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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 3 E+W**

**CASE MANAGEMENT**

*GENERAL RULES*

**When this Part applies E+W**

**3.1.**—(1) Rules 3.1 to 3.15 apply to the management of each case in a magistrates' court and in the Crown Court (including an appeal to the Crown Court) until the conclusion of that case.

[<sup>F1</sup>(2) Rules 3.16 to 3.18 apply where the case must be tried in a magistrates' court, or the court orders trial there.]

(3) Rules 3.19 to 3.34 apply where—

- (a) the defendant is sent to the Crown Court for trial;
- (b) a High Court or Crown Court judge gives permission to serve a draft indictment; or
- (c) the Court of Appeal orders a retrial.

*[Note. Rules that apply to procedure in the Court of Appeal are in Parts 36 to 42 of these Rules.*

[<sup>F2</sup>At the first hearing in a magistrates' court the court may (and in some cases must) order trial in that court, or may (and in some cases must) send the defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998(1). See Part 9 (Allocation and sending for trial) for the procedure. The decision depends upon—

(a) the classification of the offence (and the general rule, subject to exceptions, is that an offence classified as triable only on indictment must be sent to the Crown Court for trial; an offence classified as triable only summarily must be tried in a magistrates' court; and an offence classified as triable either way, on indictment or summarily, must be allocated to one or the other court for trial, subject to the defendant's right to choose Crown Court trial: see in particular sections 50A, 51 and 51A of the 1998 Act(2) and section 19 of the Magistrates' Courts Act 1980(3));

(b) the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act(4));

(c) whether the defendant is awaiting Crown Court trial for another offence;

(d) whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence;

(e) in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000; and

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*(f) in a case of low-value shoplifting, whether the defendant chooses Crown Court trial: see section 22A of the 1980 Act(5).]*

*Under paragraph 2(1) of Schedule 17 to the Crime and Courts Act 2013 and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933, the Crown Court may give permission to serve a draft indictment where it approves a deferred prosecution agreement. See Part 11 for the rules about that procedure and Part 10 for the rules about indictments.*

*The procedure for applying for the permission of a High Court judge to serve a draft indictment is in rule 10.9 (Application to a High Court judge for permission to serve a draft indictment).*

*The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968(1) (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003(2) (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act, section 84 of the 2003 Act and rules 27.6 and 39.14 require the arraignment of a defendant within 2 months.]*

#### Textual Amendments

- F1** Rule 3.1(2) substituted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **4(a)(i)**
- F2** Words in rule 3.1 substituted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **4(a)(ii)**

#### Commencement Information

- I1** Rule 3.1 in force at 5.10.2020, see Preamble

### The duty of the court **E+W**

- 3.2.**—(1) The court must further the overriding objective by actively managing the case.
- (2) Active case management includes—
- the early identification of the real issues;
  - the early identification of the needs of witnesses;
  - achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
  - monitoring the progress of the case and compliance with directions;
  - ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
  - discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
  - encouraging the participants to co-operate in the progression of the case; and
  - making use of technology.

- (1) [1968 c. 19](#); section 8 was amended by Section 12 of, and paragraph 38 of Schedule 2 to, the [Bail Act 1976 \(c. 63\)](#), section 56 of, and Part IV of Schedule 11 to, the [Courts Act 1971 \(c. 23\)](#), section 65 of, and paragraph 36 of Schedule 3 to, the [Mental Health \(Amendment\) Act 1982 \(c. 51\)](#), section 148 of, and paragraph 23 of Schedule 4 to, the [Mental Health Act 1983 \(c. 20\)](#), section 43 of the [Criminal Justice Act 1988 \(c. 33\)](#), section 168 of, and paragraph 19 of Schedule 10 to, the [Criminal Justice and Public Order Act 1994 \(c. 33\)](#), section 58 of the [Access to Justice Act 1999 \(c. 22\)](#), sections 41 and 332 of, and paragraph 43 of Schedule 3 to, and Part 4 of Schedule 37 to, the [Criminal Justice Act 2003 \(c. 44\)](#) and section 32 of, and paragraph 2 of Schedule 4 to, the [Mental Health Act 2007 \(c. 12\)](#).
- (2) [2003 c. 44](#).

