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STATUTORY INSTRUMENTS

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**2005 No. 384 (L.4)**

**SUPREME COURT OF ENGLAND AND WALES  
MAGISTRATES' COURTS,  
ENGLAND AND WALES**

**The Criminal Procedure Rules 2005**

*Made* - - - - *18th February 2005*  
*Laid before Parliament* *4th March 2005*  
*Coming into force* - - *4 April 2005*

The Criminal Procedure Rule Committee, having power under section 69 of the Courts Act 2003(1), make the following rules which may be cited as the Criminal Procedure Rules 2005:

**PART 1**

**THE OVERRIDING OBJECTIVE**

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**The overriding objective**

- 1.1.**—(1) The overriding objective of this new code is that criminal cases be dealt with justly.  
(2) Dealing with a criminal case justly includes—  
(a) acquitting the innocent and convicting the guilty;  
(b) dealing with the prosecution and the defence fairly;

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(1) [2003 c. 39](#); the power under section 69 is extended by virtue of relevant amendments to other enactments under Schedule 8 to the Courts Act 2003 and [S.I. 2004/2035](#).

- (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the court when bail and sentence are considered; and
- (g) dealing with the case in ways that take into account—
  - (i) the gravity of the offence alleged,
  - (ii) the complexity of what is in issue,
  - (iii) the severity of the consequences for the defendant and others affected, and
  - (iv) the needs of other cases.

#### **The duty of the participants in a criminal case**

**1.2.**—(1) Each participant, in the conduct of each case, must—

- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) comply with these Rules, practice directions and directions made by the court; and
- (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

#### **The application by the court of the overriding objective**

**1.3.** The court must further the overriding objective in particular when—

- (a) exercising any power given to it by legislation (including these Rules);
- (b) applying any practice direction; or
- (c) interpreting any rule or practice direction.

## **PART 2**

### **UNDERSTANDING AND APPLYING THE RULES**

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## When the Rules apply

**2.1.**—(1) In general, the Criminal Procedure Rules apply—

- (a) in all criminal cases in magistrates' courts and in the Crown Court; and
- (b) in all cases in the criminal division of the Court of Appeal.

(2) If a rule applies only in one or two of those courts, the rule makes that clear.

(3) The Rules apply on and after 4th April, 2005, but do not affect any right or duty existing under the rules of court revoked by the coming into force of these Rules.

*[Note. The rules replaced by these Rules are revoked when these Rules come into force by provisions of the Courts Act 2003(2), the Courts Act 2003 (Commencement No. 6 and Savings) Order 2004(3) and the Courts Act 2003 (Consequential Amendments) Order 2004(4). These Rules reproduce the substance of all the rules they replace.]*

## Definitions

**2.2.**—(1) In these Rules, unless the context makes it clear that something different is meant:

“court” means a tribunal with jurisdiction over criminal cases. It includes a judge, recorder, District Judge (Magistrates' Court's), lay justice and, when exercising their judicial powers, the Registrar of Criminal Appeals, a justices' clerk or assistant clerk;

“court officer” means the appropriate member of the staff of a court; and

“Practice Direction” means the Lord Chief Justice’s Consolidated Criminal Practice Direction, as amended.

(2) Definitions of some other expressions are in the rules in which they apply.

## References to Acts of Parliament and to Statutory Instruments

**2.3.** In these Rules, where a rule refers to an Act of Parliament or to subordinate legislation by title and year, subsequent references to that Act or to that legislation in the rule are shortened: so, for example, after a reference to the Criminal Procedure and Investigations Act 1996(5) that Act is called “the 1996 Act”; and after a reference to the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(6) those Regulations are called “the 1997 Regulations”.

## The glossary

**2.4.** The glossary at the end of the Rules is a guide to the meaning of certain legal expressions used in them.

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(2) 2003 c. 39.  
(3) S.I. 2004/2066.  
(4) S.I. 2004/2035.  
(5) 1996 c. 25.  
(6) S.I. 1997/684.

## PART 3

### CASE MANAGEMENT

#### Contents of this Part

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#### **The scope of this Part**

**3.1.** This Part applies to the management of each case in a magistrates' court and in the Crown Court (including an appeal to the Crown Court) until the conclusion of that case.

*[Note. Rules that apply to procedure in the Court of Appeal are in Parts 65 to 73 of these Rules.]*

#### **The duty of the court**

**3.2.—**(1) The court must further the overriding objective by actively managing the case.

(2) Active case management includes—

- (a) the early identification of the real issues;
- (b) the early identification of the needs of witnesses;
- (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
- (d) monitoring the progress of the case and compliance with directions;
- (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
- (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
- (g) encouraging the participants to co-operate in the progression of the case; and
- (h) making use of technology.

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

### **The duty of the parties**

**3.3.** Each party must—

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

### **Case progression officers and their duties**

**3.4.—**(1) At the beginning of the case each party must, unless the court otherwise directs—

- (a) nominate an individual responsible for progressing that case; and
- (b) tell other parties and the court who he is and how to contact him.

(2) In fulfilling its duty under rule 3.2, the court must where appropriate—

- (a) nominate a court officer responsible for progressing the case; and
- (b) make sure the parties know who he is and how to contact him.

(3) In this Part a person nominated under this rule is called a case progression officer.

(4) A case progression officer must—

- (a) monitor compliance with directions;
- (b) make sure that the court is kept informed of events that may affect the progress of that case;
- (c) make sure that he can be contacted promptly about the case during ordinary business hours;
- (d) act promptly and reasonably in response to communications about the case; and
- (e) if he will be unavailable, appoint a substitute to fulfil his duties and inform the other case progression officers.

### **The court's case management powers**

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

(2) In particular, the court may—

- (a) nominate a judge, magistrate, justices' clerk or assistant to a justices' clerk to manage the case;
- (b) give a direction on its own initiative or on application by a party;
- (c) ask or allow a party to propose a direction;
- (d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;
- (e) give a direction without a hearing;
- (f) fix, postpone, bring forward, extend or cancel a hearing;
- (g) shorten or extend (even after it has expired) a time limit fixed by a direction;
- (h) require that issues in the case should be determined separately, and decide in what order they will be determined; and
- (i) specify the consequences of failing to comply with a direction.

