
STATUTORY INSTRUMENTS

2014 No. 1610

The Criminal Procedure Rules 2014

PART 38

TRIAL AND SENTENCE IN THE CROWN COURT

Contents of this Part

When this Part applies	rule 38.1
General powers and requirements	rule 38.2
Application for ruling on procedure, evidence or other question of law	rule 38.3
Procedure on plea of guilty	rule 38.4
Application to withdraw a guilty plea	rule 38.5
Selecting the jury	rule 38.6
Discharging jurors	rule 38.7
Objecting to jurors	rule 38.8
Procedure on plea of not guilty	rule 38.9
Defendant unfit to plead	rule 38.10
Evidence of a witness in person	rule 38.11
Evidence of a witness in writing	rule 38.12
Evidence by admission	rule 38.13
Summing up the case to the jury and taking the verdict	rule 38.14
Conviction or acquittal at trial without a jury	rule 38.15
Procedure if the court convicts	rule 38.16
Provision of documents for the court	rule 38.17
Duty of court officer	rule 38.18

[Note. Part 3 contains rules about case management that apply during preparation for trial and at trial. The rules in this Part must be read in conjunction with those rules.]

When this Part applies

- 38.1.** This Part applies in the Crown Court where—
- (a) the court tries a case; or

- (b) the defendant pleads guilty.

[Note. The Crown Court's powers to try an allegation of an offence are contained in sections 45 and 46 of the Senior Courts Act 1981(1).

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 the Crown Court must try—*
- (i) *an offence classified as one that can be tried only in the Crown Court (in other legislation, described as triable only on indictment), 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 the Crown Court); and*
- (b) *the defendant's age (and the general rule 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, unless the offence is—*
- (i) *one of homicide,*
 - (ii) *one for which a convicted adult could be imprisoned for 14 years or more,*
 - (iii) *one of certain specified offences involving firearms, or*
 - (iv) *one of certain specified sexual offences).*

See sections 17 and 24 of the Magistrates' Courts Act 1980(2) and section 51A of the Crime and Disorder Act 1998(3).

Under section 34A of the Children and Young Persons Act 1933(4), 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 2 contains rules allowing a parent, guardian or other supporting adult to help a defendant under 18.]

General powers and requirements

38.2.—(1) Where this Part applies, the general rule is that—

- (a) the trial must be in public, but that is subject to the court's power to—
 - (i) impose a restriction on reporting what takes place at a public hearing, or public access to what otherwise would be a public hearing,
 - (ii) withhold information from the public during a public hearing, or

(1) 1981 c. 54.

(2) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38).

(3) 1998 c. 37; section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(4) 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).

- (iii) order a trial in private;
 - (b) the court must not proceed if the defendant is absent, unless the court is satisfied that—
 - (i) the defendant has waived the right to attend, and
 - (ii) the trial will be fair despite the defendant’s absence;
 - (c) the court must not sentence the defendant to imprisonment or detention unless—
 - (i) the defendant has a legal representative,
 - (ii) the defendant has been sentenced to imprisonment or detention on a previous occasion in the United Kingdom, or
 - (iii) the defendant could have been represented under legal aid but for a failure to apply, or the withdrawal of legal aid because of the defendant’s conduct or financial resources.
- (2) The court may adjourn the trial at any stage.

[Note. See section 83 of the Powers of Criminal Courts (Sentencing) Act 2000.

Part 16 contains rules about reporting, etc. restrictions. For a list of the court’s powers to impose reporting and access restrictions, see the note to rule 16.1.]

Application for ruling on procedure, evidence or other question of law

38.3.—(1) This rule applies to an application—

- (a) about—
 - (i) case management, or any other question of procedure, or
 - (ii) the introduction or admissibility of evidence, or any other question of law;
- (b) that has not been determined before the trial begins.

(2) The application is subject to any other rule that applies to it (for example, as to the time and form in which the application must be made).

(3) Unless the court otherwise directs, the application must be made, and the court’s decision announced, in the absence of the jury (if there is one).

[Note. See also rule 3.13 (Pre-trial hearings).]

Procedure on plea of guilty

38.4.—(1) This rule applies if—

- (a) the defendant pleads guilty to an offence; and
- (b) the court is satisfied that the plea represents a clear acknowledgement of guilt.

(2) The court need not receive evidence unless rule 38.16(4) applies (determination of facts for sentencing).

