justice Act 1988(330) or section 51 of the Criminal Justice Act 2003. Parts 29 and 30 contain relevant rules.]*

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(325) 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).

(326) 1865 c. 18.

(327) 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).

(328) 2003 c. 44.

(329) 1999 c. 23.

(330) 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 by written statement

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

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

*[Note. See section 9 of the Criminal Justice Act 1967(331). Part 27 contains rules about written statements. 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(332). 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(333).]*

### 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(334);
- (b) the defendant is at least 16 years old;
- (c) the prosecutor has served on the defendant—
  - (i) the summons or requisition,
  - (ii) the material on which the prosecutor relies to set out the facts of the offence and to provide information relevant to sentence,
  - (iii) a notice that the procedure set out in this rule applies, and

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(331) 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 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and regulation 9 of, and paragraph 4 of Schedule 5 to S.I. 2001/1090. It is amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 65, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39) and sections 41 and 332 of, and paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(332) 1967 c. 80.

(333) 1980 c. 43.

(334) 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).

- (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) The court may accept such a guilty plea on the hearing date, and if it does so must take account only of—
  - (a) the material served by the prosecutor on the defendant under this rule; and
  - (b) any representations by the defendant.
- (5) With the defendant's agreement, the court may deal with the case in the same way as under paragraph (4) where the defendant—
  - (a) is present; and
  - (b) has served a notice of guilty plea under paragraph (2); or
  - (c) pleads guilty there and then.

*[Note. The procedure set out in this rule is prescribed by sections 12 and 12A of the Magistrates' Courts Act 1980(335). 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(336) 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(337) a public prosecutor listed in that section may issue a written charge alleging an offence and a requisition requiring a defendant to attend court. Part 7 contains relevant rules.*

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

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

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

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(335) 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).

(336) 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) and sections 31, 331 and 332 of, and Schedule 7 and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 331 of, and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act (c. 44), with effect from a date to be appointed.

(337) 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) 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; and
    - (d) where it is likely to assist the court, identify any other matter relevant to sentence, including—
      - (i) aggravating and mitigating factors,
      - (ii) the legislation applicable, and
      - (iii) any guidelines issued by the Sentencing Guidelines Council, or guideline cases.
  - (4) The defendant must provide information relevant to sentence, including details of financial circumstances.
  - (5) Where the defendant pleads guilty but wants to be sentenced on a different basis to that disclosed by the prosecution case—
    - (a) the defendant must set out that basis in writing, identifying what is in dispute;
    - (b) the court may invite the parties to make representations about whether the dispute is material to sentence; and
    - (c) if the court decides that it is a material dispute, the court will—

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

*[Note. See sections 9, 10 and 11 of the Magistrates' Courts Act 1980(338), and sections 143, 158, 164, 172 and 174 of the Criminal Justice Act 2003(339).]*

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(338) 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,

*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(340), the court may require a defendant to attend a sentencing hearing by live link.*

*Under section 162 of the Criminal Justice Act 2003(341), the court may require a defendant who is an individual to provide a statement of financial circumstances if the defendant—*

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

*Under section 20A of the Criminal Justice Act 1991(342), 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(343), 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(344), 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(345).*

*The Sentencing Guidelines Council may issue sentencing guidelines under section 170 of the Criminal Justice Act 2003(346).*

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

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

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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).

- (339) 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 amended by section 49 of, and paragraph 9 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38); it is amended by section 6 of, and paragraphs 71, 80 and 81 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.
- (340) 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).
- (341) 2003 c. 44.
- (342) 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).
- (343) 2003 c. 44; section 156 is 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).
- (344) 2003 c. 44; section 159 is amended by section 208 of, and paragraphs 145 and 147 of Schedule 21 to, the Legal Services Act 2007 (c. 29), with effect from a date to be appointed.
- (345) 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).
- (346) 2003 c. 44; section 170 was amended by article 8 of, and paragraph 9 of the Schedule to S.I. 2007/2128.

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

*For the circumstances in which a magistrates' court may (and in some cases must) commit a defendant to the Crown Court for sentence, see sections 3, 3A, 3B, 3C, 4, 4A and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(347).*

*Under section 1 of the 2000 Act(348), if (among other things) the defendant consents, the court may defer sentence for up to 6 months, for the purpose of allowing it to take account of the defendant's conduct after conviction, or any change in the defendant's circumstances.]*

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

**37.11.**—(1) This rule—

- (a) applies where a party is absent; but
- (b) does not apply where the defendant has served a notice of guilty plea under rule 37.8 (written guilty plea: special rules).

(2) Where the prosecutor is absent, the court may—

- (a) if it has received evidence, deal with the case as if the prosecutor were present; and
- (b) in any other case—
  - (i) enquire into the reasons for the prosecutor's absence, and
  - (ii) if satisfied there is no good reason, exercise its power to dismiss the allegation.

(3) Where the defendant is absent—

- (a) the general rule is that the court will proceed as if the defendant—
  - (i) were present, and
  - (ii) had pleaded not guilty (unless a plea already has been taken)and the court must give reasons if it does not do so; but
- (b) the general rule does not apply if the defendant is under 18;
- (c) the general rule is subject to the court being satisfied that—
  - (i) any summons or requisition was served on the defendant a reasonable time before the hearing, or
  - (ii) in a case in which the hearing has been adjourned, the defendant had reasonable notice of where and when it would resume;
- (d) the general rule is subject also to rule 37.10(10)(a) (restrictions on passing sentence in the defendant's absence); and
- (e) the hearing must be treated as if it had not taken place at all if—
  - (i) the case started with a summons or requisition,

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(347) 2000 c. 6; section 3 is amended by section 41 of, and paragraphs 21 and 22 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 3A is inserted by section 41 of, and paragraphs 21 and 23 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed and has been amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4). Sections 3B and 3C are to be inserted by section 41 of, and paragraphs 21 and 23 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 4 is amended by section 41 of, and paragraphs 21 and 24 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 4A is inserted by section 41 of, and paragraphs 21 and 25 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 6 was amended by sections 41, 304 and 332 of, and paragraphs 21 and 28 of Schedule 3, paragraphs 90 and 91 of Schedule 32, and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and it is further amended by section 332 of, and Part 9 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(348) 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).



- (ii) the defendant makes a statutory declaration of not having found out about the case until after the hearing began, and
  - (iii) the defendant serves that declaration on the court officer not more than 21 days after the date of finding out about the case, unless the court extends that time limit.
- (4) Where the defendant is absent, the court—
- (a) must exercise its power to issue a warrant for the defendant's arrest, if it passes a custodial sentence; and
  - (b) may exercise its power to do so in any other case, if it does not apply the general rule in paragraph (3)(a) of this rule about proceeding in the defendant's absence.

[*Note. See sections 11, 14, 15 and 16 of the Magistrates' Courts Act 1980*(349).

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

*Under section 11 of the 1980 Act, the court may pass a custodial sentence in the defendant's absence if the case started with the defendant's arrest and charge (and not with a summons or requisition). Section 11(3A) requires that, in that event, the defendant must be brought before the court before being taken to a prison or other institution to begin serving that sentence. Under section 7(1) of the Bail Act 1976(350), 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(351), the court has power to issue a warrant for the arrest of an absent defendant, instead of proceeding, where—*

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

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

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

- 37.12.**—(1) This rule applies where a party—
- (a) introduces in evidence any document; or
  - (b) relies on any other document in the presentation of that party's case.

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(349) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

(350) 1976 c. 63.

(351) 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).



(2) Unless the court otherwise directs, that party must supply sufficient copies of such a document for—

- (a) each other party;
- (b) the court; and
- (c) the justices' legal adviser.

### **Place of trial**

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

(2) Where the hearing takes place in Wales—

- (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(352) and section 22 of the Welsh Language Act 1993(353).]*

*In some circumstances the court may conduct all or part of the hearing outside a courtroom. The members of the court may discuss the verdict and sentence outside the courtroom.]*

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

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

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

(2) A justices' legal adviser must—

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

(3) A justices' legal adviser must—

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

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

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

- (b) any written representations by the defendant.

*[Note. Section 28 of the Courts Act 2003(354) provides for the functions of a justices' legal adviser. See also section 12 of the Magistrates' Courts Act 1980(355).]*

### **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(356), serve on the defendant notice of that order unless the defendant was present when it was made;
- (e) serve on the prosecutor—
  - (i) any notice of guilty plea to which rule 37.8 applies, and
  - (ii) any declaration served under rule 37.11(3)(e) that the defendant did not know about the case;
- (f) record in the magistrates' court register the court's reasons for not proceeding in the defendant's absence where rule 37.11(3)(a) applies; and
- (g) give the court such other assistance as it requires.

*[Note. See sections 10, 11 and 12 of the Magistrates' Courts Act 1980(357).]*

*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.]*

## **PART 38**

*[Note. There are no rules in this Part.]*

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- (354) 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).
- (355) 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).
- (356) 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).
- (357) 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).

## PART 39

### TRIAL ON INDICTMENT

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#### Contents of this Part

Time limits for beginning of trials	rule 39.1
Appeal against refusal to excuse from jury service or to defer attendance	rule 39.2
Application to change a plea of guilty	rule 39.3

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#### Time limits for beginning of trials

**39.1.** The periods set out for the purposes of section 77(2)(a) and (b) of the Senior Courts Act 1981(358) shall be 14 days and 8 weeks respectively and accordingly, the trial of a person committed by a magistrates' court—

- (a) shall not begin until the expiration of 14 days beginning with the date of his committal, except with his consent and the consent of the prosecution; and
- (b) shall, unless the Crown Court has otherwise ordered, begin not later than the expiration of 8 weeks beginning with the date of his committal.

#### Appeal against refusal to excuse from jury service or to defer attendance

**39.2.—**(1) A person summoned under the Juries Act 1974(359) for jury service may appeal in accordance with the provisions of this rule against any refusal of the appropriate court officer to excuse him under section 9(2), or to defer his attendance under section 9A(1), of that Act.

(2) Subject to paragraph (3), an appeal under this rule shall be heard by the Crown Court.

(3) Where the appellant is summoned under the 1974 Act to attend before the High Court in Greater London the appeal shall be heard by a judge of the High Court and where the appellant is summoned under that Act to attend before the High Court outside Greater London or before a county court and the appeal has not been decided by the Crown Court before the day on which the appellant is required by the summons to attend, the appeal shall be heard by the court before which he is summoned to attend.

(4) An appeal under this rule shall be commenced by the appellant's giving notice of appeal to the appropriate court officer of the Crown Court or the High Court in Greater London, as the case may be, and such notice shall be in writing and shall specify the matters upon which the appellant relies as providing good reason why he should be excused from attending in pursuance of the summons or why his attendance should be deferred.

(5) The court shall not dismiss an appeal under this rule unless the appellant has been given an opportunity of making representations.

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(358) 1981 c. 54; section 77(2) was amended by paragraph 18 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and, for certain purposes by paragraph 54 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). It is further amended by Schedule 2 to the Prosecution of Offences Act 1985 (c. 23) and paragraph 54 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed. 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).

(359) 1974 c. 23.

(6) Where an appeal under this rule is decided in the absence of the appellant, the appropriate court officer of the Crown Court or the High Court in Greater London, as the case may be, shall notify him of the decision without delay.

### **Application to change a plea of guilty**

**39.3.**—(1) The defendant must apply as soon as practicable after becoming aware of the grounds for making an application to change a plea of guilty, and may only do so before the final disposal of the case, by sentence or otherwise.

- (2) Unless the court otherwise directs, the application must be in writing and it must—
- (a) set out the reasons why it would be unjust for the guilty plea to remain unchanged;
  - (b) indicate what, if any, evidence the defendant wishes to call;
  - (c) identify any proposed witness; and
  - (d) indicate whether legal professional privilege is waived, specifying any material name and date.
- (3) The defendant must serve the written application on—
- (a) the court officer; and
  - (b) the prosecutor.

## **PART 40**

### **TAINTED ACQUITTALS**

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

Time of certification	rule 40.1
Form of certification in the Crown Court	rule 40.2
Service of a copy of the certification	rule 40.3
Entry in register or records in relation to the conviction which occasioned certification	rule 40.4
Entry in the register or records in relation to the acquittal	rule 40.5
Display of copy certification form	rule 40.6
Entry in the register or records in relation to decision of High Court	rule 40.7
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<sup>(360)</sup> 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—

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<sup>(360)</sup> 1996 c. 25.

- (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 requirement for a magistrates' court to keep a register, 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 requirement for a magistrates' court to keep a register, 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 requirement for a magistrates' court to keep a register, 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(361).]*

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

Interpretation	rule 41.1
Notice of a section 76 application	rule 41.2
Response of the acquitted person	rule 41.3
Examination of witnesses or evidence by the Court of Appeal	rule 41.4
Bail or custody hearings in the Crown Court	rule 41.5
Further provisions regarding bail and custody in the Crown Court	rule 41.6
Bail or custody orders in the Court of Appeal	rule 41.7
Application for restrictions on publication	rule 41.8
Variation or revocation of restrictions on publication	rule 41.9
Powers exercisable by a single judge of the Court of Appeal	rule 41.10
Powers exercisable by the Registrar	rule 41.11
Determination by full court	rule 41.12
Notice of the determination of the application	rule 41.13
Notice of application to set aside order for retrial	rule 41.14
Leave to arraign	rule 41.15
Abandonment of the application	rule 41.16

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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(**362**).

#### 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<sup>(363)</sup> 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) Rules 19.18, 19.22 and 19.23 shall apply 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<sup>(364)</sup> (with the modification as set out in paragraph (2)), as if they were applications under rule 19.18(1).

(2) Substitute the following for Rule 19.18:

“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<sup>(365)</sup> 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<sup>(366)</sup>.

### **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<sup>(367)</sup> 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<sup>(368)</sup>, 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 Prosecution has indicated that there are reasons why the acquitted person should not be notified of the 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.

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<sup>(364)</sup>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.

<sup>(365)</sup>1980 c. 43.

<sup>(366)</sup>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).

<sup>(367)</sup>2003 c. 44.

<sup>(368)</sup>2003 c. 44.

(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(**369**), 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(**370**) or this Part.

(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—

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(369)2003 c. 44.

(370)2003 c. 44.

- (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 renewal in the form set out in the Practice Direction 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 in the form set out in the Practice Direction.

(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 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<sup>(371)</sup> 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.