(3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

(4) Where appropriate live links are available, making use of technology for the purposes of this rule includes directing the use of such facilities, whether an application for such a direction is made or not—

- (a) for the conduct of a pre-trial hearing, including a pre-trial case management hearing;
- (b) for the defendant's attendance at such a hearing—
  - (i) where the defendant is in custody, or where the defendant is not in custody and wants to attend by live link, but
  - (ii) only if the court is satisfied that the defendant can participate effectively by such means, having regard to all the circumstances including whether the defendant is represented or not; and
- (c) for receiving evidence under one of the powers to which the rules in Part 18 apply (Measures to assist a witness or defendant to give evidence).

(5) Where appropriate telephone facilities are available, making use of technology for the purposes of this rule includes directing the use of such facilities, whether an application for such a direction is made or not, for the conduct of a pre-trial case management hearing—

- (a) if telephone facilities are more convenient for that purpose than live links;
- (b) unless at that hearing the court expects to take the defendant's plea; and
- (c) only if—
  - (i) the defendant is represented, or
  - (ii) exceptionally, the court is satisfied that the defendant can participate effectively by such means without a representative.

*[Note. In relation to the defendant's attendance by live link at a pre-trial hearing, see sections 46ZA and 47 of the Police and Criminal Evidence Act 1984(3) and sections 57A to 57D and 57F of the Crime and Disorder Act 1998(4).*

*In relation to the giving of evidence by a witness and the giving of evidence by the defendant, see section 32 of the Criminal Justice Act 1988(5), sections 19, 24 and 33A of the Youth Justice and Criminal Evidence Act 1999(6) and section 51 of the Criminal Justice Act 2003(7). Part 18 (Measures to assist a witness or defendant to give evidence) contains relevant rules.]*

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- (3) 1984 c. 60; section 46ZA was inserted by section 46 of the Police and Justice Act 2006 (c. 48) and amended by section 107 of the Coroners and Justice Act 2009 (c. 25). Section 47 was amended by sections 27, 29 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 46 of the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 283 of Schedule 8 to, the Courts Act 2003 (c. 39), sections 12 and 28 of, and paragraphs 1 and 10 of Schedule 1 and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), sections 10 and 46 of, and paragraphs 1, 6 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48) and section 1 of the Police (Detention and Bail) Act 2011 (c. 9).
  - (4) 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). Section 57A was amended by section 109 of the Coroners and Justice Act 2009 (c. 25) and section 105 of, and paragraphs 36 and 39 of Schedule 12 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Sections 57B, 57C and 57D were amended by section 106 of the Coroners and Justice Act 2009 (c. 25). Section 57F was inserted by section 109 of the Coroners and Justice Act 2009 (c. 25).
  - (5) 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 article 3 of, and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.
  - (6) 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 102(1) of the Coroners and Justice Act 2009 (c. 25). Section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).
  - (7) 2003 c. 44.

*Status: Point in time view as at 04/10/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, Cross Heading: GENERAL RULES. (See end of Document for details)*

### Commencement Information

**I2** Rule 3.2 in force at 5.10.2020, see Preamble

### The duty of the parties **E+W**

**3.3.**—(1) Each party must—

- (a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and
- (b) apply for a direction if needed to further the overriding objective.