[Note. See also rule 3.24 (Arraigning the defendant on the indictment).]

Application to vacate a guilty plea

38.5.—(1) This rule applies where a party wants the court to vacate a guilty plea.

(2) Such a party must—

- (a) apply in writing—
 - (i) as soon as practicable after becoming aware of the grounds for doing so, and
 - (ii) in any event, before the final disposal of the case, by sentence or otherwise; and

- (b) serve the application on—
 - (i) the court officer, and
 - (ii) the prosecutor.
- (3) Unless the court otherwise directs, the application must—
 - (a) explain why it would be unjust for the guilty plea to remain unchanged;
 - (b) indicate what, if any, evidence the applicant wishes to call;
 - (c) identify any proposed witness; and
 - (d) indicate whether legal professional privilege is waived, specifying any material name and date.

Selecting the jury

- 38.6.**—(1) This rule—
- (a) applies where—
 - (i) the defendant pleads not guilty,
 - (ii) the defendant declines to enter a plea and the court treats that as a not guilty plea, or
 - (iii) the court determines that the defendant is not fit to be tried;
 - (b) does not apply where—
 - (i) the court orders a trial without a jury because of a danger of jury tampering or where jury tampering appears to have taken place, or
 - (ii) the court tries without a jury counts on an indictment after a trial of sample counts with a jury.
- (2) The court must select a jury to try the case from the panel, or part of the panel, of jurors summoned by the Lord Chancellor to attend at that time and place.
- (3) Where it appears that too few jurors to constitute a jury will be available from among those so summoned, the court—
- (a) may exercise its own power to summon others in the court room, or in the vicinity, up to the number likely to be required, and add their names to the panel summoned by the Lord Chancellor; but
 - (b) must inform the parties, if they are absent when the court exercises that power.
- (4) The court must select the jury by drawing at random each juror’s name from among those so summoned and—
- (a) announcing each name so drawn; or
 - (b) announcing an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.
- (5) If too few jurors to constitute a jury are available from the panel after all their names have been drawn, the court may—
- (a) exercise its own power to summon others in the court room, or in the vicinity, up to the number required; and
 - (b) announce—
 - (i) the name of each person so summoned, or
 - (ii) an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.
- (6) The jury the court selects—

- (a) must comprise no fewer than 12 jurors;
 - (b) may comprise as many as 14 jurors to begin with, where the court expects the trial to last for more than 4 weeks.
- (7) Where the court selects a jury comprising more than 12 jurors, the court must explain to them that—
- (a) the purpose of selecting more than 12 jurors to begin with is to fill any vacancy or vacancies caused by the discharge of any of the first 12 before the prosecution evidence begins;
 - (b) any such vacancy or vacancies will be filled by the extra jurors in order of their selection from the panel;
 - (c) the court will discharge any extra juror or jurors remaining by no later than the beginning of the prosecution evidence; and
 - (d) any juror who is discharged for that reason then will be available to be selected for service on another jury, during the period for which that juror has been summoned.
- (8) Each of the 12 or more jurors the court selects—
- (a) must take an oath or affirm; and
 - (b) becomes a full jury member until discharged.
- (9) The oath or affirmation must be in these terms, or in any corresponding terms that the juror declares to be binding on him or her—

“I swear by Almighty God [*or I do solemnly, sincerely and truly declare and affirm*] that I will faithfully try the defendant and give a true verdict according to the evidence.”

[Note. See sections 2, 5, 6, and 11 of the Juries Act 1974(5). See also rule 38.7 (Discharging jurors).

Under sections 44 and 46 of the Criminal Justice Act 2003(6), the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004(7), the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.

Sections 1, 3, 4, 5 and 6 of the Oaths Act 1978(8) provide for the taking of oaths and the making of affirmations, and for the words that must be used.

Part 39 contains other rules about jurors.]

Discharging jurors

- 38.7.**—(1) The court may exercise its power to discharge a juror at any time—
- (a) after the juror completes the oath or affirmation; and
 - (b) before the court discharges the jury.
- (2) No later than the beginning of the prosecution evidence, if the jury then comprises more than 12 jurors the court must discharge any in excess of 12 in reverse order of their selection from the panel.