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<sup>(371)</sup>2003 c. 44.

(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

### REMITTAL FROM ONE MAGISTRATES' COURT TO ANOTHER FOR SENTENCE

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#### Contents of this Part

Remittal for sentence	rule 42.1
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#### Remittal for sentence

**42.1.**—(1) Where a magistrates' court remits an offender to some other magistrates' court under section 10 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(372)</sup> after convicting him of an offence, the court officer for the convicting court shall send to the court officer for the other court—

- (a) a copy signed by the court officer for the convicting court of the minute or memorandum of the conviction and remittal entered in the register;
- (b) a copy of any note of the evidence given at the trial of the offender, any written statement tendered in evidence and any deposition;
- (c) such documents and articles produced in evidence before the convicting court as have been retained by that court;
- (d) any report relating to the offender considered by the convicting court;
- (e) if the offender is remitted on bail, a copy of the record made by the convicting court in pursuance of section 5 of the Bail Act 1976<sup>(373)</sup> relating to such bail and also any recognizance entered into by any person as his surety;
- (f) if the convicting court makes an order under section 148 of the 2000 Act<sup>(374)</sup> (restitution orders), a copy signed by the court officer for the convicting court of the minute or memorandum of the order entered in the register;
- (g) a copy of any representation order previously made in the same case; and

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<sup>(372)</sup>2000 c. 6.

<sup>(373)</sup>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) and paragraph 48 of Schedule 3 to, and Parts 2 and 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). The amendments in Schedule 3 of the 2003 Act are in force in relation to certain cases only. It is further amended by sections 41, 331 and 332 of, and 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) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27), with effect from dates to be appointed.

<sup>(374)</sup>2000 c. 6; section 148 was amended by paragraph 74(1) and (5) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). The provision is in force for certain purposes and will take effect for remaining purposes, from a date to be appointed.

(h) a copy of any application for a representation order.

(2) Where a magistrates' court remits an offender to some other magistrates' court as aforesaid and the other court remits him back to the convicting court under section 10(5) of the 2000 Act, the court officer for the other court shall send to the court officer for the convicting court—

- (a) a copy signed by the court officer for the other court of the minute or memorandum of the remittal back entered in the register;
- (b) if the offender is remitted back on bail, a copy of the record made by the other court in pursuance of section 5 of the Bail Act 1976 relating to such bail and also any recognizance entered into by any person as his surety; and
- (c) all documents and articles sent in pursuance of paragraph (1) of this rule.

(3) In this rule 'the offender', 'the convicting court' and 'the other court' have the same meanings as in section 10 of the 2000 Act.

## PART 43

### COMMITTAL TO THE CROWN COURT FOR SENTENCE

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#### Contents of this Part

Committals for sentence, etc	rule 43.1
Committal for order restricting discharge, etc	rule 43.2

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#### Committals for sentence, etc

**43.1.**—(1) Where a magistrates' court commits an offender to the Crown Court under the Vagrancy Act 1824<sup>(375)</sup>, sections 3, 6, 116(3)(b) or 120(2)(a) of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(376)</sup> or section 6 of the Bail Act 1976<sup>(377)</sup> after convicting him of an offence, the magistrates' court officer shall send to the Crown Court officer—

- (a) a copy signed by the magistrates' court officer of the minute or memorandum of the conviction entered in the register;
- (b) copy of any note of the evidence given at the trial of the offender, any written statement tendered in evidence and any deposition;
- (c) such documents and articles produced in evidence before the court as have been retained by the court;
- (d) any report relating to the offender considered by the court;

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<sup>(375)</sup> 1824 c. 83.

<sup>(376)</sup> 2000 c. 6; section 3 is amended by section 41 of, and paragraphs 21 and 22 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed; section 6 was amended by paragraphs 90 and 91 of Schedule 32 and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It was also amended by paragraphs 21 and 28 of Schedule 3 to the 2003 Act for certain purposes and is so amended for remaining purposes, with effect from a date to be appointed. It is further amended by Part 9 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed; section 116(3) was repealed by paragraphs 90 and 116 of Part 1 to Schedule 32 and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with transitional provisions in paragraph 29 of Schedule 2 and the section is continued in force for certain offences by section 148 of, and paragraphs 40 and 45 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4); section 120 was repealed by section 303 of, and part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with savings in relation to offences committed before 4 April 2005.

<sup>(377)</sup> 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 sections 15 and 41 of paragraphs 48(1) and 48(4) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). The amendments made by Schedule 3 of the 2003 Act are in force in relation to certain cases only, and for remaining purposes will take effect from a date to be appointed.

- (e) if the offender is committed on bail, a copy of the record made in pursuance of section 5 of the 1976 Act relating to such bail and also any recognizance entered into by any person as his surety;
- (f) if the court imposes under section 26 of the Road Traffic Offenders Act 1988(378) an interim disqualification for holding or obtaining a licence under Part III of the Road Traffic Act 1988(379), a statement of the date of birth and sex of the offender;
- (g) if the court makes an order under section 148 of the 2000 Act (restitution orders), a copy signed by the clerk of the convicting court of the minute or memorandum of the order entered in the register; and
- (h) any documents relating to an appeal by the prosecution against the granting of bail.

(2) Where a magistrates' court commits an offender to the Crown Court under the Vagrancy Act 1824 or sections 3, 6 or 120(2) of the 2000 Act and the magistrates' court on that occasion imposes, under section 26 of the Road Traffic Offenders Act 1988, an interim disqualification for holding or obtaining a licence under Part III of the Road Traffic Act 1988, the magistrates' court officer shall give notice of the interim disqualification to the Crown Court officer.

(3) Where a magistrates' court commits a person on bail to the Crown Court under any of the enactments mentioned in paragraph (2) of this rule or under section 6 of the Bail Act 1976 the magistrates' court officer shall give notice thereof in writing to the governor of the prison to which persons of the sex of the person committed are committed by that court if committed in custody for trial and also, if the person committed is under the age of 21, to the governor of the remand centre to which he would have been committed if the court had refused him bail.

[Note. See also direction V.52 in the Practice Direction.]

### Committal for order restricting discharge, etc

**43.2.** Where a magistrates' court commits an offender to the Crown Court either—

- (a) under section 43 of the Mental Health Act 1983(380) with a view to the making of a hospital order with an order restricting his discharge; or
- (b) under section 3 of the Powers of Criminal Courts (Sentencing) Act 2000, as modified by section 43(4) of the 1983 Act, with a view to the passing of a more severe sentence than the magistrates' court has power to inflict if such an order is not made,

the magistrates' court officer shall send to the Crown Court officer—

- (i) the copies, documents and articles specified in rule 43.1,
- (ii) any written evidence about the offender given by a medical practitioner under section 37 of the 1983 Act(381) or a copy of a note of any oral evidence so given,

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(378) 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.

(379) 1988 c. 52.

(380) 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 is further amended by paragraph 55 of Schedule 3 and Part 9 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(381) 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), and 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). It is amended by sections 6 and 148 of, and paragraphs 30 and 148 of Schedule 4, and paragraph 8 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.



- (iii) the name and address of the hospital the managers of which have agreed to admit the offender if a hospital order is made, and
- (iv) if the offender has been admitted to a hospital under section 37 of the 1983 Act, the name and address of that hospital.

## PART 44

### BREACH, REVOCATION AND AMENDMENT OF COMMUNITY AND OTHER ORDERS IN A MAGISTRATES' COURT

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#### Contents of this Part

When this Part applies	rule 44.1
Application by responsible officer	rule 44.2
Application by defendant or person affected	rule 44.3
Procedure on application by responsible officer	rule 44.4

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#### When this Part applies

**44.1.** This Part applies in a magistrates' court where—

- (a) the officer responsible for a defendant's compliance with an order to which applies—
  - (i) Schedule 3, 5, 7 or 8 to the Powers of Criminal Courts (Sentencing) Act 2000(**382**),
  - (ii) Schedule 8 to the Criminal Justice Act 2003(**383**), or
  - (iii) Schedule 2 to the Criminal Justice and Immigration Act 2008(**384**)wants the court to deal with that defendant for failure to comply;
- (b) one of the following wants the court to exercise any power it has to revoke or amend such an order—
  - (i) the responsible officer,
  - (ii) the defendant, or
  - (iii) a person affected by the order; or
- (c) the court considers exercising on its own initiative any power it has to revoke or amend such an order.

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

- (a) *Schedule 3 deals with the breach, revocation and amendment of curfew orders and exclusion orders;*
- (b) *Schedule 5 deals with the breach, revocation and amendment of attendance centre orders;*
- (c) *Schedule 7 deals with the breach, revocation and amendment of supervision orders;*

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**(382)** 2000 c. 6; Schedule 3 was substituted by section 304 of, and paragraphs 90 and 125 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44). It is repealed by section 149 of, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

**(383)** 2003 c. 44; paragraph 25A is to be inserted in Schedule 8 by section 6 of, and paragraph 109 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4) from a date to be appointed. Other amendments to Schedule 8 do not affect the procedure prescribed by these rules.

**(384)** 2008 c. 4; Schedule 2 will take effect from a date to be appointed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



### Procedure on application by responsible officer

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

(a) as if—

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

### DEFERRED SENTENCE

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#### Contents of this Part

Further conviction in magistrates' court after sentence deferred	rule 45.1
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#### Further conviction in magistrates' court after sentence deferred

**45.1.** Where under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(**385**) a court has deferred passing sentence on an offender and before the expiration of the period of deferment he is convicted of any offence by a magistrates' court, the court officer for the convicting court shall, if the court which deferred passing sentence on the earlier occasion was another magistrates' court or the Crown Court, give notice of the conviction to the court officer for that court.

## PART 46

*[Note. There are no rules in this Part.]*

## PART 47

### SUSPENDED SENTENCES OF IMPRISONMENT

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#### Contents of this Part

Entries in magistrates' court register in respect of

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(**385**)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) and amended by article 3 of, and paragraph 14 of Schedule 1 to, [S.I. 2008/912](#).

suspended sentences	rule 47.1
Suspended sentence supervision orders	rule 47.2

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### Entries in magistrates' court register in respect of suspended sentences

**47.1.**—(1) Where under section 119 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(386)</sup> a magistrates' court deals with a person in respect of a suspended sentence otherwise than by making an order under section 119(1)(a), the court shall cause to be entered in the register its reasons for its opinion that it would be unjust to make such an order.

(2) Where an offender is dealt with under section 119 of the 2000 Act in respect of a suspended sentence passed by a magistrates' court, the court officer shall note this in the register, or where the suspended sentence was not passed by that court, shall notify the court officer for the court by which it was passed who shall note it in the register.

*[Note. For the requirement to keep a register, see rule 5.4.]*

### Suspended sentence supervision orders

**47.2.**—(1) Where a magistrates' court makes an order under section 119(1)(a) or (b) of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of a person who is subject to a suspended sentence supervision order, the court officer shall note this in the register, or where that order was not made by that court, shall—

- (a) if the order was made by another magistrates' court, notify the court officer for that court who shall note the court register accordingly; or
- (b) if the order was made by the Crown Court, notify the Crown Court officer.

(2) Where a magistrates' court discharges a suspended sentence supervision order under section 124(1) of the 2000 Act<sup>(387)</sup>, the court officer shall note this in the register, or where that order was not made by that court, shall—

- (a) if the order was made by another magistrates' court, notify the court officer for that court who shall note the court register accordingly; or
- (b) if the order was made by the Crown Court, notify the Crown Court officer.

(3) Where a magistrates' court fines a person under section 123 of the 2000 Act<sup>(388)</sup> for breach of the requirements of a suspended sentence supervision order which was not made by that court, the court officer shall—

- (a) if the order was made by another magistrates' court, notify the court officer for that court; or
- (b) if the order was made by the Crown Court, notify the Crown Court officer.

*[Note. For the requirement to keep a register, see rule 5.4.]*

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<sup>(386)</sup>2000 c. 6; section 119 was repealed by Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with savings in relation to offences committed before 4 April 2005.

<sup>(387)</sup>2000 c. 6; section 124 was repealed by Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with savings in relation to offences committed before 4 April 2005.

<sup>(388)</sup>2000 c. 6; section 123 was repealed by Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with savings in relation to offences committed before 4 April 2005.

## PART 48

### COMMUNITY PENALTIES

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#### Contents of this Part

Curfew order or requirement with electronic monitoring requirement	rule 48.1
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#### Curfew order or requirement with electronic monitoring requirement

**48.1.**—(1) This rule applies where the Crown Court makes—

- (a) a curfew order with an electronic monitoring requirement under section 35 of the Crime (Sentences) Act 1997(**389**) or under sections 37 and 36B of the Powers of Criminal Courts (Sentencing) Act 2000(**390**); or
- (b) a community rehabilitation order with curfew and electronic monitoring requirements under section 41 of and paragraph 7 of Schedule 2 to the 2000 Act.

(2) The court officer shall serve notice of the order on the person in respect of whom it is made by way of pages 1 and 2 of the form set out in the Practice Direction.

(3) The court officer shall serve notice of the order on the person responsible for electronically monitoring compliance with it by way of the form set out in the Practice Direction.

(4) Where any community order additional to the curfew order has been made in respect of the offender, the court officer shall serve a copy of the notice required by paragraph (3) on the local probation board or Youth Offending Team responsible for the offender.

## PART 49

### HOSPITAL AND GUARDIANSHIP ORDERS

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#### Contents of this Part

Remand by magistrates' court for medical enquiries	rule 49.1
Hospital or guardianship orders imposed by magistrates' court	rule 49.2

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#### Remand by magistrates' court for medical inquiries

**49.1.** On exercising the powers conferred by section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(**391**) a magistrates' court shall—

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(**389**) 1997 c. 43; section 35 was amended by paragraph 50 of Schedule 7 and paragraph 132 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 184 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 32 of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29). It is further amended by paragraphs 135 and 139 of Part II of Schedule 7 of the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 of the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(**390**) 2000 c. 6; section 36B was inserted by section 52 of the Criminal Justice and Courts Services Act 2000 (c. 43) and is repealed by sections 6(1) and 149 of, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed. Section 36B was amended by paragraphs 90 and 96 of Schedule 32 to, and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 66 of the Schedule to, S.I. 2005/886. Section 37 was amended by paragraphs 160 and 162 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), paragraph 2 of Schedule 2 and Schedule 3 to the Anti-social Behaviour Act 2003 (c. 38) and paragraphs 90 and 97 of Schedule 32 and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(**391**) 2000 c. 6.

