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STATUTORY INSTRUMENTS

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**1993 No. 1183 (L.13)**

**MAGISTRATES' COURTS**

**PROCEDURE**

**The Magistrates' Courts (Miscellaneous  
Amendments) Rules 1993**

<i>Made</i>	- - - -	<i>27th April 1993</i>
<i>Laid before Parliament</i>		<i>29th April 1993</i>
<i>Coming into force</i>	- -	<i>24th May 1993</i>

The Lord Chancellor, in exercise of the power conferred upon him by section 144 of the Magistrates' Courts Act 1980((1)), after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

**Citation and Commencement**

1. These Rules may be cited as the Magistrates' Courts (Miscellaneous Amendments) Rules 1993 and shall come into force on 24th May 1993.

**The Justices' Clerks Rules 1970**

2. The Justices' Clerks Rules 1970((2)) shall be amended as follows—

(a) after rule 3, there shall be added the following rule((3))—

“4.—(1) The things specified in the Schedule to these Rules (except in paragraphs 13 to 15D), being things authorised to be done by, to or before a justices' clerk, may be done instead by, to or before—

(a) a person appointed by a magistrates' courts committee to assist him;

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(1) 1980 c. 43; section 144 is extended by section 145 of that Act, by section 28(1) and (1A) of the Justices of the Peace Act 1979 (c. 55) and by section 34B(6) and (7) of the Road Traffic Offenders Act 1988 (c. 53). Section 28(1) of the 1979 Act was amended by the Magistrates' Courts Act 1980, Schedule 7, paragraph 194. Subsection (1A) of that section was inserted by section 117 of the Courts and Legal Services Act 1990 (c. 41). Section 34B of the 1988 Act was inserted by section 30 of the Road Traffic Act 1991 (c. 40).

(2) S.I. 1970/231, amended by S.I. 1975/300, 1976/1767, 1978/754, 1983/527, 1991/1395, 1991/1991.

(3) For delegation by a justices' clerk under paragraphs 13 to 15D of the Schedule, see rule 32 of, and Schedule 3 to, the Family Proceedings Courts (Children Act 1989) Rules 1991 (S.I. 1991/1395) and rule 15 of, and Schedule 2 to, the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991 (S.I. 1991/1991).

- (b) where he is a part-time justices' clerk, any member of his staff who has been appointed by the magistrates' courts committee to assist him as such; or
- (c) any officer appointed by the committee of magistrates to be his deputy or to assist him,

provided that that person, member or officer has been specifically authorised by the justices' clerk for that purpose; and any reference in the Schedule to a justices' clerk shall be taken to include such a person, member or officer.

(2) Any authorisation by the justices' clerk under paragraph (1) above shall be recorded in writing at the time the authority is given or as soon as is practicable thereafter.”;

- (b) after paragraph 2 of the Schedule, there shall be inserted the following paragraph—

“**2A.**—(1) The issue of a warrant of arrest, whether or not endorsed for bail, for failure to surrender to the court, where there is no objection on behalf of the accused.

(2) The issue of a warrant of distress.”;

- (c) in paragraph 4 of the Schedule, after sub-paragraph (2) there shall be inserted the following sub-paragraphs—

“(3) The further adjournment of criminal proceedings, where there is no objection by the prosecutor, where the accused, having been remanded on bail on the previous adjournment, is remanded on bail on the like terms and conditions in his absence.

(4) The remand of the accused on bail in his absence at the time of further adjourning the proceedings in pursuance of sub-paragraph (3) above.

(5) The appointment of a later time as the time at which a person, who has been granted bail under the Police and Criminal Evidence Act 1984 subject to a duty to appear before a magistrates' court, is to appear, and the enlargement of any sureties for that person at that time, in accordance with section 43(1) of the Magistrates' Courts Act 1980, provided there is no objection by the prosecutor.”;

- (d) after paragraph 4 of the Schedule, there shall be inserted the following paragraphs—

“**4A.**—(1) The committal of a person for trial on bail in accordance with section 6(2) and (3)(b) of the Magistrates' Courts Act 1980 where, having been remanded on bail on the previous adjournment, he is released on bail on the like terms and conditions.

