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STATUTORY INSTRUMENTS

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**2018 No. 847 (L. 8)**

**SENIOR COURTS OF ENGLAND AND WALES  
MAGISTRATES' COURTS,  
ENGLAND AND WALES**

**The Criminal Procedure (Amendment No. 2) Rules 2018**

*Made* - - - - *11th July 2018*  
*Laid before Parliament* *16th July 2018*  
*Coming into force* - - *1st October 2018*

The Criminal Procedure Rule Committee makes the following Rules under section 69 of the Courts Act 2003(1), after consulting in accordance with section 72(1)(a) of that Act.

**Citation, commencement and interpretation**

1. These Rules may be cited as the Criminal Procedure (Amendment No. 2) Rules 2018 and shall come into force on 1st October 2018.

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Criminal Procedure Rules 2015(2).

**Amendments to the Criminal Procedure Rules 2015**

3. In Part 3 (Case management)—

(a) in rule 3.1 (When this Part applies)—

(i) after paragraph (3) insert—

“(4) Rule 3.28 applies in a magistrates’ court and in the Crown Court (including on an appeal to the Crown Court).”, and

(ii) at the end of the note to the rule insert—

*“The circumstances in which the court may commission a medical examination of a defendant and a report, other than for sentencing purposes, are listed in rule 3.28.”;*

(b) after rule 3.27 (Pre-trial hearings in a magistrates’ court: general rules) insert—

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(1) 2003 c. 39; section 69 was amended by sections 15(1) and 146 of, and paragraphs 308 and 332 of Schedule 4 and Part 2 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4).  
(2) S.I. 2015/1490; amended by S.I. 2016/120, 2016/705, 2017/144, 2017/282, 2017/755, 2017/915, 2018/132.

*“MEDICAL REPORTS*

**Directions for commissioning medical reports, other than for sentencing purposes**

**3.28.—(1)** This rule applies where, because of a defendant’s suspected mental ill-health—

- (a) a magistrates’ court requires expert medical opinion about the potential suitability of a hospital order under section 37(3) of the Mental Health Act 1983<sup>(3)</sup> (hospital order without convicting the defendant);
- (b) the Crown Court requires expert medical opinion about the defendant’s fitness to participate at trial, under section 4 of the Criminal Procedure (Insanity) Act 1964<sup>(4)</sup>; or
- (c) a magistrates’ court or the Crown Court requires expert medical opinion to help the court determine a question of intent or insanity,

other than such opinion introduced by a party.

(2) A court may exercise the power to which this rule applies on its own initiative having regard to—

- (a) an assessment of the defendant’s health by a mental health practitioner acting independently of the parties to assist the court;
  - (b) representations by a party; or
  - (c) observations by the court.
- (3) A court that requires expert medical opinion to which this rule applies must—
- (a) identify each issue in respect of which the court requires such opinion and any legislation applicable;
  - (b) specify the nature of the expertise likely to be required for giving such opinion;
  - (c) identify each party or participant by whom a commission for such opinion must be prepared, who may be—
    - (i) a party (or party’s representative) acting on that party’s own behalf,
    - (ii) a party (or party’s representative) acting on behalf of the court, or
    - (iii) the court officer acting on behalf of the court;
  - (d) where there are available to the court arrangements with the National Health Service under which an assessment of a defendant’s mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;
  - (e) where no such arrangements are available to the court, or they will not be used, give directions for the commissioning of an expert report or expert reports, including—
    - (i) such directions as can be made about supplying the expert or experts with the defendant’s medical records,

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(3) 1983 c. 20; section 37(3) was amended by sections 1 and 55 of, and paragraphs 1 and 7 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c. 12).

(4) 1964 c. 84; section 4 was substituted, together with section 4A, 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).