- (a) where the accused is remanded in custody, send to the institution or place to which he is committed; or
- (b) where the accused is remanded on bail, send to the institution or place at which, or the person by whom, he is to be examined,

a statement of the reasons why the court is of opinion that an inquiry ought to be made into his physical or mental condition and of any information before the court about his physical or mental condition.

### **Hospital or guardianship order imposed by a magistrates' court**

**49.2.**—(1) The magistrates' court by which a hospital order is made under section 37 of the Mental Health Act 1983<sup>(392)</sup> shall send to the hospital named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the patient to whom the order relates, and in particular such information about the mental condition, character and antecedents of the patient and the nature of the offence.

(2) The magistrates' court by which a guardianship order is made under section 37 of the 1983 Act shall send to the local health authority named therein as guardian or, as the case may be, the local health authority for the area in which the person so named resides, such information in the possession of the court as it considers likely to be of assistance in dealing with the patient to whom the order relates and in particular such information about the mental condition, character and antecedents of the patient and the nature of the offence.

(3) The magistrates' court by which an offender is ordered to be admitted to hospital under section 44 of the 1983 Act shall send to the hospital such information in the possession of the court as it considers likely to assist in the treatment of the offender until his case is dealt with by the Crown Court.

## **PART 50**

### **CIVIL BEHAVIOUR ORDERS AFTER VERDICT OR FINDING**

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

When this Part applies	rule 50.1
Behaviour orders: general rules	rule 50.2
Application for behaviour 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

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<sup>(392)</sup> 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), and 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). It is amended by sections 6 and 148 of, and paragraphs 30 and 148 of Schedule 4, and paragraph 8 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

Credibility and consistency of maker of hearsay statement	rule 50.8
Court's power to vary requirements under this Part	rule 50.9

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*[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(**393**).

*[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(**394**) (football banning orders),*
  - (ii) *section 5 of the Protection from Harassment Act 1997(**395**) (restraining orders),*
  - (iii) *sections 1C and 1D of the Crime and Disorder Act 1998(**396**) (anti-social behaviour orders and interim anti-social behaviour orders),*
  - (iv) *sections 8 and 9 of the Crime and Disorder Act 1998(**397**) (parenting orders),*
  - (v) *section 104 of the Sexual Offences Act 2003(**398**) (sexual offences prevention orders),*
  - (vi) *section 19 of the Serious Crime Act 2007(**399**) (serious crime prevention orders),*
  - (vii) *section 6 of the Violent Crime Reduction Act 2006(**400**) (drinking banning orders);*
- (b) *on acquittal, under —*

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(393) 1995 c. 38.

(394) 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).

(395) 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).

(396) 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).

(397) 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), sections 324 and 332 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. Section 9 was amended by section 85 of the Anti-social Behaviour Act 2003 (c. 38), section 324 of, and paragraph 2 of Schedule 34 to, the Criminal Justice Act 2003 (c. 44), section 64 of, and paragraph 4 of Schedule 5 to, the Children Act 2004 (c. 31) and article 3 of, and paragraph 13 of Schedule 1 to, S.I. 2008/912.

(398) 2003 c. 42.

(399) 2007 c. 27.

(400) 2006 c. 38.

section 5A of the Protection from Harassment Act 1997<sup>(401)</sup> (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 what order is proposed and why; 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.
- (3) But an interim behaviour 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.

[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.]

### **Application for behaviour order: special rules**

**50.3.**—(1) This rule applies where a prosecutor wants the court to make—

- (a) an anti-social behaviour order; or
- (b) a serious crime prevention order,

if the defendant is convicted.

(2) 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) The notice must be in the form set out in the Practice Direction and 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) The defendant must then—

- (a) serve written notice of any evidence on which the defendant relies on—
  - (i) the court officer, and
  - (ii) the prosecutor,

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<sup>(401)</sup> 1997 c. 40; section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

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) This rule does not apply to an application for an interim anti-social behaviour order.

*[Note. 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, the Director of Revenue and Customs Prosecutions, or the Director of the Serious Fraud Office. See also paragraphs 2, 7 and 13 of Schedule 2 to the 2007 Act.]*

*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 indicates that it may 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 any particular evidence before making that decision 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

- (b) in that notice identify that evidence and attach any written statement that has not already been served.

*[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 why the order should be varied or revoked; and
- (b) serve the application, and any notice under paragraph (3), on the court officer and, as appropriate, anyone listed in paragraph (1)(b).

(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, and
  - (ii) as appropriate, anyone listed in paragraph (1)(b); 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 served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing.

(6) Where a person applies under this rule to a magistrates' court—

- (a) the application must be by complaint; and
- (b) the court officer must give notice by summons of any hearing.

*[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(402), 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 evidencenot 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 he served the hearsay noticenot 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(403).]*

### **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.]*

## **PART 52**

### **ENFORCEMENT OF FINES**

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

Notice to defendant of fine or forfeited recognizance	rule 52.1
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Review of terms of postponement of warrant of commitment by magistrates' court	rule 52.5
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Payment after imprisonment imposed by magistrates' court	rule 52.8
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Particulars of fine enforcement to be entered in magistrates' court register	rule 52.12
Payment after Attendance Centre order	rule 52.13

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(403) 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).

### **Notice to defendant of fine or forfeited recognizance**

**52.1.** Where under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(404) or section 67(2) of the Criminal Justice Act 1988(405) a magistrates' court is required to enforce payment of a fine imposed or recognizance forfeited by the Crown Court or where a magistrates' court allows time for payment of a sum adjudged to be paid by a summary conviction, or directs that the sum be paid by instalments, or where the offender is absent when a sum is adjudged to be paid by a summary conviction, the magistrates' court officer shall serve on the offender notice in writing stating the amount of the sum and, if it is to be paid by instalments, the amount of the instalments, the date on which the sum, or each of the instalments, is to be paid and the places and times at which payment may be made; and a warrant of distress or commitment shall not be issued until the preceding provisions of this rule have been complied with.

### **Payment of fine to be made to magistrates' court officer**

**52.2.—(1)** A person adjudged by the conviction of a magistrates' court to pay any sum shall, unless the court otherwise directs, pay that sum, or any instalment of that sum, to the court officer.

(2) Where payment of any sum or instalment of any sum adjudged to be paid by the conviction or order of a magistrates' court is made to any person other than the court officer, that person, unless he is the person to whom the court has directed payment to be made or, in the case of a child, is the person with whom the child has his home, shall, as soon as may be, account for and, if the court officer so requires, pay over the sum or instalment to the court officer.

(3) Where payment of any sum adjudged to be paid by the conviction or order of a magistrates' court, or any instalment of such a sum, is directed to be made to the court officer for another court, the court officer for the court that adjudged the sum to be paid shall pay over any sums received by him on account of the said sum or instalment to the court officer for that other court.

### **Duty of magistrates' court officer to give receipt**

**52.3.** The court officer for a magistrates' court shall give or send a receipt to any person who makes a payment to him in pursuance of a conviction or order of a magistrates' court and who asks for a receipt.

### **Application to magistrates' court for further time**

**52.4.** An application under section 75(2) of the Magistrates' Courts Act 1980(406) (further time to pay) may, unless the court requires the applicant to attend, be made in writing.

### **Review of terms of postponement of warrant of commitment by magistrates' court**

**52.5.** An application under section 77(5) of the Magistrates' Courts Act 1980(407) may be made in writing or in person.

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(404) 2000 c. 6; section 140(1) was amended by paragraph 74(1) and (4)(b) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and it is further amended by amended by paragraph 74(1) and (4)(a) of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(405) 1988 c. 33.

(406) 1980 c. 43.

(407) 1980 c. 43; section 77(5) was inserted by section 61 of the Criminal Justice Act 1988 (c. 44) and amended by paragraph 218 of Schedule 8 to the Courts Act 2003 (c. 39).

### **Notice to defendant before enforcing magistrates' court order**

**52.6.** A warrant of commitment shall not be issued for disobedience to an order of a magistrates' court unless the defendant has been previously served with a copy of the minute of the order, or the order was made in his presence and the warrant is issued on that occasion:

Provided that this paragraph shall not apply to an order to pay money.

### **Execution of magistrates' court distress warrant**

**52.7.—(1)** A warrant of distress issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order—

- (a) shall name or otherwise describe the person against whom the distress is to be levied;
- (b) shall be directed to the constables of the police area in which the warrant is issued or to the civilian enforcement officers for the area in which they are employed, or to a person named in the warrant and shall, subject to, and in accordance with, the provisions of this rule, require them to levy the said sum by distress and sale of the goods belonging to the said person; and
- (c) may where it is directed to the constables of a police area, instead of being executed by any of those constables, be executed by any person under the direction of a constable.

(2) The warrant shall authorise the person charged with the execution of it to take as well any money as any goods of the person against whom the distress is levied; and any money so taken shall be treated as if it were the proceeds of the sale of goods taken under the warrant.

(3) The warrant shall require the person charged with the execution to pay the sum to be levied to the court officer for the court that issued the warrant.

(4) A warrant to which this rule applies may be executed by the persons to whom it was directed or by any of the following persons, whether or not the warrant was directed to them—

- (a) A constable for any police area in England and Wales, acting in his own police area;
- (b) where the warrant is one to which section 125A of the Magistrates' Courts Act 1980<sup>(408)</sup> applies, a civilian enforcement officer within the meaning of section 125A of the 1980 Act; and
- (c) where the warrant is one to which section 125A of the 1980 Act applies, any of the individuals described in section 125B(1) of the 1980 Act<sup>(409)</sup>;

and in this rule any reference to the person charged with the execution of a warrant includes any of the above persons who is for the time being authorised to execute the warrant, whether or not they have the warrant in their possession at the time.

(5) A person executing a warrant of distress shall—

- (a) either—
  - (i) if he has the warrant with him, show it to the person against whom the distress is levied, or
  - (ii) otherwise, state where the warrant is and what arrangements may be made to allow the person against whom distress is levied to inspect it;

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<sup>(408)</sup> 1980 c. 43; section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22), articles 46 and 52 of S.I. 2006/1737, section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29) and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128.

<sup>(409)</sup> 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 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29).

- (b) explain, in ordinary language, the sum for which distress is levied and the reason for the distress;
- (c) where the person executing the warrant is one of the persons referred to in paragraph (4) (b) or (c) above, show the person against whom distress is levied a written statement under section 125A(4) of 125B(4) as appropriate; and
- (d) in any case, show documentary proof of his identity.

(6) There shall not be taken under the warrant the clothing or bedding of any person or his family or the tools, books, vehicles or other equipment which he personally needs to use in his employment, business or vocation, provided that in this paragraph the word 'person' shall not include a corporation.

(7) The distress levied under any such warrant as aforesaid shall be sold within such period beginning not earlier than the 6th day after the making of the distress as may be specified in the warrant, or if no period is specified in the warrant, within a period beginning on the 6th day and ending on the 14th day after the making of the distress:

Provided that with the consent in writing of the person against whom the distress is levied the distress may be sold before the beginning of the said period.

(8) The clerk of the court which issued the warrant may, on the application of the person charged with the execution of it, extend the period within which the distress must be sold by any number of days not exceeding 60; but following the grant of such an application there shall be no further variation or extension of that period.

(9) The said distress shall be sold by public auction or in such other manner as the person against whom the distress is levied may in writing allow.

(10) Notwithstanding anything in the preceding provisions of this rule, the said distress shall not be sold if the sum for which the warrant was issued and the charges of taking and keeping the distress have been paid.

(11) Subject to any direction to the contrary in the warrant, where the distress is levied on household goods, the goods shall not, without the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale; and so much of the goods shall be impounded as is in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark.

(12) The person charged with the execution of any such warrant as aforesaid shall cause the distress to be sold, and may deduct out of the amount realised by the sale all costs and charges incurred in effecting the sale; and he shall return to the owner the balance, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant.

(13) The person charged with the execution of any such warrant as aforesaid shall as soon as practicable send to the court officer for the court that issued it a written account of the costs and charges incurred in executing it; and the court officer shall allow the person against whom the distress was levied to inspect the account within one month after the levy of the distress at any reasonable time to be appointed by the court.

(14) If any person pays or tenders to the person charged with the execution of any such warrant as aforesaid the sum mentioned in the warrant, or produces a receipt for that sum given by the court officer for the court that issued the warrant, and also pays the amount of the costs and charges of the distress up to the time of the payment or tender or the production of the receipt, the person as aforesaid shall not execute the warrant, or shall cease to execute it, as the case may be.

### **Payment after imprisonment imposed by magistrates' court**

**52.8.**—(1) The persons authorised for the purposes of section 79(2) of the Magistrates' Courts Act 1980(**410**) to receive a part payment are—

- (a) unless there has been issued a warrant of distress or commitment, the court officer for the court enforcing payment of the sum, or any person appointed under section 88 of that Act to supervise the offender;
- (b) where the issue of a warrant of commitment has been suspended on conditions which provide for payment to be made to the court officer for another magistrates' court, that court officer;
- (c) any constable holding a warrant of distress or commitment or, where the warrant is directed to some other person, that person; and
- (d) the governor or keeper of the prison or place in which the defaulter is detained, or other person having lawful custody of the defaulter:

Provided that—

- (i) the said governor or keeper shall not be required to accept any sum tendered in part payment under the said section 79(2) of the 1980 Act except on a week-day between 9 o'clock in the morning and 5 o'clock in the afternoon, and
- (ii) no person shall be required to receive in part payment under the said subsection (2) an amount which, or so much of an amount as, will not procure a reduction of the period for which the defaulter is committed or ordered to be detained.

(2) Where a person having custody of a defaulter receives payment of any sum he shall note receipt of the sum on the warrant of commitment.

(3) Where the magistrates' court officer for a court other than the court enforcing payment of the sums receives payment of any sum he shall inform the magistrates' court officer for the other court.

(4) Where a person appointed under section 88 of the 1980 Act(**411**) to supervise an offender receives payment of any sum, he shall send it forthwith to the magistrates' court officer for the court which appointed him.

### **Order for supervision made by magistrates' court**

**52.9.**—(1) Unless an order under section 88(1) of the Magistrates' Courts Act 1980 is made in the offender's presence, the court officer for the court making the order shall deliver to the offender, or serve on him by post, notice in writing of the order.