(2) The making of witness orders in accordance with section 1 of the Criminal Procedure (Attendance of Witnesses) Act 1965 where the clerk has exercised the powers in sub-paragraph (1) above, and the informing of a person committed for trial by virtue of that sub-paragraph of the matters referred to in subsection (3) of that section.

**4B.**—(1) The asking of an accused whether he pleads guilty or not guilty to a charge, after having stated to him the substance of the information laid against him.

(2) The fixing or setting aside of a date, time and place for the trial of an information.”;

- (e) after paragraph 8 of the Schedule, there shall be inserted the following paragraph—

“**8A.**—(1) The making or withdrawal of an application to the Secretary of State, pursuant to the Fines (Deductions from Income Support) Regulations 1992, for deductions to be made from an offender's income support.

(2) The doing of such other things as are required or permitted to be done by a magistrates' court under those Regulations.”;

- (f) for paragraph 11 of the Schedule, there shall be substituted the following paragraph—

“11. The amending, in accordance with paragraph 12 of Schedule 2 to the Criminal Justice Act 1991, of a probation order or a community service order by substituting for the petty sessions area specified in the order the other area in which the offender proposes to reside or is residing.”; and

(g) after paragraph 11 of the Schedule, there shall be inserted the following paragraph—

“11A. The varying, in accordance with section 18(6) of the Criminal Justice Act 1982, of an attendance centre order by—

- (a) varying the day or hour specified in the order for the offender’s first attendance at the relevant attendance centre; or
- (b) substituting for the relevant attendance centre an attendance centre which the justices' clerk is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances.”.

### **The Magistrates' Courts Rules 1981**

3. The Magistrates' Courts Rules 1981((4)) shall be amended as follows—

(a) in rule 12, at the end there shall be added the following paragraphs—

“(3) If, notwithstanding paragraph (1) above, it appears to the court at any stage in the trial of an information that the information charges more than one offence, the court shall call upon the prosecutor to elect on which offence he desires the court to proceed, whereupon the offence or offences on which the prosecutor does not wish to proceed shall be struck out of the information; and the court shall then proceed to try that information afresh.

(4) If a prosecutor who is called upon to make an election under paragraph (3) above fails to do so, the court shall dismiss the information.

(5) Where, after an offence has or offences have been struck out of the information under paragraph (3) above, the accused requests an adjournment and it appears to the court that he has been unfairly prejudiced, it shall adjourn the trial.”;

(b) after rule 13, there shall be inserted the following rule—

“Procedure on information where accused is not legally represented

**13A.—**(1) The court shall explain to an accused who is not legally represented the substance of the charge in simple language.

(2) If an accused who is not legally represented, instead of asking a witness in support of the charge questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the accused and may for this purpose question the accused in order to bring out or clear up any point arising out of such assertions.”;

(c) in rule 57(1), the words after the words “a copy of the order” to the end shall be omitted;

(d) in rule 66—

(i) in paragraph (11), after the words “the entries shall be signed” there shall be inserted the words “or their accuracy certified”; and

(ii) after paragraph (11), there shall be inserted the following paragraph—

“(11A) Any certificates made by virtue of paragraph (11) shall be kept with and as part of the register.”;

- (e) in rule 74(2), for the words “statement of the decision from which the appeal is brought” there shall be substituted the following words—  
“copy of the extract of the magistrates' court register relating to that decision”;
- (f) after rule 90, there shall be inserted the following rule—

“Notes of argument in bail hearings

**90A.** Where the court hears full argument as to bail, the clerk of the court shall take a note of that argument.”;

- (g) after rule 95, there shall be inserted the following rule—

“Warrant issued out of hours

**95A.** Where a warrant is issued by a justice of the peace for any petty sessions area at a time when the office of the clerk to the justices for that area is closed, the applicant for the warrant shall within 72 hours serve upon the clerk any information on which the warrant was issued.”;

- (h) paragraph (2) of rule 99 shall be omitted;
- (i) after rule 101, there shall be inserted the following rule—

“Applications under section 34B(6) or (7) of the Road Traffic Offenders Act 1988

**101A.**—(1) An application to the supervising court under section 34B (6) or (7) of the Road Traffic Offenders Act 1988 shall be served on the clerk of that court within 28 days after the date specified in an order under section 34A(2) of that Act, where that date falls on or after 24th May 1993.