- (ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert, and
  - (iii) directions about the arrangements that will apply for the payment of each expert;
  - (f) set a timetable providing for—
    - (i) the date by which a commission is to be delivered to each expert,
    - (ii) the date by which any failure to accept a commission is to be reported to the court,
    - (iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer, and
    - (iv) the date by which each report commissioned is to be received by the court; and
  - (g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.
- (4) A commission addressed to an expert must—
- (a) identify each issue in respect of which the court requires expert medical opinion and any legislation applicable;
  - (b) include—
    - (i) the information required by the court to be supplied to the expert,
    - (ii) details of the timetable set by the court, and
    - (iii) details of the arrangements that will apply for the payment of the expert;
  - (c) identify the person (each person, if more than one) to whom a copy of the expert's report is to be supplied; and
  - (d) request confirmation that the expert from whom the opinion is sought—
    - (i) accepts the commission, and
    - (ii) will adhere to the timetable.

*[Note. See also rule 28.8 (Directions for commissioning medical reports for sentencing purposes).*

*The court may request a medical examination of the defendant and a report under—*

- (a) *section 4 of the Criminal Procedure (Insanity) Act 1964, under which the Crown Court may determine a defendant's fitness to plead;*
- (b) *section 35 of the Mental Health Act 1983(5), under which the court may order the defendant's detention in hospital to obtain a medical report;*
- (c) *section 36 of the 1983 Act(6), under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial;*
- (d) *section 37 of the 1983 Act(7), under which the court may order the defendant's detention and treatment in hospital, or make a guardianship order, instead of*

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(5) 1983 c. 20; section 35 was amended by sections 1(4) and 10(1) and (2) of, and paragraphs 1 and 5 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 54 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(6) 1983 c. 20; section 36 was amended by sections 1(4), 5(1) and (2) and 10(1) and (3) of, and paragraphs 1 and 6 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 55 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(7) 1983 c. 20; section 37 was amended by sections 55 and 56 of, and paragraph 12 of Schedule 4 and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43), section 67 of, and paragraph 11 of Schedule 4 to, the Youth Justice and Criminal Evidence

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*disposing of the case in another way (section 37(3) allows a magistrates' court to make such an order without convicting the defendant if satisfied that the defendant did the act or made the omission charged);*

- (e) *section 38 of the 1983 Act(8), under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;*
- (f) *section 157 of the Criminal Justice Act 2003(9), under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;*
- (g) *section 207 of the 2003 Act(10) (in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(11) (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.*

*For the purposes of the legislation listed in (a), (c), (d) and (e) above, the court requires the written or oral evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. For the purposes of (b), (f) and (g), the court requires the evidence of one medical practitioner so approved.*

*Under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(12), a magistrates' court may adjourn a trial to obtain medical reports.*

*Part 19 (Expert evidence) contains rules about the content of expert medical reports.*

*For the authorities from whom the court may require information about hospital treatment or guardianship, see sections 39 and 39A of the 1983 Act(13).*

*The Practice Direction includes a timetable for the commissioning and preparation of a report or reports which the court may adopt with such adjustments as the court directs.*

*Payments to medical practitioners for reports and for giving evidence are governed by section 19(3) of the Prosecution of Offences Act 1985(14) and by the Costs in Criminal*

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Act 1999 (c. 23), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 304 of, and paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 2 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), sections 1, 4, 10, 55 and paragraphs 1 and 7 of Schedule 1, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12), sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), sections 122 and 142 of, and paragraph 1 of Schedule 19 and paragraph 2 of Schedule 26 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 28 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by section 148 of, and paragraph 8 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) with effect from a date to be appointed.