(2) It shall be the duty of any person for the time being appointed under the said section to advise and befriend the offender with a view to inducing him to pay the sum adjudged to be paid and thereby avoid committal to custody and to give any information required by a magistrates' court about the offender's conduct and means.

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(**410**) 1980 c. 43; section 79(2) was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and is amended by section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

(**411**) 1980 c. 43; section 88 was amended by paragraph 53 of Schedule 14 to the Criminal Justice Act 1982 (c. 48) and by paragraph 68 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraphs 58 and 64 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and section 62 of, and paragraphs 45 and 54 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

### Transfer of magistrates' court fine order

**52.10.**—(1) The court officer for a magistrates' court which has made a transfer of fine order under section 89 or 90 or section 90 as applied by section 91 of the Magistrates' Courts Act 1980(**412**) shall send to the clerk of the court having jurisdiction under the order a copy of the order.

(2) Where a magistrates' court has made a transfer of fine order in respect of a sum adjudged to be paid by a court in Scotland or in Northern Ireland the court officer shall send a copy of the order to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be.

(3) Where a court officer receives a copy of a transfer of fine order (whether made in England and Wales, or in Scotland or in Northern Ireland) specifying his court as the court by which payment of the sum in question is to be enforceable, he shall thereupon, if possible, deliver or send by post to the offender notice in writing.

(4) Where under a transfer of fine order a sum adjudged to be paid by a Scottish court or by a Northern Irish court is enforceable by a magistrates' court—

- (a) if the sum is paid, the court officer shall send it to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be; or
- (b) if the sum is not paid, the court officer shall inform the clerk of the Scottish court or the clerk of the Northern Irish court, as the case may be, of the manner in which the adjudication has been satisfied or that the sum, or any balance thereof, appears to be irrecoverable.

### Directions by magistrates' court that money found on defaulter shall not be applied in satisfaction of debt

**52.11.** Where the defaulter is committed to, or ordered to be detained in, a prison or other place of detention, any direction given under section 80(2) of the Magistrates' Courts Act 1980 shall be endorsed on the warrant of commitment.

### Particulars of fine enforcement to be entered in magistrates' court register

**52.12.**—(1) Where the court on the occasion of convicting an offender of an offence issues a warrant of commitment for a default in paying a sum adjudged to be paid by the conviction or, having power to issue such a warrant, fixes a term of imprisonment under section 77(2) of the Magistrates' Courts Act 1980(**413**), the reasons for the court's action shall be entered in the register, or any separate record kept for the purpose of recording particulars of fine enforcement.

(2) There shall be entered in the register, or any such record, particulars of any—

- (a) means inquiry under section 82 of the 1980 Act(**414**);
- (b) hearing under subsection (5) of the said section 82;

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(412) 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. Section 91 was amended by paragraphs 95 and 109 of Schedule 13 to the Access to Justice Act 1999, and paragraph 69 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 227(1), (2) and (3) of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 50 of S.I. 2006/1737. (There are other amendments not relevant to this rule).

(413) 1980 c. 43; section 77(2) was amended by paragraph 50 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraph 66 Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by Schedule 7 and paragraphs 58 and 62 of Part II of Schedule 8 to the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(414) 1980 c. 43; section 82 was amended by section 61(1), (3) and (4) 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) and paragraphs 220(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39). 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), Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed (there are other amendments which are not relevant to this rule).



- (c) allowance of further time for the payment of a sum adjudged to be paid by a conviction;
- (d) direction that such a sum shall be paid by instalments including any direction varying the number of instalments payable, the amount of any instalments payable and the date on which any instalment becomes payable;
- (e) distress for the enforcement of such a sum;
- (f) attachment of earnings order for the enforcement of such a sum;
- (g) decision of the Secretary of State to make deductions from income support under section 24 of the Criminal Justice Act 1991(415);
- (h) order under the 1980 Act placing a person under supervision pending payment of such a sum;
- (i) order under section 85(1) of the 1980 Act(416) remitting the whole or any part of a fine;
- (j) order under section 120(4) of the 1980 Act(417) remitting the whole or any part of any sum enforceable under that section (forfeiture of recognizance);
- (k) authority granted under section 87(3) of the 1980 Act(418) authorising the taking of proceedings in the High Court or county court for the recovery of any sum adjudged to be paid by a conviction;
- (l) transfer of fine order made by the court;
- (m) order transferring a fine to the court;
- (n) order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(419) specifying the court for the purpose of enforcing a fine imposed or a recognizance forfeited by the Crown Court; and
- (o) any fine imposed or recognizance forfeited by a coroner which has to be treated as imposed or forfeited by the court;
- (p) reference by a justice of the peace of an application under section 77(5) of the 1980 Act(420) for a review of the terms on which a warrant of commitment is postponed; or
- (q) order under section 77(3) of the 1980 Act(421) varying the time for which or the conditions subject to which a warrant of commitment is postponed.

*[Note. For the requirement to keep a register, see rule 5.4.]*

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(415) 1991 c. 53; section 24 was amended by section 47(3) of the Criminal Justice and Public Order Act 1994 (c. 33); section 11(1) of, and paragraph 55 of Schedule 1 of the Social Security (Incapacity for Work) Act 1994 (c. 18); section 63 of, and paragraph 30 of Schedule 3 to, the Vehicle Excise and Registration Act 1994 (c. 22), section 41 of, and paragraph 21(3) of Schedule 2, and Schedule 3 to, the Jobseekers Act 1995 (c. 18); section 86 of, and paragraph 55 of Schedule 7 to, the Social Security Act 1998 (c. 14); section 70 of, and paragraph 27 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c. 30), section 165 of, and paragraph 136 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 14 of, and paragraph 31 of Schedule 2 to, the State Pension Credit Act 2002 (c. 16), section 96 of the Courts Act 2003 (c. 39), section 58 of, and paragraph 30 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and sections 28 and 70 of, and paragraph 8 of Schedule 3 to, the Welfare Reform Act 2007 (c. 5).

(416) 1980 c. 43; section 85(1) substituted by section 61(1) and (5) of the Criminal Justice Act 1988 (c. 44).

(417) 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 46 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29).

(418) 1980 c. 43; section 87(3) was amended by section 50 of the Criminal Procedure and Investigations Act 1996 (c. 25) and paragraph 223(1) and (3) of Schedule 8 to the Courts Act 2003 (c. 39).

(419) 2000 c. 6; section 140(1) was amended by paragraph 74(1) and (4)(b) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and it is further amended by amended by paragraph 74(1) and (4)(a) of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(420) 1980 c. 43; section 77(5) was inserted by section 61 of the Criminal Justice Act 1988 (c. 44) and amended by paragraph 218 of Schedule 8 to the Courts Act 2003 (c. 39).

(421) 1980 c. 43; section 77(3) was inserted by section 61 (1) and (2) of the Criminal Justice Act 1988 (c. 33).



### Payment after Attendance Centre order

**52.13.**—(1) Where any person is ordered, under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000(**422**), to attend at an attendance centre in default of payment of a sum of money, payment may thereafter be made—

- (a) of the whole of the said sum, to the court officer for the magistrates' court which made the order, or
- (b) of the whole or, subject to paragraph (2), any part of the said sum, to the officer in charge of the attendance centre specified in the order ('the officer in charge').

(2) The officer in charge may not accept a part payment that would not secure the reduction by one or more complete hours of the period of attendance specified in the order.

(3) On receiving a payment under paragraph (1) the court officer shall forthwith notify the officer in charge.

(4) The officer in charge shall pay any money received by him under paragraph (1) above to the court officer and shall note the receipt of the money in the register maintained at the attendance centre.

## PART 53

### COMPENSATION ORDERS

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#### Contents of this Part

Review of compensation order made by a magistrates' court	rule 53.1
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#### Review of compensation order made by a magistrates' court

**53.1.**—(1) An application under section 133 of the Powers of Criminal Courts (Sentencing) Act 2000(**423**) for the review of a compensation order shall be by complaint.

(2) The court officer for the magistrates' court to which the complaint is made shall send a letter to the person for whose benefit the compensation order was made, inviting him to make observations and to attend any hearing of the complaint and advising him of his right to be heard.

## PART 54

### CONDITIONAL DISCHARGE

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#### Contents of this Part

Further offence committed after offender conditionally

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(**422**) 2000 c. 6; section 60 was amended by article 5 of S.I. 2001/618, paragraphs 90 and 102(1) and (4) of Schedule 32 to the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 72 of the Schedule to S.I. 2005/886. It is further amended by paragraphs 160 and 173 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and paragraphs 90 and 102(1) and (2)(c) and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. It is repealed by sections 6 and 149 of, and Part 1 of Schedule 27 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

(**423**) 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).

discharged by a magistrates' court

rule 54.1

### **Further offence committed after offender conditionally discharged by a magistrates' court**

**54.1.**—(1) Where a magistrates' court deals with a person under section 13 of the Powers of Criminal Courts (Sentencing) Act 2000(**424**) in relation to an order for conditional discharge which was not made by that court the court officer shall give notice of the result of the proceedings to the court officer for the court by which the order was made.

(2) The court officer for a magistrates' court receiving a notice under this rule shall note the decision of the other court in the register.

*[Note. For the requirement to keep a register, see rule 5.4.]*

## **PART 55**

### **ROAD TRAFFIC PENALTIES**

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

Endorsement of driving licence by a magistrates' court	rule 55.1
Application to magistrates' court for removal of a disqualification	rule 55.2
Application to court for review of course provider's refusal to issue a certificate of satisfactory completion of driving course	rule 55.3
Statutory declaration under section 72 or 73 of the Road Traffic Offenders Act 1988	rule 55.4
Appeal against recognition of a foreign driving disqualification	rule 55.5

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### **Endorsement of driving licence by a magistrates' court**

**55.1.**—(1) Where a magistrates' court convicts a person of an offence and, under section 44 of the Road Traffic Offenders Act 1988(**425**) orders that particulars of the conviction, and, if the court orders him to be disqualified, particulars of the disqualification, shall be endorsed on any licence held by him, the particulars to be endorsed shall include—

- (a) the name of the local justice area for which the court is acting;
- (b) the date of the conviction and the date on which sentence was passed (if different);
- (c) particulars of the offence including the date on which it was committed; and
- (d) particulars of the sentence of the court (including the period of disqualification, if any).

(2) Where a magistrates' court orders that the licence of an offender be endorsed as mentioned in paragraph (1) or imposes an interim disqualification as mentioned in rule 43.1(1)(f) and the court officer knows or is informed of the date of birth and sex of the offender, the court officer shall send the information to the licensing authority which granted the licence.

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(**424**) 2000 c. 6; section 13 was amended by article 2 of, and paragraph 64 of the Schedule to [S.I. 2005/886](#).

(**425**) 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.

### **Application to magistrates' court for removal of a disqualification**

**55.2.**—(1) An application under section 42 of the Road Traffic Offenders Act 1988(**426**) or paragraph 7 of Schedule 4 to the Road Traffic (Consequential Provisions) Act 1988(**427**) for an order removing a disqualification or disqualifications for holding or obtaining a licence shall be by complaint.

(2) The justice to whom the complaint is made shall issue a summons directed to the chief officer of police requiring him to appear before a magistrates' court to show cause why an order should not be made on the complaint.

(3) Where a magistrates' court makes an order under either of the provisions mentioned in paragraph (1) the court shall cause notice of the making of the order and a copy of the particulars of the order endorsed on the licence, if any, previously held by the applicant for the order to be sent to the licensing authority to which notice of the applicant's disqualification was sent.

### **Application to court for review of course provider's refusal to issue a certificate of satisfactory completion of driving course**

**55.3.**—(1) An application to the supervising court or the relevant local court under section 34B(6) or (8) of the Road Traffic Offenders Act 1988(**428**) shall be served on the court officer within 28 days after the date specified in an order under section 34A(5) of the 1988 Act.

(2) An application under section 34B(6) of the 1988 Act shall be accompanied by the notice under section 34B(5) of the 1988 Act.

(3) Where such an application is served on the court officer—

(a) he shall fix a date and time for the hearing of the application; and

(b) he shall—

(i) serve a copy of the application on the course provider, and

(ii) serve notice of the hearing on the applicant and course provider.

(4) If the course provider fails to appear or be represented at the hearing of the application without reasonable excuse, the court may proceed to decide the application in his absence.

(5) In this rule, 'course provider', 'relevant local court' and 'supervising court' have the meanings assigned to them in England and Wales by section 34C of the 1988 Act.

### **Statutory declaration under section 72 or 73 of the Road Traffic Offenders Act 1988**

**55.4.** Where a magistrates' court officer receives a statutory declaration under section 72 or 73 of the Road Traffic Offenders Act 1988(**429**) (fixed penalty notice or notice fixed to vehicle invalid) he shall send a copy of it to the appropriate chief officer of police.

(**426**) 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), with effect from a date to be appointed.

(**427**) 1988 c. 54.

(**428**) 1988 c. 53; section 34B was inserted by 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 provision in section 35 of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(**429**) 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).

## 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<sup>(430)</sup>; and
- (b) the person to whom it is given wants to appeal under section 59 of the Act<sup>(431)</sup> 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 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<sup>(432)</sup>.

(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—

- (a) the general rule is that it will do so at a hearing (which will be in public, unless the court otherwise directs); but
- (b) it may do so without a hearing.

(8) The court officer must serve on the minister—

- (a) notice of the outcome of the appeal; and
- (b) notice of any suspension of the disqualification; and
- (c) the appellant's driving licence, if surrendered to the court officer.

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<sup>(430)</sup>2003 c. 32.

<sup>(431)</sup>2003 c. 32; section 59 was amended by article 2 of, and paragraph 97 of the Schedule to, [S.I. 2008/3009](#).

<sup>(432)</sup>2003 c. 32; section 60 was amended by section 40(4) of, and paragraph 79 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

*[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(433), 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

Statements, etc. relevant to making confiscation orders	rule 56.1
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Drug trafficking – compensation on acquittal in the Crown Court	rule 56.6

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#### 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(434) in any proceedings in respect of an offence listed in Schedule 4 to that Act; or

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(433) 2003 c. 32; section 63 is to be 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).

(434) 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).

- (b) tenders to the Crown Court any statement or other document under section 11 of the Drug Trafficking Act 1994(435) 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(436) 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(437) 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.

(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.

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(435) 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).

(436) 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).

(437) 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).

