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STATUTORY INSTRUMENTS

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**1981 No. 552 (L. 1)**

**MAGISTRATES' COURTS  
PROCEDURE**

**The Magistrates' Courts Rules 1981**

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| <i>Made</i>                   | - - - - | <i>20th March 1981</i> |
| <i>Laid before Parliament</i> |         | <i>8th April 1981</i>  |
| <i>Coming into Operation</i>  |         | <i>6th July 1981</i>   |

The Lord Chancellor, in exercise of the power conferred on him by section 144 of the Magistrates' Courts Act 1980(1), as extended by section 145 of that Act, after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:—

GENERAL

**Citation, operation and revocations**

1.—(1) These Rules may be cited as the Magistrates' Courts Rules 1981 and shall come into operation on 6th July 1981.

(2) The Rules mentioned in the Schedule to these Rules are hereby revoked; but where proceedings were commenced before 6th July 1981 and the old enactments within the meaning of paragraphs 1 and 2(2) of Schedule 8 to the Magistrates' Courts Act 1980 continue to apply by virtue of paragraph 2(1) of the said Schedule 8, the provisions of the Rules so mentioned continue to apply and nothing in these Rules affects those provisions.

**Interpretation**

2.—(1) In these Rules—

“the Act of 1978” means the Domestic Proceedings and Magistrates' Courts Act 1978(2);

“the Act of 1980” means the Magistrates' Courts Act 1980;

“child” means a person who has not attained the age of 18;

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(1) 1980 c. 43.  
(2) 1978 c. 22.

“contribution order” has the meaning assigned to it by section 87 of the Children and Young Persons Act 1933(3);

“judgment summons” has the meaning assigned to it by rule 58.

(2) In these Rules “legal aid order” and “statement of means” have the meanings assigned to them by regulation 31(1) of the Legal Aid in Criminal Proceedings (General) Regulations 1968(4).

(3) In these Rules a reference to the person with whom a child has his home shall be construed in accordance with Part IV of the Children Act 1975(5), except that, in the case of any child in the care of a local authority, the local authority shall be treated for the purposes of these Rules as the person with whom the child has his home.

(4) In these Rules a reference to “the authorised persons for the police area” is a reference to the persons employed by a local authority in that area or by the chief officer of police or the police authority for that area who are authorised by the chief officer of police to execute warrants.

(5) Any requirement in these Rules that a document shall be in the prescribed form shall be construed as a requirement that the document shall be in the form prescribed in that behalf by rules made under section 144 of the Act of 1980, or a form to like effect.

(6) In these Rules any reference to a rule shall be construed as a reference to a rule contained in these Rules; and any reference in a rule to a paragraph shall be construed as a reference to a paragraph of that rule.

### **Saving for the Magistrates' Courts (Children and Young Persons) Rules 1970**

3. The provisions of these Rules shall have effect subject to the provisions of the Magistrates' Courts (Children and Young Persons) Rules 1970(6).

## **INFORMATION AND COMPLAINT**

### **Information and complaint**

4.—(1) An information may be laid or complaint made by the prosecutor or complainant in person or by his counsel or solicitor or other person authorised in that behalf.

(2) Subject to any provision of the Act of 1980 and any other enactment, an information or complaint need not be in writing or on oath.

(3) It shall not be necessary in an information or complaint to specify or negative an exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint contained in the enactment creating the offence or on which the complaint is founded.

## **PROCEEDINGS PRELIMINARY TO TRIAL ON INDICTMENT**

### **Restrictions on reports of committal proceedings**

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

(3) 1933 c. 12; section 87 was amended by the Children and Young Persons Act 1969 (c. 54), section 72(3) and Schedule 5, paragraph 9 and the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 89(2)(a) and Schedule 2, paragraph 3.

(4) S.I. 1968/1231, to which there are amendments not relevant to these Rules.

(5) 1975 c. 72.

(6) S.I. 1970/1792, amended by S.I. 1976/1769, 1978/869.

of committal proceedings imposed by section 8 of the Act of 1980 and inform him of his right to apply to the court for an order removing those restrictions.

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

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

### **Committal for trial without consideration of evidence**

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

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

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

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

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

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

or words to that effect:

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

(5) Where the court has given to the accused the warning required by paragraph (4) the clerk of the court shall give to him written notice of the provisions of section 11 of the Criminal Justice Act 1967(7) about giving notice of particulars of alibi to the solicitor for the prosecution and the solicitor's name and address shall be stated in the notice.

### **Taking depositions of witnesses and statement of accused**

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

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

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(7) 1967 c. 80.

shall cause his deposition to be read to him in the presence and hearing of the accused, and shall require the witness to sign the deposition:

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

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

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

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

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

(7) The court shall then ask the accused whether he wishes to say anything in answer to the charge and, if he is not represented by counsel or a solicitor, shall before asking the question say to him—  
“You will have an opportunity to give evidence on oath before us and to call witnesses. But first I am going to ask you whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so. Anything you say will be taken down and may be given in evidence at your trial. You should take no notice of any promise or threat which any person may have made to persuade you to say anything.”,

or words to that effect.

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

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

“I must warn you that if this court should commit you for trial you may not be permitted at that trial to give evidence of an alibi or to call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the solicitor for the prosecution not later than 7 days from the end of these committal proceedings.”,  
or words to that effect and, if it appears to the court that the accused may not understand the meaning of the term “alibi”, the court shall explain it to him:

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

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

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

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

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

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

### **Order for attendance of witness at court of trial**

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

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

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

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

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

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

### **Notice to governor of prison of committal on bail**

**9.**—(1) Where the accused is committed for trial on bail, the clerk of the court shall give notice thereof in writing to the governor of the prison to which persons of the sex of the person committed are committed by that court if committed in custody for trial and also, if the person committed is under 21, to the governor of the remand centre to which he would have been committed if the court had refused him bail.

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

### **Notices on committal of person subject to transfer direction**

**10.** Where a transfer direction has been given by the Secretary of State under section 73 of the Mental Health Act 1959<sup>(9)</sup> in respect of a person remanded in custody by a magistrates' court and, before the direction ceases to have effect, that person is committed for trial, the clerk of the court shall give notice in the prescribed form—

- (a) to the governor of the prison to which persons of the sex of that person are committed by that court if committed in custody for trial; and

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<sup>(8)</sup> 1965 c. 69.

<sup>(9)</sup> 1959 c. 72.

- (b) to the managers of the hospital where he is detained.

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

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

(2) As soon as practicable after the committal of any person for trial, and in any case within 4 days from the date of his committal (not counting Sundays, Good Friday, Christmas Day or Bank Holidays), the clerk of the magistrates' court that committed him shall, subject to the provisions of section 5 of the Prosecution of Offences Act 1979<sup>(10)</sup> (which relates to the sending of documents and things to the Director of Public Prosecutions), send to the appropriate officer of the Crown Court—

- (a) the information, if it is in writing;
  - (b) the depositions and written statements tendered in evidence, together with a certificate authenticating the depositions and statements, and any admission of facts made for the purposes of the committal proceedings under section 10 of the Criminal Justice Act 1967 and not withdrawn;
  - (c) all statements made by the accused before the magistrates' court;
  - (d) a list of the names, addresses and occupations of the witnesses in respect of whom witness orders have been made;
  - (e) a copy of the record made in pursuance of section 5 of the Bail Act 1976<sup>(11)</sup> relating to the grant or withholding of bail in respect of the accused on the occasion of the committal;
  - (f) any recognizance entered into by any person as surety for the accused together with a statement of any enlargement thereof under section 129(4) of the Act of 1980;
  - (g) a list of the documents and articles produced in evidence before the justices or treated as so produced;
  - (h) such of the documents and articles referred to in the last preceding sub-paragraph as have been retained by the justices;
  - (i) a certificate showing whether the accused was informed at the committal proceedings of the requirements of section 11 of the Criminal Justice Act 1967 (notice of alibi) and a record of any particulars given by him to the magistrates' court under that section;
  - (j) if the committal was under section 6(2) of the Act of 1980 (committal for trial without consideration of the evidence), a statement to that effect;
  - (k) if the magistrates' court has made an order under section 8(2) of the Act of 1980 (removal of restrictions on reports of committal proceedings), a statement to that effect;
  - (l) the certificate of the examining justices as to costs of prosecution (Form B in the Schedule to the Costs in Criminal Cases Regulations 1908<sup>(12)</sup>);
  - (m) if any person under the age of 17 is concerned in the committal proceedings, a statement whether the magistrates' court has given a direction under section 39 of the Children and Young Persons Act 1933 (prohibition of publication of certain matter in newspapers).
- (3) The clerk shall retain a copy of any list sent in pursuance of paragraph (2)(d).

<sup>(10)</sup> 1979 c. 31.

<sup>(11)</sup> 1976 c. 63.

<sup>(12)</sup> S.R. & O. 1908/1001.

(4) The period of 4 days specified in paragraph (2) may be extended in relation to any committal for so long as the appropriate officer of the Crown Court directs, having regard to the length of any document mentioned in that paragraph or any other relevant circumstances.

## SUMMARY TRIAL OF INFORMATION AND HEARING OF COMPLAINT

### **Information to be for one offence only**

**12.**—(1) Subject to any Act passed after 2nd October 1848, a magistrates' court shall not proceed to the trial of an information that charges more than one offence.

(2) Nothing in this rule shall prohibit 2 or more informations being set out in one document.

### **Order of evidence and speeches: information**

**13.**—(1) On the summary trial of an information, where the accused does not plead guilty, the prosecutor shall call the evidence for the prosecution, and before doing so may address the court.

(2) At the conclusion of the evidence for the prosecution, the accused may address the court, whether or not he afterwards makes an unsworn statement or calls evidence.

(3) At the conclusion of the evidence, if any, for the defence, the prosecutor may call evidence to rebut that evidence.

(4) At the conclusion of the evidence for the defence and any unsworn statement which the accused may make and the evidence, if any, in rebuttal, the accused may address the court if he has not already done so.

(5) Either party may, with the leave of the court, address the court a second time, but where the court grants leave to one party it shall not refuse leave to the other.

(6) Where both parties address the court twice the prosecutor shall address the court for the second time before the accused does so.

### **Order of evidence and speeches: complaint**

**14.**—(1) On the hearing of a complaint, except where the court determines under section 53(3) of the Act of 1980 to make the order with the consent of the defendant without hearing evidence, the complainant shall call his evidence, and before doing so may address the court.

(2) At the conclusion of the evidence for the complainant the defendant may address the court, whether or not he afterwards calls evidence.

(3) At the conclusion of the evidence, if any, for the defence, the complainant may call evidence to rebut that evidence.

(4) At the conclusion of the evidence for the defence and the evidence, if any, in rebuttal, the defendant may address the court if he has not already done so.

(5) Either party may, with the leave of the court, address the court a second time, but where the court grants leave to one party it shall not refuse leave to the other.

(6) Where the defendant obtains leave to address the court for a second time his second address shall be made before the second address, if any, of the complainant.

### **Adjournment of trial of information**

**15.**—(1) Where in the absence of the accused a magistrates' court adjourns the trial of an information, the clerk of the court shall give to the accused notice in writing of the time and place at which the trial is to be resumed.

(2) Service of the notice required to be given by paragraph (1) may be effected in any manner in which service of a summons may be effected under paragraph (1) or (3) of rule 99 and paragraph (2) of that rule shall apply to the proof of service of the notice as it applies to the proof of service of a summons in respect of the offence charged in the information.

### **Form of conviction or order**

**16.**—(1) A form of summary conviction or order made on complaint shall be drawn up if required for an appeal or other legal purpose, and if drawn up shall be in such one of the prescribed forms as is appropriate to the case.

(2) Where the conviction is of an offence that could not have been tried summarily without the consent of the accused, the conviction shall contain a statement that the accused consented to the summary trial.