- (8) 1983 c. 20; section 38 was amended by section 49(1) of the Crime (Sentences) Act 1997 (c. 43), sections 1(4) and 10(1) and (5) of, and paragraphs 1 and 8 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 56 of Schedule 21 to, the Legal Services Act 2007 (c. 29).
- (9) 2003 c. 44; section 157 was amended by section 38 of the Health and Social Care Act 2012 (c. 7).
- (10) 2003 c. 44; section 207 was amended by article 4(2) of, and paragraph 7 of Schedule 5 to, S.I. 2009/1182, article 14(a) and (b) of, and Part 1 of Schedule 5 to, S.I. 2010/813, section 72 of the Health and Social Care Act 2012 (c. 7) and section 73 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 62 of, and paragraph 48 of Schedule 5 to, the Children and Social Work Act 2017 (c. 16), with effect from a date to be appointed.
- (11) 2008 c. 4.
- (12) 2000 c. 6.
- (13) 1983 c. 20; section 39 was amended by sections 2(1) and 5(1) of, and paragraph 107 of Schedule 1 and Schedule 3 to, the Health Authorities Act 1995 (c. 17), section 2(5) of, and paragraphs 42 and 46 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 31(1) and (2) of the Mental Health Act 2007 (c. 12), article 3 of, and paragraph 13 of the Schedule to, S.I. 2007/961 and section 55 of, and paragraphs 24 and 28 of Schedule 5 to, the Health and Social Care Act 2012 (c. 7). Section 39A was inserted by section 27(1) of the Criminal Justice Act 1991 (c. 53).
- (14) 1985 c. 23; section 19(3) was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), sections 40 and 67 of, and paragraph 4 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 99 of Schedule

*Cases (General) Regulations 1986(15), regulation 17 (Determination of rates or scales of allowances payable out of central funds), regulation 20 (Expert witnesses, etc.) and regulation 25 (Written medical reports). The rates and scales of allowances payable under those Regulations are determined by the Lord Chancellor.]”;* and

- (c) amend the table of contents correspondingly.
4. In Part 5 (Forms and court records)—
- (a) in the note to rule 5.8 (Supply to the public, including reporters, of information about cases), for sub-paragraph (e) substitute—
- “(e) *the Data Protection Act 1998(16) (sections 34 and 35 of the Act contain relevant exemptions from prohibitions against disclosure that usually apply) and Part 3 of the Data Protection Act 2018(17) (sections 43(3) and 117 of which make exceptions for criminal proceedings from some other provisions of that Act); and”;* and
- (b) after the second paragraph of the note to rule 5.9 (Supply of written certificate or extract from records) insert—
- “Under section 92 of the Sexual Offences Act 2003(18), a certificate which records a conviction for an offence and a statement by the convicting court that that offence is listed in Schedule 3 to the Act is evidence of those facts for certain purposes of that Act.”.*
5. In Part 24 (Trial and sentence in a magistrates’ court), in rule 24.17 (Statutory declaration of ignorance of proceedings)—
- (a) in paragraph (1)(a)(i) for “information and summons” substitute “application for a summons”;
- (b) in paragraph (4)(a) for “the information or written charge” substitute “the application for the summons or the written charge”;
- (c) in paragraph (4)(c)(i) for “an information in the same terms as the original information” substitute “an application for a summons in the same terms as the original application”; and
- (d) in paragraph (6)(a) for “information” substitute “application for a summons”.
6. In Part 25 (Trial and sentence in the Crown Court), in rule 25.16 (Procedure if the court convicts)—
- (a) in paragraph (2)(a)(ii) for “request” substitute “commission”; and
- (b) in the fifth paragraph of the note to the rule for “requests” substitute “commissions”.
7. In Part 28 (Sentencing procedures in special cases)—
- (a) in the first paragraph of the note to rule 28.3 (Notification requirements), for sub-paragraph (a) substitute—
- “(a) *Part 2 of, and Schedule 3 to, the Sexual Offences Act 2003(19) (notification for the period specified by section 82 of the Act(20) after conviction, etc. of an*

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9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).

(15) S.I. 1986/1335; regulation 17 was amended by regulations 2 and 13 of S.I. 2008/2448, regulation 20 was amended by regulations 2 and 14 of S.I. 2008/2448 and by regulations 4 and 7 of S.I. 2012/1804, and regulation 25 was amended by regulations 2 and 10 of S.I. 2009/2720.

(16) 1998 c. 29; the Act is repealed, subject to transitional and saving provisions, with effect from 25th May, 2018.

(17) 2018 c. 12.

(18) 2003 c. 42.

