
STATUTORY INSTRUMENTS

1981 No. 552

The Magistrates' Courts Rules 1981

PROCEEDINGS PRELIMINARY TO TRIAL ON INDICTMENT

Restrictions on reports of committal proceedings

5.—(1) Except in a case where evidence is, with the consent of the accused, to be given in his absence under section 4(4)(b) of the Act of 1980 (absence caused by ill health), a magistrates' court acting as examining justices shall before admitting in evidence any written statement or taking depositions of witnesses in accordance with rule 7 explain to the accused the restrictions on reports of committal proceedings imposed by section 8 of the Act of 1980 and inform him of his right to apply to the court for an order removing those restrictions.

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

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

Committal for trial without consideration of evidence

6.—(1) This rule applies to committal proceedings where the accused is represented by counsel or a solicitor and where the court has been informed that all the evidence for the prosecution is in the form of written statements copies of which have been given to the accused.

(2) A magistrates' court inquiring into an offence in committal proceedings to which this rule applies shall cause the charge to be written down, if this has not already been done, and read to the accused and shall then ascertain whether he wishes to—

- (a) object to any of the prosecution statements being tendered in evidence;
- (b) give evidence himself or call witnesses; or
- (c) submit that the prosecution statements disclose insufficient evidence to put him on trial by jury for the offence with which he is charged.

(3) If the court is satisfied that the accused or, as the case may be, each of the accused does not wish to take any of the steps mentioned in sub-paragraphs (a), (b) and (c) of paragraph (2) and determines, after receiving any written statements tendered by the prosecution and the defence under section 102 of the Act of 1980, to commit the accused for trial without consideration of the evidence, the court shall proceed in accordance with paragraph (4) and in any other case shall proceed in accordance with rule 7.

(4) The court shall then say to the accused—

“You will be committed for trial by jury but I must warn you that at that trial you may not be permitted to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or at any time in the next seven days to the solicitor for the prosecution.”,

or words to that effect:

Provided that the court shall not be required to give this warning in any case where it appears to the court that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so.

(5) Where the court has given to the accused the warning required by paragraph (4) the clerk of the court shall give to him written notice of the provisions of section 11 of the Criminal Justice Act 1967⁽¹⁾ about giving notice of particulars of alibi to the solicitor for the prosecution and the solicitor's name and address shall be stated in the notice.

Taking depositions of witnesses and statement of accused

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

(2) A magistrates' court inquiring into an offence as examining justices shall cause the evidence of each witness, including the evidence of the accused, but not including any witness of his merely to his character, to be put into writing; and as soon as may be after the examination of such a witness shall cause his deposition to be read to him in the presence and hearing of the accused, and shall require the witness to sign the deposition:

Provided that where the evidence has been given in the absence of the accused under section 4(4) of the Act of 1980 this shall be recorded on the deposition of the witness and the deposition need not be read in the presence and hearing of the accused.

(3) The depositions shall be authenticated by a certificate signed by one of the examining justices.

(4) Where the accused is not represented by counsel or a solicitor, before a statement made in writing by or taken in writing from a child is received in evidence under subsection (1) of section 103 of the Act of 1980 the court shall cause the effect of that subsection to be explained to the accused in ordinary language and, if the defence does not object to the application of that subsection, shall inform him that he may ask questions about the circumstances in which the statement was made or taken.

(5) Any such statement as aforesaid which is received in evidence shall be made an exhibit.

(6) After the evidence for the prosecution (including any statements tendered under section 102 of the Act of 1980, has been given and after hearing any submission, if any is made, the court shall, unless it then decides not to commit for trial, cause the charge to be written down, if this has not already been done, and, if the accused is not represented by counsel or a solicitor, shall read the charge to him and explain it in ordinary language.

(7) The court shall then ask the accused whether he wishes to say anything in answer to the charge and, if he is not represented by counsel or a solicitor, shall before asking the question say to him—

“You will have an opportunity to give evidence on oath before us and to call witnesses. But first I am going to ask you whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so. Anything you say will be taken down and may be given in evidence at your trial. You should take no notice of any promise or threat which any person may have made to persuade you to say anything.”,

or words to that effect.

(8) Whatever the accused says in answer to the charge shall be put into writing, read over to him and signed by one of the examining justices and also, if the accused wishes, by him.

(9) The court shall then say to the accused—

“I must warn you that if this court should commit you for trial you may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given

(1) 1967 c. 80.

particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the solicitor for the prosecution not later than 7 days from the end of these committal proceedings.”, or words to that effect and, if it appears to the court that the accused may not understand the meaning of the term “alibi”, the court shall explain it to him:

Provided that the court shall not be required to give this warning in any case where it appears to the court that, having regard to the nature of the offence with which the accused is charged, it is unnecessary to do so.

(10) After complying with the requirements of this rule relating to the statement of the accused, and whether or not he has made a statement in answer to the charge, the court shall give him an opportunity to give evidence himself and to call witnesses.

(11) Where the accused is represented by counsel or a solicitor, his counsel or solicitor shall be heard on his behalf, either before or after the evidence for the defence is taken, at his discretion, and may, if the accused gives evidence himself and calls witnesses, be heard on his behalf with the leave of the court both before and after the evidence is taken:

Provided that, where the court gives leave to counsel or the solicitor for the accused to be heard after, as well as before, the evidence is taken, counsel or the solicitor for the prosecution shall be entitled to be heard immediately before counsel or the solicitor for the accused is heard for the second time.