### **Committals for sentence, etc.**

**17.**—(1) Where a magistrates' court commits an offender to the Crown Court under the Vagrancy Act 1824(**13**), section 37 or 38 of the Act of 1980, section 56(1) or 62(6) of the Criminal Justice Act 1967(**14**), section 24(2)(a) of the Powers of Criminal Courts Act 1973(**15**) or section 6 of the Bail Act 1976 after convicting him of an offence, the clerk of the magistrates' court shall send to the appropriate officer of the Crown Court—

- (a) a copy signed by the clerk of the magistrates' court of the minute or memorandum of the conviction entered in the register;
- (b) a copy of any note of the evidence given at the trial of the offender, any written statement tendered in evidence and any deposition;
- (c) such documents and articles produced in evidence before the court as have been retained by the court;
- (d) any report relating to the offender considered by the court;
- (e) if the offender is committed on bail, a copy of the record made in pursuance of section 5 of the said Act of 1976 relating to such bail and also any recognizance entered into by any person as his surety;
- (f) if the court imposes under section 56(8) of the Criminal Justice Act 1967 an interim disqualification for holding or obtaining a licence under Part III of the Road Traffic Act 1972(**16**), a statement of the date of birth and sex of the offender; and
- (g) if the court makes an order under section 28 of the Theft Act 1968(**17**) (orders for restitution), a copy signed by the clerk of the convicting court of the minute or memorandum of the order entered in the register.

(2) Where a magistrates' court commits an offender to the Crown Court under the Vagrancy Act 1824, section 8(6) or 24(2) of the Powers of Criminal Courts Act 1973, section 37 or 38 of the Act of 1980 or section 56(1) or 62(6) of the Criminal Justice Act 1967 and the magistrates' court on that occasion imposes, under section 56(8) of the Criminal Justice Act 1967, an interim disqualification for holding or obtaining a licence under Part III of the Road Traffic Act 1972, the clerk of the magistrates' court shall give notice of the interim disqualification to the appropriate officer of the Crown Court.

(13) 1824 c. 83.

(14) 1967 c. 80; section 56(1) was substituted by the [Criminal Law Act 1977 \(c. 45\)](#), section 46.

(15) 1973 c. 62.

(16) 1972 c. 20.

(17) 1968 c. 60; section 28 was amended by the [Criminal Justice Act 1972 \(c. 71\)](#), section 64(1) and Schedule 5 and the [Criminal Law Act 1977 \(c. 45\)](#), section 65(4) and Schedule 12.



(3) Where a magistrates' court commits a person on bail to the Crown Court under any of the enactments mentioned in paragraph (2) or under section 6(4) of the Powers of Criminal Courts Act 1973 or under section 6 of the Bail Act 1976 the clerk of the magistrates' court shall give notice thereof in writing to the governor of the prison to which persons of the sex of the person committed are committed by that court if committed in custody for trial and also, if the person committed is under the age of 21, to the governor of the remand centre to which he would have been committed if the court had refused him bail.

**Committal to Crown Court for order restricting discharge, etc.**

18. Where a magistrates' court commits an offender to the Crown Court either—

- (a) under section 67(1) of the Mental Health Act 1959 with a view to the making of a hospital order with an order restricting his discharge; or
- (b) under section 38 of the Act of 1980, as modified by subsection (4) of the said section 67, with a view to the passing of a more severe sentence than the magistrates' court has power to inflict if such an order is not made,

the clerk of the court shall send to the appropriate officer of the Crown Court—

- (i) the copies, documents and articles specified in rule 17;
- (ii) any written evidence about the offender given by a medical practitioner under section 60(1)(a) of the Mental Health Act 1959 or a copy of a note of any oral evidence so given;
- (iii) the name and address of the hospital the managers of which have agreed to admit the offender if a hospital order is made; and
- (iv) if the offender has been admitted to a hospital under section 68 of that Act, the name and address of that hospital.

**Remittals to another magistrates' court for sentence, etc.**

19.—(1) Where a magistrates' court remits an offender to some other magistrates' court under section 39 of the Act of 1980 after convicting him of an offence, the clerk of the convicting court shall send to the clerk of the other court—

- (a) a copy signed by the clerk of the convicting court of the minute or memorandum of the conviction and remittal entered in the register;
- (b) a copy of any note of the evidence given at the trial of the offender, any written statement tendered in evidence and any deposition;
- (c) such documents and articles produced in evidence before the convicting court as have been retained by that court;
- (d) any report relating to the offender considered by the convicting court;
- (e) if the offender is remitted on bail, a copy of the record made by the convicting court in pursuance of section 5 of the Bail Act 1976 relating to such bail and also any recognizance entered into by any person as his surety;
- (f) if the convicting court makes an order under section 28 of the Theft Act 1968 (orders for restitution), a copy signed by the clerk of the convicting court of the minute or memorandum of the order entered in the register;
- (g) a copy of any legal aid order previously made in the same case;
- (h) a copy of any legal aid application; and
- (i) any statement of means already submitted.

(2) Where a magistrates' court remits an offender to some other magistrates' court as aforesaid and the other court remits him back to the convicting court under subsection (5) of the said section 39, the clerk of the other court shall send to the clerk of the convicting court—

- (a) a copy signed by the clerk of the other court of the minute or memorandum of the remittal back entered in the register;
- (b) if the offender is remitted back on bail, a copy of the record made by the other court in pursuance of section 5 of the Bail Act 1976 relating to such bail and also any recognizance entered into by any person as his surety;
- (c) all documents and articles sent in pursuance of paragraph (1).

(3) In this rule “the offender”, “the convicting court” and “the other court” have the same meanings as in the said section 39.

#### **Duty of clerk receiving statutory declaration under s.14(1) of Act of 1980**

**20.** Where the clerk of a magistrates' court receives a statutory declaration which complies with section 14(1) of the Act of 1980, he shall—

- (a) note the receipt of the declaration in the register against the entry in respect of the trial of the information to which the declaration relates; and
- (b) inform the prosecutor and, if the prosecutor is not a constable, the chief officer of police of the receipt of the declaration.

### SUMMARY TRIAL OF OFFENCE TRIABLE EITHER WAY

#### **Duty to recall witnesses who have given evidence before examining justices**

**21.** Where under section 25(3) or (7) of the Act of 1980 a magistrates' court, having heard to inquire into an information as examining justices, proceeds to try the information summarily, then, unless the accused pleads guilty, the court shall recall for cross-examination any witnesses who have already given evidence, except any not required by the accused or the prosecutor to be recalled for that purpose.

#### **Preservation of depositions where offence triable either way is dealt with summarily**

**22.** The clerk of the magistrates' court by which any person charged with an offence triable either way has been tried summarily shall preserve for a period of three years such depositions as have been taken.

### REMAND

#### **Remand on bail for more than 8 days where sureties have not entered into recognizances**

**23.** Where the court, with a view to a person's being remanded on bail under paragraph (a) of section 128(6) of the Act of 1980 for a period exceeding 8 days, has fixed the amount of the recognizances to be taken for that purpose but commits that person to custody because the recognizances of the sureties have not yet been taken, the warrant of commitment shall direct the governor or keeper of the prison or place to which he is committed to bring him before the court at the end of 8 clear days or at such earlier time as may be specified in the warrant, unless in the meantime the sureties have entered into their recognizances.

#### **Documents to be sent on remand for medical inquiry**

**24.** On exercising the powers conferred by section 30 of the Act of 1980 a court shall—

- (a) where the accused is remanded in custody, send to the institution or place to which he is committed;
- (b) where the accused is remanded on bail, send to the institution or place at which, or the person by whom, he is to be examined,

a statement of the reasons why the court is of opinion that an inquiry ought to be made into his physical or mental condition and of any information before the court about his physical or mental condition.

### **Transfer of remand hearings**

**25.**—(1) Where a magistrates' court, under section 130(1) of the Act of 1980, orders that an accused who has been remanded in custody be brought up for any subsequent remands before an alternate magistrates' court, the clerk of the first-mentioned court shall, as soon as practicable after the making of the order and in any case within 2 days thereafter (not counting Sundays, Good Friday, Christmas Day or bank holidays), send to the clerk of the alternate court—

- (a) a statement indicating the offence or offences charged;
- (b) a copy of the record made by the first-mentioned court in pursuance of section 5 of the Bail Act 1976 relating to the withholding of bail in respect of the accused when he was last remanded in custody;
- (c) a copy of any legal aid order previously made in the same case;
- (d) a copy of any legal aid application;
- (e) any statement of means already submitted; and
- (f) if the first-mentioned court has made an order under section 8(2) of the Act of 1980 (removal of restrictions on reports of committal proceedings), a statement to that effect.

(2) The clerk of an alternate magistrates' court before which an accused who has been remanded in custody is brought up for any subsequent remands in pursuance of an order made as aforesaid shall, as soon as practicable after the order ceases to be in force and in any case within 2 days thereafter (not counting Sundays, Good Friday, Christmas Day or bank holidays), send to the clerk of the magistrates' court which made the order—

- (a) the documents referred to in sub-paragraphs (c), (d) and (e) of paragraph (1);
- (b) a copy of the record made by the alternate court in pursuance of section 5 of the Bail Act 1976 relating to the grant or withholding of bail in respect of the accused when he was last remanded in custody or on bail;
- (c) a copy of any legal aid order made by the alternate court;
- (d) a copy of any legal aid application made to the alternate court;
- (e) any statement of means submitted to the alternate court; and
- (f) if the alternate court has made an order under section 8(2) of the Act of 1980 (removal of restrictions on reports of committal proceedings), a statement to that effect.

### **Notice of further remand in certain cases**

**26.** Where a transfer direction has been given by the Secretary of State under section 73 of the Mental Health Act 1959 in respect of a person remanded in custody by a magistrates' court and the direction has not ceased to have effect, the clerk of the court shall give notice in writing to the managers of the hospital where he is detained of any further remand under section 128 of the Act of 1980.

## DEFERMENT OF SENTENCE

### **Notification of conviction before expiration of period of deferment**

27. Where under section 1 of the Powers of Criminal Courts Act 1973 a court has deferred passing sentence on an offender and before the expiration of the period of deferment he is convicted of any offence by a magistrates' court, the clerk of the court shall, if the court which deferred passing sentence on the earlier occasion was another magistrates' court or the Crown Court, give notice of the conviction to the clerk of that magistrates' court or the appropriate officer of the Crown Court, as the case may be.

## CONDITIONAL DISCHARGE AND PROBATION

### **Notification of discharge, etc., of probation order or order for conditional discharge**

28.—(1) Where a magistrates' court discharges a probation order or makes an order under section 11 of the Powers of Criminal Courts Act 1973 substituting an order for conditional discharge for a probation order and, in either case, the probation order was not made by that court, the clerk of the court shall—

- (a) if the probation order was made by another magistrates' court, notify the clerk of that court; or
- (b) if the probation order was made by the Crown Court, notify the appropriate officer of the Crown Court.

(2) Where a magistrates' court deals with a person under section 6 or 8 of the said Act of 1973 in relation to a probation order or order for conditional discharge which was not made by that court the clerk of the court shall give notice of the result of the proceedings to the clerk of the court by which the order was made.

(3) The clerk of a magistrates' court receiving a notice under this rule shall note the decision of the other court in the register against the entry in respect of the original order.

## SUSPENDED SENTENCES

### **Entries in register in respect of suspended sentences**

29.—(1) Where under section 23 of the Powers of Criminal Courts Act 1973 a magistrates' court deals with a person in respect of a suspended sentence otherwise than by making an order under subsection (1)(a) of that section, the court shall cause to be entered in the register its reasons for its opinion that it would be unjust to make such an order.

(2) Where an offender is dealt with under the said section 23 in respect of a suspended sentence passed by a magistrates' court, the clerk of the court shall note this in the register against the original entry in respect of the suspended sentence, or where the suspended sentence was not passed by that court, shall notify the clerk of the court by which it was passed who shall note it in the register against the original entry in respect of the suspended sentence.