(5) 1974 c. 23; section 2 was amended by section 61 of the Administration of Justice Act 1982 (c. 53) and Part 10 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). Section 5 was amended by section 15 of, and paragraphs 77 and 78 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). Section 6 was amended by paragraph 45 of Schedule 15 to the Criminal Justice Act 1988 (c. 33). Section 11 was amended by section 58 of, and paragraph 8 of Schedule 10 and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(6) 2003 c. 44.

(7) 2004 c. 28.

(8) 1978 c. 19.

- (3) The court may exercise its power to discharge the jury at any time—
 - (a) after each juror has completed the oath or affirmation; and
 - (b) before the jury has delivered its verdict on each offence charged in the indictment.
- (4) The court must exercise its power to discharge the jury when, in respect of each offence charged in the indictment, either—
 - (a) the jury has delivered its verdict on that offence; or
 - (b) the court has discharged the jury from reaching a verdict.

[*Note. See sections 16 and 18 of the Juries Act 1974(9).*]

Objecting to jurors

- 38.8.**—(1) A party who objects to the panel of jurors must serve notice explaining the objection on the court officer and on the other party before the first juror’s name or number is drawn.
- (2) A party who objects to the selection of an individual juror must—
 - (a) tell the court of the objection—
 - (i) after the juror’s name or number is announced, and
 - (ii) before the juror completes the oath or affirmation; and
 - (b) explain the objection.
 - (3) A prosecutor who exercises the prosecution right without giving reasons to prevent the court selecting an individual juror must announce the exercise of that right before the juror completes the oath or affirmation.
 - (4) The court must determine an objection under paragraph (1) or (2)—
 - (a) at a hearing, in public or in private; and
 - (b) in the absence of the jurors, unless the court otherwise directs.

[*Note. See section 29 of the Juries Act 1825(10) and section 12 of the Juries Act 1974(11).*]

Procedure on plea of not guilty

- 38.9.**—(1) This rule applies where—
 - (a) the defendant pleads not guilty; or
 - (b) the defendant declines to enter a plea and the court treats that as a not guilty plea.
- (2) In the following sequence—
 - (a) where there is a jury, the court must—
 - (i) inform the jurors of each offence charged in the indictment to which the defendant pleads not guilty, and
 - (ii) explain to the jurors that it is their duty, after hearing the evidence, to decide whether the defendant is guilty or not guilty of each offence;
 - (b) the prosecutor may summarise the prosecution case;
 - (c) the prosecutor must introduce the evidence on which the prosecution case relies;

(9) 1974 c. 23; section 16 was amended by sections 121 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

(10) 1825 c. 50; section 29 was amended by section 40 of, and paragraph 3 of Schedule 4 to, the Courts Act 1971 (c. 23). There are other amendments not relevant to this rule.

(11) 1974 c. 23; section 12 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

- (d) subject to paragraph (3), at the end of the prosecution evidence, on the defendant's application or on its own initiative, the court—
 - (i) may direct the jury (if there is one) to 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;
- (e) subject to paragraph (4), at the end of the prosecution evidence, the court must ask whether the defendant intends to give evidence in person and, if the answer is 'no', then the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—
 - (i) the right to give evidence in person, and
 - (ii) that if the defendant does not give evidence in person, or refuses to answer a question while giving evidence, the court may draw such inferences as seem proper;
- (f) the defendant may summarise the defence case, if he or she intends to call at least one witness other than him or herself to give evidence in person about the facts of the case;
- (g) in this order (or in a different order, if the court so directs) the defendant may—
 - (i) give evidence in person,
 - (ii) call another witness, or witnesses, to give evidence in person, and
 - (iii) introduce any other evidence;
- (h) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);
- (i) the prosecutor may make final representations, where—
 - (i) the defendant has a legal representative,
 - (ii) the defendant has called at least one witness, other than the defendant him or herself, to give evidence in person about the facts of the case, or
 - (iii) the court so permits; and
- (j) the defendant may make final representations.

(3) Paragraph (2)(d) does not apply in relation to a charge of murder, manslaughter, attempted murder, or causing harm contrary to section 18 or 20 of the Offences against the Person Act 1861(12) until the court has heard all the evidence (including any defence evidence), where the defendant is charged with—

- (a) any of those offences; and
- (b) an offence of causing or allowing a child or vulnerable adult to die or to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004(13).

(4) Paragraph (2)(e) does not apply where it appears to the court that, taking account of all the circumstances, the defendant's physical or mental condition makes it undesirable for the defendant to give evidence in person.