*[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(**438**) or section 74A, 74B or 74C of the Criminal Justice Act 1988(**439**), 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(**440**) (order to make material available) or section 55 of the Drug Trafficking Act 1994(**441**) (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.

(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.

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(438) 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).

(439) 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).

(440) 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).

(441) 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).



*[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(**442**) and section 75A of the Criminal Justice Act 1988(**443**) (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(**444**), 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.]*

### **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(**445**), 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.]*

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(**442**) 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).

(**443**) 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).

(**444**) 2000 c. 6; section 140(1) was amended by paragraph 74(1) and (4)(b) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and it is further amended by amended by paragraph 74(1) and (4)(a) of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**445**) 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).



## 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:

‘business day’ means any day other than a Saturday, Sunday, Christmas Day or Good Friday, or a bank holiday under the Banking and Financial Dealings Act 1971<sup>(446)</sup>, in England and Wales;

‘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<sup>(447)</sup>;

‘restraint proceedings’ means proceedings under sections 42 and 58(2) and (3) of the Proceeds of Crime Act 2002<sup>(448)</sup>;

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<sup>(446)</sup> 1971 c. 80.

<sup>(447)</sup> 1995 c. 38.

<sup>(448)</sup> 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) is amended by section 62 of, and paragraphs 142 and 143 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

‘receivership proceedings’ means proceedings under sections 48, 49, 50, 51, 54(4), 59(2) and (3), 62 and 63 of the 2002 Act<sup>(449)</sup>;

‘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<sup>(450)</sup>.

(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.

(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.

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<sup>(449)</sup>2002 c. 29; section 49 was amended by section 82(1) of the [Serious Crime Act \(c. 27\)](#); section 59(2) is amended by section 62 of, and paragraphs 142 and 144 of Schedule 13 of the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), with effect from a date to be appointed. 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 \(c. 27\)](#).

<sup>(450)</sup>[S.I. 2002/3133](#).

(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, 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.
- (c) A party may serve notice in writing waiving his right to be served with 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.
- (d) 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) Part 4 and 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) Where this Part or Parts 58, 59, 60 or 61 requires service of a document, then, unless the Crown Court directs otherwise, the document may be served by any of the following methods—

- (a) in all cases, by delivering the document personally to the party to be served;
- (b) if no solicitor is acting for the party to be served by delivering the document at, or by sending it by first class post to, his residence or his last-known residence; or
- (c) if a solicitor is acting for the party to be served—
  - (i) by delivering the document at, or sending it by first class post to, the solicitor's business address, or

- (ii) where the solicitor's business address includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or
  - (iii) if the solicitor has indicated that he is willing to accept service by facsimile transmission, by sending a legible copy of the document by facsimile transmission to the solicitor's office.
- (3) A document shall, unless the contrary is proved, be deemed to have been served—
  - (a) in the case of service by first class post, on the second business day after posting;
  - (b) in the case of service in accordance with paragraph (2)(c)(ii), on the second business day after the day on which it is left at the document exchange; and
  - (c) in the case of service in accordance with paragraph (2)(c)(iii), where it is transmitted on a business day before 4 p.m., on that day and in any other case, on the next business day.
- (4) 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 this rule if the Crown Court is satisfied that the person had notice of the order by being present when the order was made.

#### **Service by an alternative method**

- 57.12.**—(1) Where it appears to the Crown Court that there is a good reason to authorise service by a method not otherwise permitted by rule 57.11, the court may make an order permitting service by an alternative method.
- (2) An application for an order permitting service by an alternative method—
    - (a) must be supported by evidence; and
    - (b) may be made without notice.
  - (3) An order permitting service by an alternative method must specify—
    - (a) the method of service; and
    - (b) the date when the document will be deemed to be served.

#### **Service outside the jurisdiction**

- 57.13.**—(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**

- 57.14.**—(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—

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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 method of service;
- (b) the date of service; and
- (c) if the document is served under rule 57.12, 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

**57.15.**—(1) The rules in this Part and in Parts 59 to 61 and 71 apply with the necessary modifications to proceedings under The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(451)</sup> in the same way that they apply to corresponding proceedings under Part 2 of the Proceeds of Crime Act 2002<sup>(452)</sup>.

(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>
B3	41
B4	42
B5	43
B6	44
B10	48
B11	49
B12	58
B18	31
B22	50
B24	51
B25	52
B26	53
B29	55
B31	57
B36	62
B37	63
B39	65
B40	66

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<sup>(451)</sup>S.I. 2005/3181.

<sup>(452)</sup>2002 c. 29.

## PART 58

### PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE ONLY TO CONFISCATION PROCEEDINGS

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#### Contents of this Part

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Application for new calculation of available amount	rule 58.4
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Application by magistrates' court officer to discharge confiscation order	rule 58.6
Application for variation of confiscation order made against an absconder	rule 58.7
Application for discharge of confiscation order made against an absconder	rule 58.8
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Compensation – general	rule 58.10
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Payment of money in bank or building society account in satisfaction of confiscation order	rule 58.12

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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(**453**), 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(**454**).

- (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(**455**) 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.
- (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(**456**) 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.

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(**454**) 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).

(**455**) 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).

(**456**) 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).



- (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<sup>(457)</sup> 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
- (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.

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<sup>(457)</sup>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).

(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(458) 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.

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(458)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).

(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 by whom the compensation would be payable under section 72(9) of the 2002 Act (or if the compensation is payable out of a police fund under section 72(9)(a), 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—
  - (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(459) 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;

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(459) 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).

- (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) The payment order shall be served on the bank or building society in respect of which it is made by leaving it at, or sending it by first class post to, the principal office of the bank or building society.
- (3) A payment order which is served by first class post shall, unless the contrary is proved, be deemed to have been served on the second business day after posting.
- (4) 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

Application for restraint order	rule 59.1
Restraint orders	rule 59.2
Application for discharge or variation of restraint order by a person affected by the order	rule 59.3
Application for variation of restraint order by the person who applied for the order	rule 59.4
Application for discharge of a restraint 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

**59.1.**—(1) This rule applies where the prosecutor, or an accredited financial investigator, makes an application for a restraint order under section 42 of the Proceeds of Crime Act 2002(**460**).

(2) The application may be made without notice.

(3) The application must be in writing and supported by a witness statement which must—

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(**460**)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).

- (a) give the grounds for the application;
- (b) to the best of the witness's 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) give the grounds for, and full details of, any application for an ancillary order under section 41(7) of the 2002 Act for the purposes of ensuring that the restraint order is effective; and
- (d) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act.

### **Restraint 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) A restraint 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 directs otherwise, a restraint order made without notice has effect until the court makes an order varying or discharging the restraint order.

(8) The applicant for a restraint order must—

- (a) serve copies of the restraint order and of the witness statement made in support of the application on the defendant and any person who is prohibited from dealing with realisable property by the restraint order; and
- (b) notify any person whom the applicant knows to be affected by the restraint order of the terms of the restraint order.

### **Application for discharge or variation of restraint 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 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 the 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; and
- (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act.

(4) The application and witness statement must be lodged with the Crown Court.

(5) 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.

(6) If the court makes an order for the variation of a restraint 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 a restraint 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 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 restraint order.

(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(461).]*

## PART 60

### PROCEEDS OF CRIME ACT 2002: RULES APPLICABLE ONLY TO RECEIVERSHIP PROCEEDINGS

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#### Contents of this Part

Application for appointment of a management or an enforcement receiver	rule 60.1
Application for conferral of powers on a management receiver or an enforcement receiver	rule 60.2
Applications for discharge or variation of receivership orders, and applications for other orders	rule 60.3
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(462) 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.

(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;

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(461) 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).

(462) 2002 c. 29.

- (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 he has been authorised to make the application under section 68 of the 2002 Act; and
- (e) if the proposed receiver is not a member of staff of the Crown Prosecution Service or the Revenue and Customs Prosecutions Office 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;
  - (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; and
  - (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act.



(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>(463)</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,

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.

<sup>(463)</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).

(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<sup>(464)</sup>;

(b) section 306B of the Insolvency Act 1986<sup>(465)</sup>; and

(c) article 279B of The Insolvency (Northern Ireland) Order 1989<sup>(466)</sup>.

## 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 member of staff of the Crown Prosecution Service or the Revenue and Customs Prosecutions Office (and it is immaterial whether the receiver is a permanent or temporary member or he is 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,

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 member of staff of the Crown Prosecution Service or of the Revenue and Customs Prosecutions Office (and it is immaterial whether the receiver is a permanent or temporary member or he is 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.

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<sup>(464)</sup> 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).

<sup>(465)</sup> 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).

<sup>(466)</sup> 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).

(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<sup>(467)</sup>.

## 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 will certify the result.

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<sup>(467)</sup>2002 c. 29; section 55(4)(b) was amended by paragraph 408 of Schedule 8 to, the Courts Act 2003 (c. 39).

### **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(**468**) 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.

### **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.

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(**468**) 2002 c. 29; section 58(2) is amended by section 62 of, and paragraphs 142 and 143 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed. Section 59(2) is amended by section 62 of, and paragraphs 142 and 144 of Schedule 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

### 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(469).

### Hearsay evidence

**61.8.** Section 2(1) of the Civil Evidence Act 1995(470) (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(471) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

### 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.

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(469) 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) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15). It is further amended by sections 41 and 332 of, and paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) for limited purposes; and for remaining 1995 purposes, with effect from a date to be appointed.

(470) 1995 c. 38.

(471) S.I. 1998/3132; amending instruments relevant to this Part are S.I. 2000/221 and 2001/4015.

(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 will 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).
- (4) Subject to paragraph (5), where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until—
- (a) notice is served in accordance with paragraph (2); or
  - (b) the Crown Court makes an order under rule 61.17 and the order is served as required by paragraph (3) of that rule.
- (5) Where the certificate of a LSC funded client is revoked or discharged—
- (a) the solicitor who acted for that person will cease to be the solicitor acting in the proceedings as soon as his retainer is determined under regulation 4 of The Community Legal Service (Costs) Regulations 2000(472); and
  - (b) if that person wishes to continue, where he appoints a solicitor to act on his behalf paragraph (2) will apply as if he had previously represented himself in the proceedings.
- (6) 'Certificate' in paragraph (5) means a certificate issued under the Funding Code (approved under section 9 of the Access to Justice Act 1999(473)) and 'LSC funded client' means an individual

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(472) S.I. 2000/441.

(473) 1999 c. 22; section 9 was amended by article 8 of, and paragraph 4 of the Schedule to, S.I. 2003/1887.



who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the 1999 Act.

#### **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 will 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(474).]

### **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.

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(474) 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).

### **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.

### **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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#### **When this Part applies**

**62.1.—**(1) This Part applies—

- (a) in the Crown Court, where a person is accused of disobeying—
  - (i) an order of the Crown Court, or
  - (ii) any other order, where legislation allows that person to be punished as if that were an order of the Crown Court;

- (b) in magistrates' courts and in the Crown Court, where a person is accused of contempt of court under section 18 of the Criminal Procedure and Investigations Act 1996<sup>(475)</sup>.

(2) In this Part, 'respondent' means any such accused person.

*[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order: see section 45 of the Senior Courts Act 1981<sup>(476)</sup>.*

*Under section 18 of the Criminal Procedure and Investigations Act 1996, a magistrates' court and the Crown Court can punish for contempt of court the use of disclosed prosecution material in contravention of section 17 of that Act<sup>(477)</sup>.*

See also—

- (a) rule 6.13 and rule 6.22 (disobedience to certain investigation orders);
- (b) rule 22.8 (unauthorised disclosure of prosecution material);
- (c) rule 59.6 (disobedience to a restraint order).]

### **Exercise of court's power to punish for contempt of court**

**62.2.** The court must not exercise its power to punish the respondent for contempt of court in the respondent's absence, unless the respondent has had at least 14 days in which to—

- (a) make any representations; and
- (b) introduce any evidence.

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

**62.3.—**(1) A person who wants the court to exercise its power to punish the respondent for contempt of court 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 hear the application (not less than 14 days after service).

(2) The application must—

- (a) identify the respondent;
- (b) explain that it is an application for the respondent to be punished for contempt of court;
- (c) contain such particulars of the conduct constituting contempt of court as to make clear what the applicant alleges 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 of the application.

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

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<sup>(475)</sup> 1996 c. 25.

<sup>(476)</sup> 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).

<sup>(477)</sup> 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).

*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.]*

### **Notice of suspension of punishment**

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

- (a) the court exercises its power to suspend a punishment it imposes for contempt of court—
  - (i) for a period, or
  - (ii) conditionally; and
- (b) the respondent is absent when the court does so.

(2) The applicant must serve on the respondent notice of the terms of the court’s order.

### **Application to discharge an order for imprisonment**

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

- (a) the court has ordered the respondent’s imprisonment for contempt of court; and
- (b) the respondent wants the court to discharge that order.

(2) The respondent must—

- (a) apply in writing;
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the applicant who applied for the respondent’s punishment;
- (c) explain why it is appropriate for the order to be discharged; and
- (d) ask for a hearing, if the respondent wants one.

### **Introduction of written witness statement or other hearsay**

**62.6.**—(1) A party 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 62.3, in the case of the applicant, or
  - (ii) not more than 7 days after service of that application, 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 by so informing the court officer and the party who would have given it.

*[Note. On an application under rule 62.3, hearsay evidence is admissible under the Civil Evidence Act 1995(478). Section 1(2) of the 1995 Act 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 defines a statement as meaning ‘any representation of fact or opinion, however made’.*

*Under section 2 of the 1995 Act, 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**

**62.7.**—(1) This rule applies to a written witness statement served under rule 62.6.

(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.

#### **False statements**

**62.8.**—(1) In the Crown Court, the court can punish for contempt of court a person who makes, or causes to be made, a false statement in such a written witness statement without an honest belief in its truth.

(2) The Crown Court may exercise its power to punish that person for contempt of court—

- (a) on an application by a party, with the court's permission; or
- (b) on its own initiative.

(3) A person who wants the court to exercise that power must comply with the rules in this Part.

#### **Content of notice of other hearsay**

**62.9.**—(1) This rule applies to a notice of hearsay, other than a written witness statement, served under rule 62.6.

(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.

#### **Cross-examination of maker of written witness statement or other hearsay**

**62.10.**—(1) This rule applies where a party wants the court's permission to cross-examine the maker of a written witness statement, or other hearsay statement, served under rule 62.6.