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

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

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

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

### **Application to vary a direction**

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

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

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

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

### **Agreement to vary a time limit fixed by a direction**

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

- (a) the variation will not—
  - (i) affect the date of any hearing that has been fixed, or
  - (ii) significantly affect the progress of the case in any other way;
- (b) the court has not prohibited variation by agreement; and
- (c) the court's case progression officer is promptly informed.

(2) The court's case progression officer must refer the agreement to the court if he doubts the condition in paragraph (1)(a) is satisfied.

### **Case preparation and progression**

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

(2) At every hearing the court must, where relevant—

- (a) if the defendant is absent, decide whether to proceed nonetheless;
- (b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;
- (c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;
- (d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and
- (e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

### **Readiness for trial or appeal**

**3.9.**—(1) This rule applies to a party's preparation for trial or (in the Crown Court) appeal, and in this rule and rule 3.10 trial includes any hearing at which evidence will be introduced.

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

### **Conduct of a trial or an appeal**

**3.10.** In order to manage the trial or (in the Crown Court) appeal, the court may require a party to identify—

- (a) which witnesses he intends to give oral evidence;
- (b) the order in which he intends those witnesses to give their evidence;
- (c) whether he requires an order compelling the attendance of a witness;
- (d) what arrangements, if any, he proposes to facilitate the giving of evidence by a witness;
- (e) what arrangements, if any, he proposes to facilitate the participation of any other person, including the defendant;
- (f) what written evidence he intends to introduce;
- (g) what other material, if any, he intends to make available to the court in the presentation of the case;
- (h) whether he intends to raise any point of law that could affect the conduct of the trial or appeal; and
- (i) what timetable he proposes and expects to follow.

### **Case management forms and records**

**3.11.**—(1) The case management forms set out in the Practice Direction must be used, and where there is no form then no specific formality is required.

- (2) The court must make available to the parties a record of directions given.

*[Note. Case management may be affected by the following other rules and legislation:*

#### *Criminal Procedure Rules*

*Parts 10.4 and 27.2: reminders of right to object to written evidence being read at trial*

*Part 12.2: time for first appearance of accused sent for trial*

*Part 13: dismissal of charges sent or transferred to the Crown Court*

*Part 14: the indictment*

*Part 15: preparatory hearings in serious fraud and other complex or lengthy cases*

*Parts 21–26: the rules that deal with disclosure*

*Parts 27–36: the rules that deal with evidence*

*Part 37: summary trial*

*Part 38: trial of children and young persons*

*Part 39: trial on indictment*

*Regulations*

*Prosecution of Offences (Custody Time Limits) Regulations 1987(7)*

*Criminal Justice Act 1987 (Notice of Transfer) Regulations 1988(8)*

*Criminal Justice Act 1991 (Notice of Transfer) Regulations 1992(9)*

*Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(10)*

*Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2000(11)*

*Provisions of Acts of Parliament*

*Sections 5, 10 and 18, Magistrates' Courts Act 1980(12): powers to adjourn hearings*

*Sections 128 and 129, Magistrates' Courts Act 1980(13): remand in custody by magistrates' courts*

*Part 1, Criminal Procedure and Investigations Act 1996(14): disclosure*

*Schedule 2, Criminal Procedure and Investigations Act 1996(15): use of witness statements at trial*

*Section 2, Administration of Justice (Miscellaneous Provisions) Act 1933(16): procedural conditions for trial in the Crown Court*

*Section 6, Magistrates' Courts Act 1980(17): committal for trial*

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(7) S.I. 1987/299.

(8) S.I. 1988/1691.

(9) S.I. 1992/1670, amended by S.I. 1998/461.

(10) S.I. 1997/684.

(11) S.I. 2000/3305.

(12) 1980 c. 43; section 5 was amended by section 59 of, and paragraph 1(a) of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 18 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and is further amended by paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(13) Section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 129 is amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(14) 1996 c. 25.

(15) Schedule 2 was amended by section 109(1) of, and paragraph 380 of Schedule 8 to, the Courts Act 2003 (c. 39) and is repealed by paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(16) 1933 c. 36; section 2 was amended by section 56(4) of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 152(1) of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54), section 31(6) of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23), section 15 of, and paragraph 1 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 170(1) of, and paragraph 10 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 119 of, and paragraph 5 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and article 3 of, and paragraph 1 of the Schedule to, S.I. 2004/2035.

(17) Section 6 was amended by section 170(1) of, and paragraphs 65 and 66 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6(1)(a) of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), paragraph 4 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraphs 95 and 96 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 202 of Schedule 8 to, the Courts Act 2003 (c. 39), and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.



*Section 4, Criminal Justice Act 1987(18): section 53, Criminal Justice Act 1991(19): section 51, Crime and Disorder Act 1998(20): other procedures by which a case reaches the Crown Court*

*Section 7, Criminal Justice Act 1987(21); Parts III and IV, Criminal Procedure and Investigations Act 1996: pre-trial and preparatory hearings in the Crown Court*

*Section 9, Criminal Justice Act 1967(22): proof by written witness statement]*

## PART 4

### SERVICE OF DOCUMENTS

#### Contents of this Part

Summons issued by a magistrates' court	rule 4.1
Proof of service in magistrates' courts	rule 4.2
Documents in Crown Court proceedings	rule 4.3

#### Service of summons, etc issued by a magistrates' court

**4.1.**—(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;
- (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) Service for the purposes of the Magistrates' Courts Act 1980(23) 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.