### **Suspended sentence supervision orders**

30.—(1) Where a magistrates' court makes an order under section 23(1)(a) or (b) of the Powers of Criminal Courts Act 1973 in respect of a person who is subject to a suspended sentence supervision order, the clerk of the court shall note this in the register against the original entry in respect of the suspended sentence supervision order, or where that order was not made by that court, shall—

- (a) if the order was made by another magistrates' court, notify the clerk of that court who shall note the court register accordingly; or

(b) if the order was made by the Crown Court, notify the appropriate officer of the Crown Court.

(2) Where a magistrates' court discharges a suspended sentence supervision order under section 26(9) of the said Act of 1973, the clerk of the court shall note this in the register against the original entry in respect of that order, or where that order was not made by that court, shall—

(a) if the order was made by another magistrates' court, notify the clerk of that court who shall note the court register accordingly; or

(b) if the order was made by the Crown Court, notify the appropriate officer of the Crown Court.

(3) Where a magistrates' court fines a person under section 27 of the said Act of 1973 for breach of the requirements of a suspended sentence supervision order which was not made by that court, the clerk of the court shall—

(a) if the order was made by another magistrates' court, notify the clerk of that court; or

(b) if the order was made by the Crown Court, notify the appropriate officer of the Crown Court.

## HOSPITAL ORDER

### Documents to be sent under Mental Health Act 1959

**31.**—(1) The court by which a hospital order is made under section 60 of the Mental Health Act 1959 shall send to the hospital named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the patient to whom the order relates, and in particular such information about the mental condition, character and antecedents of the patient and the nature of the offence.

(2) The court by which a guardianship order is made under the said section 60 shall send to the local health authority named therein as guardian or, as the case may be, the local health authority for the area in which the person so named resides, such information in the possession of the court as it considers likely to be of assistance in dealing with the patient to whom the order relates and in particular such information about the mental condition, character and antecedents of the patient and the nature of the offence.

(3) The court by which an offender is ordered to be admitted to hospital under section 68 of the said Act of 1959 shall send to the hospital such information in the possession of the court as it considers likely to assist in the treatment of the offender until his case is dealt with by the Crown Court.

## ENDORSEMENT

### Endorsement of driving licence

**32.**—(1) Where a magistrates' court convicts a person of an offence and, under section 101 of the Road Traffic Act 1972(**18**) orders that particulars of the conviction, and, if the court orders him to be disqualified, particulars of the disqualification, shall be endorsed on any licence held by him, the particulars to be endorsed shall include—

(a) the name of the petty sessions area for which the court is acting;

(b) the date of the conviction and the date on which sentence was passed (if different);

(c) particulars of the offence including the date on which it was committed;

(d) particulars of the sentence of the court (including the period of disqualification, if any).

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(18) 1972 c. 20; section 101 was amended by the [Road Traffic Act 1974 \(c. 50\)](#), section 13(1) and Schedule 3, paragraph 10.

(2) Where a magistrates' court orders that the licence of an offender be endorsed as mentioned in paragraph (1) or imposes an interim disqualification as mentioned in rule 17(1)(f) and the clerk of the court knows or is informed of the date of birth and sex of the offender, the clerk shall send the information to the licensing authority which granted the licence.

## DEPOSITION OF PERSON DANGEROUSLY ILL

### **Deposition of person dangerously ill**

**33.**—(1) Where a justice of the peace takes the deposition of a person under section 105 of the Act of 1980 and the deposition relates to an offence with which a person has been charged, the justice shall give the person, whether prosecutor or accused, against whom it is proposed to use it reasonable notice of the intention to take the deposition, and shall give that person or his counsel or solicitor full opportunity of cross-examining the deponent.

(2) The justice shall sign the deposition and add to it a statement of his reason for taking it, the day when, and the place where it was taken and the names of any persons present when it was taken.

(3) The justice shall send the deposition, with the statement, to the clerk to the justices for the petty sessions area for which the justice acts and the clerk shall—

- (a) if the deposition relates to an offence for which a person has been committed for trial, send the deposition and statement to the appropriate officer of the Crown Court;
- (b) if the deposition relates to proceedings which are pending before a magistrates' court acting for another area, send the deposition and statement to the clerk of that court.

## APPEAL TO MAGISTRATES' COURT

### **Appeal to be by complaint**

**34.** Where under any enactment an appeal lies to a magistrates' court against the decision or order of a local authority or other authority, or other body or person, the appeal shall be by way of complaint for an order.

## AFFILIATION ORDERS

### **Time for hearing affiliation summons**

**35.**—(1) The time at which a summons issued under section 1 of the Affiliation Proceedings Act 1957(19), shall require the defendant to appear shall be after the day on which the birth of the child is expected.

(2) If at the time when such a summons requires the defendant to appear before a magistrates' court the complainant has not been delivered of the child, or has been so recently delivered that she is unable to appear, the court shall adjourn the hearing until a time after the complainant has been delivered and when she is able to appear.

(3) Paragraph (2) shall apply to the non-appearance of the complainant at the time fixed on any such adjournment as aforesaid as it applies to the time specified in the summons.

## DOMESTIC PROCEEDINGS

### **Reasons for decisions in certain domestic proceedings to be recorded**

**36.**—(1) Where a magistrates' court makes a decision in any domestic proceedings to which this rule applies, the court shall cause the reasons for its decision to be recorded in writing.

(2) Any record of a decision kept in pursuance of this rule shall indicate the names of the justices constituting the court by which the decision was made.

(3) Where a magistrates' court makes a decision in any proceedings for which the reasons are required by this rule to be recorded, the court shall draw up the terms of the record in consultation with the clerk of the court or any person employed to assist him as a clerk in court in the proceedings, and shall do so before the decision is announced.

(4) This rule applies to the following domestic proceedings, that is to say:—

- (a) proceedings on an application for an order under section 2 or 7 of the Act of 1978 where the court, in pursuance of section 3(1)(g) of that Act, has regard to the conduct of each of the parties in relation to the marriage and in consequence determines that the amount of any payment to be made by the respondent should be less than it would have ordered apart from such conduct;
- (b) proceedings where—
  - (i) an order regarding the legal custody of or access to a child is made under section 8(2) or 14 of the Act of 1978 or section 9, 10, 11 or 14A of the Guardianship of Minors Act 1971(20); or
  - (ii) any order made as aforesaid is varied,and a party objects to any of the terms of the order or variation.

#### **Copies of records to be supplied in connection with appeals**

**37.** The clerk of a magistrates' court shall supply a copy of the record of the reasons for a decision kept in pursuance of rule 36 to any person on application, if satisfied that it is required in connection with an appeal or possible appeal.

#### **Certification of records**

**38.** For the purposes of section 84(2) of the Act of 1978 (which provides that a copy of any record made by virtue of section 84 of the reasons for a decision of a magistrates' court shall, if certified by such officer of the court as may be prescribed, be admissible as evidence of those reasons) the certifying officer shall be the clerk of the magistrates' court concerned.

### **ORDERS FOR PERIODICAL PAYMENTS**

#### **Method of making periodical payments**

**39.—(1)** A magistrates' court ordering periodical payments to be made through a clerk of a magistrates' court under section 59 of the Act of 1980 shall notify the person required to make the payments of the hours during which, and the place at which, payments are to be made.

- (2) A clerk of a magistrates' court shall send any periodical payments by post to—
  - (a) the person entitled to them; or
  - (b) if the person entitled to them is a child, to the child or to the person with whom the child has his home:

Provided that the clerk may—

- (a) at the request of the person entitled to the payments; or
- (b) if the person entitled to them is a child, at the request of the child or the person with whom the child has his home,

make other arrangements for making the payments.

(3) If a person makes any periodical payments to a clerk of a magistrates' court otherwise than in person at the clerk's office, he shall do so at his own risk and expense.

#### **Duty of clerk to notify arrears of periodical payments**

**40.** Where an order under section 59(1) of the Act requires periodical payments to be made to the clerk of a magistrates' court and the payments are at any time in arrears to an amount equal—

- (a) in the case of payments to be made monthly or less frequently, to twice the sum payable periodically; or
- (b) in any other case, to four times the sum payable periodically,

the clerk shall, unless it appears to him that it is unnecessary or inexpedient to do so, give to the person entitled to the payments or, if that person is a child, to the child or the person with whom the child has his home notice in writing stating the particulars of the arrears.

#### **Revocation, variation, etc., of orders for periodical payments**

**41.—**(1) This rule shall apply to a complaint for the revocation, discharge, revival, alteration or variation of an affiliation order or order enforceable as an affiliation order, but shall not apply—

- (a) where jurisdiction is confined by paragraph (a) of subsection (2) of section 88 of the Children and Young Persons Act 1933<sup>(21)</sup> to courts appointed for the commission area where the person liable is residing;
- (b) where an order has been made under the proviso to subsection (4) of that section;
- (c) to a contribution order;
- (d) to a complaint for an order under section 26(4) of the Children Act 1948<sup>(22)</sup>;
- (e) to a complaint for an order under section 22(1) of the Maintenance Orders Act 1950<sup>(23)</sup>.

(2) A complaint to which this rule applies may be made to a justice of the peace acting for the same petty sessions area as the responsible court or to a justice of the peace acting for the petty sessions area where the complainant is for the time being.

(3) A justice of the peace shall not take action on a complaint to which this rule applies unless either the complainant has furnished him with written particulars—

- (a) of the nature of the evidence that the complainant proposes to adduce at the hearing of the complaint and the names and addresses and, if known to him, the occupations of his witnesses; and
- (b) of the occupations of the complainant and defendant and the address of the complainant and last address of the defendant known to the complainant,

or the justice is acting for the same petty sessions area as the responsible court and it appears to him that the last address of the defendant known to the complainant is within that area.

(4) Where a complaint to which this rule applies is made to a justice of the peace acting for the same petty sessions area as the responsible court, and it appears to him that either of the places stated in the said particulars as being the addresses of the complainant and defendant is within another petty sessions area, then, if the justice determines that the complaint could more conveniently be dealt

(21) 1933 c. 12; section 88 was amended by the [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), section 89(2)(a) and Schedule 2, paragraph 4.

(22) 1948 c. 43; section 26(4) was amended by the [Domestic Proceedings and Magistrates' Courts Act 1978](#), section 89(2)(a) and Schedule 2, paragraph 8.

(23) 1950 c. 37; section 22(1) was amended by the [Domestic Proceedings and Magistrates' Courts Act 1978](#), section 89(2)(a) and Schedule 2, paragraph 14.



with by a magistrates' court acting for that other petty sessions area, he shall cause the clerk of the responsible court to send by post to the clerk of that other court the complaint, the said particulars and a copy of any relevant record of reasons for a decision kept in pursuance of rule 36.

(5) Where the places stated in the said particulars as being the addresses of the complainant and the defendant appear to the justice to be outside the petty sessions area for which the justice is acting and in other and different petty sessions areas, the reference in the last preceding paragraph to another petty sessions area shall be construed as a reference to such one of those other areas aforesaid as appears to the justice convenient.

(6) On receipt by the clerk of a magistrates' court of a complaint, the particulars and a copy of any relevant record of reasons under paragraph (4), he shall bring the complaint before the court, and the court shall issue a summons requiring the defendant to appear before it, and shall hear and determine the complaint.

(7) Where a complaint to which this rule applies is made to a justice of the peace acting for a petty sessions area other than that for which the responsible court acts, the justice shall cause the clerk of the magistrates' court acting for that other petty sessions area to send the complaint, the said particulars and the said copy of any relevant record of reasons by post to the clerk of the responsible court; and the clerk of the responsible court shall bring the complaint before the court; and thereupon paragraphs (4) to (6) shall have effect as if the complaint had been made and the particulars and the copy of any relevant record of reasons furnished to a justice of the peace acting for the same petty sessions area as the responsible court.

(8) Notwithstanding the foregoing provisions of this rule, a justice to whom a complaint is made may refer the complaint to the responsible court which may, in such case or when the complaint is brought before the court in accordance with paragraph (6), cause the complaint, the particulars and the copy of any relevant record of reasons to be sent by post to the clerk of the court which made the original order and that clerk and that court shall proceed in accordance with the provisions of paragraph (6).