(2) Active assistance for the purposes of this rule includes—

- (a) at the beginning of the case, communication between the prosecutor and the defendant at the first available opportunity and in any event no later than the beginning of the day of the first hearing;
- (b) after that, communication between the parties and with the court officer until the conclusion of the case;
- (c) by such communication establishing, among other things—
  - (i) whether the defendant is likely to plead guilty or not guilty,
  - (ii) what is agreed and what is likely to be disputed,
  - (iii) what information, or other material, is required by one party of another, and why, and
  - (iv) what is to be done, by whom, and when (without or if necessary with a direction);
- (d) reporting on that communication to the court—
  - (i) at the first hearing, and
  - (ii) after that, as directed by the court; <sup>F3</sup>...
- (e) alerting the court to any reason why—
  - (i) a direction should not be made in any of the circumstances listed in rule 3.2(4) or (5) (The duty of the court: use of live link or telephone facilities), or
  - (ii) such a direction should be varied or revoked;
- <sup>F4</sup>(f) alerting the court to any potential impediment to the defendant's effective participation in the trial; and
- (g) alerting the court to any related family proceedings or anticipated such proceedings as soon as reasonably practicable after becoming aware of them.]

### Textual Amendments

- F3** Word in rule 3.3(2)(d) omitted (5.4.2021) by virtue of [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(a), **6(a)(i)**
- F4** Rule 3.3(2)(f)(g) inserted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(a), **6(a)(ii)**

### Commencement Information

**I3** Rule 3.3 in force at 5.10.2020, see Preamble

### Case progression officers and their duties **E+W**

- 3.4.**—(1) At the beginning of the case each party must, unless the court otherwise directs—
- (a) nominate someone responsible for progressing that case; and
  - (b) tell other parties and the court who that is and how to contact that person.
- (2) In fulfilling its duty under rule 3.2, the court must where appropriate—
- (a) nominate a court officer responsible for progressing the case; and
  - (b) make sure the parties know who that is and how to contact that court officer.
- (3) In this Part a person nominated under this rule is called a case progression officer.
- (4) A case progression officer must—
- (a) monitor compliance with directions;
  - (b) make sure that the court is kept informed of events that may affect the progress of that case;
  - (c) make sure that he or she can be contacted promptly about the case during ordinary business hours;
  - (d) act promptly and reasonably in response to communications about the case; and
  - (e) if he or she will be unavailable, appoint a substitute to fulfil his or her duties and inform the other case progression officers.

#### Commencement Information

**I4** Rule 3.4 in force at 5.10.2020, see Preamble

### The court's case management powers **E+W**

**3.5.**—(1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.

- (2) In particular, the court may—
- (a) nominate a judge, magistrate or justices' legal adviser to manage the case;
  - (b) give a direction on its own initiative or on application by a party;
  - (c) ask or allow a party to propose a direction;
  - (d) receive applications, notices, representations and information by letter, by telephone, by live link, by email or by any other means of electronic communication, and conduct a hearing by live link, telephone or other such electronic means;
  - (e) give a direction—
    - (i) at a hearing, in public or in private, or
    - (ii) without a hearing;
  - (f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
  - (g) shorten or extend (even after it has expired) a time limit fixed by a direction;
  - (h) require that issues in the case should be—
    - (i) identified in writing,
    - (ii) determined separately, and decide in what order they will be determined; <sup>F5</sup>...
  - (i) specify the consequences of failing to comply with a direction;

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- [<sup>F6</sup>(j) request information from a court dealing with family proceedings by—
- (i) making the request itself, or
  - (ii) directing the court officer or a party to make the request on the criminal court’s behalf; and
- (k) supply information to a court dealing with family proceedings as if [<sup>F7</sup>a request] had been made under rule 5.8(7) [<sup>F8</sup>(Request for information about a case)] by—
- (i) supplying the information itself, or
  - (ii) directing the court officer or a party to supply that information on the criminal court’s behalf.]

(3) A magistrates’ court may give a direction that will apply in the Crown Court if the case is to continue there.

(4) The Crown Court may give a direction that will apply in a magistrates’ court if the case is to continue there.

(5) Any power to give a direction under this Part includes a power to vary or revoke that direction.

(6) If a party fails to comply with a rule or a direction, the court may—

- (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
- (b) exercise its powers to make a costs order; and
- (c) impose such other sanction as may be appropriate.