(5) Where there is more than one defendant, this rule applies to each in the order their names appear in the indictment, or in an order directed by the court.

(12) 1861 c. 100; section 18 was amended by the Statute Law Revision Act 1892 (c. 19), the Statute Law Revision (No 2) Act 1893 (c. 54) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 20 was amended by the Statute Law Revision Act 1892 (c. 19).

(13) 2004 c. 28; section 5 was amended by section 1 of the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4).

(6) Unless the jury (if there is one) has retired to consider its verdict, the court may allow a party to introduce evidence, or make representations, after that party's opportunity to do so under paragraph (2).

- (7) Unless the jury has already reached a verdict on a count, the court may exercise its power to—
- (a) discharge the jury from reaching a verdict on that count;
 - (b) direct the jury to acquit the defendant on that count; or
 - (c) invite the jury to convict the defendant, if the defendant pleads guilty to the offence charged by that count.

[Note. See also rule 3.24 (Arraigning the defendant on the indictment).

The admissibility of evidence that a party introduces is governed by rules of evidence.

Under section 35 of the Criminal Justice and Public Order Act 1994(14), 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 38.9(2)(e) and (4) is prescribed by that section.

Section 2 of the Criminal Evidence Act 1898(15) restricts the circumstances in which the defendant may summarise the defence case before introducing evidence.

Section 79 of the Police and Criminal Evidence Act 1984(16) requires a defendant who wishes to give evidence in person to do so before calling any other witness, unless the court otherwise permits.

Section 2 of the Criminal Procedure Act 1865(17) and section 3 of the Criminal Evidence Act 1898(18) restrict the circumstances in which the prosecutor may make final representations without the court's permission. See also section 1 of the Criminal Procedure (Right of Reply) Act 1964(19).

The procedure set out in rule 38.9(3) is prescribed by sections 6 and 6A of the Domestic Violence, Crime and Victims Act 2004(20).

Under section 17 of the Criminal Justice Act 1967(21), the court may direct the jury to acquit where the prosecutor offers no evidence.

See rule 38.14 for the procedure on taking the verdict and rule 38.16 for the procedure if the court convicts the defendant.]

Defendant unfit to plead

- 38.10.**—(1) This rule applies where—
- (a) it appears to the court, on application or on its own initiative, that the defendant may not be fit to be tried; and
 - (b) the defendant has not by then been acquitted of each offence charged by the indictment.
- (2) The court—

(14) 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) and paragraphs 62 and 63 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(15) 1898 c. 36.

(16) 1984 c. 60.

(17) 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).

(18) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).

(19) 1964 c. 34; section 1 was amended by section 1 of, and the Schedule to, the Statute Law (Repeals) Act 1974 (c. 22).

(20) 2004 c. 28; section 6 was amended by section 3 of, and paragraphs 7 and 8 of the Schedule to, the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4) and section 6A was inserted by section 2 of that Act.

(21) 1967 c. 80; section 17 was amended by paragraph 42 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

- (a) must exercise its power to decide, without a jury, whether the defendant is fit to be tried;
 - (b) may postpone the exercise of that power until immediately before the opening of the defence case.
- (3) Where the court determines that the defendant is not fit to be tried—
- (a) the court must exercise its power to appoint a person to put the case for the defence, taking account of all the circumstances and in particular—
 - (i) the willingness and suitability (including the qualifications and experience) of that person,
 - (ii) the nature and complexity of the case,
 - (iii) any advantage of continuity of representation, and
 - (iv) the defendant’s wishes and needs;
 - (b) the court must select a jury, if none has been selected yet; and
 - (c) rule 38.9 (Procedure on plea of not guilty) applies, if the steps it lists have not already been taken, except that—
 - (i) everything which that rule requires to be done by the defendant may be done instead by the person appointed to put the case for the defence,
 - (ii) under rule 38.9(2)(a), the court must explain to the jurors that their duty is to decide whether or not the defendant did the act or made the omission charged as an offence, not whether the defendant is guilty of that offence, and
 - (iii) rule 38.9(2)(e) does not apply (warning of consequences of defendant not giving evidence).

[Note. See sections 4 and 4A of the Criminal Procedure (Insanity) Act 1964(22).

Under section 4 of the 1964 Act, the court must not determine the defendant’s fitness to be tried except on the evidence of two or more registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. Under section 4A, if satisfied that the defendant did the act or made the omission charged as an offence the jury must make a finding to that effect, and if not so satisfied must acquit the defendant.]