(19) 2003 c. 42; Schedule 3 was amended by article 2 of S.I. 2007/296, section 63(2) of, and paragraph 63 of Schedule 6 to, the Serious Crimes Act 2007 (c. 27), section 148(1) of, and paragraphs 53 and 58 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177(1) of, and paragraph 62 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Other amendments to Schedule 3 are not relevant to these Rules.

*offence listed in Schedule 3 and committed in the circumstances specified in that Schedule);” and*

(b) for rule 28.8 (Requests for medical reports, etc.) substitute—

**“Directions for commissioning medical reports for sentencing purposes**

- 28.8.**—(1) This rule applies where for sentencing purposes the court requires—
- (a) a medical examination of the defendant and a report; or
  - (b) information about the arrangements that could be made for the defendant where the court is considering—
    - (i) a hospital order, or
    - (ii) a guardianship order.
- (2) The court must—
- (a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;
  - (b) specify the nature of the expertise likely to be required for giving such opinion;
  - (c) identify each party or participant by whom a commission for such opinion must be prepared, who may be—
    - (i) a party (or party’s representative) acting on that party’s own behalf,
    - (ii) a party (or party’s representative) acting on behalf of the court, or
    - (iii) the court officer acting on behalf of the court;
  - (d) where there are available to the court arrangements with the National Health Service under which an assessment of a defendant’s mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;
  - (e) where no such arrangements are available to the court, or they will not be used, give directions for the commissioning of an expert report or expert reports, including—
    - (i) such directions as can be made about supplying the expert or experts with the defendant’s medical records,
    - (ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert, and
    - (iii) directions about the arrangements that will apply for the payment of each expert;
  - (f) set a timetable providing for—
    - (i) the date by which a commission is to be delivered to each expert,
    - (ii) the date by which any failure to accept a commission is to be reported to the court,
    - (iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer, and
    - (iv) the date by which each report commissioned is to be received by the court; and

- (g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.
- (3) A commission addressed to an expert must—
  - (a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;
  - (b) include—
    - (i) the information required by the court to be supplied to the expert,
    - (ii) details of the timetable set by the court, and
    - (iii) details of the arrangements that will apply for the payment of the expert;
  - (c) identify the person (each person, if more than one) to whom a copy of the expert's report is to be supplied; and
  - (d) request confirmation that the expert from whom the opinion is sought—
    - (i) accepts the commission, and
    - (ii) will adhere to the timetable.

*[Note. See also rule 3.28 (directions for commissioning medical reports in connection with fitness to participate in the trial, etc.).]*

*For sentencing purposes the court may request a medical examination of the defendant and a report under—*

- (a) *section 35 of the Mental Health Act 1983, under which the court may order the defendant's detention in hospital to obtain a medical report;*
- (b) *section 36 of the 1983 Act, under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial;*
- (c) *section 37 of the 1983 Act, under which the court may order the defendant's detention and treatment in hospital, or make a guardianship order, instead of disposing of the case in another way (section 37(3) allows a magistrates' court to make such an order without convicting the defendant if satisfied that the defendant did the act or made the omission charged);*
- (d) *section 38 of the 1983 Act, under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;*
- (e) *section 157 of the Criminal Justice Act 2003, under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;*
- (f) *section 207 of the 2003 Act (in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008 (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.*

*For the purposes of the legislation listed in (b), (c) and (d) above, the court requires the written or oral evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. For the purposes of (a), (e) and (f) the court requires the evidence of one medical practitioner so approved.*

*Under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, a magistrates' court may adjourn a trial to obtain medical reports.*

*Part 19 (Expert evidence) contains rules about the content of expert medical reports.*

*For the authorities from whom the court may require information about hospital treatment or guardianship, see sections 39 and 39A of the 1983 Act.*

*The Practice Direction includes a timetable for the commissioning and preparation of a report or reports which the court may adopt with such adjustments as the court directs.*