(3) Except where another rule contains provision to the contrary, paragraph (2) shall have effect in relation to a document (other than a summons) issued by a justice of the peace as it has effect in

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- (18) 1987 c. 38; section 4 was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 65 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37) and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22), and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.
  - (19) 1991 c. 53; section 53 was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 93 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 47 of Schedule 4 to the Access to Justice Act 1999 (c. 22) and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.
  - (20) 1998 c. 37; section 51 is substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.
  - (21) Section 7 was amended by section 168(1) of, and paragraph 30 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is further amended by sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.
  - (22) 1967 c. 80; section 9 was amended by the Children and Young Persons Act 1969 (c. 54), Schedule 5, paragraph 55, the Courts Act 1971 (c. 23), Schedule 8, Part 2, paragraph 49, the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 6(1), the Criminal Procedure and Investigations Act 1996 (c. 25) section 69(1) and S.I. 2001/1090. It is further amended by the Courts Act 2003 (c. 39), Schedule 4, paragraph 1 and the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 43(1), (2) and Schedule 37, Part 4, with effect from dates to be appointed.
  - (23) 1980 c. 43.

relation to a summons so issued, but with the substitution of references to England and Wales for the references to the United Kingdom.

(4) 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 1980 Act 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.

(5) Paragraph (1)(c) shall not authorise the service by post of a summons requiring the attendance of any person to give evidence or produce a document or thing.

(6) 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.

*[Note. Formerly rule 99 of the Magistrates' Courts Rules 1981(24). As to the form of a summons, see rule 7.7. For further rules of service applicable in particular circumstances see rules 7.5 (notice of order under section 25 of the Road Traffic Offenders Act 1988(25)), 19.2 (application for reconsideration of police bail), 34.6 (hearsay evidence), 35.7 (evidence of bad character), 37.6 (notice of intention to cite previous convictions), 40.3 (tainted acquittals), 52.1 (notice of fine), 52.7 (minute of order of court), 55.4 (notice of registration under section 71(6) of the 1988 Act(26)) and 64.5 (appeal by case stated).]*

#### **Proof of service in magistrates' courts**

**4.2.—**(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 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 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.

(3) References in paragraph (2) of this rule 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.

(4) Any process or other document produced by the court computer system on a given day shall be sufficient evidence that the process or other document was sent to the person to whom it is addressed within 2 days of it being produced, unless the contrary is proved.

*[Note. Formerly rule 67 of the Magistrates' Courts Rules 1981.]*

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(24) S.I. 1982/552; amending instruments relevant to this Part are S.I. 1993/1183 and 2003/1236.

(25) 1988 c. 53; section 25 was amended by paragraphs 140 and 142 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 118 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 311 of Schedule 8 to the Courts Act 2003 (c. 39).

(26) Section 71(6) was amended by paragraphs 140 and 150 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 317 of Schedule 8 to the Courts Act 2003 (c. 39).

## Service of documents in Crown Court proceedings

**4.3.** Except where any other rule contains provision to the contrary, any notice or other document which is required by these Rules to be given to any person in respect of Crown Court proceedings may be served personally on that person or sent to him by post at his usual or last known residence or place of business in England or Wales or, in the case of a company, at the company's registered office in England or Wales.

*[Note. Formerly rule 28 of the Crown Court Rules 1982(27). For further rules of service applicable in particular circumstances see rules 13.6 (dismissal of charges transferred or sent), 15.8 (preparatory hearings), 34.6 (hearsay evidence), 35.7 (evidence of bad character), 40.3 (tainted acquittals), 41.17 (retrial following acquittal) and 57.11 to 57.14 (proceedings under the Proceeds of Crime Act 2002(28)). As to service of documents in an appeal to the Court of Appeal see rule 68.1 and the rules listed in the explanatory note to that rule.]*

## PART 5

### FORMS

#### Contents of this Part

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Forms	rule 5.1
Forms in Welsh	rule 5.2
Signature of magistrates' court forms	rule 5.3

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#### Forms

**5.1.** The forms set out in the Practice Direction shall be used as appropriate in connection with the rules to which they apply.

#### Magistrates' court forms in Welsh

**5.2.—**(1) Subject to the provisions of this rule, the Welsh language forms set out in the Practice Direction or forms to the like effect may be used in connection with proceedings in magistrates' courts in Wales.

(2) Both a Welsh form and an English form may be used in the same document.

(3) When only a Welsh form set out in the Practice Direction accompanying this rule, or only the corresponding English form, is used in connection with proceedings in magistrates' courts in Wales, there shall be added the following words in Welsh and English:

“Darperir y ddogfen hon yn Gymraeg/Saesneg os bydd arnoch ei heisiau. Dylech wneud cais yn ddi-oed i (Glerc Llys yr Ynadon) (rhodder yma'r cyfeiriad) ... ..

This document will be provided in Welsh/English if you require it. You should apply immediately to (the Justices' Clerk to the Magistrates' Court) (address) ... ..

If a person other than a justices' clerk is responsible for sending or giving the document, insert that person's name.”

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(27) S.I. 1982/1109.

(28) 2002 c. 29.

(4) The justices' clerk or other person responsible for the service of a form bearing the additional words set out in paragraph (3) above shall, if any person upon whom the form is served so requests, provide him with the corresponding English or Welsh form.

(5) In this rule any reference to serving a document shall include the sending, giving or other delivery of it.

(6) In the case of a discrepancy between an English and Welsh text the English text shall prevail.

*[Note. Formerly rules 2 to 6 of, and Schedule 2 to, the Magistrates' Courts (Welsh Forms) Rules 1986(29).]*

### **Signature of magistrates' court forms by justices' clerk**

**5.3.**—(1) Subject to paragraph (2) below, where any form prescribed by these Rules 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 justices' clerk.

(2) This rule shall not apply to any form of information, complaint, statutory declaration or warrant, other than a warrant of commitment or of distress.

(3) In this rule where a signature is required on a form or warrant other than an arrest, remand or commitment warrant, an electronic signature incorporated into the document will satisfy this requirement.