Evidence of a witness in person

38.11.—(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—
 - (i) must not be given in public unless the address is relevant to an issue in the case,
 - (ii) may be given in writing to the court, parties and jury.

(22) 1964 c. 84; sections 4 and 4A were substituted 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).

(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 may ask questions in examination-in-chief;
- (b) if the witness gives evidence for the prosecution—
 - (i) the defendant, if there is only one, may ask questions in cross-examination, or
 - (ii) subject to the court's directions, each defendant, if there is more than one, may ask such questions, in the order their names appear in the indictment or as directed by the court;
- (c) if the witness gives evidence for a defendant—
 - (i) subject to the court's directions, each other defendant, if there is more than one, may ask questions in cross-examination, in the order their names appear in the indictment or as directed by the court, and
 - (ii) the prosecutor may ask such questions;
- (d) the party who called the witness may ask questions in re-examination arising out of any cross-examination.

(5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) The court may—

- (a) ask a witness questions; and in particular
- (b) where the defendant is not represented, ask a witness any question necessary in the defendant's interests.

[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(23) 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(24).

Sections 1, 3, 5 and 6 of the Oaths Act 1978(25) 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 Act 1963(26) 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,*

(23) 1999 c. 23.

(24) 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).

(25) 1978 c. 19.

(26) 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).

- (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)(27);*
- (b) *by the court are in its 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(28), 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(29), a witness may refresh his or her memory by referring to a record made earlier, 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 by the time the witness gives evidence in person.*

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(30), or by live link under section 32 of the Criminal Justice Act 1988(31) or section 51 of the Criminal Justice Act 2003. Parts 29 and 30 contain relevant rules.]

Evidence of a witness in writing

38.12.—(1) This rule applies where a party wants to introduce in evidence the written statement of a witness to which applies—

- (a) Part 27 (Witness statements);
 - (b) Part 33 (Expert evidence); or
 - (c) Part 34 (Hearsay evidence).
- (2) If the court admits such evidence—
- (a) each relevant part of the statement must be read or summarised aloud; or
 - (b) the court and the jury (if there is one) must read the statement and its gist must be summarised aloud.

(27) 1865 c. 18.

(28) 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).

(29) 2003 c. 44.

(30) 1999 c. 23.

(31) 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.

[Note. See Parts 27, 33 and 34, and the other legislation to which those Parts apply. The admissibility of evidence that a party introduces is governed by rules of evidence.

A written witness statement to which Part 27 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 27.4 refers.

An expert report to which Part 33 applies may only be introduced in evidence if it has been served in accordance with rule 33.3.

Rule 34.3 provides for opposing the introduction of hearsay evidence, including such evidence in a document.

Where a witness gives evidence in person, a previous written statement by that witness may be admissible as evidence under section 119 (Inconsistent statements) or under section 120 (Other previous statements of witnesses) of the Criminal Justice Act 2003.]

Evidence by admission

38.13.—(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(32). The admissibility of evidence that a party introduces is governed by rules of evidence.]

Summing up the case to the jury and taking the verdict

38.14.—(1) This rule applies—

- (a) where there is a jury; and
- (b) after following the sequence in rule 38.9 (Procedure on plea of not guilty).

(2) The court must—

- (a) give the jury directions about the relevant law;
- (b) summarise for the jury the evidence relevant to the issues they must decide;
- (c) give the jury such questions, if any, as the court invites jurors to answer in coming to a verdict;
- (d) direct the jury to retire to consider its verdict;
- (e) if necessary, recall the jury to answer jurors' questions;
- (f) if appropriate, recall the jury to give directions for a verdict by a majority; and
- (g) recall the jury when it informs the court that it has reached a verdict.

(3) The court may give the jury directions and questions in writing.

(4) When the court recalls the jury to deliver its verdict, the court must ask the foreman chosen by the jury, in respect of each count—

- (a) whether the jury has reached a verdict on which all the jurors agree;
- (b) if so, whether that verdict is guilty or not guilty;
- (c) if not, where the jury has deliberated for at least 2 hours and if the court decides to invite a majority verdict, then—

- (i) whether at least 10 (of 11 or 12 jurors), or 9 (of 10 jurors), agreed on a verdict,
- (ii) if so, is that verdict guilty or not guilty, and
- (iii) if (and only if) such a verdict is guilty, how many jurors agreed to that verdict and how many disagreed.

