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STATUTORY INSTRUMENTS

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**2010 No. 60**

**The Criminal Procedure Rules 2010**

**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(1), or section 47(1E) of the Police and Criminal Evidence Act 1984(2), 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.

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(1) 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).

(2) 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).

(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(3), must—

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

(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(4).*

*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(5) 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;

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(3) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) 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.

(4) 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.

(5) 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).

- (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)
- (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(6) 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(7) in his absence,

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

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(6) 1984 c. 60.

(7) 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.

### **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>(8)</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—

- (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>(9)</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>(10)</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:

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<sup>(8)</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 \(c. 37\)](#).

<sup>(9)</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>(10)</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 \(c. 51\)](#).

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 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(11), 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.

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

### 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(12) 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.

*[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(13) 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(14) 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(15), 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;

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(12) 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.

(13) 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).

(14) 1976 c. 63; section 7(5) was amended by section 198 of the Extradition Act 2003 (c. 41).

(15) 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.

- (e) if the first-mentioned court has made an order under section 8(2) of the 1980 Act(16) (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(17) Act 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(18) without being brought before the first-mentioned court; and
- (h) if the first-mentioned court remands the accused under section 128A(19) 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

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(16) 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.

(17) 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).

(18) 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 is repealed 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.

(19) 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).



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(20) 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(21), that a transfer direction given by the Secretary of State under section 48 of that Act in 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(22), 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

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(20) 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).

(21) 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.

(22) 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.

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.

(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(23), 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.

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(23) 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.

(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;
- (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(24), 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(25), in the same way as cases triable only on indictment.]*

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(24) 2003 c. 44.

(25) 1998 c. 37.

### **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(26) 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 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

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(26) 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.

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(27), 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,
  - (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(28), 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(29) set out conditions for imposing such requirements.*

*Under section 3AC of the 1976 Act(30), 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;

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(27) 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).

(28) 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).

(29) 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).

(30) 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).

- (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.