*[Note. Formerly rule 109 of the Magistrates' Court Rules 1981(30).]*

## **PART 6**

### **COURT RECORDS**

#### **Contents of this Part**

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Magistrates' court register	rule 6.1
Registration of endorsement of licence under section 57 of the Road Traffic Offenders Act 1988	rule 6.2
Registration of certificate under section 70 of the Road Traffic Offenders Act 1988	rule 6.3
Register as proof of magistrates' court proceedings	rule 6.4

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### **Magistrates' court register**

**6.1.**—(1) A magistrates' court officer shall keep a register in which there shall be entered—

- (a) a minute or memorandum of every adjudication of the court; and
- (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 may be stored in electronic form on the court computer system and entries in the register shall include, where relevant, the following particulars—

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(29) S.I. 1986/1079, modified by sections 43 and 44 of the Criminal Justice and Court Services Act 2000 (c. 43).

(30) S.I. 1981/552, amended by S.I. 2003/1236.

- (a) the name of the informant, complainant or applicant;
- (b) the name and date of birth (if known) of the defendant or respondent;
- (c) the nature of offence, matter of complaint or details of the application;
- (d) the date of offence or matter of complaint;
- (e) the plea or consent to order; and
- (f) the minute of adjudication.

(3) Particulars of any entry relating to a decision about bail or the reasons for any such decisions or the particulars of any certificate granted under section 5(6A) of the Bail Act 1976(31) 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) Where, by virtue of section 128(3A) of the Magistrates' Courts Act 1980(32), an accused gives his consent to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) or 18(4)(33) of that Act, the court shall cause the consent of the accused, and the date on which it was notified to the court, to be entered in the register.

(5) Where any consent mentioned in paragraph (4) is withdrawn, the court shall cause the withdrawal of the consent and the date on which it was notified to the court to be entered in the register.

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

(7) 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.

(8) 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 1980 Act (disorderly conduct on his part) or by virtue of section 23(1) of that Act(34) (consent signified by person representing him).

(9) In any case to which section 22 of the 1980 Act(35) (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.

(10) Where a court has power under section 53(3) of the 1980 Act 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.

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(31) 1976 c. 63; section 5(6A) was inserted by section 60 of the Criminal Justice Act 1982 (c. 48) and amended by paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(32) 1980 c. 43; section 128(3A) was inserted by section 59 of, and paragraph 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and amended by section 170(1) of, and Schedule 15 to, the Criminal Justice Act 1988 and sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is further amended by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(33) Section 5 was amended by section 59 of, and paragraph 1(a) of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 18(4) was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48).

(34) Section 23(1) was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 2000 (c. 41).

(35) Section 22 was amended by sections 38 and 170(2) of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 2(2) of the Aggravated Vehicle Taking Act 1992 (c. 11) and sections 46 and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(11) In the case of conviction or dismissal, the register shall clearly show the nature of the offence of which the accused is convicted or, as the case may be, the nature of the offence charged in the information that is dismissed.

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

(13) Where a court is required under section 130(3) of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(36)</sup> to give reasons for not making a compensation order the court shall cause the reasons given to be entered in the register.

(14) Where a court passes a custodial sentence, the court shall cause a statement of whether it obtained and considered a pre-sentence report before passing sentence to be entered in the register.

(15) 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 Lord Chancellor.

(16) A record of summary conviction or order made on complaint required for an appeal or other legal purpose may be in the form of certified extract from the court register.

(17) Such part of the register as relates to proceedings in a youth court may be recorded separately and stored in electronic form on the court computer system.

*[Note. Formerly rules 16 and 66 of the Magistrates' Court Rules 1981<sup>(37)</sup>, and rule 25 of the Magistrates' Courts (Children and Young Persons) Rules 1992<sup>(38)</sup>.]*

### **Registration of endorsement of licence under section 57 of the Road Traffic Offenders Act 1988**

**6.2.** A magistrates' court officer or justices' clerk who, as a fixed penalty clerk within the meaning of section 69(4) of the Road Traffic Offenders Act 1988<sup>(39)</sup>, endorses a driving licence under section 57(3) or (4) of that Act<sup>(40)</sup> (endorsement of licences without hearing) shall register the particulars of the endorsement in a book separate from the register kept under rule 6.1 but any such book shall be regarded as forming part of the register.

*[Note. Formerly rule 66A of the Magistrates' Courts Rules 1981.]*

### **Registration of certificate issued under section 70 of the Road Traffic Offenders Act 1988**

**6.3.** A magistrates' court officer shall register receipt of a registration certificate issued under section 70 of the Road Traffic Offenders Act 1988<sup>(41)</sup> (sum payable in default of fixed penalty to be enforced as a fine) in a book separate from the register kept under rule 6.1 but any such book shall be regarded as forming part of the register.

*[Note. Formerly rule 66B of the Magistrates' Courts Rules 1981.]*

### **Proof of proceedings in magistrates' courts**

**6.4.** The register of a magistrates' court, or an extract from the register certified by the magistrates' court officer as a true extract, shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register.

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<sup>(36)</sup> 2000 c. 6.

<sup>(37)</sup> S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1986/1332, 1988/2132, 1992/709, 1992/2072, 1993/1183, 2001/610 and 2003/1236.

<sup>(38)</sup> S.I. 1992/2071, amended by S.I. 2003/1236.

<sup>(39)</sup> 1988 c. 53; section 69(4) was amended by paragraph 105 of Schedule 4 to the Road Traffic Act 1991 (c. 40), paragraphs 140 and 148 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 315 of Schedule 8 to the Courts Act 2003 (c. 39).

<sup>(40)</sup> Section 57(3) and (4) was amended by regulation 2(2) of, and paragraph 17 of Schedule 2 to, S.I. 1990/144.

<sup>(41)</sup> Section 70 was amended by paragraphs 140 and 149 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and by paragraph 316 of Schedule 8 to the Courts Act 2003 (c. 39).

[Note. Formerly rule 68 of the Magistrates' Courts Rules 1981. As to the requirement to keep a register, see rule 6.1.]