(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(479).]

### **Credibility and consistency of maker of written witness statement or other hearsay**

**62.11.**—(1) This rule applies where a party wants to challenge the credibility or consistency of the maker of a written witness statement, or other hearsay statement, served under rule 62.6.

(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 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(480).]

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

**62.12.**—(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 statement, notice or application for which it is needed; and

(b) explain the delay.

## **PART 63**

### **APPEAL TO THE CROWN COURT**

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

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(479) 1995 c. 38.

(480) 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).

When this Part applies	rule 63.1
Service of appeal notice	rule 63.2
Form of appeal notice	rule 63.3
Duty of magistrates' court officer	rule 63.4
Duty of person keeping exhibit	rule 63.5
Reference by the Criminal Cases Review Commission	rule 63.6
Hearings and decisions	rule 63.7
Abandoning an appeal	rule 63.8
Court's power to vary requirements under this Part	rule 63.9
Constitution of the Crown Court	rule 63.10

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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(481),
  - (ii) section 45 of the Mental Health Act 1983(482),
  - (iii) paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000(483), or paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003(484),
  - (iv) section 10 of the Violent Crime Reduction Act 2006(485),
  - (v) section 42 of the Counter Terrorism Act 2008(486);
- (b) the Criminal Cases Review Commission refers a defendant's case to the Crown Court under section 11 of the Criminal Appeal Act 1995(487);
- (c) a prosecutor wants to appeal under—
  - (i) section 14A(5A) of the Football Spectators Act 1989(488), or
  - (ii) section 147(3) of the Customs and Excise Management Act 1979(489); or
- (d) a person wants to appeal under—

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(481) 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 \(c. 45\)](#).

(482) 1983 c. 20.

(483) 2000 c. 6.

(484) 2003 c. 44.

(485) 2006 c. 38.

(486) 2008 c. 28.

(487) 1995 c. 35.

(488) 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 \(c. 38\)](#).

(489) 1979 c. 2.



- (i) section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956(490),
- (ii) section 12(5) of the Contempt of Court Act 1981(491),
- (iii) regulation 3C or 3H of The Costs in Criminal Cases (General) Regulations 1986(492), or
- (iv) section 22 of the Football Spectators Act 1989(493).

(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(494). 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(495) for the circumstances in which the Criminal Cases Review Commission may refer a conviction or sentence to the Crown Court.*

*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.*

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(490) 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).

(491) 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).

(492) 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).

(493) 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).

(494) 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).

(495) 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 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.]*

### 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—

- (a) serve with the appeal notice any application for an extension of the time limit under this rule; and
- (b) in that application, explain why the appeal notice is late.

*[Note. Under section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000(496), a magistrates' court may defer passing sentence for up to 6 months.]*

### 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(497).*

*See also rule 3.10 (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;
- (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; and
- (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.

#### **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 party
- 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.
- (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(498) and section 109 of the Magistrates' Courts Act 1980(499). 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;
  - (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 or a Recorder, 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.

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**(498)** 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).

**(499)** 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).

[Note. See sections 73 and 74 of the Senior Courts Act 1981(500), section 45 of the Children and Young Persons Act 1933(501) and section 9 of the Courts Act 2003(502).]

## PART 64

### APPEAL TO THE HIGH COURT BY WAY OF CASE STATED

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#### Contents of this Part

Application to a magistrates' court to state a case	rule 64.1
Consideration of a draft case by a magistrates' court	rule 64.2
Preparation and submission of final case to a magistrates' court	rule 64.3
Extension of time limits by a magistrates' court	rule 64.4
Content of case stated by a magistrates' court	rule 64.5
Application to the Crown Court to state a case	rule 64.6

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#### Application to a magistrates' court to state a case

**64.1.**—(1) An application under section 111(1) of the Magistrates' Courts Act 1980(503) shall be made in writing and signed by or on behalf of the applicant and shall identify the question or questions of law or jurisdiction on which the opinion of the High Court is sought.

(2) Where one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of fact made by the magistrates' court which it is claimed cannot be supported by the evidence before the magistrates' court shall be specified in such application.

(3) Any such application shall be sent to a court officer for the magistrates' court whose decision is questioned.

[Note. For the procedure to be followed in the High Court, see Part 52 of The Civil Procedure Rules 1998(504).]

#### Consideration of a draft case by a magistrates' court

**64.2.**—(1) Within 21 days after receipt of an application made in accordance with rule 64.1, a court officer for the magistrates' court whose decision is questioned shall, unless the justices refuse to state a case under section 111(5) of the Magistrates' Courts Act 1980, send a draft case in which are stated the matters required under rule 64.6 (content of case stated) to the applicant or his legal representative and shall send a copy thereof to the respondent or his legal representative.

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(500) 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).

(501) 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).

(502) 2003 c. 39.

(503) 1980 c. 43.

(504) S.I. 1998/3132.

(2) Within 21 days after receipt of the draft case under paragraph (1), each party may make representations thereon. Any such representations shall be in writing and signed by or on behalf of the party making them and shall be sent to the magistrates' court officer.

(3) Where the justices refuse to state a case under section 111(5) of the 1980 Act and they are required by a mandatory order of the High Court under section 111(6) to do so, this rule shall apply as if in paragraph (1)—

- (a) for the words 'receipt of an application made in accordance with rule 64.1' there were substituted the words 'the date on which a mandatory order under section 111(6) of the 1980 Act is made'; and
- (b) the words 'unless the justices refuse to state a case under section 111(5) of the 1980 Act' were omitted.

#### **Preparation and submission of final case to a magistrates' court**

**64.3.**—(1) Within 21 days after the latest day on which representations may be made under rule 64.2, the justices whose decision is questioned shall make such adjustments, if any, to the draft case prepared for the purposes of that rule as they think fit, after considering any such representations, and shall state and sign the case.

(2) A case may be stated on behalf of the justices whose decision is questioned by any 2 or more of them and may, if the justices so direct, be signed on their behalf by the justices' clerk.

(3) Forthwith after the case has been stated and signed a court officer for the court shall send it to the applicant or his legal representative, together with any statement required by rule 64.4.

#### **Extension of time limits by a magistrates' court**

**64.4.**—(1) If a magistrates' court officer is unable to send to the applicant a draft case under rule 64.2(1) within the time required by that paragraph, he shall do so as soon as practicable thereafter and the provisions of that rule shall apply accordingly; but in that event a court officer shall attach to the draft case, and to the final case when it is sent to the applicant or his legal representative under rule 64.3(3), a statement of the delay and the reasons for it.

(2) If a magistrates' court officer receives an application in writing from or on behalf of the applicant or the respondent for an extension of the time within which representations on the draft case may be made under rule 64.2(2), together with reasons in writing for it, the justices' clerk may, by notice in writing sent to the applicant, or respondent as the case may be, by the magistrates' court officer, extend the time and the provisions of that paragraph and of rule 64.3 shall apply accordingly; but in that event the court officer shall attach to the final case, when it is sent to the applicant or his legal representative under rule 64.3(3), a statement of the extension and the reasons for it.

(3) If the justices are unable to state a case within the time required by rule 64.3(1), they shall do so as soon as practicable thereafter and the provisions of that rule shall apply accordingly; but in that event a court officer shall attach to the final case, when it is sent to the applicant or his legal representative under rule 64.3(3), a statement of the delay and the reasons for it.

#### **Content of case stated by a magistrates' court**

**64.5.**—(1) A case stated by the magistrates' court shall state the facts found by the court and the question or questions of law or jurisdiction on which the opinion of the High Court is sought.

(2) Where one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of fact which it is claimed cannot be supported by the evidence before the magistrates' court shall be specified in the case.

(3) Unless one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the case shall not contain a statement of evidence.

#### **Application to the Crown Court to state a case**

**64.6.**—(1) An application under section 28 of the Senior Courts Act 1981<sup>(505)</sup> to the Crown Court to state a case for the opinion of the High Court shall be made in writing to a court officer within 21 days after the date of the decision in respect of which the application is made.

(2) The application shall state the ground on which the decision of the Crown Court is questioned.

(3) After making the application, the applicant shall forthwith send a copy of it to the parties to the proceedings in the Crown Court.

(4) On receipt of the application, the Crown Court officer shall forthwith send it to the judge who presided at the proceedings in which the decision was made.

(5) On receipt of the application, the judge shall inform the Crown Court officer as to whether or not he has decided to state a case and that officer shall give notice in writing to the applicant of the judge's decision.

(6) If the judge considers that the application is frivolous, he may refuse to state a case and shall in that case, if the applicant so requires, cause a certificate stating the reasons for the refusal to be given to him.

(7) If the judge decides to state a case, the procedure to be followed shall, unless the judge in a particular case otherwise directs, be the procedure set out in paragraphs (8) to (12) of this rule.

(8) The applicant shall, within 21 days of receiving the notice referred to in paragraph (5), draft a case and send a copy of it to the Crown Court officer and to the parties to the proceedings in the Crown Court.

(9) Each party to the proceedings in the Crown Court shall, within 21 days of receiving a copy of the draft case under paragraph (8), either—

- (a) give notice in writing to the applicant and the Crown Court officer that he does not intend to take part in the proceedings before the High Court;
- (b) indicate in writing on the copy of the draft case that he agrees with it and send the copy to a court officer; or
- (c) draft an alternative case and send it, together with the copy of the applicant's case, to the Crown Court officer.

(10) The judge shall consider the applicant's draft case and any alternative draft case sent to the Crown Court officer under paragraph (9)(c).

(11) If the Crown Court so orders, the applicant shall, before the case is stated and delivered to him, enter before the Crown Court officer into a recognizance, with or without sureties and in such sum as the Crown Court considers proper, having regard to the means of the applicant, conditioned to prosecute the appeal without delay.

(12) The judge shall state and sign a case within 14 days after either—

- (a) the receipt of all the documents required to be sent to a court officer under paragraph (9); or
- (b) the expiration of the period of 21 days referred to in that paragraph,

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<sup>(505)</sup> 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).



whichever is the sooner.

(13) A case stated by the Crown Court shall state the facts found by the Crown Court, the submissions of the parties (including any authorities relied on by the parties during the course of those submissions), the decision of the Crown Court in respect of which the application is made and the question on which the opinion of the High Court is sought.

(14) Any time limit referred to in this rule may be extended either before or after it expires by the Crown Court.

(15) If the judge decides not to state a case but the stating of a case is subsequently required by a mandatory order of the High Court, paragraphs (7) to (14) shall apply to the stating of the case save that—

- (a) in paragraph (7) the words ‘If the judge decides to state a case’ shall be omitted; and
- (b) in paragraph (8) for the words ‘receiving the notice referred to in paragraph (5)’ there shall be substituted the words ‘the day on which the mandatory order was made’.

## 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;

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

[Note. See rule 2.2 for the usual meaning of ‘court’.

*Under section 53 of the Senior Courts Act 1981(506), 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.*

*Under section 55 of that Act(507), 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(508); section 49 of the Criminal Justice Act 2003(509); The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(510); The Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(511); The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(512); 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 3.9(3) (requiring a certificate of readiness), and
  - (iii) rule 3.10 (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.

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(506) 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).

(507) 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).

(508) 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. 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).

(509) 2003 c. 44.

(510) S.I. 2005/2798.

(511) S.I. 2006/2135.

(512) S.I. 2008/1863.

## 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;
- (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(513) on an appeal against conviction or sentence, and*
- (b) under section 18A of that Act(514) 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(515) 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.

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(513) 1968 c. 19.

(514) 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).

(515) 1988 c. 33; section 36 was amended by sections 272, 304 and 331 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and 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) and section 149 of, and Part 28 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). 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.

*[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 Sentences: Appeals in Transitional Cases) Order 2005(516), The Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(517) 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(518), 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.]*

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(516) S.I. 2005/2798.

(517) S.I. 2006/2135.

(518) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

## **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;
- (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) Unless the Crown Court otherwise directs, where someone may appeal to the Court of Appeal the Crown Court officer must—

- (a) arrange for the recording of the proceedings in the Crown Court;
- (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 rule 65.9(2)); and
- (c) arrange for any document or object exhibited in the proceedings in the Crown Court to be kept there, or kept by some other appropriate person, until 6 weeks after the conclusion of those proceedings.

(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 rules 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.**—(1) 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.

- (2) Unless the Crown Court otherwise directs, such a person—
  - (a) must not provide anyone else with a transcript of a public interest ruling or of an application for such a ruling;
  - (b) subject to that, must provide anyone else with any transcript for which that person asks—
    - (i) in accordance with the transcription arrangements made by the Crown Court officer, and
    - (ii) on payment by that person of any charge fixed by the Treasury.

*[Note. Section 32 of the Criminal Appeal Act 1968 deals with the recording of proceedings in the Crown Court, the transcription of such a recording and the charge for providing such a transcript. See also rule 65.8(2) (duty of Crown Court officer).]*

#### **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<sup>(519)</sup>; 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<sup>(520)</sup>; 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.

<sup>(519)</sup>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).

<sup>(520)</sup>1947 c. 44; section 17 was amended by article 3(2) of [S.I. 1968/1656](#).

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

When this Part applies	rule 66.1
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Powers of Court of Appeal judge	rule 66.6
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Right to attend hearing	rule 66.8

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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<sup>(521)</sup> or section 35(1) of the Criminal Procedure and Investigations Act 1996<sup>(522)</sup>; or
- (b) section 47(1) of the Criminal Justice Act 2003<sup>(523)</sup>.

(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 15 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.

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<sup>(521)</sup>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.

<sup>(522)</sup>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.

<sup>(523)</sup>2003 c. 44.

- (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;
  - (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 ruling
 not 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(524) and section 49 of the Criminal Justice Act 2003(525).]*

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(524) 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

### 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.

*[Note. See rule 65.6 (hearings).]*

## PART 67

### APPEAL TO THE COURT OF APPEAL AGAINST RULING ADVERSE TO PROSECUTION

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#### Contents of this Part

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Respondent's notice	rule 67.7
Public interest ruling	rule 67.8
Powers of Court of Appeal judge	rule 67.9
Renewing applications	rule 67.10
Right to attend hearing	rule 67.11

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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(**526**).

(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.]*

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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.  
**(525)** 2003 c. 44.  
**(526)** 2003 c. 44.