(9) Where a magistrates' court makes an order on a complaint to which this rule applies affecting an order made by another magistrates' court or affecting an order under which payments are made to the clerk of another magistrates' court, the clerk of the first-mentioned court shall cause a copy of the order to be sent to the clerk of that other court.

(10) In this rule "responsible court" means—

- (a) where payments under the order are made to the clerk of a magistrates' court, that court;
- (b) where payments are not so made, the court which made the order.

### **Application for sums under affiliation order to be paid to person having custody of child**

**42.** An application under section 5(3) of the Affiliation Proceedings Act 1957 shall be by complaint for an order.

### **Service of copy of order**

**43.** Where a magistrates' court makes, revokes, discharges, suspends, revives, alters or varies an affiliation order or order enforceable as an affiliation order or allows time or further time for payment of a lump sum under any such order or orders payment of a lump sum under any such order to be paid by instalments or varies any such order for payment by instalments the court shall cause a copy of its order to be served on the defendant by delivering it to him or by sending it by post in a letter addressed to him at his last known or usual place of abode.

**Remission of sums due under order**

**44.**—(1) Before remitting the whole or any part of a sum due under an affiliation order or an order enforceable as an affiliation order under section 95 of the Act of 1980, the court shall, except save where it appears to it to be unnecessary or impracticable to do so, cause the person in whose favour the order is made or, if that person is a child, the child or the person with whom the child has his home to be notified of its intention and shall afford to such person a reasonable opportunity to make representations to the court, either orally at an adjourned hearing of the complaint for enforcement or in writing and such representations shall be considered by the court.

(2) Any written representations may be considered by the court if they purport to be signed by or on behalf of the person in whose favour the order is made or, if that person is a child, by or on behalf of the child or the person with whom the child has his home.

**Duty of clerk to notify remarriage of person entitled to payments under a maintenance order**

**45.**—(1) Where the clerk of a magistrates' court to whom any payments under an order to which this rule applies are required to be made is notified in writing by or on behalf of the person entitled to payments under such an order, the person liable to make payments under such an order or the personal representatives of either of those persons that the person so entitled has remarried, the clerk shall forthwith in writing so notify the clerk or other appropriate officer of each of the courts mentioned in paragraph (2) of which he is not the clerk.

(2) The courts referred to in paragraph (1) are—

- (a) any court which has made a relevant order or, in the case of a provisional order made under section 3 of the Maintenance Orders (Facilities for Enforcement) Act 1920<sup>(24)</sup> or section 3 of the Maintenance Orders (Reciprocal Enforcement) Act 1972<sup>(25)</sup>, the court which confirmed the order;
- (b) if a relevant order has been transmitted abroad for registration under section 2 of the said Act of 1920 or section 2 of the said Act of 1972 the court in which the order is registered, and
- (c) if a complaint for the enforcement of a relevant order has been sent to a court under rule 59(2), that court.

(3) This rule applies to an order in relation to which section 4(2) of the Act of 1978 applies, an order to which section 38 of the Matrimonial Causes Act 1973<sup>(26)</sup> applies and an attachment of earnings order made to secure payments under either of the above-mentioned orders and in paragraph (2) “relevant order” means any such order to which the payments referred to in paragraph (1) relate.

**SATISFACTION, ENFORCEMENT AND APPLICATION OF PAYMENTS****Notice to defendant of fine or forfeited recognizance**

**46.**—(1) Where under section 32(1) of the Powers of Criminal Courts Act 1973, section 49 of the Criminal Justice Act 1967 or section 19(5) of the Coroners Act 1887<sup>(27)</sup> a magistrates' court is required to enforce payment of a fine imposed or recognizance forfeited by the Crown Court or by a coroner or where a magistrates' court allows time for payment of a sum adjudged to be paid by a summary conviction, or directs that the sum be paid by instalments, or where the offender is absent when a sum is adjudged to be paid by a summary conviction, the clerk of the court shall serve on the offender notice in writing stating the amount of the sum and, if it is to be paid by instalments,

(24) 1920 c. 33.

(25) 1972 c. 18.

(26) 1973 c. 18.

(27) 1887 c. 71.

the amount of the instalments, the date on which the sum, or each of the instalments, is to be paid and the places and times at which payment may be made; and a warrant of distress or commitment shall not be issued until the preceding provisions of this rule have been complied with.

(2) A notice under this rule shall be served by delivering it to the offender or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

### **Registration and notification of financial penalty enforcement order**

**47.**—(1) The clerk of a magistrates' court receiving a financial penalty enforcement order made by the Defence Council or an officer authorised by them shall cause the said order to be registered in his courts by means of a memorandum entered in the register kept pursuant to rule 66 and signed by him and shall send notice in writing to the Defence Council or the authorised officer, as appropriate, stating that the order has been so registered.

(2) Where a financial penalty enforcement order has been registered in accordance with the provisions of paragraph (1), the clerk shall forthwith serve on the person against whom the order was made a notice of registration in the prescribed form.

(3) A notice required by paragraph (2) shall be served on the person by delivering it to him or by sending it by post addressed to him at the address shown on the financial penalty enforcement order.

(4) In this rule “financial penalty enforcement order” means an order made under section 133A(1) of the Army Act 1955(**28**), section 133A(1) of the Air Force Act 1955(**29**) or section 128F(1) of the Naval Discipline Act 1957(**30**).

### **To whom payments are to be made**

**48.**—(1) A person adjudged by the conviction or order of a magistrates' court to pay any sum shall, unless the court otherwise directs, pay that sum, or any instalment of that sum, to the clerk of the court.

(2) Where payment of any sum or instalment of any sum adjudged to be paid by the conviction or order of a magistrates' court is made to any person other than the clerk of the court, that person, unless he is the person to whom the court has directed payment to be made or, in the case of a child, is the person with whom the child has his home, shall, as soon as may be, account for and, if the clerk so requires, pay over the sum or instalment to the clerk of the court.

(3) Where payment of any sum adjudged to be paid by the conviction or order of a magistrates' court, or any instalment of such a sum, is directed to be made to the clerk of some other magistrates' court, the clerk of the court that adjudged the sum to be paid shall pay over any sums received by him on account of the said sum or instalment to the clerk of that other court.

### **Duty of clerk to give receipt**

**49.** The clerk of a magistrates' court shall give or send a receipt to any person who makes a payment to him in pursuance of a conviction or order of a magistrates' court and who asks for a receipt.

### **Relief of collecting officer**

**50.**—(1) Where a magistrates' court has ordered periodical payments to be made through the clerk of a magistrates' court, then, if it is proved that the person on whose behalf the order was made or, if that person is a child, the child or the person with whom the child has his home has persistently

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(28) 1955 c. 18; section 133A(1) was inserted by the [Armed Forces Act 1976 \(c. 52\)](#), section 16 and Schedule 8, paragraph 1.

(29) 1955 c. 19; section 133A(1) was inserted by the [Armed Forces Act 1976](#), section 16 and Schedule 8, paragraphs 1 and 2.

(30) 1957 c. 53; section 128F(1) was inserted by the [Armed Forces Act 1976](#), section 16 and Schedule 8, paragraphs 1 and 3.

received the payments direct from the person liable to make them, the court that made the order may by order vary it so as to require the payments to be made direct.

- (2) An order under this rule may be made—
- (a) on complaint by the clerk through whom payments were ordered to be made; or
  - (b) on the hearing of a complaint to enforce the original order, if both parties are present.

### **Application for further time**

**51.** An application under section 75(2) of the Act of 1980, section 22 of the Act of 1978, section 12B(5) of the Guardianship of Minors Act 1971<sup>(31)</sup> or section 6A(5) of the Affiliation Proceedings Act 1957<sup>(32)</sup> may, unless the court requires the applicant to attend, be made in writing.

### **Notice of date of hearing of means inquiry etc.**

**52.** Where a magistrates' court, under subsection (1) of section 86 of the Act of 1980 (power of magistrates' court to fix pay for appearance of offender at means inquiry etc.), has fixed a day on which an offender must appear in person before the court and, under subsection (3) of that section, fixes a later day in substitution for the day previously fixed, service of the notice of the substituted day may be effected in any manner in which service of a summons may be effected under rule 99(1).

### **Notice to defendant before enforcing order**

**53.—**(1) A warrant of distress shall not be issued for failure to pay a sum enforceable as a civil debt unless the defendant has been previously served with a copy of the minute of the order, or the order was made in his presence and the warrant is issued on that occasion.

(2) A warrant of commitment shall not be issued for disobedience to an order of a magistrates' court unless the defendant has been previously served with a copy of the minute of the order, or the order was made in his presence and the warrant is issued on that occasion:

Provided that this paragraph shall not apply to—

- (a) an order to pay money; or
- (b) an expedited order under section 16(2) and (6) of the Act of 1978.

(3) A copy of the minute of the order shall be served under this rule by delivering it to the defendant or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

(4) In relation to an order under section 16 of the Act of 1978 (other than an expedited order under subsections (2) and (6) of that section) paragraphs (2) and (3) shall have effect as if for the references to a copy of a minute of the order there were substituted references to a copy of the order.

### **Execution of distress warrant**

**54.—**(1) A warrant of distress issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order—

- (a) shall name or otherwise describe the person against whom the distress is to be levied;
- (b) shall be directed to the constables of the police area in which the warrant is issued or to the authorised persons for the police area specified in the warrant, or to a person named in the warrant and shall, subject to, and in accordance with, the provisions of this rule, require them to levy the said sum by distress and sale of the goods belonging to the said person;

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(31) 1971 c. 3; section 128 was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), section 43.

(32) 1957 c. 55; section 6A was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978](#), section 53.

(c) may where it is directed to the constables of a police area, instead of being executed by any of those constables, be executed by any person under the direction of a constable.

(2) The warrant shall authorise the person charged with the execution of it to take as well any money as any goods of the person against whom the distress is levied; and any money so taken shall be treated as if it were the proceeds of the sale of goods taken under the warrant.

(3) The warrant shall require the person charged with the execution to pay the sum to be levied to the clerk of the court that issued the warrant.

(4) There shall not be taken under the warrant the wearing apparel or bedding of any person or his family or the tools and implements of his trade; so however that if the tools and implements of his trade exceed in value fifty pounds it shall be lawful to take such of the tools and implements as will leave in that person's possession tools and implements of his trade to the value of fifty pounds.

(5) The distress levied under any such warrant as aforesaid shall be sold within such period beginning not earlier than the 6th day after the making of the distress as may be specified in the warrant, or if no period is specified in the warrant, within a period beginning on the 6th day and ending on the 14th day after the making of the distress:

Provided that with the consent in writing of the person against whom the distress is levied the distress may be sold before the beginning of the said period.

(6) The said distress shall be sold by public auction or in such other manner as the person against whom the distress is levied may in writing allow.

(7) Notwithstanding anything in the preceding provisions of this rule, the said distress shall not be sold if the sum for which the warrant was issued and the charges of taking and keeping the distress have been paid.

(8) Subject to any direction to the contrary in the warrant, where the distress is levied on household goods, the goods shall not, without the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale; and so much of the goods shall be impounded as is in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark.

(9) The constable or other person charged with the execution of any such warrant as aforesaid shall cause the distress to be sold, and may deduct out of the amount realised by the sale all costs and charges incurred in effecting the sale; and he shall return to the owner the balance, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant.

(10) The constable or other person charged with the execution of any such warrant as aforesaid shall as soon as practicable send to the clerk of the court that issued it a written account of the costs and charges incurred in executing it; and the clerk shall allow the person against whom the distress was levied to inspect the account within one month after the levy of the distress at any reasonable time to be appointed by the court.

(11) If any person pays or tenders to the constable or other person charged with the execution of any such warrant as aforesaid the sum mentioned in the warrant, or produces a receipt for that sum given by the clerk of the court that issued the warrant, and also pays the amount of the costs and charges of the distress up to the time of the payment or tender or the production of the receipt, the constable or other person as aforesaid shall not execute the warrant, or shall cease to execute it, as the case may be.

