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STATUTORY INSTRUMENTS

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**1995 No. 2619 (L.10)**

**MAGISTRATES' COURTS**

**PROCEDURE**

**The Magistrates' Courts (Amendment) (No. 2) Rules 1995**

*Made* - - - - *5th October 1995*  
*Laid before Parliament* *10th October 1995*  
*Coming into force* - - *1st November 1995*

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:

1. These rules may be cited as the Magistrates' Courts (Amendment) (No. 2) Rules 1995 and shall come into force on 1st November 1995.

2. For rule 104A of the Magistrates' Courts Rules 1981(2) ("the 1981 Rules") there shall be substituted the following rule—

**"Statements etc, relevant to making confiscation orders under the Criminal Justice Act 1988**

**104A.**—(1) When, in any proceedings in respect of an offence listed in Schedule 4 to the Criminal Justice Act 1988(3), the prosecutor or the defendant tenders to a magistrates' court any statement or other document under section 73 of the said Act of 1988 he must serve a copy thereof as soon as practicable on the defendant or the prosecutor, as the case may be.

(2) Any statement tendered to the magistrates' court by the prosecutor under section 73 of the said Act of 1988 shall include the following particulars, namely—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is made and the date on which it was made;
- (c) where the statement is not tendered immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred;

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(1) 1980 c. 43; section 144 is extended by section 145 of that Act.  
(2) S.I. 1981/552; relevant amending instruments are S.I. 1989/300, 1993/1183 and 1994/3154.  
(3) 1988 c. 33; section 73 was amended by section 3 of the Proceeds of Crime Act 1995 and sections 74A, 74B and 74C were inserted by, respectively, sections 5, 6 and 7 of that Act.

(d) such information known to the prosecutor as is relevant to the determination as to whether or not the defendant has benefited from relevant criminal conduct and to the assessment of the value of his benefit from such conduct.

(3) Where, in accordance with section 73(1C) of the said Act of 1988, the defendant indicates the extent to which he accepts any allegation contained within the prosecutor's statement, if he indicates the same in writing to the prosecutor, he must serve a copy of that reply on the clerk of the magistrates' court."

3. After rule 104B of the 1981 Rules there shall be inserted the following rule—

**“Confiscation orders— revised assessments**

**104C.**—(1) Where the prosecutor makes an application under section 74A, 74B or 74C of the Criminal Justice Act 1988, such an application must be in writing and a copy thereof must be served on the defendant.

(2) The application must include the following particulars, namely—

- (a) the name of the defendant;
- (b) the date on which and the place where any relevant conviction occurred;
- (c) the date on which and the place where any relevant confiscation order, was made or, as the case may be, varied;
- (d) the grounds on which the application is made;
- (e) an indication of the evidence available to support the application.”

Dated 5th October 1995

*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 Magistrates' Courts Rules 1981 to govern procedures arising out of Part VI of the Criminal Justice Act 1988 (confiscation of the proceeds of an offence) as amended by the Proceeds of Crime Act 1995.