*Payments to medical practitioners for reports and for giving evidence are governed by section 19(3) of the Prosecution of Offences Act 1985 and by the Costs in Criminal Cases (General) Regulations 1986, regulation 17 (Determination of rates or scales of allowances payable out of central funds), regulation 20 (Expert witnesses, etc.) and regulation 25 (Written medical reports). The rates and scales of allowances payable under those Regulations are determined by the Lord Chancellor.]"; and*

- (c) amend the table of contents correspondingly.
- 8. In Part 34 (Appeal to the Crown Court)—
  - (a) in rule 34.2 (Service of appeal notice)—
    - (i) for the heading to the rule substitute “Service of appeal and respondent’s notices”, and
    - (ii) after paragraph (4) insert—
      - “(5) Where the appeal is against conviction or against a finding of guilt, unless the respondent agrees that the court should allow the appeal—
        - (a) the respondent must serve a respondent’s notice on—
          - (i) the Crown Court officer; and
          - (ii) the appellant; and
        - (b) the respondent must serve that notice not more than 21 days after service of the appeal notice.”;
  - (b) for rule 34.3 (Form of appeal notice) substitute—

**“Form of appeal and respondent’s notices**

**34.3.—(1) The appeal notice must—**

- (a) specify—
  - (i) the conviction or finding of guilt,
  - (ii) the sentence, or
  - (iii) the order, or the failure to make an order,
 about which the appellant wants to appeal;
- (b) summarise the issues;
- (c) in an appeal against conviction or against a finding of guilt, to the best of the appellant’s ability and to assist the court in fulfilling its duty under rule 3.2 (the court’s duty of case management)—
  - (i) identify the witnesses who gave oral evidence in the magistrates’ court,
  - (ii) identify the witnesses who gave written evidence in the magistrates’ court,
  - (iii) identify the prosecution witnesses whom the appellant will want to question if they are called to give oral evidence in the Crown Court,
  - (iv) identify the likely defence witnesses,
  - (v) give notice of any special arrangements or other measures that the appellant thinks are needed for witnesses,

- (vi) explain whether the issues in the Crown Court differ from the issues in the magistrates' court, and if so how, and
  - (vii) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court;
  - (d) in an appeal against a sentence, order or failure to make an order—
    - (i) identify any circumstances, report or other information of which the appellant wants the court to take account, and
    - (ii) explain the significance of those circumstances or that information to what is in issue;
  - (e) in an appeal against a finding that the appellant insulted someone or interrupted proceedings in the magistrates' court, attach—
    - (i) the magistrates' court's written findings of fact, and
    - (ii) the appellant's response to those findings;
  - (f) say whether the appellant has asked the magistrates' court to reconsider the case; and
  - (g) include a list of those on whom the appellant has served the appeal notice.
- (2) A respondent's notice must—
- (a) give the date on which the respondent was served with the appeal notice; and
  - (b) to assist the court in fulfilling its duty under rule 3.2—
    - (i) identify the witnesses who gave oral evidence in the magistrates' court,
    - (ii) identify the witnesses who gave written evidence in the magistrates' court,
    - (iii) identify the prosecution witnesses whom the respondent intends to call to give oral evidence in the Crown Court,
    - (iv) give notice of any special arrangements or other measures that the respondent thinks are needed for witnesses,
    - (v) explain whether the issues in the Crown Court differ from the issues in the magistrates' court, and if so how, and
    - (vi) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court.
- (3) Paragraph (4) applies in an appeal against conviction or against a finding of guilt where in the magistrates' court a party to the appeal—
- (a) introduced in evidence material to which applies—
    - (i) Part 16 (Written witness statements),
    - (ii) Part 19 (Expert evidence),
    - (iii) Part 20 (Hearsay evidence),
    - (iv) Part 21 (Evidence of bad character), or
    - (v) Part 22 (Evidence of a complainant's previous sexual behaviour); or
  - (b) made an application to which applies—
    - (i) Part 17 (Witness summonses, warrants and orders),
    - (ii) Part 18 (Measures to assist a witness or defendant to give evidence), or
    - (iii) Part 23 (Restriction on cross-examination by a defendant).

(4) If such a party wants to reintroduce that material or to renew that application in the Crown Court that party must include a notice to that effect in the appeal or respondent's notice, as the case may be.