#### **Payment after imprisonment imposed**

**55.**—(1) The persons authorised for the purposes of section 79(2) of the Act of 1980 to receive a part payment are—

- (a) unless there has been issued a warrant of distress or commitment, the clerk of the court enforcing payment of the sum, or any person appointed under section 88 of that Act to supervise the offender;
- (b) where the issue of a warrant of commitment has been suspended on conditions which provide for payment to be made to the clerk of some other magistrates' court, that clerk;
- (c) any constable holding a warrant of distress or commitment, or, where the warrant is directed to some other person, that person;
- (d) the governor or keeper of the prison or place in which the defaulter is detained, or other person having lawful custody of the defaulter:

Provided that—

- (i) the said governor or keeper shall not be required to accept any sum tendered in part payment under the said subsection (2) except on a week-day between 9 o'clock in the morning and 5 o'clock in the afternoon; and
  - (ii) no person shall be required to receive in part payment under the said subsection (2) an amount which, or so much of an amount as, will not procure a reduction of the period for which the defaulter is committed or ordered to be detained.
- (2) Where a person having custody of a defaulter receives payment of any sum he shall note receipt of the sum on the warrant of commitment.
- (3) Where the clerk of a court other than the court enforcing payment of the sums receives payment of any sum he shall inform the clerk of the other court.
- (4) Where a person appointed under section 88 of the Act of 1980 to supervise an offender receives payment of any sum, he shall send it forthwith to the clerk of the court which appointed him.
- (5) If the period of imprisonment imposed on any person in default of payment of a sum adjudged to be paid by a conviction or order of a magistrates' court, or for want of sufficient distress to satisfy such a sum, is reduced through part payments to less than 5 days, he may be committed either to a prison or to a place certified by the Secretary of State under section 134 of the Act of 1980, or, if he is already in prison, the Secretary of State may transfer him to a place so certified.

### **Order for supervision**

**56.**—(1) Unless an order under section 88(1) of the Act of 1980 is made in the offender's presence, the clerk of the court making the order shall deliver to the offender, or serve on him by post, notice in writing of the order.

(2) It shall be the duty of any person for the time being appointed under the said section to advise and befriend the offender with a view to inducing him to pay the sum adjudged to be paid and thereby avoid committal to custody and to give any information required by a magistrates' court about the offender's conduct and means.

### **Transfer of fine order**

**57.**—(1) The clerk of a magistrates' court which has made a transfer of fine order under section 89 or 90 or section 90 as applied by section 91 of the Act of 1980 shall send to the clerk of the court having jurisdiction under the order a copy of the order with a statement of the offence and the steps, if any, taken to recover the sum adjudged to be paid, and with such further information as is available and is in the opinion of the first-mentioned clerk likely to assist the last-mentioned court.

(2) Where a magistrates' court has made a transfer of fine order in respect of a sum adjudged to be paid by a court in Scotland or in Northern Ireland the clerk of the magistrates' court shall send a copy of the order to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be.

(3) Where the clerk of a magistrates' court receives a copy of a transfer of fine order (whether made in England and Wales, or in Scotland or in Northern Ireland) specifying that court as the court by which payment of the sum in question is to be enforceable, he shall thereupon, if possible, deliver or send by post to the offender notice in writing in the prescribed form.

(4) Where under a transfer of fine order a sum adjudged to be paid by a Scottish court or by a Northern Irish court is enforceable by a magistrates' court—

- (a) if the sum is paid, the clerk of the magistrates' court shall send it to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be;
- (b) if the sum is not paid, the clerk of the magistrates' court shall inform the clerk of the Scottish court or the clerk of the Northern Irish court, as the case may be, of the manner in which the adjudication has been satisfied or that the sum, or any balance thereof, appears to be irrecoverable.

### **Civil debt: judgment summons**

**58.**—(1) A summons issued on a complaint made for the purposes of section 96 of the Act of 1980 (in these rules referred to as a “judgment summons”) shall be served on the judgment debtor personally:

Provided that if a justice of the peace is satisfied by evidence on oath that prompt personal service of the summons is impracticable, he may allow the summons to be served in such a way as he may think just.

(2) Unless the judgment debtor appears and consents to an immediate hearing, the court shall not hear the complaint unless the summons was served at least 3 clear days before the hearing.

(3) Service of a judgment summons outside the commission area for which the justice issuing the summons acted may, without prejudice to any other provision of these rules enabling service of a summons to be proved, be proved by affidavit.

### **Enforcement of affiliation orders, etc.**

**59.**—(1) Subject to the following provisions of this rule, a complaint for the enforcement of an affiliation order, or an order enforceable as an affiliation order, shall be heard by the court that made the order:

Provided that—

- (a) where—
  - (i) the complainant is the person in whose favour the order was made or, if that person is a child, is the child or the person with whom the child has his home; and
  - (ii) the complainant resides in a petty sessions area other than that for which the court acts; and
  - (iii) payment is directed to be made either to the complainant or the clerk of a magistrates' court acting for that petty sessions area,the complaint may be heard by the last-mentioned court;
- (b) where the complainant is the clerk of a magistrates' court, the complaint may be heard by that court.

(2) Where a complaint is made to a justice of the peace for the enforcement of such an order as aforesaid and it appears to him that the defendant is for the time being in some petty sessions area other than that for which the justice is acting and that the order may be more conveniently enforced by a magistrates' court acting for that area, the justice shall cause the clerk of the court to send the

complaint by post to the clerk of a magistrates' court acting for that other petty sessions area, and for that purpose shall write down the complaint if this has not already been done.

(3) On receipt by the clerk of a magistrates' court of a complaint sent under the last preceding paragraph, he shall bring it before the court; and the court shall issue a summons or warrant for procuring the appearance of the defendant before it, and shall hear and determine the complaint.

(4) If, after a complaint has been sent to the clerk of a magistrates' court under this rule, the clerk of the court to which the complaint was made receives any payment under the order, he shall forthwith send by post to the clerk to whom the complaint was sent a certificate of the amount of the payment and of the date when it was made.

(5) If, after a complaint has been sent as aforesaid, payment under the order is made, not to the clerk of the court to which the complaint was originally made, but to the person specified in the order or, in the case of a child, to the person with whom the child has his home, that person shall forthwith inform the clerk of the amount and date as aforesaid and the clerk shall forthwith send a certificate of the amount and date as required by the last preceding paragraph.

(6) A certificate under this rule purporting to be signed by the clerk of the court to which the complaint was originally made shall be admissible as evidence on the hearing of the complaint that the amount specified in the certificate was paid on the date so specified.

(7) This rule shall not apply—

- (a) where jurisdiction is confined by section 88(2)(a) of the Children and Young Persons Act 1933(33), to courts having jurisdiction in the place where the person liable is residing;
- (b) to a contribution order.

### **Enforcement where periodical payments made under more than one order**

**60.**—(1) Where periodical payments are required to be made to any person by another person under more than one periodical payments order, proceedings for the recovery of the payments may be brought by way of one complaint. Any such complaint shall indicate the payments due under each order referred to in the complaint.

(2) Any sum paid to the clerk of a magistrates' court on any date under 2 or more periodical payments orders by the person liable to make payments under the orders which is less than the total sum required to be paid on that date to that clerk by that person in respect of those orders (being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which requires payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him) shall be apportioned equally between the orders to the extent of the amount due under each order and if, as a result of the apportionment, the payments under any such order are no longer in arrears the residue shall be applied to the amount due under the other order or (if there is more than one other order) shall be apportioned equally in the same way between the other orders.

(3) In this rule—

“periodical payments order” means an order made by a magistrates' court, or registered in a magistrates' court under Part II of the Maintenance Orders Act 1950 or Part I of the Maintenance Orders Act 1958(34), which requires the making of periodical payments,

and any payments required under a periodical payments order to be made to a child shall for the purposes of this rule be treated as if they were required to be made to the person with whom the child has his home.

(33) 1933 c. 12; section 88 was amended by the Children and Young Persons Act 1969 (c. 54) section 72(3) and Schedule 5, paragraph 10 and the Domestic Proceedings and Magistrates' Courts' Act 1978 (c. 22), section 89(2)(a) and Schedule 2, paragraph 4.

(34) 1958 c. 39.



**Notice of adjudication on complaint for enforcement of affiliation order, etc.**

61. A magistrates' court shall give notice in writing to the complainant of its adjudication on a complaint for the enforcement of an affiliation order, or order enforceable as an affiliation order, unless the complainant is present or is the clerk of the court.

**Particulars relating to payment of lump sum under affiliation order, etc. to be entered in register**

62. Where a magistrates' court allows time for payment of a lump sum required to be paid under an affiliation order, or order enforceable as an affiliation order, or orders that any such lump sum shall be paid by instalments or varies the number of instalments payable, the amount of any instalment payable or the date on which any instalment becomes payable, particulars thereof shall be entered in the register or in any separate record kept for the purpose of recording particulars of lump sum payments.

**Notice of date of reception in custody and discharge**

63.—(1) Where in proceedings to enforce an affiliation order, or an order enforceable as an affiliation order, the defendant is committed to custody, then on his discharge the governor or keeper of the prison or place of detention shall send to the clerk of the court that committed the defendant a certificate showing the dates of the defendant's reception and discharge; and that clerk shall, if the payments under the order are required to be made to the clerk of any other court, send the certificate to the last-mentioned clerk.

(2) Where a magistrates' court issues a warrant of commitment for a default in paying a sum adjudged to be paid by a summary conviction then on the discharge of the defaulter the governor or keeper of the prison or place of detention shall send to the clerk of the court a certificate showing the dates of the defaulter's reception and discharge.

**Direction that money found on defaulter shall not be applied in satisfaction of debt**

64. Where the defaulter is committed to, or ordered to be detained in, a prison or other place of detention, any direction given under section 80(2) of the Act of 1980 shall be endorsed on the warrant of commitment.

**Particulars of fine enforcement to be entered in register**

65.—(1) Where the court on the occasion of convicting an offender of an offence issues a warrant of commitment for a default in paying a sum adjudged to be paid by the conviction or, having power to issue such a warrant, fixes a term of imprisonment under section 77(2) of the Act of 1980, the reasons for the court's action shall be entered in the register, or any separate record kept for the purpose of recording particulars of fine enforcement.

(2) There shall be entered in the register, or any such record, particulars of any—

- (a) means inquiry under section 82 of the Act of 1980;
- (b) hearing under subsection (5) of the said section 82;
- (c) allowance of further time for the payment of a sum adjudged to be paid by a conviction;
- (d) direction that such a sum shall be paid by instalments;
- (e) distress for the enforcement of such a sum;
- (f) attachment of earnings order for the enforcement of such a sum;
- (g) order under that Act placing a person under supervision pending payment of such a sum;
- (h) order under section 85(1) of that Act remitting the whole or any part of a fine;

- (i) order under section 120(4) of that Act remitting the whole or any part of any sum enforceable under that section (forfeiture of recognizance);
- (j) authority granted under section 87(3) of that Act authorising the taking of proceedings in the High Court or county court for the recovery of any sum adjudged to be paid by a conviction;
- (k) transfer of fine order made by the court;
- (l) order transferring a fine to the court;
- (m) order under section 32(1) of the Powers of Criminal Courts Act 1973 specifying the court for the purpose of enforcing a fine imposed or a recognizance forfeited by the Crown Court; and
- (n) any fine imposed or recognizance forfeited by a coroner which has to be treated as imposed or forfeited by the court.

## REGISTER

### **Register of convictions, etc.**

**66.**—(1) The clerk of every magistrates' court shall keep a register in which there shall be entered—

- (a) a minute or memorandum of every adjudication of the court;
- (b) a minute or memorandum of every other proceeding or thing required by these rules or any other enactment to be so entered.

(2) The register shall be in the prescribed form, and entries in the register shall include, where relevant, such particulars as are provided for in the said form.

(3) Particulars of any entry relating to a decision about bail or the reasons for any such decisions may be made in a book separate from that in which the entry recording the decision itself is made, but any such separate book shall be regarded as forming part of the register.

(4) On the summary trial of an information the accused's plea shall be entered in the register.