(2) An application under section 34B(6) of that Act shall be accompanied by the notice under section 34B(5) of that Act.

(3) On being served with such an application, the clerk of the court shall—

- (a) fix a date and time for the hearing of the application;
- (b) serve a copy of the application on the course organiser; and
- (c) serve notice of the hearing on the applicant and course organiser.

(4) If the course organiser fails to appear or be represented at the hearing of the application without reasonable excuse, the court may proceed to decide the application in his absence.

(5) In this rule, “course organiser” and “supervising court” have the meanings assigned to them in England and Wales by section 34C of the Road Traffic Offenders Act 1988.”; and

- (j) for paragraph (2) of rule 104, there shall be substituted the following paragraph—

“(2) The clerk of the court to which the complaint is made shall send a letter by post to the person for whose benefit the compensation order was made, inviting him to make observations and to attend any hearing of the complaint and advising him of his right to be heard.”.

### **The Magistrates' Courts (Forms) Rules 1981**

4. The Magistrates' Courts (Forms) Rules 1981((5)) shall be amended by the insertion, in the form numbered 59 after the words “[Crown Court at . . .]”, of the following words—

“Offence:

Steps, if any, taken to recover the sum:

Further available information:”,

and by the omission of the footnote to that form.

27th April 1993

*Mackay of Clashfern, C.*

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Justices' Clerks Rules 1970 and the Magistrates' Courts Rules 1981. They also make minor amendments to the Magistrates' Courts (Forms) Rules 1981.

Rule 2 of these Rules amends the 1970 Rules. It enables certain persons appointed to assist the justices' clerk to do most of the things authorised to be done by, to or before a justices' clerk under the Schedule to the 1970 Rules. Rule 2 also adds to the Schedule to the 1970 Rules by authorising a clerk (including a person appointed to assist him) to issue a warrant for failure to surrender to the court or a warrant of distress. It also authorises the adjournment by the clerk of criminal proceedings, where the prosecutor does not object, in the absence of the accused. Rule 2 authorises the clerk to commit a person who is on bail under section 6(2) of the Magistrates' Court Act 1980. The clerk may now ask an accused whether he pleads guilty or not guilty to a charge, and may fix or set aside a date for the trial of an information. Rule 2 also enables the clerk to apply for deductions to be made from an offender's income support and to amend or vary probation orders, community service orders and attendance centre orders in certain circumstances.

Rule 3 of these Rules amends the Magistrates' Courts Rules 1981 by requiring a court, where it appears in a trial that the information charges more than one offence, to call upon the prosecutor to decide on which offence he wishes the court to proceed. New procedures are introduced for informations where the accused is not legally represented. The clerk is now required to take a note of the arguments in bail hearings. Rule 3 also enables entries on the register to be certificated as authentic, rather than signed individually. Where a decision is appealed against, the clerk will be required to send a copy of the relevant extract of the register to the appropriate officer of the Crown Court. New provision is also made with respect to warrants issued out of hours. The requirement to prove that a summons came to the recipient's knowledge (where it was not delivered to him) in order to prove service of that summons is removed. Proof that a summons was posted in a correctly addressed pre-paid envelope would now suffice to establish proof of service in most cases. Rule 3 also prescribes the procedure for an application by a disqualified driver under section 34B (6) or (7) of the Road Traffic Offenders Act 1988 for the review of a notice issued to him by the organiser of a road traffic rehabilitation course, or for a declaration of default in respect of that organiser.

These Rules also make a number of minor amendments, including (in rule 4) alteration of the form of a transfer of fines order.