*[Note. Depending upon the nature of a case and the stage that it has reached, its progress may be affected by other Criminal Procedure Rules and by other legislation. The note at the end of this Part lists other rules and legislation that may apply.]*

*See also rule 3.8 (Case preparation and progression).*

*The court may make a costs order under—*

- (a) *section 19 of the Prosecution of Offences Act 1985(8), where the court decides that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party;*
- (b) *section 19A of that Act(9), where the court decides that a party has incurred costs as a result of an improper, unreasonable or negligent act or omission on the part of a legal representative;*
- (c) *section 19B of that Act(10), where the court decides that there has been serious misconduct by a person who is not a party.*

*Under some other legislation, including Parts 19, 20 and 21 of these Rules, if a party fails to comply with a rule or a direction then in some circumstances—*

- (a) *the court may refuse to allow that party to introduce evidence;*
- (b) *evidence that that party wants to introduce may not be admissible;*

(8) 1985 c. 23; section 19 was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 45 of, and Schedule 6 to, the Legal Aid Act 1988 (c. 34), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 24 of, and paragraphs 27 and 28 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), 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 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), section 6 of, and paragraph 32 of Schedule 4 and paragraphs 1 and 5 of Schedule 27 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 22 and 23 of Schedule 5, and paragraphs 1 and 5 and Part 4 of Schedule 7, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(9) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(10) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

(c) *the court may draw adverse inferences from the late introduction of an issue or evidence.*

See also—

- (a) *section 81(1) of the Police and Criminal Evidence Act 1984(11) and section 20(3) of the Criminal Procedure and Investigations Act 1996(12) (advance disclosure of expert evidence);*
- (b) *section 11(5) of the Criminal Procedure and Investigations Act 1996(13) (faults in disclosure by accused);*
- (c) *section 132(5) of the Criminal Justice Act 2003(14) (failure to give notice of hearsay evidence).]*

#### Textual Amendments

- F5** Word in rule 3.5(2)(h) omitted (5.4.2021) by virtue of [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(a), **6(b)(i)**
- F6** [Rule 3.5\(2\)\(j\)\(k\)](#) inserted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(a), **6(b)(ii)**
- F7** Words in rule 3.5(2)(k) substituted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **4(b)(i)**
- F8** Words in rule 3.5(2)(k) substituted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **4(b)(ii)**

#### Commencement Information

- I5** Rule 3.5 in force at 5.10.2020, see Preamble

### Application to vary a direction **E+W**

**3.6.**—(1) A party may apply to vary a direction if—

- (a) the court gave it without a hearing;
- (b) the court gave it at a hearing in that party’s absence; or
- (c) circumstances have changed.

(2) A party who applies to vary a direction must—

- (a) apply as soon as practicable after becoming aware of the grounds for doing so; and
- (b) give as much notice to the other parties as the nature and urgency of the application permits.

#### Commencement Information

- I6** Rule 3.6 in force at 5.10.2020, see Preamble

### Agreement to vary a time limit fixed by a direction **E+W**

**3.7.**—(1) The parties may agree to vary a time limit fixed by a direction, but only if—

- (a) the variation will not—

(11) 1984 c. 60; section 81(1) was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c.39).

(12) 1996 c. 25; section 20(3) was amended by section 109(1) of, and paragraph 378 of Schedule 8 to, the Courts Act 2003 (c.39).

(13) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).

(14) 2003 c. 44.

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*Changes to legislation: There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, Cross Heading: GENERAL RULES. (See end of Document for details)*

- (i) affect the date of any hearing that has been fixed, or
  - (ii) significantly affect the progress of the case in any other way;
  - (b) the court has not prohibited variation by agreement; and
  - (c) the court's case progression officer is promptly informed.
- (2) The court's case progression officer must refer the agreement to the court if in doubt that the condition in paragraph (1)(a) is satisfied.