(5) Where a court tries any person summarily in any case in which he may be tried summarily only with his consent, the court shall cause his consent to be entered in the register and, if the consent is signified by a person representing him in his absence, the court shall cause that fact also to be entered in the register.

(6) Where a person is charged before a magistrates' court with an offence triable either way the court shall cause the entry in the register to show whether he was present when the proceedings for determining the mode of trial were conducted and, if they were conducted in his absence, whether they were so conducted by virtue of section 18(3) of the Act of 1980 (disorderly conduct on his part) or by virtue of section 23(1) of that Act (consent signified by person representing him).

(7) In any case to which section 22 of the Act of 1980 (certain offences triable either way to be tried summarily if value involved is small) applies, the court shall cause its decision as to the value involved or, as the case may be, the fact that it is unable to reach such a decision to be entered in the register.

(8) Where a court has power under section 53(3) of the Act of 1980 to make an order with the consent of the defendant without hearing evidence, the court shall cause any consent of the defendant to the making of the order to be entered in the register.

(9) The entry in the column of the register headed "Nature of Offence" shall show clearly, in case of conviction or dismissal, what is the offence of which the accused is convicted or, as the case may be, what is the offence charged in the information that is dismissed.

(10) An entry of a conviction in the register shall state the date of the offence.

(11) The entries shall be signed by one of the justices, or the justice, before whom the proceedings to which they relate took place, or by the clerk who was present when those proceedings took place: Provided that, where the proceedings took place before a justice or justices sitting elsewhere than in a petty sessional court-house, the justice or, as the case may be, one of the justices may instead of signing an entry in the register, send to the clerk whose duty it is to keep the register a signed return of the proceedings containing the particulars required to be entered in the register; and the clerk shall enter the return in the register.

(12) Every register shall be open to inspection during reasonable hours by any justice of the peace, or any person authorised in that behalf by a justice of the peace or the Secretary of State.

## EVIDENCE—GENERAL

### **Proof of service, handwriting, etc.**

**67.**—(1) The service on any person of a summons, process, notice or document required or authorised to be served in any proceedings before a magistrates' court, and the handwriting or seal of a justice of the peace or other person on any warrant, summons, notice, process or documents issued or made in any such proceedings, may be proved in any legal proceedings by a document purporting to be a solemn declaration in the prescribed form made before a justice of the peace, commissioner for oaths, clerk of a magistrates' court or registrar of a county court or a sheriff or sheriff clerk (in Scotland) or a clerk of petty sessions (in Northern Ireland).

(2) The service of any process or other document required or authorised to be served, the proper addressing, pre-paying and posting or registration for the purposes of service of a letter containing such a document, and the place, date and time of posting or registration of any such letter, may be proved in any proceedings before a magistrates' court by a document purporting to be a certificate signed by the person by whom the service was effected or the letter posted or registered.

(3) References in paragraph (2) to the service of any process shall, in their application to a witness summons, be construed as including references to the payment or tender to the witness of his costs and expenses.

### **Proof of proceedings**

**68.** The register of a magistrates' court, or any document purporting to be an extract from the register and to be certified by the clerk as a true extract, shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register.

### **Proof that affiliation, maintenance orders, etc., have not been revoked, etc.**

**69.** A certificate purporting to be signed by the clerk of a magistrates' court, and stating that no minute or memorandum of an order revoking, discharging, suspending, reviving, altering or varying an affiliation order, or order enforceable as an affiliation order or an order made under Part I of the Act of 1978 enforceable otherwise than as an affiliation order made by the court is entered in the register of the court shall, in any proceedings relating to the enforcement of the order or the revocation, discharge, suspension, revival, alteration or variation of the order, be evidence that the order has not been revoked, discharged, suspended, revived, altered or varied.

## EVIDENCE—CRIMINAL PROCEEDINGS

### **Written statements in committal proceedings or summary trial**

**70.**—(1) Written statements to be tendered in evidence under section 102 of the Act of 1980 or section 9 of the Criminal Justice Act 1967 shall be in the prescribed form.

(2) When a copy of such a statement is given to or served on any party to the proceedings a copy of the statement and of any exhibit which accompanied it shall be given to the clerk of the magistrates' court as soon as practicable thereafter, and where a copy of any such statement is given or served by or on behalf of the prosecutor, the accused shall be given notice of his right to object to the statement being tendered in evidence.

(3) Where before a magistrates' court enquiring into an offence as examining justices the accused objects to a written statement being tendered in evidence and he has been given a copy of the statement but has not given notice of his intention to object to the statement being tendered in evidence, the court shall if necessary, adjourn to enable the witness to be called.

(4) Where a written statement to be tendered in evidence under the said section 102 or 9 refers to any document or object as an exhibit, that document or object shall wherever possible be identified by means of a label or other mark of identification signed by the maker of the statement, and before a magistrates' court treats any document or object referred to as an exhibit in such a written statement as an exhibit produced and identified in court by the maker of the statement, the court shall be satisfied that the document or object is sufficiently described in the statement for it to be identified.

(5) If it appears to a magistrates' court that any part of a written statement is inadmissible there shall be written against that part "Treated as inadmissible, J.P., an Examining Justice" if the written statement is tendered in evidence under the said section 102, or "Ruled inadmissible, J.P., Justice of the Peace" if the written statement is tendered in evidence under the said section 9.

(6) Where a written statement is tendered in evidence under the said section 102 or 9 before a magistrates' court the name and address of the maker of the statement shall be read aloud unless the court otherwise directs.

(7) Where under subsection (5) of the said section 102 or subsection (6) of the said section 9 in any proceedings before a magistrates' court any part of a written statement has to be read aloud, or an account has to be given orally of so much of any written statement as is not read aloud, the statement shall be read or the account given by or on behalf of the party which has tendered the statement in evidence.

(8) Written statements tendered in evidence under the said section 102 before a magistrates' court acting as examining justices shall be authenticated by a certificate signed by one of the examining justices.

(9) A written statement tendered in evidence under the said section 102 or 9 before a magistrates' court and not sent to the Crown Court under rule 11, 17 or 18 shall be preserved for a period of three years by the clerk of the magistrates' court.

### **Proof by formal admission**

**71.** Where under section 10 of the Criminal Justice Act 1967 a fact is admitted orally in court by or on behalf of the prosecutor or defendant for the purposes of the summary trial of an offence or proceedings before a magistrates' court acting as examining justices the court shall cause the admission to be written down and signed by or on behalf of the party making the admission.

### **Proof of previous convictions**

**72.** Service on any person of a notice of intention to cite previous convictions under section 104 of the Act of 1980 or section 182(2A)(c) of the Road Traffic Act 1972<sup>(35)</sup> may be effected by delivering it to him or by sending it by post in a registered letter or by recorded delivery service addressed to him at his last known or usual place of abode.

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(35) 1972 c. 20; new subsection (2A) was inserted by the [Road Traffic Act 1974 \(c. 50\)](#), section 13(3).

### **Clerk to have copies of documents sent to defendant under s. 12(1) of the Act of 1980**

73. Where the prosecutor sends to the accused the statement of facts referred to in section 12(1) of the Act of 1980 (plea of guilty in absence of accused), he shall send a copy of the statement to the clerk of the magistrates' court.

## **APPEAL TO CROWN COURT**

### **Documents to be sent to Crown Court**

74.—(1) A clerk of a magistrates' court shall as soon as practicable send to the appropriate officer of the Crown Court any notice of appeal to the Crown Court given to the clerk of the court.

(2) The clerk of a magistrates' court shall send to the appropriate officer of the Crown Court, with the notice of appeal, a statement of the decision from which the appeal is brought and of the last known or usual place of abode of the parties to the appeal.

(3) Where any person, having given notice of appeal to the Crown Court, has been granted bail for the purposes of the appeal the clerk of the court from whose decision the appeal is brought shall before the day fixed for the hearing of the appeal send to the appropriate officer of the Crown Court—

- (a) in the case of bail in criminal proceedings, a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such bail;
- (b) in the case of bail otherwise than in criminal proceedings, the recognizance entered into by the appellant relating to such bail.

(4) Where, in any such case as is referred to in paragraph 3(b), the recognizance in question has been entered into otherwise than before the magistrates' court from whose decision the appeal is brought, or the clerk of that court, the person who took the recognizance shall send it forthwith to that clerk.

(5) Where a notice of appeal is given in respect of a hospital order or guardianship order made under section 60 of the Mental Health Act 1959, the clerk of the magistrates' court from which the appeal is brought shall send with the notice to the appropriate officer of the Crown Court any written evidence considered by the court under subsection (1)(a) of the said section 60.

(6) Where a notice of appeal is given in respect of an appeal against conviction by a magistrates' court the clerk of the court shall send with the notice to the appropriate officer of the Crown Court any admission of facts made for the purposes of the summary trial under section 10 of the Criminal Justice Act 1967.

### **Abandonment of appeal**

75. Where notice to abandon an appeal has been given by the appellant, any recognizance conditioned for the appearance of the appellant at the hearing of the appeal shall have effect as if conditioned for the appearance of the appellant before the court from whose decision the appeal was brought at a time and place to be notified to the appellant by the clerk of that court.

## **CASE STATED**

### **Application to state case**

76.—(1) An application under section 111(1) of the Act of 1980 shall be made in writing and signed by or on behalf of the applicant and shall identify the question or questions of law or jurisdiction on which the opinion of the High Court is sought.

(2) Where one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of

fact made by the magistrates' court which it is claimed cannot be supported by the evidence before the magistrates' court shall be specified in such application.

(3) Any such application shall be sent to the clerk of the magistrates' court whose decision is questioned.

### **Consideration of draft case**

**77.**—(1) Within 21 days after receipt of an application made in accordance with rule 76, the clerk of the magistrates' court whose decision is questioned shall, unless the justices refuse to state a case under section 111(5) of the Act of 1980, send a draft case in which are stated the matters required under rule 81 to the applicant or his solicitor and shall send a copy thereof to the respondent or his solicitor.

(2) Within 21 days after receipt of the draft case under paragraph (1), each party may make representations thereon. Any such representations shall be in writing and signed by or on behalf of the party making them and shall be sent to the clerk.

(3) Where the justices refuse to state a case under section 111(5) of the Act and they are required by the High Court by order of mandamus under section 111(6) to do so, this rule shall apply as if in paragraph (1)—

- (a) for the words “receipt of an application made in accordance with rule 76” there were substituted the words “the date on which an order of mandamus under section 111(6) of the Act of 1980 is made”; and
- (b) the words “unless the justices refuse to state a case under section 111(5) of the Act of 1980” were omitted.

### **Preparation and submission of final case**

**78.**—(1) Within 21 days after the latest day on which representations may be made under rule 77, the justices whose decision is questioned shall make such adjustments, if any, to the draft case prepared for the purposes of that rule as they think fit, after considering any such representations, and shall state and sign the case.

(2) A case may be stated on behalf of the justices whose decision is questioned by any 2 or more of them and may, if the justices so direct, be signed on their behalf by their clerk.

(3) Forthwith after the case has been stated and signed the clerk of the court shall send it to the applicant or his solicitor, together with any statement required by rule 79.

### **Extension of time limits**

**79.**—(1) If the clerk of a magistrates' court is unable to send to the applicant a draft case under paragraph (1) of rule 77 within the time required by that paragraph, he shall do so as soon as practicable thereafter and the provisions of that rule shall apply accordingly; but in that event the clerk shall attach to the draft case, and to the final case when it is sent to the applicant or his solicitor under rule 78(3), a statement of the delay and the reasons therefor.

(2) If the clerk of a magistrates' court receives an application in writing from or on behalf of the applicant or the respondent for an extension of the time within which representations on the draft case may be made under paragraph (2) of rule 77, together with reasons in writing therefor, he may by notice in writing sent to the applicant or respondent as the case may be extend the time and the provisions of that paragraph and of rule 78 shall apply accordingly; but in that event the clerk shall attach to the final case, when it is sent to the applicant or his solicitor under rule 78(3), a statement of the extension and the reasons therefor.

