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STATUTORY INSTRUMENTS

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**2010 No. 60**

**The Criminal Procedure Rules 2010**

**PART 50**

**CIVIL BEHAVIOUR ORDERS AFTER VERDICT OR FINDING**

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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(1).

*[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(2) (football banning orders),*

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(1) 1995 c. 38.

(2) 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).

- (ii) *section 5 of the Protection from Harassment Act 1997*(3) (*restraining orders*),
- (iii) *sections 1C and 1D of the Crime and Disorder Act 1998*(4) (*anti-social behaviour orders and interim anti-social behaviour orders*),
- (iv) *sections 8 and 9 of the Crime and Disorder Act 1998*(5) (*parenting orders*),
- (v) *section 104 of the Sexual Offences Act 2003*(6) (*sexual offences prevention orders*),
- (vi) *section 19 of the Serious Crime Act 2007*(7) (*serious crime prevention orders*),
- (vii) *section 6 of the Violent Crime Reduction Act 2006*(8) (*drinking banning orders*);
- (b) *on acquittal, under —*  
*section 5A of the Protection from Harassment Act 1997*(9) (*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.]*

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- (3) 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).
  - (4) 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).
  - (5) 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.
  - (6) 2003 c. 42.
  - (7) 2007 c. 27.
  - (8) 2006 c. 38.
  - (9) 1997 c. 40; section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

### **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,

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(10), which apply in civil proceedings in magistrates' courts. Rule 3 of the 1999 Rules however includes a time limit, which may be varied by the court, or a justices' clerk, of 21 days before the date fixed for the hearing, for service of a hearsay notice.]*

#### **Cross-examination of maker of hearsay statement**

**50.7.**—(1) This rule applies where a party wants the court's permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

- (2) The party who wants to cross-examine that person must—
  - (a) apply in writing, with reasons, not more than 7 days after service of the notice of hearsay evidence; and
  - (b) serve the application on—
    - (i) the court officer,
    - (ii) the party who served the hearsay evidence notice, and
    - (iii) every party on whom the hearsay evidence notice was served.
- (3) The court may decide an application under this rule with or without a hearing.
- (4) But the court must not—
  - (a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or
  - (b) allow an application under this rule unless everyone served with the application has had at least 7 days in which to make representations, including representations about whether there should be a hearing.

*[Note. See also section 3 of the Civil Evidence Act 1995.]*

#### **Credibility and consistency of maker of hearsay statement**

**50.8.**—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

- (2) The party who wants to challenge the credibility or consistency of that person must—
- (a) serve a written notice of intention to do so on—
    - (i) the court officer, and
    - (ii) the party who served the notice of hearsay evidence  
not more than 7 days after service of that hearsay evidence notice; and
  - (b) in the notice, identify any statement or other material on which that party relies.
- (3) The party who served the hearsay notice—
- (a) may call that person to give oral evidence instead; and
  - (b) if so, must serve a notice of intention to do so on—
    - (i) the court officer, and
    - (ii) every party on whom he served the hearsay notice  
not more than 7 days after service of the notice under paragraph (2).

*[Note. Section 5(2) of the Civil Evidence Act 1995 describes the procedure for challenging the credibility of the maker of a statement of which hearsay evidence is introduced. See also section 6 of that Act. The 1995 Act does not allow the introduction of evidence of a previous inconsistent statement otherwise than in accordance with sections 5, 6 and 7 of the Criminal Procedure Act 1865(11).]*

#### **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.

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(11) 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).