## 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(**527**), or
  - (ii) paragraph 14 of Schedule 22 to the Criminal Justice Act 2003(**528**),
  - (iii) section 42 of the Counter Terrorism Act 2008(**529**);
- (b) the Criminal Cases Review Commission refers a case to the Court of Appeal under section 9 of the Criminal Appeal Act 1995(**530**);
- (c) a prosecutor wants to appeal to the Court of Appeal under section 14A(5A) of the Football Spectators Act 1989(**531**);
- (d) a party wants to appeal under section 74(8) of the Serious Organised Crime and Police Act 2005(**532**);
- (e) a person found in contempt of court wants to appeal under section 13 of the Administration of Justice Act 1960(**533**) and section 18A of the Criminal Appeal Act 1968(**534**); or

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(527) 1968 c. 19.

(528) 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).

(529) 2008 c. 28.

(530) 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).

(531) 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).

(532) 2005 c. 15.

(533) 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).

(534) 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).

- (f) a person wants to appeal to the Court of Appeal under—
  - (i) section 24 of the Serious Crime Act 2007(535), or
  - (ii) regulation 3C or 3H of The Costs in Criminal Cases (General) Regulations 1986(536).

(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(537));*
- (b) a sentence (sections 9 and 10 of the 1968 Act(538));*
- (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(539));*
- (e) a hospital order, interim hospital order or supervision order under section 5 or 5A of the Criminal Procedure (Insanity) Act 1964(540) (section 16A of the 1968 Act(541)).*

*See section 50 of the 1968 Act(542) for the meaning of ‘sentence’.*

*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.*

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(535) 2007 c. 27.

(536) 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).

(537) 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), 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). It is further amended by section 41 of, and paragraph 44 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), commenced in part, the remainder to have effect from a date to be appointed.

(538) 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 the Criminal Justice Act 2003 (c. 44). It is further amended by sections 41 and 332 of, and paragraph 44 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed. 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), section 304 and 319 of, and paragraphs 7 and 8 of Schedule 32 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 332 of, 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), with effect from a date to be appointed.

(539) 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).

(540) 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).

(541) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(542) 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 55 of, and paragraph 6 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), 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), and section 52 of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

*See section 13 of the Criminal Appeal Act 1995(543) 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 punished by the Crown Court 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(544) 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(545) 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
- (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 paragraph 14 of Schedule 22 to the Criminal Justice Act 2003, or

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(543) 1995 c. 35; section 13 is amended by section 321 of, and paragraph 3 of Schedule 11 to, the Armed Forces Act 2006 (c. 52), with effect from a date to be appointed.

(544) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(545) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

- (ii) the Criminal Cases Review Commission refers the case to the court; and
- (b) not more than—
  - (i) 28 days after such a decision, or after the Registrar serves notice that the Commission has referred a sentence, or
  - (ii) 56 days after 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) *a finding of contempt of court,*
  - (ii) *a wasted or third party costs order;*
- (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(546), under section 81(1B) of the Senior Courts Act 1981(547), under section 14A(5B) of the Football Spectators Act 1989(548), 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(549).]*

### **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 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).]*

(546) 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).

(547) 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).

(548) 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).

(549) 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.

### 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 not more than 14 days after the Registrar serves—

- (a) 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) 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 (special measures directions);
- (b) Part 30 (use of live television link other than for vulnerable witnesses);
- (c) Part 34 (hearsay evidence);
- (d) Part 35 (evidence of bad character); and
- (e) 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(550), 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.

(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(551) and section 3(8) of the Bail Act 1976(552). An application about bail or about the conditions of bail may be made either by an appellant or respondent.]*

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**(550)** 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).

**(551)** 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).



*Under section 81(1) of the Senior Courts Act 1981(553), 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,
  - (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.

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(552) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and is further amended by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), commenced in part and for certain purposes only, the remainder to take effect from a date to be appointed.

(553) 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 to, the Criminal Justice Act 2003 (c. 44) and articles 2 and 6 of S.I. 2004/1033. It is further amended by sections 41, 331 and 332 of, and paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. 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).



(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(554) (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
  - (ii) a finding of disability.

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(554) 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) and paragraph 48 of Schedule 3 to, and Parts 2 and 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). The amendments in Schedule 3 of the 2003 Act are in force in relation to certain cases only. It is further amended by sections 41, 331 and 332 of, and 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) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27), with effect from dates to be appointed.

*[Note. See rule 65.6 (hearings) and section 22 of the Criminal Appeal Act 1968(555). There are corresponding provisions in The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(556) and in The Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(557). Under section 22 of the 1968 Act, 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(558) (detention in hospital on conviction), or
  - (ii) an order under section 5(2) of the Criminal Procedure (Insanity) Act 1964(559) (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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(555) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

(556) S.I. 2005/2798.

(557) S.I. 2006/2135.

(558) 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).

(559) 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(**560**); 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(**561**) 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

#### 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(**562**) 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—*

(560) 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).

(561) 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).

(562) 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>(563)</sup>;
- (b) under section 58(7) of the Criminal Procedure and Investigations Act 1996<sup>(564)</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 Rule 16.10 for the procedure on an application to restrict public access to a trial.

*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>(563)</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) and the Statute Law (Repeals) Act 2004 (c. 14). It is further amended by section 41 of, and paragraph 53 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

<sup>(564)</sup> 1996 c. 25.

*A Court of Appeal judge may give permission to appeal under section 31(2B) of the Criminal Appeal Act 1968(565).]*

#### **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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(565) 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

When this Part applies	rule 70.1
Service of notice of reference and application for permission	rule 70.2
Form of notice of reference and application for permission	rule 70.3
Registrar's notice to defendant	rule 70.4
Respondent's notice	rule 70.5
Variation or withdrawal of notice of reference or application for permission	rule 70.6
Right to attend hearing	rule 70.7
Anonymity of defendant on reference of point of law	rule 70.8

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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<sup>(566)</sup>; or
- (b) refer a sentencing case to the Court of Appeal under section 36 of the Criminal Justice Act 1988<sup>(567)</sup>.

*[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<sup>(568)</sup> and the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006<sup>(569)</sup>.*

*The rules in Part 65 also apply where this Part applies.]*

#### Service of notice of reference and application for permission

**70.2.—**(1) The Attorney General must—

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<sup>(566)</sup>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).

<sup>(567)</sup>1988 c. 33; section 36 was amended by sections 272, 304 and 331 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and 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) and section 149 of, and Part 28 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). 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.

<sup>(568)</sup>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).

<sup>(569)</sup>S.I. 2006/1116.

- (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 defendant
 before 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**

Extension of time	rule 71.1
Other applications	rule 71.2

Examination of witness by court	rule 71.3
Supply of documentary and other exhibits	rule 71.4
Registrar's power to require information from court of trial	rule 71.5
Hearing by single judge	rule 71.6
Determination by full court	rule 71.7
Notice of determination	rule 71.8
Record of proceedings and transcripts	rule 71.9
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(**570**) 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(**571**).

### 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(**572**) 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.

### 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.

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(**570**)2002 c. 29.  
(**571**)S.I. 2003/82.  
(**572**)1968 c. 19.

### **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<sup>(573)</sup> 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<sup>(574)</sup>.

### **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<sup>(575)</sup>, 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.

### **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—

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<sup>(573)</sup>S.I. 2003/82.

<sup>(574)</sup>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).

<sup>(575)</sup>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).

- (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

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(**576**), 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;
- (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(**577**) to be present at the hearing of the appeal, although he may be in custody;

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(**576**) 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).  
 (**577**) S.I. 2003/ 82.

- (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

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(**578**) 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
- (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—

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(**578**) 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).

- (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**

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(579), 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(580) (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(581) or section 35 of the Criminal Procedure and Investigations Act 1996(582) (appeal against order at preparatory hearing). See also Part 66.*
  - (ii) *section 47 of the Criminal Justice Act 2003(583) (appeal against order for non-jury trial after jury tampering.) See also Part 66.*
  - (iii) *Part 9 of the Criminal Justice Act 2003(584) (prosecutor’s appeal against adverse ruling). See also Part 67.*
  - (iv) *Part 1 of the Criminal Appeal Act 1968(585) (defendant’s appeal against conviction, sentence, etc.). See also Part 68.*

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(579) 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).

(580) 2003 c. 44.

(581) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45, 310 and 331 of, and paragraphs 18, 52 and 54 of Schedule 36, and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035 and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). The amendment made by 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.

(582) 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 section 331 of, and 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).

(583) 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).

(584) 2003 c. 44.

(585) 1968 c. 19.

Under section 13 of the Administration of Justice Act 1960(586), 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(587), 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(588) (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(589), 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(590) (appeal against sentence review decision). See also Part 68.

Under section 24 of the Serious Crime Act 2007(591), 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(592), 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(593), 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(594) (prosecutor's appeal against failure to make football banning order). See Part 68.
- (b) from a decision of the Court of Appeal on an appeal under section 159(1) of the Criminal Justice Act 1988(595) (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

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(586) 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).

(587) S.I. 2005/2798.

(588) 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).

(589) S.I. 2006/2135.

(590) 2005 c. 15.

(591) 2007 c. 27.

(592) 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).

(593) 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).

(594) 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).

(595) 1988 c. 33; section 159(1) was amended by section 61 of the Criminal Procedure and Investigations Act 1996 (c. 25).

- 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(596). 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.*

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(596) 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).

- (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(597).*
- (b) *article 18 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(598).*

*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(599).*
- (b) *paragraph 9 of Schedule 3 to the Criminal Justice Act 1988(600).*
- (c) *article 15 of The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(601).*
- (d) *article 20 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(602).]*

### **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
  - (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(603).*
- (b) *article 19 of The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(604).*

(597) 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).

(598) S.I. 2006/2135.

(599) 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).

(600) 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).

(601) S.I. 2005/2798.

(602) S.I. 2006/2135.

(603) 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).

(604) S.I. 2006/2135.

*For the grant of a representation order for proceedings in the Supreme Court, see—*

- (a) *Access to Justice Act 1999, sections 12 and 14 and Schedule 3(605), and*
- (b) *The Criminal Defence Service (General) (No. 2) Regulations 2001(606).]*

### **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**

When this Part applies	rule 75.1
Preparation of request	rule 75.2
Submission of request	rule 75.3
Postponement of case pending request	rule 75.4

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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 MemberState 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—

- (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—

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(605) 1999 c. 22; section 12 was amended by section 182 of the Extradition Act 2003 (c. 41) and article 8 of, and paragraph 4 of the Schedule to, S.I. 2005/3429; section 14 was amended by article 8 of, and paragraph 4 of the Schedule to, S.I. 2005/3429 and section 56 of the Criminal Justice and Immigration Act 2008 (c. 4).

(606) S.I. 2001/1437; amended by S.I. 2002/712, 2004/1196, 2006/2490 and S.I. 2007/2936.

- (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 will—
  - (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.

#### **Postponement of case pending request**

**75.4.** Where the court orders the submission of a request—

- (a) the general rule is that it will adjourn or postpone any further hearing; but
- (b) it may otherwise direct.

## **PART 76**

### **COSTS**

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

##### **Section 1: general**

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Costs orders: general rules	rule 76.2
Court's power to vary requirements under Sections 2, 3 and 4	rule 76.3

**Section 2: costs out of central funds**

Costs out of central funds rule 76.4

**Section 3: payment of costs by one party to another**

Costs on conviction and sentence rule 76.5

Costs on appeal rule 76.6

Costs on an application rule 76.7

Costs resulting from unnecessary or improper act, etc. rule 76.8

**Section 4: other costs orders**

Costs against a legal representative rule 76.9

Costs against a third party rule 76.10

**Section 5: assessment of costs**

Assessment and re-assessment rule 76.11

Appeal to a costs judge rule 76.12

Appeal to a High Court judge rule 76.13

Application for an extension of time under Section 5 rule 76.14

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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(**607**) and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986(**608**);
- (b) section 109 of the Magistrates' Courts Act 1980(**609**);
- (c) section 52 of the Senior Courts Act 1981(**610**) and rule 76.6;
- (d) section 8 of the Bankers Books Evidence Act 1879(**611**);
- (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(**612**);
- (f) section 36(5) of the Criminal Justice Act 1972(**613**);

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(**607**) 1985 c. 23.

(**608**) S.I. 1986/1335.

(**609**) 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).

(**610**) 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).

(**611**) 1879 c. 11.

(**612**) 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).

(**613**) 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).



- (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988**(614)**;
  - (h) section 14H(5) of the Football Spectators Act 1989**(615)**; or
  - (i) Part 3 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008**(616)**.
- (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—*

- (a) *under section 16 of the Prosecution of Offences Act 1985**(617)** (defence costs), for the payment out of central funds of a defendant’s costs (see rule 76.4);*
- (b) *under section 17 of the Prosecution of Offences Act 1985**(618)** (prosecution costs), for the payment out of central funds of a private prosecutor’s costs (see rule 76.4);*
- (c) *under section 18 of the Prosecution of Offences Act 1985**(619)** (award of costs against accused), for the payment by a defendant of another person’s costs (see rules 76.5 and 76.6);*
- (d) *under section 19(1) of the Prosecution of Offences Act 1985**(620)** 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) *under section 19A of the Prosecution of Offences Act 1985**(621)** (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*
  - (ii) *disallowing the payment to that representative of such costs**(see rule 76.9);*
- (f) *under section 19B of the Prosecution of Offences Act 1985**(622)** (provision for award of costs against third parties) and regulation 3F of The Costs in Criminal Cases (General)*

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**(614)** 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).

**(615)** 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).

**(616)** S.I. 2008/1863.

**(617)** 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 the Criminal Justice Act 2003 (c. 44), and section 58 of, and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4). It is further amended by sections 41 and 332 of, and paragraph 57 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed; the amendment under section 41 and paragraph 57(1)(3)(b)(i) of Schedule 3 came into force on 9 May 2005 in relation to certain cases only.

**(618)** 1985 c. 23; section 17 is amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

**(619)** 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).

**(620)** 1985 c. 23.

**(621)** 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

**(622)** 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

*Regulations 1986(623), 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) under 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) under section 52 of the Senior Courts Act 1981 and 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) (see rule 76.6);*
- (i) under 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) under 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) under 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) under 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) under 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) under article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(624), corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 76.4);*
- (o) under 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);*
- (p) under 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);*
- (q) under 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); or*
- (r) under 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).*

*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.*

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**(623)** [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](#).