(12) Where the court determines to commit the accused for trial in respect of a charge which differs from that which was read to him in accordance with the provisions of paragraph (6), the court shall cause the new charge to be read to him.

(13) Where the court has given to the accused the warning required by paragraph (9) the clerk of the court shall give to him written notice of the provisions of section 11 of the Criminal Justice Act 1967 about giving notice of particulars of alibi to the solicitor for the prosecution and the solicitor's name and address shall be stated in the notice.

Order for attendance of witness at court of trial

8.—(1) A witness order under section 1 of the Criminal Procedure (Attendance of Witnesses) Act 1965⁽²⁾ shall be in the prescribed form and shall be served on the witness as soon as practicable after the accused has been committed for trial:

Provided that where, at the conclusion of the examination of a witness, the court determines that the witness order shall be a conditional order, the order shall be served on him immediately after the deposition has been signed.

(2) Where a court has directed under subsection (2)(b) of the said section 1 that a witness order shall be treated as a conditional order, it shall give notice to the witness in the prescribed form.

(3) If a witness order has been made as aforesaid and the court determines not to commit the accused for trial, it shall give notice to the witness that he is no longer required to attend.

(4) A notice given under this rule shall be in writing and signed by one of the justices composing the court or the clerk of the court.

(5) A witness order under the said section 1 and a notice given under this rule shall be served by delivering it to the witness or by leaving it for him with some person at his last known or usual place of abode or by sending it by post in a letter addressed to him at his last known or usual place of abode.

Notice to governor of prison of committal on bail

9.—(1) Where the accused is committed for trial on bail, the clerk of the court shall give notice thereof in writing to the governor of the prison to which persons of the sex of the person committed

(2) 1965 c. 69.

are committed by that court if committed in custody for trial and also, if the person committed is under 21, to the governor of the remand centre to which he would have been committed if the court had refused him bail.

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

Notices on committal of person subject to transfer direction

10. Where a transfer direction has been given by the Secretary of State under section 73 of the Mental Health Act 1959⁽³⁾ in respect of a person remanded in custody by a magistrates' court and, before the direction ceases to have effect, that person is committed for trial, the clerk of the court shall give notice in the prescribed form—

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

Documents and exhibits to be retained and sent to court of trial

11.—(1) A magistrates' court that commits a person for trial shall, unless there are reasons for not doing so, retain any documents and articles produced by a witness who is subject to a conditional witness order or in whose case the court has directed that a witness order be treated as a conditional order.

(2) As soon as practicable after the committal of any person for trial, and in any case within 4 days from the date of his committal (not counting Sundays, Good Friday, Christmas Day or Bank Holidays), the clerk of the magistrates' court that committed him shall, subject to the provisions of section 5 of the Prosecution of Offences Act 1979⁽⁴⁾ (which relates to the sending of documents and things to the Director of Public Prosecutions), send to the appropriate officer of the Crown Court—

- (a) the information, if it is in writing;
- (b) the depositions and written statements tendered in evidence, together with a certificate authenticating the depositions and statements, and any admission of facts made for the purposes of the committal proceedings under section 10 of the Criminal Justice Act 1967 and not withdrawn;
- (c) all statements made by the accused before the magistrates' court;
- (d) a list of the names, addresses and occupations of the witnesses in respect of whom witness orders have been made;
- (e) a copy of the record made in pursuance of section 5 of the Bail Act 1976⁽⁵⁾ relating to the grant or withholding of bail in respect of the accused on the occasion of the committal;
- (f) any recognizance entered into by any person as surety for the accused together with a statement of any enlargement thereof under section 129(4) of the Act of 1980;
- (g) a list of the documents and articles produced in evidence before the justices or treated as so produced;
- (h) such of the documents and articles referred to in the last preceding sub-paragraph as have been retained by the justices;

(3) 1959 c. 72.

(4) 1979 c. 31.

(5) 1976 c. 63.

- (i) a certificate showing whether the accused was informed at the committal proceedings of the requirements of section 11 of the Criminal Justice Act 1967 (notice of alibi) and a record of any particulars given by him to the magistrates' court under that section;
 - (j) if the committal was under section 6(2) of the Act of 1980 (committal for trial without consideration of the evidence), a statement to that effect;
 - (k) if the magistrates' court has made an order under section 8(2) of the Act of 1980 (removal of restrictions on reports of committal proceedings), a statement to that effect;
 - (l) the certificate of the examining justices as to costs of prosecution (Form B in the Schedule to the Costs in Criminal Cases Regulations 1908(6));
 - (m) if any person under the age of 17 is concerned in the committal proceedings, a statement whether the magistrates' court has given a direction under section 39 of the Children and Young Persons Act 1933 (prohibition of publication of certain matter in newspapers).
- (3) The clerk shall retain a copy of any list sent in pursuance of paragraph (2)(d).
- (4) The period of 4 days specified in paragraph (2) may be extended in relation to any committal for so long as the appropriate officer of the Crown Court directs, having regard to the length of any document mentioned in that paragraph or any other relevant circumstances.