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## STATUTORY INSTRUMENTS

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# 2010 No. 60

## The Criminal Procedure Rules 2010

### PART 64

#### APPEAL TO THE HIGH COURT BY WAY OF CASE STATED

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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<sup>(1)</sup> 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(2).]*

##### 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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(1) 1980 c. 43.

(2) 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>(3)</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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(3) 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’.