**(624)** [S.I. 2008/1863](#).

*As to costs in restraint or receivership proceedings under Part 2 of the Proceeds of Crime Act 2002(625), 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(626);*
- (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(627) 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(628) or article 31 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(629).*

*See also section 58, section 150(1) and Part III of the Magistrates' Courts Act 1980(630) and Schedule 5 to the Courts Act 2003(631).]*

### **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—
  - (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—

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(625) 2002 c. 29.

(626) 1970 c. 31; section 41(3) is amended by section 62 of, and paragraph 35 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

(627) 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.

(628) S.I. 1986/1335; regulation 3I was inserted by regulation 7 of S.I. 2004/2408.

(629) S.I. 2008/1863.

(630) 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).

(631) 2003 c. 39.

- (a) the general rule is that it will 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.*

*Under section 141 of the Powers of Criminal Courts (Sentencing) Act 2000(632) and section 75 of the Magistrates' Courts Act 1980(633), 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

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(632) 2000 c. 6.

(633) 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).

- (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 funded by the Legal Services Commission.

(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 will 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
- (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) it may direct an assessment under, as applicable—

- (i) regulations 4 to 12 of The Costs in Criminal Cases (General) Regulations 1986(**634**), or
- (ii) articles 21 to 28 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**635**);

(b) it may assess the amount itself, if the recipient agrees;

(c) it must assess the amount itself, in a case in which it decides not to allow an amount that is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings.

[Note. See also rule 76.2.

*An order for the payment of costs out of central funds can be made—*

(a) *for a defendant—*

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(634) S.I. 1986/1335; relevant amending instruments are S.I. 1999/2096 and S.I. 2008/2448.  
(635) S.I. 2008/1863.

- (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), or
- (vii) where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order;

*(See section 16 of the Prosecution of Offences Act 1985 and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986(636); section 36(5) of the Criminal Justice Act 1972 and paragraph 11 of Schedule 3 to the Criminal Justice Act 1988; and article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)*

- (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.)]*

### SECTION 3: PAYMENT OF COSTS BY ONE PARTY TO ANOTHER

#### Costs on conviction and sentence

**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; or
  - (c) dealt with for breach of a sentence.
- (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 will make an order if it is satisfied that the defendant can pay; but
- (c) the court may decline to do so.
- (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; and
- (b) section 18 of the Prosecution of Offences Act 1985(637) and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986.

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—
  - (i) section 108 of the Magistrates' Courts Act 1980(638), or
  - (ii) section 45 of the Mental Health Act 1983(639).
- (2) In this rule, costs include—
  - (a) costs incurred in the court that made the decision under appeal; and
  - (b) costs funded by the Legal Services Commission.
- (3) The court may make an order—
  - (a) on application by the person who incurred the costs; or
  - (b) on its own initiative.

(637) 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).

(638) 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).

(639) 1983 c. 20.

- (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.*

*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(640); section 52 of the Senior Courts Act 1981(641) (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(642); and article 15 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(643).]*

### **Costs on an application**

**76.7.**—(1) This rule applies where the court can order a party to pay another person's costs in a case in which—

- (a) the court decides an application for the production in evidence of a copy of a bank record;
  - (b) a magistrates' court or the Crown Court decides an application to terminate a football banning order; or
  - (c) the Crown Court allows an application to withdraw a witness summons.
- (2) The court may make an order—
- (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(644);*
- (c) *section 14H(5) of the Football Spectators Act 1989(645); and*
- (d) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(646).]*

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(640) 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).

(641) 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).

(642) 1988 c. 33.

(643) S.I. 2008/1863.

(644) 1879 c. 11.

(645) 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).

(646) 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).

### **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 funded by the Legal Services Commission.
- (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,
    - (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*(**647**) and regulation 3 of *The Costs in Criminal Cases (General) Regulations 1986*(**648**); and
- (c) article 16 of *The Serious Crime Act 2007 (Appeals under Section 24) Order 2008*(**649**).

*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.]*

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(647) 1985 c. 23.

(648) S.I. 1986/1335; regulation 3 was amended by regulations 2 and 3 of S.I. 2008/2448.

(649) S.I. 2008/1863.

#### 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 funded by the Legal Services Commission.

(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),
  - (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 will 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) funded by the Legal Services Commission, 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<sup>(650)</sup>;
- (c) article 17 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008<sup>(651)</sup>; and
- (d) article 27 of The Criminal Defence Service (Funding) Order 2007<sup>(652)</sup>.

*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 funded by the Legal Services Commission.
- (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,

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<sup>(650)</sup> 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

<sup>(651)</sup> S.I. 2008/1863.

<sup>(652)</sup> S.I. 2007/1174; article 27 was amended by articles 6 and 22 of The Criminal Defence Service (Funding) (Amendment) Order S.I. 2007/3552 except in relation to proceedings classified as "Very High Cost" cases.

- (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 will 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 authoritynot 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 party
 not 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<sup>(653)</sup>; 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<sup>(654)</sup>.]*

### **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;

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<sup>(653)</sup>S.I. 1998/3132.

<sup>(654)</sup>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).



- (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.

<i>Expression</i>	<i>Meaning</i>
account monitoring order	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;
action plan order	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);
admissible evidence	evidence allowed in proceedings (not all evidence introduced by the parties may be allowable in court);
adduce	to introduce (in evidence);
adjourn	to suspend or delay the hearing of a case;
advance information	information about the case against an accused, to which the accused may be entitled before he or she enters a plea;
affidavit	a written, sworn statement of evidence;
affirmation	a non-religious alternative to the oath sworn by someone about to give evidence in court or swearing a statement;
appellant	person who is appealing against a decision of the court;
arraign	to put charges to the defendant in open court in the Crown Court;
arraignment	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;
authorities	judicial decisions or opinions of authors of repute used as grounds of statements of law;
bill of indictment	a written accusation of a crime against one or more persons – a criminal trial in the Crown Court cannot start without a valid indictment;
in camera (trial)	trial in private;

case stated	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;
in chambers	non-trial hearing in private;
committal	sending someone to a court (usually from a magistrates' court to the Crown court) or to prison;
committal for sentence	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;
committal proceedings	preliminary hearing in a magistrates' court before a case is sent to be tried before a jury in the Crown Court;
compellable witness	a witness who can be forced to give evidence against an accused (not all witnesses are compellable);
compensation order	an order that a convicted person must pay compensation for loss or damage caused by the convicted person;
complainant	a person who makes a formal complaint. In relation to an offence of rape or other sexual offences the complainant is the person against whom the offence is alleged to have been committed;
complaint	document used to start certain types of proceedings in a magistrates' court, or the process of using such a document to start proceedings;
conditional discharge	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;
confiscation order	an order that private property be taken into possession by the state;
Convention right	a right under the European Convention on Human Rights;
costs	the expenses involved in a court case, including the fees of the solicitors and barristers and of the court;
counsel	a barrister;
cross examination	questioning of a witness by a party other than the party who called the witness;
custody time limit	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;
customer information order	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;
declaration of incompatibility	a declaration by a court that a piece of UK legislation is incompatible with the provisions of the European Convention on Human Rights;
deferred sentence	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;
deposition	written record of a witness' written evidence;
distress warrant	court order giving the power to seize goods from a debtor to pay his debts;
estreatment (of recognizance)	forfeiture;
evidence in chief	the evidence given by a witness for the party who called him;
examining justice	a magistrate carrying out his or her function of checking that a case appears on the face of the prosecution case papers to exist against an accused before the case is put forward for trial in the Crown Court – see committal and sending for trial;
exhibit	a document or thing presented as evidence in court;
forfeiture by peaceable re-entry	the re-possession by a landlord of premises occupied by tenants;
guardianship order	an order appointing someone to take charge of a child's affairs and property;
hearsay evidence	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;
hospital order	an order that an offender be admitted to and detained in a specified hospital;
indictment	the document containing the formal charges against a defendant – a trial in the Crown Court cannot start without this;
informant	someone who lays an information;
information	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;
intermediary	a person who asks a witness (particularly a child) questions posed by the cross-examining legal representative;
justice of the peace	a magistrate, either a lay justice, or a District Judge (Magistrates’ Courts);
justices’ clerk	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;
leave of the court	permission granted by the court;
leave to appeal	permission granted to appeal the decision of a court;
letter of request	letter issued to a foreign court asking a judge to take the evidence of some person within that court’s jurisdiction;
to levy distress	to seize property from a debtor or a wrongdoer;
local justice area	an area established for the purposes of the administration of magistrates’ courts;
mandatory order	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);
nominated court	a court nominated to take evidence pursuant to a request by a foreign court;
notice of transfer	procedure used in cases of serious and complex fraud, and in certain cases involving child witnesses, whereby the prosecution can, without seeking judicial approval, have the case sent direct to the Crown Court without the need to have the accused committed for trial;
offence triable either way	an offence which may be tried either in the magistrates’ court or in the Crown Court;
in open court	in a courtroom which is open to the public;
order restricting discharge	an order restricting the discharge from hospital of patients who have been sent there for psychiatric treatment;
parenting order	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;

party	a person or organisation directly involved in a criminal case, either as prosecutor or defendant
prefer, preferment	to bring or lay a charge or indictment;
preparatory hearing	a hearing forming part of the trial sometimes used in long and complex cases to settle various issues without requiring the jury to attend;
realisable property	property which can be sold for money.
receiver	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 of receiver (management receiver, director’s receiver, enforcement receiver);
receivership order	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;
recognizance	formal undertaking to pay the crown a specified sum if an accused fails to surrender to custody;
register	the formal records kept by a magistrates’ court;
to remand	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;
reparation order	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;
representation order	an order authorising payment of legal aid for a defendant;
requisition	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;
respondent	the other party (to the appellant) in a case which is the subject of an appeal;
restraint order	an order prohibiting a person from dealing with any realisable property held by him;
seal	a formal mark which the court puts on a document to indicate that the document has been issued by the court;
security	money deposited to ensure that the defendant attends court;

sending for trial	procedure whereby indictable offences are transferred to the Crown Court without the need for a committal hearing in the magistrates' court;
skeleton argument	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;
special measures	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);
statutory declaration	a declaration made before a Commissioner for Oaths in a prescribed form;
to stay	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;
summons	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;
surety	a person who guarantees that a defendant will attend court;
suspended sentence	sentence which takes effect only if the offender commits another offence punishable with imprisonment within the specified period;
supervision order	an order placing a person who has been given a suspended sentence under the supervision of a local officer;
tainted acquittal	an acquittal affected by interference with a witness or a juror;
taxing authority	a body which assesses costs;
territorial authority	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;
transfer direction (mental health)	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;
warrant of arrest	court order to arrest a person;
warrant of commitment	court order sending someone to prison;
warrant of detention	a court order authorising someone's detention;

wasted costs order	an order that a barrister or solicitor is not to be paid fees that they would normally be paid by the Legal Services Commission;
witness	a person who gives evidence, either by way of a written statement or orally in court;
witness summons	a document served on a witness requiring him or her to attend court to give evidence;
written charge	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;
youth court	magistrates' courts exercising jurisdiction over offences committed by and other matters related to, children and young persons.

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

I allow these Rules, which shall come into force on 5th April 2010.

11th January 2010

*Jack Straw*  
Lord Chancellor

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

## EXPLANATORY NOTE

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

The Criminal Procedure Rules 2010 consolidate The Criminal Procedure Rules 2005, [S.I. 2005/384](#), with the amendments made by [S.I. 2006/353](#), [2006/2636](#), [2007/699](#), [2007/2317](#), [2007/3662](#), [2008/2076](#), [2008/3269](#) and [2009/2087](#). The new Rules incorporate the further amendments listed beneath. Otherwise, they reproduce the rules that they supersede.

<i>Rule</i>	<i>Amendment</i>
Part 2	Rule 2.1 is amended, to provide for the transition to these new rules.
Part 3	Rule 3.5 is amended, to include the expression ‘justices’ legal adviser’ that is defined in Part 2, and rules 3.9 and 3.10 are amended, to apply them to all appeals (not just appeal to the Crown Court).
Part 4	Rule 4.10 is amended, to omit the definition of ‘business day’ that is contained in Part 2.
Part 6	Rules 6.1 and 6.2 are amended, and Section 5 (rules 6.23 to 6.26) is added, to provide for investigation anonymity orders.
Part 10	Rule 10.4 is replaced.
Part 15	Rule 15.5(2) is amended, to cross-refer to Part 33.
Part 29	The Part is replaced.
Part 34	The Part is replaced.
Part 35	The Part is replaced.
Part 37	Rule 37.3 is amended, to provide for parties’ final representations at trial.
Part 52	Rules 52.6 to 52.14 are renumbered 52.5 to 52.13.



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

<i>Rule</i>	<i>Amendment</i>
Part 55	Rule 55.3 is amended, to accommodate amendments to section 34 of the Road Traffic Offenders Act 1988, and rule 55.5 is added, to provide for appeals under section 59 of the Crime (International Co-operation) Act 2003.
Part 56	Rule 56.4 is amended, to omit the provision about the Proceeds of Crime Act 2002 that is contained in Part 6.
Part 60	Rule 60.6(4) is amended, to cross-refer to rules 76.11 to 76.14.
Part 63	Rule 63.1 is amended, to include references to section 10 of the Violent Crime Reduction Act 2006 and section 42 of the Counter Terrorism Act 2008.
Part 64	Rules 64.6 and 64.7 are renumbered 64.5 and 64.6.
Part 68	Rule 68.1 is amended, to include a reference to section 42 of the Counter Terrorism Act 2008.
Part 71	Rule 71.6(1) is amended, to cross-refer to rule 65.6(5).
Part 75	The Part is replaced.

Amendments to notes to rules. There are amended, to cross-refer to relevant statutes and other rules, the notes to rules 3.5, 3.11, 4.4, 14.1, 16.11, 19.11, 30.1, 32.9, 37.3, 37.15, 40.4, 40.5, 40.7, 47.1, 47.2, 50.1, 52.12, 54.1, 63.1, 63.7 and 68.1.

Amendments to tables of contents of Parts. There are amended, to correct discrepancies, the lists of rule names in the tables of contents of Parts 10, 11, 13, 16, 19, 20, 31, 32, 40, 41, 52, 54, 55, 56, 57, 59, 64, 65 and 73.

Amendments to the Glossary. Some entries are amended, the better to correspond with the use in these Rules of the expressions glossed.

These Rules come into force on 5th April 2010.