#### Commencement Information

**I7** Rule 3.7 in force at 5.10.2020, see Preamble

### Case preparation and progression **E+W**

**3.8.**—(1) At every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

- (2) At every hearing the court must, where relevant—
- (a) if the defendant is absent, decide whether to proceed nonetheless;
  - (b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;
  - (c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;
  - (d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and
  - (e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.
- (3) In order to prepare for the trial, the court must take every reasonable step—
- (a) to encourage and to facilitate the attendance of witnesses when they are needed; and
  - (b) to facilitate the participation of any person, including the defendant.
- (4) Facilitating the participation of the defendant includes finding out whether the defendant needs interpretation because—
- (a) the defendant does not speak or understand English; or
  - (b) the defendant has a hearing or speech disorder.
- (5) Where the defendant needs interpretation—
- (a) the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend;
  - (b) interpretation may be by an intermediary where the defendant has a speech disorder, without the need for a defendant's evidence direction;
  - (c) on application or on its own initiative, the court may require a written translation to be provided for the defendant of any document or part of a document, unless—
    - (i) translation of that document, or part, is not needed to explain the case against the defendant, or
    - (ii) the defendant agrees to do without and the court is satisfied that the agreement is clear and voluntary and that the defendant has had legal advice or otherwise understands the consequences; and



- (d) on application by the defendant, the court must give any direction which the court thinks appropriate, including a direction for interpretation by a different interpreter, where—
  - (i) no interpretation is provided,
  - (ii) no translation is ordered or provided in response to a previous application by the defendant, or
  - (iii) the defendant complains about the quality of interpretation or of any translation.
- (6) Facilitating the participation of any person includes giving directions for the appropriate treatment and questioning of a witness or the defendant, especially where the court directs that such questioning is to be conducted through an intermediary.
- (7) Where directions for appropriate treatment and questioning are required, the court must—
  - (a) invite representations by the parties and by any intermediary; and
  - (b) set ground rules for the conduct of the questioning, which rules may include—
    - (i) a direction relieving a party of any duty to put that party’s case to a witness or a defendant in its entirety,
    - (ii) directions about the manner of questioning,
    - (iii) directions about the duration of questioning,
    - (iv) if necessary, directions about the questions that may or may not be asked,
    - (v) directions about the means by which any intermediary may intervene in questioning, if necessary,
    - (vi) where there is more than one defendant, the allocation among them of the topics about which a witness may be asked, and
    - (vii) directions about the use of models, plans, body maps or similar aids to help communicate a question or an answer.

[Note. Part 18 (Measures to assist a witness or defendant to give evidence) contains rules about an application for a defendant’s evidence direction under (among other provisions) sections 33BA and 33BB of the Youth Justice and Criminal Evidence Act 1999(15).

F9  
.....

Where a trial in a magistrates’ court will take place in Wales, a participant may use the Welsh language: see rule 3.18. Where a trial in the Crown Court will take place in Wales and a participant wishes to use the Welsh language, see rule 3.34.]

<b>Textual Amendments</b>	
<b>F9</b>	Words in rule 3.8 Note omitted (8.2.2021) by virtue of <a href="#">The Criminal Procedure (Amendment) Rules 2021 (S.I. 2021/40)</a> , rules 2, 6(c)
<b>Commencement Information</b>	
<b>I8</b>	Rule 3.8 in force at 5.10.2020, see Preamble

**Ground rules hearing** E+W

**3.9.—(1)** This rule applies where the court exercises the powers to which rule 3.8(6) and (7) apply (directions for appropriate treatment and questioning of a witness or defendant).

(15) 1999 c. 23; sections 33BA and 33BB are inserted by section 104 of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

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*Changes to legislation: There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, Cross Heading: GENERAL RULES. (See end of Document for details)*