(3) If the justices are unable to state a case within the time required by paragraph (1) of rule 78, they shall do so as soon as practicable thereafter and the provisions of that rule shall apply accordingly; but in that event the clerk shall attach to the final case, when it is sent to the applicant or his solicitor under rule 78(3), a statement of the delay and the reasons therefor.

### **Service of documents**

**80.** Any document required by rules 76 to 79 to be sent to any person shall, either be delivered to him or be sent by post in a registered letter or by recorded delivery service and, if sent by post to an applicant or respondent, shall be addressed to him at his last known or usual place of abode.

### **Content of case**

**81.—**(1) A case stated by the magistrates' court shall state the facts found by the court and the question or questions of law or jurisdiction on which the opinion of the High Court is sought.

(2) Where one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the particular finding of fact which it is claimed cannot be supported by the evidence before the magistrates' court shall be specified in the case.

(3) Unless one of the questions on which the opinion of the High Court is sought is whether there was evidence on which the magistrates' court could come to its decision, the case shall not contain a statement of evidence.

## **RECOGNIZANCES AND BAIL**

### **Recognizance to keep the peace, etc., taken by one court and discharged by another**

**82.** Where a magistrates' court acting for any petty sessions area makes an order under section 116 of the Act of 1980 discharging a recognizance entered into before a magistrates' court acting for any other petty sessions area, the clerk of the court that orders the recognizance to be discharged shall send a copy of the order of discharge to the clerk of the court acting for that other petty sessions area.

### **Application to vary order for sureties or dispense with them**

**83.** Where a person has been committed to custody in default of finding sureties and the order to find sureties was made at the instance of another person, an application under section 118 of the Act of 1980 shall be made by complaint against that other person.

### **Notice of enlargement of recognizances**

**84.—**(1) If a magistrates' court before which any person is bound by a recognizance to appear enlarges the recognizance to a later time under section 129 of the Act in his absence, it shall give him and his sureties, if any, notice thereof.

(2) If a magistrates' court, under section 129(4) of the Act of 1980, enlarges the recognizance of a surety for a person committed for trial on bail, it shall give the surety notice thereof.

### **Directions as to security, etc.**

**85.** Where a magistrates' court, under section 3(5) or (6) of the Bail Act 1976, imposes any requirement to be complied with before a person's release on bail, the court may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.

**Requirements to be complied with before release**

**86.**—(1) Where a magistrates' court has fixed the amount in which a person (including any surety) is to be bound by a recognizance, the recognizance may be entered into—

- (a) in the case of a surety in connection with bail in criminal proceedings where the accused is in a prison or other place of detention, before the governor or keeper of the prison or place as well as before the persons mentioned in section 8(4)(a) of the Bail Act 1976;
- (b) in any other case, before a justice of the peace, a justices' clerk, a police officer who either is of the rank of inspector or above or is in charge of a police station or, if the person to be bound is in a prison or other place of detention, before the governor or keeper of the prison or place.

(2) The clerk of a magistrates' court which has fixed the amount in which a person (including any surety) is to be bound by a recognizance or, under section 3(5) or (6) of the Bail Act 1976, has imposed any requirement to be complied with before a person's release on bail shall issue a certificate in the prescribed form showing the amount and conditions, if any, of the recognizance or, as the case may be, containing a statement of the requirement; and a person authorised to take the recognizance or do anything in relation to the compliance with such requirement shall not be required to take or do it without production of such a certificate as aforesaid.

(3) If any person proposed as a surety for a person committed to custody by a magistrates' court produces to the governor or keeper of the prison or other place of detention in which the person so committed is detained a certificate in the prescribed form to the effect that he is acceptable as a surety, signed by any of the justices composing the court or the clerk of the court and signed in the margin by the person proposed as surety, the governor or keeper shall take the recognizance of the person so proposed.

(4) Where the recognizance of any person committed to custody by a magistrates' court or of any surety of such a person is taken by any person other than the court which committed the first-mentioned person to custody, the person taking the recognizance shall send it to the clerk of that court:

Provided that, in the case of a surety, if the person committed has been committed to the Crown Court for trial or under any of the enactments mentioned in rule 17(1), the person taking the recognizance shall send it to the appropriate officer of the Crown Court.

**Notice to governor of prison, etc. where release from custody is ordered**

**87.** Where a magistrates' court has, with a view to the release on bail of a person in custody, fixed the amount in which he or any surety of such a person shall be bound or, under section 3(5) or (6) of the Bail Act 1976, imposed any requirement to be complied with before his release—

- (a) the clerk of the court shall give notice thereof to the governor or keeper of the prison or place where that person is detained by sending him such a certificate as is mentioned in rule 86(2);
- (b) any person authorised to take the recognizance of a surety or do anything in relation to the compliance with such requirement shall, on taking or doing it, send notice thereof by post to the said governor or keeper in the prescribed form and, in the case of a recognizance of a surety, shall give a copy of the notice to the surety.

**Release when recognizances have been taken or requirements complied with**

**88.** Where a magistrates' court has, with a view to the release on bail of a person in custody, fixed the amount in which he or any surety of such a person shall be bound or, under section 3(5) or (6) of the Bail Act 1976, imposed any requirement to be complied with before his release and given notice thereof in accordance with these Rules to the governor or keeper of the prison or place where that



person is detained, the governor or keeper shall, when satisfied that the recognizances of all sureties required have been taken and that all such requirements have been complied with—

- (a) in the case of bail in criminal proceedings, unless he is in custody for some other cause, release him;
- (b) in the case of bail otherwise than in criminal proceedings, take the recognizances of that person if this has not already been done and, unless he is in custody for some other cause, release him.

#### **Procedure under s. 13 of the Courts Act 1971**

**89.** Where under section 13(7) of the Courts Act 1971(**36**) a magistrates' court commits to custody or releases on bail a person who has been arrested in pursuance of a warrant issued by the Crown Court, or the officer in charge of a police station releases such a person on bail under section 13(6) of that Act, the clerk of the magistrates' court or the officer, as the case may be, shall forthwith notify the appropriate officer of the Crown Court of the action which has been taken and, if that person has been released, shall transmit to the appropriate officer of the Crown Court as soon as practicable—

- (a) in the case of bail in criminal proceedings, a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such bail;
- (b) in the case of bail otherwise than in criminal proceedings, the recognizance of that person.

#### **Bail records to be entered in register**

**90.** Any record required by section 5 of the Bail Act 1976 to be made by a magistrates' court (together with any note of reasons required by subsection (4) of that section to be included) shall be made by way of an entry in the register and shall contain the particulars set out in the appropriate form prescribed for the purpose.

#### **Notice of change of time for appearance**

**91.** Where—

- (a) a person has been granted bail under section 43(1) of the Act of 1980 and the magistrates' court before which he is to appear appoints, under section 43(2), a later time as the time at which he is to appear; or
- (b) a magistrates' court further remands a person on bail under section 129 of that Act in his absence,

it shall give him and his sureties, if any, notice thereof.

#### **Notification of bail decision after arrest while on bail**

**92.** Where a person who has been released on bail and is under a duty to surrender into the custody of a court is brought under section 7(4)(a) of the Bail Act 1976(**37**) before a justice of the peace, the justice shall cause a copy of the record made in pursuance of section 5 of that Act relating to his decision under section 7(5) of that Act in respect of that person to be sent—

- (a) in the case of a magistrates' court, to the clerk thereof; or
- (b) in the case of any other court, to the appropriate officer thereof.

Provided that this rule shall not apply where the court is a magistrates' court acting for the same petty sessions area as that for which the justice acts.

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(36) 1971 c. 23.

(37) 1976 c. 63; section 7(4) was amended by the [Criminal Law Act 1977 \(c. 45\)](#), section 65(4) and Schedule 12.

**Variation of arrangements for bail on committal to Crown Court**

93. Where a magistrates' court has committed a person on bail to the Crown Court for trial or under any of the enactments mentioned in rule 17(1) and subsequently varies any conditions of the bail or imposes any conditions in respect of the bail, the clerk of the court shall send to the appropriate officer of the Crown Court a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such variation or imposition of conditions.

**WARRANT****Committal to custody to be by warrant**

94. A justice of the peace shall not commit any person to a prison, detention centre, remand centre or place certified under section 134 of the Act of 1980 or to the custody of a constable under section 128(7) of that Act except by a warrant of commitment.

**Warrant to be signed**

95. Except where signature by the clerk of a magistrates' court is permitted by rule 109 or by the Magistrates' Courts (Forms) Rules 1981(38), every warrant under the Act of 1980 shall be signed by the justice issuing it.

**Warrant of arrest**

96.—(1) A warrant issued by a justice of the peace for the arrest of any person shall require the persons to whom it is directed, that is to say, the constables of the police area in which the warrant is issued, or the authorised persons for the police area specified in the warrant, or any persons named in that behalf in the warrant, to arrest the person against whom the warrant is issued.

(2) The warrant shall name or otherwise describe the person for whose arrest it is issued, and shall contain a statement of the offence charged in the information or, as the case may be, the ground on which the warrant is issued.

**Warrant of commitment**

97.—(1) A warrant of commitment issued by a justice of the peace—

- (a) shall name or otherwise describe the person committed;
- (b) shall contain a statement of the offence with which the person committed is charged, or of which he has been convicted, or of any other ground on which he is committed;
- (c) shall be directed to a person named in the warrant or to the constables of the police area in which the warrant is issued or to the authorised persons for the police area specified in the warrant and to the governor or keeper of the prison or place of detention specified in the warrant, and shall require—
  - (i) the named person or the constables or authorised persons to arrest the person committed, if he is at large, and convey him to that prison or place and deliver him with the warrant to the governor or keeper;
  - (ii) the governor or keeper to keep in his custody the person committed until that person be delivered in due course of law, or until the happening of an event specified in the warrant, or for the period specified in the warrant, as the case may be.

(2) A warrant of commitment may be executed by conveying the person committed to any prison or place of detention in which he may lawfully be detained and delivering him there together with the

warrant; and, so long as any person is detained in any such prison or place other than that specified in the warrant, the warrant shall have effect as if that other prison or place were the prison or place specified in it.

(3) Notwithstanding the preceding provisions of this rule, a warrant of commitment issued in pursuance of a valid conviction, or of a valid order requiring the person committed to do or abstain from doing anything, shall not, if it alleges that the person committed has been convicted, or ordered to do or abstain from doing that thing, be held void by reason of any defect in the warrant.

(4) The governor or keeper of the prison or place of detention at which any person is delivered in pursuance of a warrant of commitment shall give to the constable or other person making the delivery a receipt for that person.

(5) Notwithstanding the preceding provisions of this rule, a warrant of a justice of the peace to commit to custody any person who to the justice's knowledge is already detained in a prison or other place of detention shall be delivered to the governor or keeper of the prison or place of detention in which that person is detained.

## SUMMONS

### **Form of summons**

**98.**—(1) A summons shall be signed by the justice issuing it or state his name and be authenticated by the signature of the clerk of a magistrates' court.

(2) A summons requiring a person to appear before a magistrates' court to answer to an information or complaint shall state shortly the matter of the information or complaint and shall state the time and place at which the defendant is required by the summons to appear.

(3) A single summons may be issued against a person in respect of several informations or complaints; but the summons shall state the matter of each information or complaint separately and shall have effect as several summonses, each issued in respect of one information or complaint.

### **Service of summons, etc.**

**99.**—(1) Service of a summons issued by a justice of the peace on a person other than a corporation may be effected—

- (a) by delivering it to the person to whom it is directed; or
- (b) by leaving it for him with some person at his last known or usual place of abode; or
- (c) by sending it by post in a letter addressed to him at his last known or usual place of abode.

(2) If the person summoned fails to appear, service of a summons in manner authorised by sub-paragraph (b) or (c) of paragraph (1) shall not be treated as proved unless it is proved that the summons came to his knowledge; and for that purpose any letter or other communication purporting to be written by him or on his behalf in such terms as reasonably to justify the inference that the summons came to his knowledge shall be admissible as evidence of that fact;

Provided that this paragraph shall not apply to any summons in respect of a summary offence served in manner authorised by the said sub-paragraph (c) in a registered letter or by recorded delivery service.