(5) Where evidence has been given that the defendant was insane, so as not to be responsible for the act or omission charged as the offence, then under paragraph (4)(a) the court must ask whether the jury's verdict is guilty, not guilty, or not guilty by reason of insanity.

[Note. Under section 17 of the Juries Act 1974(33), the court may accept the verdict of a majority, as long as the jury has had at least 2 hours for deliberation.

Under section 6 of the Criminal Law Act 1967, the jury may convict a defendant of an offence other than one charged by the indictment if that offence is proved by the evidence.

The verdict to which rule 38.14(6) refers is provided for by section 2 of the Trial of Lunatics Act 1883(34). The evidence required before such a verdict may be reached is prescribed by section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991(35).]

Conviction or acquittal without a jury

38.15.—(1) This rule applies where—

- (a) the court tries the case without a jury; and
- (b) after following the sequence in rule 38.9 (Procedure on plea of not guilty).

(2) In respect of each count, the court must give reasons for its decision to convict or acquit.

[Note. Under sections 44 and 46 of the Criminal Justice Act 2003(36), the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004(37), the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.]

Procedure if the court convicts

38.16.—(1) This rule applies where, in respect of any count in the indictment—

- (a) the defendant pleads guilty; or
- (b) the court convicts the defendant.

(2) The court may exercise its power—

- (a) if the defendant is an individual—
 - (i) to require a pre-sentence report,
 - (ii) to request a medical report,
 - (iii) to require a statement of the defendant's financial circumstances;
- (b) if the defendant is a corporation, to require such information as the court directs about the defendant's corporate structure and financial resources;
- (c) to adjourn sentence pending—

(33) 1974 c. 23.

(34) 1883 c. 38; section 2 was amended by section 17 of, and Schedule 2 to, the Criminal Lunatics Act 1884 (c. 64) and sections 1 and 8 of the Criminal Procedure (Insanity) Act 1964 (c. 84).

(35) 1991 c. 25.

(36) 2003 c. 44.

(37) 2004 c. 28.

- (i) receipt of any such report, statement or information,
 - (ii) the verdict in a related case.
- (3) The prosecutor must—
 - (a) summarise the prosecution case, if the sentencing court has not heard evidence;
 - (b) identify in writing any offence that the prosecutor proposes should be taken into consideration in sentencing;
 - (c) provide information relevant to sentence, including—
 - (i) any previous conviction of the defendant, and the circumstances where relevant,
 - (ii) any statement of the effect of the offence on the victim, the victim’s family or others; and
 - (d) identify any other matter relevant to sentence, including—
 - (i) the legislation applicable,
 - (ii) any sentencing guidelines, or guideline cases,
 - (iii) aggravating and mitigating features affecting the defendant’s culpability and the harm which the offence caused, was intended to cause or might foreseeably have caused, and
 - (iv) the effect of such of the information listed in paragraph (2) as the court may need to take into account.
- (4) Where the defendant pleads guilty, the court may give directions for determining the facts on the basis of which sentence must be passed if—
 - (a) the defendant wants to be sentenced on a basis agreed with the prosecutor; or
 - (b) in the absence of such agreement, the defendant wants to be sentenced on the basis of different facts to those disclosed by the prosecution case.
- (5) 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.
- (6) Before passing sentence—
 - (a) the court must give the defendant an opportunity to make representations and introduce evidence relevant to sentence;
 - (b) where the defendant is under 18, the court may give the defendant’s parents, guardian or other supporting adult, if present, such an opportunity as well; and
 - (c) if the court requires more information, it may exercise its power to adjourn the hearing.
- (7) When the court has taken into account all the evidence, information and any report available, the court must—
 - (a) as a general rule, pass sentence at the earliest opportunity;
 - (b) when passing sentence—
 - (i) explain the reasons,
 - (ii) explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence,

unless the defendant is absent or the defendant's ill-health or disorderly conduct makes such an explanation impracticable, and

(iii) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and

(c) deal with confiscation, costs and any civil behaviour order.

(8) The general rule is subject to the court's power to defer sentence for up to 6 months.

[Note. See sections 143, 158, 164, 172 and 174 of the Criminal Justice Act 2003(38).

Under sections 57D and 57E of the Crime and Disorder Act 1998(39), the court may require a defendant to attend a sentencing hearing by live link.