- (2) At a pre-trial case management hearing convened for the purpose—
- (a) the parties and any intermediary must—
    - (i) attend, unless the court otherwise directs, and
    - (ii) actively assist the court in setting ground rules and giving directions;
  - (b) the court must—
    - (i) discuss proposed ground rules and directions with the parties and any intermediary,
    - (ii) set ground rules for the conduct of questioning of the witness or defendant, as applicable, and
    - (iii) give such other directions as may be required to facilitate the effective participation of that witness or defendant; and
  - (c) despite rule 3.14(b) (court officer’s duty to make a record of directions), the court may require the parties—
    - (i) to make a record of those ground rules and directions, and
    - (ii) to serve that record on each other, on any intermediary and on the court officer.
- (3) In setting such ground rules and giving such directions, the court must have regard to—
- (a) any intermediary’s report;
  - (b) the parties’ representations; and
  - (c) such other information or advice as the court requires.
- (4) The ground rules for questioning set by the court may include any listed in rule 3.8(7)(b).
- (5) The directions given by the court may include any about—
- (a) the timetable for the submission of proposed questions;
  - (b) the timetable for the trial, including the taking of breaks during proceedings;
  - (c) seating arrangements in the court room for the defendant, the defendant’s advocate and legal representative, any intermediary and any parent, guardian or other companion of the defendant; and
  - (d) any explanation to be given to the jury, if there is one, of—
    - (i) the witness’ or the defendant’s communication needs and behaviour, as applicable, and
    - (ii) the role of the intermediary, if there is one.

*[Note. See also rule 3.16 (Pre-trial hearings in a magistrates’ court: general rules) and rule 3.21 (Pre-trial hearings in the Crown Court: general rules).]*

#### **Commencement Information**

**19** Rule 3.9 in force at 5.10.2020, see Preamble

### **Directions for commissioning medical reports, other than for sentencing purposes** E+W

**3.10.**—(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>(16)</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>(17)</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,
  - (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

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<sup>(16)</sup> 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).

<sup>(17)</sup> 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).

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- (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(18), under which the court may order the defendant’s detention in hospital to obtain a medical report;*
- (c) *section 36 of the 1983 Act(19), under which the Crown Court may order the defendant’s detention in hospital instead of in custody pending trial or sentence;*
- (d) *section 37 of the 1983 Act(20), 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);*
- (e) *section 38 of the 1983 Act(21), under which the court may order the defendant’s temporary detention and treatment in hospital instead of disposing of the case in another way;*

**(18)** 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).

**(19)** 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).

**(20)** 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 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.

**(21)** 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).

- (f) section 157 of the Criminal Justice Act 2003(22), 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(23)(in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(24) (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(25), 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(26).

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(27) and by the Costs in Criminal Cases (General) Regulations 1986(28), 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.]

#### Commencement Information

**110** Rule 3.10 in force at 5.10.2020, see Preamble

### Hearing to inform the court of sensitive material **E+W**

**3.11.—**(1) This rule applies where the prosecutor has, or is aware of, material—

- (22) 2003 c. 44; section 157 was amended by section 38 of the Health and Social Care Act 2012 (c. 7).
- (23) 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), section 73 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 62 of, and paragraph 48 of Schedule 5 to, the Children and Social Work Act 2017 (c. 16).
- (24) 2008 c. 4.
- (25) 2000 c. 6.
- (26) 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).
- (27) 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 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).
- (28) 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.

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- (a) the revelation of which to the public or to the defendant the prosecutor thinks would give rise to a real risk of serious prejudice to an important public interest;
  - (b) to which the prosecutor does not think the obligation to disclose prosecution material applies, under Part I of the Criminal Procedure and Investigations Act 1996; but
  - (c) of the existence of which the prosecutor thinks it necessary to inform the court to avoid—
    - (i) potential unfairness to the defendant in the conduct of the trial,
    - (ii) potential prejudice to the fair management of the trial, or
    - (iii) potential prejudice to that public interest.
- (2) Such a prosecutor must—
- (a) ask for a hearing so to inform the court; and
  - (b) notify the defendant of that request only to such extent, if any, and at such time, if at all, as the court directs.
- (3) At or before the hearing the prosecutor must—
- (a) explain—
    - (i) why the hearing is necessary, and
    - (ii) why it is necessary for the hearing to take place in the defendant’s absence;
  - (b) explain to what extent, if any, and when, if at all, the defendant should be informed—
    - (i) of the hearing, and
    - (ii) of the material of which the prosecutor wants to inform the court; and
  - (c) provide or describe the material to the court—
    - (i) only to the extent needed to achieve the purpose for which the hearing is convened, and
    - (ii) in such manner as the court directs.
- (4) Unless the court otherwise directs—
- (a) any such hearing—
    - (i) must be in private, and
    - (ii) must take place in the defendant’s absence;
  - (b) the court officer must not give notice to anyone other than the prosecutor of—
    - (i) the court’s decision on the request for a hearing,
    - (ii) the arrangements for any such hearing, and
    - (iii) any directions given at such a hearing; and
  - (c) the court officer may—
    - (i) keep any written representations or material received under this rule, or
    - (ii) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