## PART 7

### COMMENCING PROCEEDINGS IN MAGISTRATES' COURTS

#### Contents of this Part

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#### Information and complaint

**7.1.**—(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 Magistrates' Courts Act 1980(42) and any other enactment, an information or complaint need not be in writing or on oath.

[Note. Formerly rule 4(1) and (2) of the Magistrates' Court Rules 1981(43). As to the form of an information, see rules 7.2 and 7.3.]

#### Statement of offence

**7.2.**—(1) Every information laid in, or summons, warrant or other document issued or made by, a magistrates' court shall be sufficient if it—

- (a) describes the 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
- (b) gives such particulars as may be necessary to provide reasonable information about the nature of the charge.

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(42) 1980 c. 43.

(43) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1986/1332, 1993/1183, 2001/610 and 2003/1236.

(2) It shall not be necessary for any of those documents to—

- (a) state all the elements of the offence; or
- (b) negative any matter upon which the accused may rely.

(3) 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, bylaw or other instrument creating the offence.

*[Note. Formerly rules 4(3) and 100 of the Magistrates' Courts Rules 1981.]*

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

**7.3.**—(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 two or more informations being set out in one document.

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

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

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

*[Note. Formerly rule 12 of the Magistrates' Courts Rules 1981.]*

### **Duty of court officer receiving statutory declaration under section 14(1) of the Magistrates' Courts Act 1980**

**7.4.** Where a magistrates' court officer receives a statutory declaration which complies with section 14(1) of the Magistrates' Courts Act 1980(**44**) (accused did not know of proceedings), he shall—

- (a) note the receipt of the declaration in the register; and
- (b) inform the prosecutor and, if the prosecutor is not a constable, the chief officer of police of the receipt of the declaration.

*[Note. Formerly rule 20 of the Magistrates' Courts Rules 1981. As to the requirement to keep a register, see rule 6.1.]*

### **Notice of order under section 25 of the Road Traffic Offenders Act 1988**

**7.5.**—(1) Where a magistrates' court makes an order under section 25 of the Road Traffic Offenders Act 1988(**45**) 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 court officer shall serve notice in writing of the order on the offender.

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(44) Section 14(1) was amended by paragraphs 95 and 98 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 205 of Schedule 8 to the Courts Act 2003 (c. 39).

(45) 1988 c. 53; section 25 was amended by paragraphs 140 and 142 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 118 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 311 of Schedule 8 to the Courts Act 2003 (c. 39).



(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.

*[Note. Formerly rule 108 of the Magistrates' Courts Rules 1981.]*

### **Statutory declaration under section 72 and 73 of the Road Traffic Offenders Act 1988**

7.6. Where a magistrates' court officer receives a statutory declaration under section 72 and 73 of the Road Traffic Offenders Act 1988(46) (fixed penalty notice or notice fixed to vehicle invalid) he shall send a copy of it to the appropriate chief officer of police.

*[Note. Formerly rule 112 of the Magistrates' Courts Rules 1981.]*

### **Form of summons**

7.7.—(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.

(4) In this rule where a signature is required, an electronic signature incorporated into the document shall satisfy this requirement.

*[Note. Formerly rule 98 of the Magistrates' Courts Rules 1981. As to the service of a summons, see rule 4.1.]*

### **Summons or warrant to secure attendance of a parent or guardian at a youth court**

7.8. Where a child or young person is charged with an offence, or is for any other reason brought before a court, a summons or warrant may be issued by a court to enforce the attendance of a parent or guardian under section 34A of the Children and Young Persons Act 1933(47), in the same manner as if an information were laid upon which a summons or warrant could be issued against a defendant under the Magistrates' Courts Act 1980 and a summons to the child or young person may include a summons to the parent or guardian to enforce his attendance for the said purpose.

*[Note. Formerly rule 26 of the Magistrates' Courts (Children and Young Persons) Rules 1992(48).]*

### **Magistrates' court officer to have copies of documents sent to accused under section 12(1) of the Magistrates' Courts Act 1980**

7.9. Where the prosecutor notifies a magistrates' court officer that the documents mentioned in section 12(1)(a) and 12(1)(b) of the Magistrates' Courts Act 1980(49) have been served upon

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(46) Section 72 was amended by regulation 2(2) of, and paragraph 20 of Schedule 2 to, S.I. 1990/144; both sections were further amended by paragraphs 140 and 151 of Schedule 13 to the Access to Justice Act 1999 (c. 22).

(47) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by paragraph 1 of Schedule 5 to the Local Government Act 2000 (c. 22).

(48) S.I. 1992/2071.

(49) Section 12(1) was substituted by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by paragraphs 95 and 97 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 203 of Schedule 8 to the Courts Act 2003 (c. 39), and is further amended by section 308 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

the accused, the prosecutor shall send to the court officer a copy of the document mentioned in section 12(1)(b).

*[Note. Formerly rule 73 of the Magistrates' Courts Rules 1981. Section 12 of the Magistrates' Courts Act 1980 applies where a summons has been issued requiring a person to appear before a magistrates' court, other than a youth court, to answer an information for a summary offence punishable with not more than 3 months' imprisonment. The documents mentioned in section 12(1)(b) are: a notice stating the effect of section 12, and either a statement of the facts to be placed before the court if the accused pleads guilty by post, or copies of the statements of the prosecution witnesses.]*

## PART 8

### OBJECTING TO THE DISCONTINUANCE OF PROCEEDINGS IN A MAGISTRATES' COURT

#### Contents of this Part

Time for objecting	rule 8.1
Form of Notice	rule 8.2
Duty of Director of Public Prosecutions	rule 8.3
Duty of magistrates' court	rule 8.4

#### Time for objecting

**8.1.** The period within which an accused person may give notice under section 23(7) of the Prosecution of Offences Act 1985(**50**) that he wants proceedings against him to continue is 35 days from the date when the proceedings were discontinued under that section.