*[Note. The Practice Direction sets out forms of appeal and respondent's notices for use in connection with this rule.*

*In some cases, a magistrates' court can reconsider a conviction, sentence or other order and make a fresh decision. See section 142 of the Magistrates' Courts Act 1980(21).*

*See also rule 3.11 (Conduct of a trial or an appeal).]*

(c) for rule 34.4 (Duty of magistrates' court officer) substitute—

**“Duty of magistrates' court officer**

**34.4.—**(1) The magistrates' court officer must—

- (a) arrange for the magistrates' court to hear as soon as practicable any application to that court under rule 34.2(3)(c) (suspension of disqualification pending appeal); and
- (b) as soon as practicable notify the Crown Court officer of the service of the appeal notice and make available to that officer—
  - (i) the appeal notice and any accompanying application served by the appellant,
  - (ii) details of the parties including their addresses, and
  - (iii) a copy of each magistrates' court register entry relating to the decision under appeal and to any application for bail pending appeal.

(2) Where the appeal is against conviction or against a finding of guilt, the magistrates' court officer must make available to the Crown Court officer as soon as practicable—

- (a) all material served on the magistrate's court officer to which applies—
  - (i) Part 8 (Initial details of the prosecution case),
  - (ii) Part 16 (Written witness statements),
  - (iii) Part 17 (Witness summonses, warrants and orders),
  - (iv) Part 18 (Measures to assist a witness or defendant to give evidence),
  - (v) Part 19 (Expert evidence),
  - (vi) Part 20 (Hearsay evidence),
  - (vii) Part 21 (Evidence of bad character),
  - (viii) Part 22 (Evidence of a complainant's previous sexual behaviour),
  - (ix) Part 23 (Restriction on cross-examination by a defendant);
- (b) any case management questionnaire prepared for the purposes of the trial;
- (c) all case management directions given by the magistrates' court for the purposes of the trial; and
- (d) any other document, object or information for which the Crown Court officer asks.

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(21) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

(3) Where the appeal is against sentence, the magistrates' court officer must make available to the Crown Court officer as soon as practicable any report received for the purposes of sentencing.

(4) Unless the magistrates' court otherwise directs, the magistrates' court officer—

(a) must keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until at least—

(i) 6 weeks after the conclusion of those proceedings, or

(ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks; but

(b) need not keep such a document if—

(i) the document that was exhibited is a copy of a document retained by the party who produced it, and

(ii) what was in evidence in the magistrates' court was the content of that document.

*[Note. See also section 133 of the Criminal Justice Act 2003(22) (Proof of statements in documents).]*”;

(d) for rule 34.7 (Application to introduce further evidence or for ruling on procedure, evidence or other question of law) substitute—

#### **“Preparation for appeal**

**34.7.**—(1) The Crown Court may conduct a preparation for appeal hearing (and if necessary more than one such hearing) where—

(a) it is necessary to conduct such a hearing in order to give directions for the effective determination of the appeal; or

(b) such a hearing is required to set ground rules for the conduct of the questioning of a witness or appellant.

(2) Where under rule 34.3(4) a party gives notice to reintroduce material or to renew an application first introduced or made in the magistrates' court—

(a) no other notice or application to the same effect otherwise required by these Rules need be served; and

(b) any objection served by the other party in the magistrates' court is treated as renewed unless within 14 days that party serves notice withdrawing it.

(3) Paragraphs (4) and (5) apply where—

(a) the appeal is against conviction or against a finding of guilt;

(b) a party wants to introduce material or make an application under a Part of these Rules listed in rule 34.3(3); and

(c) that party gives no notice of reintroduction or renewal under rule 34.3(4) (whether because the conditions for giving such a notice are not met or for any other reason).

(4) Such a party must serve the material, notice or application required by that Part not more than 14 days after service of the appeal notice.