(3) Service for the purposes of the Act of 1980 of a summons issued by a justice of the peace on a corporation may be effected by delivering it at, or sending it by post to, the registered office of the corporation, if that office is in the United Kingdom, or, if there is no registered office in the United Kingdom, any place in the United Kingdom where the corporation trades or conducts its business.

(4) Paragraph (3) shall have effect in relation to a document (other than a summons) issued by a justice of the peace as it has effect in relation to a summons so issued, but with the substitution of references to England and Wales for the references to the United Kingdom.

(5) Any summons or other document served in manner authorised by the preceding provisions of this rule shall, for the purposes of any enactment other than the Act of 1980 or these Rules requiring a summons or other document to be served in any particular manner, be deemed to have been as effectively served as if it had been served in that manner; and nothing in this rule shall render invalid the service of a summons or other document in that manner.

(6) Sub-paragraph (c) of paragraph (1) shall not authorise the service by post of—

- (a) a summons requiring the attendance of any person to give evidence or produce a document or thing; or
- (b) a summons issued under any enactment relating to the liability of members of the naval, military or air forces of the Crown for the maintenance of their wives and children, whether legitimate or illegitimate.

(7) In the case of a summons issued on an application for an order under section 16 or 17(1) of the Act of 1978 (powers of court to make orders for the protection of a party to a marriage or a child of the family) service of the summons shall not be effected in manner authorised by sub-paragraph (b) or (c) of paragraph (1) unless a justice of the peace is satisfied by evidence on oath that prompt personal service of the summons is impracticable and allows service to be effected in such manner.

(8) Where this rule or any other of these Rules provides that a summons or other document may be sent by post to a person's last known or usual place of abode that rule shall have effect as if it provided also for the summons or other document to be sent in the manner specified in the rule to an address given by that person for that purpose.

(9) This rule shall not apply to a judgment summons.

## FORM IN WHICH OFFENCE MAY BE STATED IN DOCUMENTS

### Statement of offence

**100.**—(1) Every information, summons, warrant or other document laid, issued or made for the purposes of, or in connection with, any proceedings before a magistrates' court for an offence shall be sufficient if it describes the specific offence with which the accused is charged, or of which he is convicted, in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the elements of the offence, and gives such particulars as may be necessary for giving reasonable information of the nature of the charge.

(2) If the offence charged is one created by or under any Act, the description of the offence shall contain a reference to the section of the Act, or, as the case may be, the rule, order, regulation, byelaw or other instrument creating the offence.

## MISCELLANEOUS

### Application for, and notice to be given of, order under s. 95 of, or paragraph 7 of Schedule 10 to, Road Traffic Act 1972

**101.**—(1) An application under section 95 of, or paragraph 7 of Schedule 10 to, the Road Traffic Act 1972 for an order removing a disqualification or disqualifications for holding or obtaining a licence shall be by complaint.

(2) The justice to whom the complaint is made shall issue a summons directed to the chief officer of police requiring him to appear before a magistrates' court acting for the petty sessions area for which the justice is acting to show cause why an order should not be made on the complaint.

(3) Where a magistrates' court makes an order under either of the provisions mentioned in paragraph (1) the court shall cause notice of the making of the order and a copy of the particulars of the order endorsed on the licence, if any, previously held by the applicant for the order to be sent to the licensing authority to which notice of the applicant's disqualification was sent.

#### **Application for revocation of order under s.14 of Food and Drugs Act 1955**

**102.**—(1) An application under section 14(4) of the Food and Drugs Act 1955<sup>(39)</sup> for the revocation of an order under that section disqualifying a person from using particular premises as catering premises shall be by complaint.

(2) The justice to whom the complaint is made shall issue a summons directed to the local authority upon whose application the, disqualification order was made, requiring the local authority to show cause why the disqualification should not be revoked.

#### **Application for substitution of conditional discharge for probation**

**103.** An application to a magistrates' court under section 11 of the Powers of Criminal Courts Act 1973 for the substitution of an order of conditional discharge for a probation order shall be by complaint.

#### **Application for review of compensation order**

**104.**—(1) An application under section 37 of the Powers of Criminal Courts Act 1973 for the review of a compensation order shall be by complaint.

(2) The justice to whom the complaint is made shall issue a summons directed to the person for whose benefit the compensation order was made, requiring him to show cause why the order should not be amended or revoked.

#### **Application for alteration of maintenance agreement under s. 35 of Matrimonial Causes Act 1973**

**105.** An application to a magistrates' court under section 35 of the Matrimonial Causes Act 1973<sup>(40)</sup> for the alteration of a maintenance agreement shall be by complaint.

#### **Proceedings against person outside the United Kingdom on application for variation, etc. of certain maintenance and custody orders**

**106.**—(1) The period referred to in section 24(2) of the Act of 1978 and in section 41(2A) of the Maintenance Orders (Reciprocal Enforcement) Act 1972<sup>(41)</sup> (which provide that, subject to certain conditions, a magistrates' court may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed by rules, proceed on an application made under section 20 or 21 of the said Act of 1978, section 60 of the Act of 1980 or section 9, 10, 11 or 12C(5) of the Guardianship of Minors Act 1971<sup>(42)</sup> notwithstanding that the respondent has not been served with the summons) shall be the whole of the period beginning one month before the making of the application and ending with the date of the hearing.

(2) Before proceeding in any such case as is referred to in the said section 24(2) or the said section 41(2A), the court shall be satisfied that, in addition to the matter referred to in those

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(39) 1955 c. 16.

(40) 1973 c. 18.

(41) 1972 c. 18; subsection (2A) of section 41 was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), section 89(2)(a) and Schedule 2, paragraph 36.

(42) 1971 c. 3; section 12C was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978](#), section 43.

subsections, the applicant has taken steps to notify the respondent of the making of the application and of the time and place appointed for the hearing by—

- (a) causing a notice in writing to that effect to be delivered to the respondent; or
- (b) causing a notice in writing to that effect to be sent by post addressed to the respondent at his last known or usual place of abode or at his place of business or at such other address at which there is ground for believing that it will reach the respondent, in accordance with directions given for the purpose by a justice of the peace acting for the same petty sessions area as that of the court; or
- (c) causing a notice to that effect to be inserted in one or more newspapers, in accordance with directions given as aforesaid;

and that it is reasonable in all the circumstances to proceed in the absence of the respondent.

(3) In any such case as is referred to in the said section 24(2) or the said section 41(2A), the court shall not make the order for which the application is made unless it is satisfied that during the period of 6 months immediately preceding the making of the application the respondent was continuously outside the United Kingdom or was not in the United Kingdom on more than 30 days and that, having regard to any communication to the court in writing purporting to be from the respondent, it is reasonable in all the circumstances so to do.

(4) Paragraph (1) of rule 67 of these Rules shall apply for the purpose of proving the delivery of a written notice in pursuance of paragraph (2)(a) as it applies for the purpose of proving the service of a summons.

In relation to a solemn declaration made outside the United Kingdom, paragraph (1) of the said rule 67 as applied by this paragraph, shall have effect as if for the reference to the authorities mentioned in the said paragraph (1) there were substituted a reference to a consular officer of Her Majesty's Government in the United Kingdom or any person for the time being authorised by law, in the place where the declarant is, to administer an oath for any judicial or other legal purpose.

(5) Paragraph (2) of the said rule 67 shall apply for the purpose of proving the sending of a written notice in pursuance of paragraph (2)(b) or the insertion of a notice in a newspaper in pursuance of paragraph (2)(c) as it applies for the purpose of proving the service of any process, provided, as respects the insertion of a notice in a newspaper, that a copy of the newspaper containing the notice is annexed to the certificate.

### **Application for summons to witness or warrant for his arrest**

**107.**—(1) An application for the issue of a summons or warrant under section 97 of the Act of 1980 may be made by the applicant in person or by his counsel or solicitor.

(2) An application for the issue of such a summons may be made by delivering or sending the application in writing to the clerk to the magistrates' court for submission to a justice of the peace.

### **Notice of order under s.104 of Road Traffic Act 1972**

**108.**—(1) Where a magistrates' court makes an order under section 104 of the Road Traffic Act 1972(43) that an offender shall inform the court of his date of birth or sex or both and the offender is not present in court, the clerk of the court shall serve notice in writing of the order on the offender.

(2) A notice under this rule shall be served by delivering it to the offender or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

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(43) 1972 c. 20; section 104 was amended by the [Road Traffic Act 1974 \(c. 50\)](#), section 13(1) and Schedule 3, paragraph 11.

**Signature of forms prescribed by rules made under the Act of 1980**

**109.**—(1) Subject to paragraph (2), where any form prescribed by Rules made or having effect as if made under section 144 of the Act of 1980 contains provision for signature by a justice of the peace only, the form shall have effect as if it contained provision in the alternative for signature by the clerk of a magistrates' court.

(2) This rule shall not apply to any form of warrant, other than a warrant of commitment or of distress, or to any form prescribed in the Magistrates' Courts (Forms) Rules 1981.

Dated 20th March 1981.

*Hailsham of St. Marylebone, C.*

*Status: This is the original version (as it was originally made).*

## SCHEDULE

Rule 1(2).

## REVOCATIONS

| Rules revoked  | References                      |
|--|---------------------------------|
| The Magistrates' Courts Rules 1968                     | <a href="#">S.I. 1968/1920.</a> |
| The Magistrates' Courts (Amendment) Rules 1969         | <a href="#">S.I. 1969/1711.</a> |
| The Magistrates' Courts (Amendment) Rules 1970         | <a href="#">S.I. 1970/1004.</a> |
| The Magistrates' Courts (Amendment) (No. 2) Rules 1970 | <a href="#">S.I. 1970/1791.</a> |
| The Magistrates' Courts (Amendment) Rules 1973         | <a href="#">S.I. 1973/790.</a>  |
| The Magistrates' Courts (Amendment) Rules 1975         | <a href="#">S.I. 1975/126.</a>  |
| The Magistrates' Courts (Amendment) (No. 2) Rules 1975 | <a href="#">S.I. 1975/518.</a>  |
| The Magistrates' Courts (Amendment) Rules 1977         | <a href="#">S.I. 1977/1174.</a> |
| The Magistrates' Courts (Amendment) Rules 1978         | <a href="#">S.I. 1978/147.</a>  |
| The Magistrates' Courts (Amendment) (No. 2) Rules 1978 | <a href="#">S.I. 1978/758.</a>  |
| The Magistrates' Courts (Amendment) Rules 1979         | <a href="#">S.I. 1979/1221.</a> |
| The Magistrates' Courts (Amendment) Rules 1980         | <a href="#">S.I. 1980/510.</a>  |
| The Magistrates' Courts (Amendment) (No. 2) Rules 1980 | <a href="#">S.I. 1980/1583.</a> |

**EXPLANATORY NOTE***(This Note is not part of the Rules.)*

These Rules consolidate, with some minor amendments, the various Rules relating to procedure in magistrates' courts specified in the Schedule to these Rules.

The only amendments of substance are contained in rules 41 and 57. Rule 41(4) is amended so as to require that, where reasons for a decision in domestic proceedings have been recorded under rule 36 of these Rules, the clerk of the court to which a complaint for variation, revocation etc. of an order for



periodical payments is made shall, if the justice determines under rule 41(4) that the complaint could be more conveniently dealt with by a court acting for another petty sessions area, send a copy of the record of those reasons, in addition to the complaint and the written particulars referred to in rule 41(3), to the clerk of the court acting for that other petty sessions area. Consequential amendments are made to paragraphs (6), (7) and (8) of rule 41.

Rule 57 (which deals with transfer of fine orders) is amended in consequence of the coming into operation on 1st December 1980 of section 40 of, and paragraphs 1 and 3 of Schedule 7 to, the Criminal Law Act 1977 which, inter alia, made new provision for the transfer of fines between England and Wales and Northern Ireland.