*[Note. Formerly rule 3 of the Magistrates' Courts (Discontinuance of Proceedings) Rules 1986(**51**). For the equivalent procedure in the Crown Court see section 23A of the 1985 Act.]*

#### Form of notice

**8.2.** Notice under section 23(3), (4) or (7) of the Prosecution of Offences Act 1985(**52**) shall be given in writing and shall contain sufficient particulars to identify the particular offence to which it relates; and, without prejudice to any other lawful method of giving notice, may be given by post in a registered letter or by the recorded delivery service, in which case it shall be treated as having been given on the date on which it is received for dispatch by the postal operator (within the meaning of the Postal Services Act 2000(**53**)) concerned.

*[Note. Formerly rule 4 of the Magistrates' Courts (Discontinuance of Proceedings) Rules 1986.]*

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(50) 1985 c. 23; section 23(7) was amended by paragraphs 129 and 131 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 290 of Schedule 8 to the Courts Act 2003 (c. 39).

(51) S.I. 1986/367; amending instruments relevant to this Part are S.I. 2001/615 and 2001/1149.

(52) Section 23(3) was amended by paragraphs 129 and 131 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 290 of Schedule 8 to the Courts Act 2003 (c. 39).

(53) 2000 c. 26.

### **Duty of Director of Public Prosecutions**

**8.3.** On giving notice under section 23(3) or (4) of the Prosecution of Offences Act 1985 the Director of Public Prosecutions shall inform any person who is detaining the accused person for the offence in relation to which the notice is given that he has given such notice and of the effect of the notice.

*[Note. Formerly rule 5 of the Magistrates' Courts (Discontinuance of Proceedings) Rules 1986.]*

### **Duty of magistrates' court**

**8.4.** On being given notice under section 23(3) of the Prosecution of Offences Act 1985 in relation to an offence for which the accused person has been granted bail by a court, a magistrates' court officer shall inform—

- (a) any sureties of the accused; and
- (b) any persons responsible for securing the accused's compliance with any conditions of bail

that he has been given such notice and of the effect of the notice.

*[Note. Formerly rule 6 of the Magistrates' Courts (Discontinuance of Proceedings) Rules 1986.]*

## **PART 9**

### **PRE-TRIAL HEARINGS IN MAGISTRATES' COURTS**

#### **Contents of this Part**

*[Note. There are currently no rules in this Part.]*

## **PART 10**

### **COMMITTAL FOR TRIAL**

#### **Contents of this Part**

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Restrictions on reports of committal proceedings	rule 10.1
Committal for trial without consideration of the evidence	rule 10.2
Consideration of evidence at committal proceedings	rule 10.3
Court's reminder to defendant of right to object to evidence being read at trial without further proof	rule 10.4
Material to be sent to court of trial	rule 10.5

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### Restrictions on reports of committal proceedings

**10.1.**—(1) Except in a case where evidence is, with the consent of the accused, to be tendered in his absence under section 4(4)(b) of the Magistrates' Courts Act 1980(**54**) (absence caused by ill health), a magistrates' court acting as examining justices shall before admitting any evidence explain to the accused the restrictions on reports of committal proceedings imposed by section 8 of that Act 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 1980 Act(**55**) 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.

*[Note. Formerly rule 5 of the Magistrates' Courts Rules 1981(**56**). On the coming into force of Schedule 3 to the Criminal Justice Act 2003(**57**) committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998(**58**) in the same way as cases triable only on indictment.]*

### Committal for trial without consideration of the evidence

**10.2.**—(1) This rule applies to committal proceedings where the accused has a solicitor acting for him in the case and where the court has been informed that all the evidence falls within section 5A(2) of the Magistrates' Courts Act 1980(**59**).

(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 submit that there is 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 make such a submission as is referred to in paragraph (2) it shall, after receiving any written evidence falling within section 5A(3) of the 1980 Act, determine whether or not to commit the accused for trial without consideration of the evidence, and where it determines not to so commit the accused it shall proceed in accordance with rule 10.3.

*[Note. Formerly rule 6 of the Magistrates' Courts Rules 1981. On the coming into force of Schedule 3 to the Criminal Justice Act 2003 committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998 in the same way as cases triable only on indictment.]*

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(54) 1980 c. 43; section 4(4)(b) was amended by paragraph 25 of Schedule 18 to the Courts and Legal Services Act 1990 (c. 41) and paragraph 2 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(55) Section 8(2) was amended by sections 1(1) and 2 of the Criminal Justice (Amendment) Act 1981 (c. 27) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(56) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1992/729, 1992/2072, 1994/1481, 1997/706, 2001/610 and 2003/1236.

(57) 2003 c. 44.

(58) 1998 c. 37; section 51 is substituted, and section 51A inserted, by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(59) Section 5A was inserted by paragraph 3 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

### **Consideration of evidence at committal proceedings**

**10.3.**—(1) This rule does not apply to committal proceedings where under section 6(2) of the Magistrates' Courts Act of 1980(60) a magistrates' court commits a person for trial without consideration of the evidence.

- (2) A magistrates' court inquiring into an offence as examining justices, having ascertained—
- (a) that the accused has no legal representative acting for him in the case; or
  - (b) that the accused's legal representative has requested the court to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence with which he is charged, as the case may be,

shall permit the prosecutor to make an opening address to the court, if he so wishes, before any evidence is tendered.

(3) After such opening address, if any, the court shall cause evidence to be tendered in accordance with sections 5B(4), 5C(4), 5D(5) and 5E(3)(61) of the 1980 Act, that is to say by being read out aloud, except where the court otherwise directs or to the extent that it directs that an oral account be given of any of the evidence.

(4) The court may view any exhibits produced before the court and may take possession of them.

(5) After the evidence has been tendered the court shall hear any submission which the accused may wish to make as to whether there is sufficient evidence to put him on trial by jury for any indictable offence.

(6) The court shall permit the prosecutor to make a submission—

- (a) in reply to any submission made by the accused in pursuance of paragraph (5); or
- (b) where the accused has not made any such submission but the court is nevertheless minded not to commit him for trial.