- (5) Subject to paragraph (4), the requirements of that Part apply (for example, as to the form in which a notice must be given or an application made and as to the time and form in which such a notice or application may be opposed).”;
- (e) in rule 34.11 (Constitution of the Crown Court), for paragraph (3) substitute—
- “(3) Before the hearing of an appeal begins and after that hearing ends—
- (a) the Crown Court may comprise only a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate; and
- (b) so constituted, the court may, among other things, exercise the powers to which apply—
- (i) the rules in this Part and in Part 3 (Case management), and
- (ii) rule 35.2 (stating a case for the opinion of the High Court, or refusing to do so).”;
- (f) amend the table of contents correspondingly.
- 9.** In Part 35 (Appeal to the High Court by case stated), after the second paragraph of the note to rule 35.2 (Application to state a case) insert—
- “Where Part 34 (Appeal to the Crown Court) applies, an application to which this rule applies may be determined by a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate without justices of the peace: see rule 34.11 (Constitution of the Crown Court).”.*
- 10.** In Part 36 (Appeal to the Court of Appeal: general rules)—
- (a) in rule 36.8 (Duty of Crown Court officer)—
- (i) in paragraph (5) for “serve on the Registrar” substitute “serve on or make available to the Registrar”,
- (ii) omit paragraph (5)(a), and
- (iii) renumber paragraph (5)(b) to (e) as (5)(a) to (d) respectively; and
- (b) in rule 36.14 (Grounds of appeal and opposition)—
- (i) in paragraph (3)(a) for “in writing” substitute “for permission to do so”,
- (ii) renumber paragraphs (4) and (5) as paragraphs (6) and (7) respectively, and
- (iii) after paragraph (3) insert—
- “(4) Paragraph (5) applies where one of the following Parts applies—
- (a) Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing);
- (b) Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution);
- (c) Part 39 (Appeal to the Court of Appeal about conviction or sentence); or
- (d) Part 40 (Appeal to the Court of Appeal about reporting or public access restriction).
- (5) An appellant who wants to rely on a ground of appeal not identified by the appeal notice must—
- (a) apply for permission to do so and identify each such ground;
- (b) in respect of each such ground—
- (i) explain why it was not included in the appeal notice, and
- (ii) where Part 39 applies, comply with rule 39.3(2);

- (c) serve the application on—
  - (i) the Registrar, and
  - (ii) any respondent;
- (d) serve the application—
  - (i) as soon as reasonably practicable, and in any event
  - (ii) at the same time as serving any renewed application for permission to appeal which relies on that ground.”

**11.** In Part 39 (Appeal to the Court of Appeal about conviction or sentence)—

- (a) for rule 39.2 (Service of appeal notice) substitute—

**“Service of appeal notice**

**39.2.** The appellant must serve an appeal notice on the Registrar—

- (a) not more than 28 days after—
  - (i) the conviction, verdict, or finding,
  - (ii) the sentence,
  - (iii) the order (subject to paragraph (b)), or the failure to make an order, or
  - (iv) the minimum term review decision under section 274(3) of, or paragraph 14 of Schedule 22 to, the Criminal Justice Act 2003about which the appellant wants to appeal;
- (b) not more than 21 days after the order in a case in which the appellant appeals against a wasted or third party costs order;
- (c) not more than 28 days after the Registrar serves notice that the Criminal Cases Review Commission has referred a conviction to the court.

*[Note. The time limit for serving an appeal notice (a) on an appeal under Part 1 of the Criminal Appeal Act 1968 and (b) on an appeal against a finding of contempt of court is prescribed by sections 18 and 18A of the Criminal Appeal Act 1968. It may be extended, but not shortened.*

*For service of a reference by the Criminal Cases Review Commission, see rule 39.5.J”; and*

- (b) in rule 39.3 (Form of appeal notice)—
  - (i) omit paragraph (1)(i), and
  - (ii) in the first paragraph of the note to the rule for “a form of appeal notice” substitute “forms of appeal notice”.

**12.** In Part 46 (Representatives), in rule 46.1(2)(a) (Functions of representatives and supporters) for “information” substitute “application for a summons or warrant”.