Under section 156 of the Criminal Justice Act 2003(40), 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(41), 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.

Rule 42.8 of these Rules applies to requests for medical reports.

Under section 162 of the Criminal Justice Act 2003(42), the court may require a defendant who is an individual to provide a statement of financial circumstances if the defendant is convicted.

Under section 20A of the Criminal Justice Act 1991(43), 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.

The Sentencing Council may issue sentencing guidelines under section 120 of the Coroners and Justice Act 2009(44).

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(45). Under that legislation, in some circumstances the court has discretion not to make such an order.

(38) 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 substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(39) 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), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(40) 2003 c. 44; section 156 was 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) and paragraphs 8 and 13 of Schedule 19, and paragraphs 20 and 22 of Schedule 21, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(41) 2003 c. 44; section 159 was amended by section 208 of, and paragraphs 145 and 147 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(42) 2003 c. 44.

(43) 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).

(44) 2009 c. 25.

(45) 1988 c. 53; section 34 was amended by section 29(1), (2) and (3) of the Road Traffic Act 1991 (c. 40), section 3(2) of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165(1) of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30),

The evidence that may be introduced is subject to rules of evidence.

In addition to the specific powers to which this rule applies, the court has a general power to adjourn a trial: see rule 38.2.

Part 42 contains rules about sentencing procedure in special cases. Part 50 contains rules about civil behaviour orders after verdict. Parts 56 to 61 contain rules about confiscation and related orders. Part 76 contains rules about costs.

Under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(46), 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.]

Provision of documents for the court

38.17.—(1) Unless the court otherwise directs, a party who introduces a document in evidence, or who otherwise uses a document in presenting that party's case, must provide a copy for—

- (a) each other party;
- (b) any witness that party wants to refer to the document; and
- (c) the court.

(2) If the court so directs, a party who introduces or uses a document for such a purpose must provide a copy for the jury.

(3) Unless the court otherwise directs, on application or on its own initiative, the court officer must provide for the court—

- (a) any copy received under paragraph (1) before the trial begins; and
- (b) a copy of the court officer's record of—
 - (i) information supplied by each party for the purposes of case management, including any revision of information previously supplied,
 - (ii) each pre-trial direction for the management of the case,
 - (iii) any pre-trial decision to admit evidence,
 - (iv) any pre-trial direction about the giving of evidence, and
 - (v) any admission to which rule 38.13 (Evidence by admission) applies; and
- (c) any other document served on the court officer for the use of the court.

Duty of court officer

38.18. The court officer must—

- (a) serve on each party notice of where and when an adjourned hearing will resume, unless that party was present when that was arranged;
- (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 38.16(2) applies (pre-sentence and medical reports);

section 25(2) of the Road Safety Act 2006 (c. 49), article 2(1)(b) of S.I. 2007/3480 and paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 177(1) of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) and section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22), with effect from a date to be appointed.

(46) 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).

- (d) where the court has ordered a defendant to provide information under section 25 of the Road Traffic Offenders Act 1988(47), serve on the defendant notice of that order unless the defendant was present when it was made;
- (e) give the court such other assistance as it requires, including—
 - (i) selecting jurors from the panel summoned by the Lord Chancellor, under rule 38.6 (Selecting the jury),
 - (ii) taking the oaths or affirmations of jurors and witnesses, under rules 38.6 and 38.11 (Evidence of a witness in person);
 - (iii) informing the jurors of the offence or offences charged in the indictment, and of their duty, under rule 38.9 (Procedure on plea of not guilty);
 - (iv) endorsing any written directions or questions which the court gives the jury under rule 38.14(3) (Summing up the case to the jury and taking the verdict) with a note recording the date and time at which those directions or questions were given; and
 - (v) asking the jury foreman to deliver the verdict, under rule 38.14(4).

[Note. See also section 82 of the Senior Courts Act 1981(48) (Duties of officers of Crown Court).

Under Part 5, the court officer must—

- (a) *record details of a case and of the court's decisions; and*
- (b) *give public notice of specified details about a trial, including by such arrangements as the Lord Chancellor directs.*

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.]

(47) 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).

(48) 1981 c. 54; section 82 was amended by section 15 of, and paragraphs 114 and 135 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and sections 116 and 178 of, and Part 3 of Schedule 3 to, the Coroners and Justice Act 2009 (c. 25).