(7) After hearing any submission made in pursuance of paragraph (5) or (6) the court shall, unless it decides not to commit the accused 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.

*[Note. Formerly rule 7 of the Magistrates' Courts Rules 1981. On the coming into force of Schedule 3 to the Criminal Justice Act 2003 committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998 in the same way as cases triable only on indictment.]*

### **Court's reminder to a defendant of right to object to evidence being read at trial without further proof**

**10.4.** A magistrates' court which commits a person for trial shall forthwith remind him of his right to object, by written notification to the prosecutor and the Crown Court within 14 days of being committed unless that court in its discretion permits such an objection to be made outside that period, to a statement or deposition being read as evidence at the trial without oral evidence being given by the person who made the statement or deposition, and without the opportunity to cross-examine that person.

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(60) Section 6(2) was substituted by paragraph 4 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(61) Sections 5B to 5E were inserted by paragraph 3 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and are repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

*[Note. Formerly rule 8 of the Magistrates' Courts Rules 1981. As to the duty on the prosecution to notify the defendant of this right, see rule 27.2. On the coming into force of Schedule 3 to the Criminal Justice Act 2003 committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998 in the same way as cases triable only on indictment.]*

### **Material to be sent to court of trial**

**10.5.**—(1) 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 Saturdays, Sundays, Good Friday, Christmas Day or Bank Holidays), the magistrates' court officer shall, subject to the provisions of section 7 of the Prosecution of Offences Act 1985(**62**) (which relates to the sending of documents and things to the Director of Public Prosecutions), send to the Crown Court officer—

- (a) the information, if it is in writing;
- (b) (i) the evidence tendered in accordance with section 5A of the Magistrates' Courts Act 1980 and, where any of that evidence consists of a copy of a deposition or documentary exhibit which is in the possession of the court, any such deposition or documentary exhibit, and
  - (ii) a certificate to the effect that that evidence was so tendered;
- (c) any notification by the prosecutor under section 5D(2) of the 1980 Act regarding the admissibility of a statement under section 23 or 24 of the Criminal Justice Act 1988(**63**) (first hand hearsay; business documents);
- (d) a copy of the record made in pursuance of section 5 of the Bail Act 1976(**64**) relating to the grant or withholding of bail in respect of the accused on the occasion of the committal;
- (e) 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 1980 Act;
- (f) a list of the exhibits produced in evidence before the justices or treated as so produced;
- (g) such of the exhibits referred to in paragraph (1)(f) as have been retained by the justices;
- (h) the names and addresses of any interpreters engaged for the defendant for the purposes of the committal proceedings, together with any telephone numbers at which they can be readily contacted, and details of the languages or dialects in connection with which they have been so engaged;
- (i) if the committal was under section 6(2) of the 1980 Act (committal for trial without consideration of the evidence), a statement to that effect;
- (j) if the magistrates' court has made an order under section 8(2) of the 1980 Act (removal of restrictions on reports of committal proceedings), a statement to that effect;

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(62) 1985 c. 23; section 7 was amended by paragraphs 129 and 130 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 287 of Schedule 8 to the Courts Act 2003 (c. 39).

(63) 1988 c. 33; sections 23 and 24 were amended by paragraph 28 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and section 67 of, and paragraphs 15 and 16 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23); section 24 was further amended by paragraphs 13 and 14 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32); both sections are repealed by section 136(a) of, and Part 6 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(64) 1976 c. 63; section 5 was amended by section 65(4) of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60(2) and (3) of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39) and Part 2 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), and is further amended by paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36 and Part 2 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

- (k) the certificate of the examining justices as to the costs of the prosecution under the Costs in Criminal Cases (General) Regulations 1986(65);
- (l) if any person under the age of 18 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(66) (prohibition of publication of certain matter in newspapers);
- (m) a copy of any representation order previously made in the case;
- (n) a copy of any application for a representation order previously made in the case which has been refused; and
- (o) any documents relating to an appeal by the prosecution against the granting of bail.

(2) The period of 4 days specified in paragraph (1) may be extended in relation to any committal for so long as the Crown Court officer directs, having regard to the length of any document mentioned in that paragraph or any other relevant circumstances.

*[Note. Formerly rule 11 of the Magistrates' Courts Rules 1981. On the coming into force of Schedule 3 to the Criminal Justice Act 2003 committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998 in the same way as cases triable only on indictment.]*

## PART 11

### TRANSFER FOR TRIAL OF SERIOUS FRAUD CASES OR CASES INVOLVING CHILDREN

#### Contents of this Part

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Interpretation of this Part	rule 11.1
Transfer on bail	rule 11.2
Notice where person removed to hospital	rule 11.3
Variation of arrangements for bail	rule 11.4
Documents to be sent to Crown Court	rule 11.5

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#### Interpretation of this Part

**11.1.**—(1) In this Part:

“notice of transfer” means a notice referred to in section 4(1) of the Criminal Justice Act 1987(67) or section 53(1) of the Criminal Justice Act 1991(68).

(2) Where this Part requires a document to be given or sent, or a notice to be communicated in writing, it may, with the consent of the addressee, be sent by electronic communication.

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(65) S.I. 1986/1335.

(66) 1933 c. 12; section 39 was amended by sections 57(1) and 64(3) of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37) and sections 37(2), 39 and 46 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48), and is further amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) with effect from a date to be appointed, when it will cease to have effect in relation to criminal proceedings.

(67) 1987 c. 38; section 4(1) was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22), and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(68) 1991 c. 53; section 53(1) was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(3) Electronic communication means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

- (a) by means of an electronic communications network (within the meaning of the Communications Act 2003(69)); or
- (b) by other means but while in an electronic form.