**13.** In Part 47 (Investigation orders and warrants), in rule 47.32 (Application for warrant under section 352 of the Proceeds of Crime Act 2002)—

- (a) in paragraph (2)(a) after “a detained cash investigation” insert “, a detained property investigation, a frozen funds investigation”;
- (b) for paragraph (2)(b)(ii) substitute—
  - “(ii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation, the cash or property involved, or the money held in

the frozen account, was obtained through unlawful conduct or is intended to be used in unlawful conduct;” and

(c) in paragraph (4)(b)—

(i) for “the person under investigation” substitute “the person, cash, property or money under investigation”,

(ii) for paragraph (4)(b)(iii) substitute—

“(iii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation into the derivation of cash, property or money, relates to the question whether that cash, property or money is recoverable property;”, and

(iii) for paragraph (4)(b)(iv) substitute—

“(iv) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation into the intended use of cash, property or money, relates to the question whether that cash, property or money is intended by any person to be used in unlawful conduct.”.

**14.** In Part 50 (Extradition)—

(a) in the first paragraph of the note to rule 50.3 (Exercise of court’s powers) for “information” substitute “allegation”; and

(b) in rule 50.10 (Issue of provisional arrest warrant)—

(i) in paragraph (2)(a) for “information” substitute “application for a warrant”, and

(ii) in paragraph (2)(b) for “the information” substitute “that application”.

*Burnett of Maldon, C.J.*

*Leveson, P.*

*William Davis, J.*

*Haddon-Cave, J.*

*Martin Picton*

*Martin Edmunds*

*Michael Snow*

*Louise Bryant*

*Nicola Hewer and Melissa Case*

*Siân Jones*

*Alison Saunders*

*Alison Pople*

*Nathaniel Rudolf*

*Paul Harris*

*Folashade Abiodun*

*Nicholas Ephgrave*

*David Kenyon*

*Jodie Blackstock*

I allow these Rules, which shall come into force on 1st October 2018.

11th July 2018

*David Gauke*  
Lord Chancellor

**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 Criminal Procedure Rules 2015, [S.I. 2015/1490](#), as follows:

<i>Rule</i>	<i>Amendment</i>
Part 3	Rule 3.1 is amended to include a reference to new rule 3.28. Rule 3.28 is added to impose detailed procedural requirements for commissioning a medical report about a defendant's mental health other than for sentencing purposes.
Part 5	The note to rule 5.8 is amended to include a reference to the Data Protection Act 2018. The note to rule 5.9 is amended to include a reference to the type of certificate for which section 92 of the Sexual Offences Act 2003 provides (certificates for purposes of Part 2 of that Act).
Part 28	The note to rule 28.3 is amended to clarify the reference to notification requirements under the Sexual Offences Act 2003. Rule 28.8 is amended to impose detailed procedural requirements for commissioning a medical report about a defendant's mental health for sentencing purposes.
Part 34	Rules 34.2, 34.3, 34.4 and 34.7 are amended to include requirements for the service of a respondent's notice and for the collection of case management information to facilitate preparation in the Crown Court for an effective appeal hearing there. Rule 34.11 is amended to clarify the power of a Crown Court judge to state a case for the opinion of the High Court, or to refuse to do so, following an appeal to the Crown Court.
Part 35	The note to rule 35.2 is amended to include a reference to the power of a Crown Court judge under rule 34.11.
Part 36	Rule 36.8 is amended in consequence of the amendment to rule 39.2. Rule 36.14 is amended to require an application to the Court of Appeal for permission to rely on a ground of appeal not identified by the appeal notice.
Part 39	Rule 39.2 is amended to require service of an appeal notice to which Part 39 applies on the Registrar of Criminal Appeals, not on the Crown Court officer.

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

Amendments to cross-references. The following rules, and notes to rules ('n'), of the Criminal Procedure Rules are amended to make consequential and other corrections to the cross-references that they contain: 24.17, 25.16, 39.3, 46.1, 47.32, 50.3(n) and 50.10.

These Rules come into force on 1st October 2018.