#### **Commencement Information**

**III** Rule 3.11 in force at 5.10.2020, see Preamble

### Readiness for trial or appeal **E+W**

**3.12.**—(1) This rule applies to a party’s preparation for trial or appeal, and in this rule and rule 3.13 ‘trial’ includes any hearing at which evidence will be introduced.

- (2) In fulfilling the duty under rule 3.3, each party must—
- (a) comply with directions given by the court;
  - (b) take every reasonable step to make sure that party’s witnesses will attend when they are needed;
  - (c) make appropriate arrangements to present any written or other material; and
  - (d) promptly inform the court and the other parties of anything that may—
    - (i) affect the date or duration of the trial or appeal, or
    - (ii) significantly affect the progress of the case in any other way.
- (3) The court may require a party to give a certificate of readiness.

#### Commencement Information

**I12** Rule 3.12 in force at 5.10.2020, see Preamble

### Conduct of a trial or an appeal **E+W**

- 3.13.** In order to manage a trial or an appeal, the court—
- (a) must establish, with the active assistance of the parties, what are the disputed issues;
  - (b) must consider setting a timetable that—
    - (i) takes account of those issues and of any timetable proposed by a party, and
    - (ii) may limit the duration of any stage of the hearing;
  - (c) may require a party to identify—
    - (i) which witnesses that party wants to give evidence in person,
    - (ii) the order in which that party wants those witnesses to give their evidence,
    - (iii) whether that party requires an order compelling the attendance of a witness,
    - (iv) what arrangements are desirable to facilitate the giving of evidence by a witness,
    - (v) what arrangements are desirable to facilitate the participation of any other person, including the defendant,
    - (vi) what written evidence that party intends to introduce,
    - (vii) what other material, if any, that person intends to make available to the court in the presentation of the case, and
    - (viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal; and
  - (d) may limit—
    - (i) the examination, cross-examination or re-examination of a witness, and
    - (ii) the duration of any stage of the hearing.

[Note. See also rules 3.5 (The court’s case management powers) and 3.8 (Case preparation and progression).]

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#### Commencement Information

**I13** Rule 3.13 in force at 5.10.2020, see Preamble

#### Duty of court officer **E+W**

**3.14.** The court officer must—

- (a) where a person is entitled or required to attend a hearing, give as much notice as reasonably practicable to—
  - (i) that person, and
  - (ii) that person’s custodian (if any); and
- (b) where the court gives directions, promptly make a record available to the parties.

*[<sup>F10</sup>Note. See also rule 5.9 (Request for information by a party or person directly affected by a case).]]*

#### Textual Amendments

**F10** Rule 3.14 Note substituted (4.10.2021) by [The Criminal Procedure \(Amendment No. 2\) Rules 2021 \(S.I. 2021/849\)](#), rules 1, **4(c)**

#### Commencement Information

**I14** Rule 3.14 in force at 5.10.2020, see Preamble

#### Court’s power to vary requirements under this Part **E+W**

**3.15.—**(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit set by this Part; and
  - (b) allow an application or representations to be made orally.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application or representations for which it is needed; and
  - (b) explain the delay.

#### Commencement Information

**I15** Rule 3.15 in force at 5.10.2020, see Preamble



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