*[Note. Formerly rule 2 of the Magistrates' Courts (Notice of Transfer) Rules 1988(70) and rule 2 of the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992(71). See also sections 4 and 5 of the Criminal Justice Act 1987 and section 53 of, and Schedule 6 to, the Criminal Justice Act 1991. On the coming into force of Schedule 3 to the Criminal Justice Act 2003(72) those provisions will be replaced with sections 51B and 51C of the Crime and Disorder Act 1998(73), which are to similar effect. For the duties of the prosecuting authority see the Criminal Justice Act 1987 (Notice of Transfer) Regulations 1988(74) and the Criminal Justice Act 1991 (Notice of Transfer) Regulations 1992(75).]*

### Transfer on bail

**11.2.**—(1) Where a person in respect of whom notice of transfer has been given—

- (a) is granted bail under section 5(3) or (7A) of the Criminal Justice Act 1987(76) by the magistrates' court to which notice of transfer was given; or
- (b) is granted bail under paragraph 2(1) or (7) of Schedule 6 to the Criminal Justice Act 1991(77) by the magistrates' court to which notice of transfer was given,

the magistrates' court officer shall give notice thereof in writing to the governor of the prison or remand centre to which the said person would have been committed by that court if he had been committed in custody for trial.

(2) Where notice of transfer is given under section 4(1) of the 1987 Act in respect of a corporation the magistrates' court officer shall give notice thereof to the governor of the prison to which would be committed a male over 21 committed by that court in custody for trial.

*[Note. Formerly rule 3 of the Magistrates' Courts (Notice of Transfer) Rules 1988 and rule 3 of the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992. For bail generally, see Part 19.]*

### Notice where person removed to hospital

**11.3.** Where a transfer direction has been given by the Secretary of State under section 47 or 48 of the Mental Health Act 1983(78) in respect of a person remanded in custody by a magistrates' court and, before the direction ceases to have effect, notice of transfer is given in respect of that person, the magistrates' court officer shall give notice thereof in writing—

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(69) 2003 c. 21.

(70) S.I. 1988/1701; amending instruments relevant to this Part are S.I. 1997/708, 2001/615 and 2003/1236.

(71) S.I. 1992/2070; amending instruments relevant to this Part are S.I. 1997/709, 2001/615, 2003/1236.

(72) 2003 c. 44.

(73) 1998 c. 37; sections 51B and 51C are inserted by paragraphs 15 and 18 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(74) S.I. 1988/1691.

(75) S.I. 1992/1670, amended by S.I. 1998/461.

(76) Section 5(7A) was inserted by section 144 of the Criminal Justice Act 1988 (c. 33) and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(77) Paragraph 2(1) of Schedule 6 was amended by section 168(2) of, and paragraph 71 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(78) 1983 c. 20; section 47 was amended by sections 49(3) and 56(2) of, and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43).



- (a) to the governor of the prison to which that person would have been committed by that court if he had been committed in custody for trial; and
- (b) to the managers of the hospital where he is detained.

*[Note. Formerly rule 4 of the Magistrates' Courts (Notice of Transfer) Rules 1988 and rule 4 of the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992.]*

### **Variation of arrangements for bail**

**11.4.**—(1) A person who intends to make an application to a magistrates' court under section 3(8) of the Bail Act 1976(79) as that subsection has effect under section 3(8A) of that Act shall give notice thereof in writing to the magistrates' court officer, and to the designated authority or the defendant, as the case may be, and to any sureties concerned.

(2) Where, on an application referred to in paragraph (1), a magistrates' court varies or imposes any conditions of bail, the magistrates' court officer shall send to the Crown Court officer a copy of the record made in pursuance of section 5 of the 1976 Act relating to such variation or imposition of conditions.

*[Note. Formerly rule 5 of the Magistrates' Courts (Notice of Transfer) Rules 1988.]*

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

**11.5.** As soon as practicable after a magistrates' court to which notice of transfer has been given has discharged the functions reserved to it under section 4(1) of the Criminal Justice Act 1987 or section 53(3) of the Criminal Justice Act 1991(80), the magistrates' court officer shall send to the Crown Court officer—

- (a) a list of the names, addresses and occupations of the witnesses;
- (b) a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to the grant of withholding of bail in respect of the accused;
- (c) any recognizance entered into by any person as surety for the accused together with a statement of any enlargement thereof;
- (d) a copy of any representation order previously made in the case; and
- (e) a copy of any application for a representation order previously made in the case which has been refused.

*[Note. Formerly rule 7 of the Magistrates' Courts (Notice of Transfer) Rules 1988 and rule 6 of the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992.]*

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(79) 1976 c. 63; section 3(8) was amended by section 65(4) of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and is further amended by paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 3(8A) was inserted by section 15 of, and paragraph 9 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38) and amended by section 168(1) of, and paragraph 12(a) of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), and is repealed by paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(80) Section 53(3) was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 47 of Schedule 4 to the Access to Justice Act 1999 (c. 22), and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

## PART 12

### SENDING FOR TRIAL

#### Contents of this Part

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Documents to be sent to the Crown Court	rule 12.1
Time for first appearance of accused sent for trial	rule 12.2

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#### Documents to be sent to the Crown Court

**12.1.**—(1) As soon as practicable after any person is sent for trial (pursuant to section 51 of the Crime and Disorder Act 1998(**81**)), and in any event within 4 days from the date on which he is sent (not counting Saturdays, Sundays, Good Friday, Christmas Day or Bank Holidays), the magistrates' court officer shall, subject to section 7 of the Prosecution of Offences Act 1985(**82**) (which relates to the sending of documents and things to the Director of Public Prosecutions), send to the Crown Court officer—

- (a) the information, if it is in writing;
- (b) the notice required by section 51(7) of the 1998 Act;
- (c) a copy of the record made in pursuance of section 5 of the Bail Act 1976(**83**) relating to the granting or withholding of bail in respect of the accused on the occasion of the sending;
- (d) any recognizance entered into by any person as surety for the accused together with any enlargement thereof under section 129(4) of the Magistrates' Courts Act 1980(**84**);
- (e) the names and addresses of any interpreters engaged for the defendant for the purposes of the appearance in the magistrates' court, together with any telephone numbers at which they can be readily contacted, and details of the languages or dialects in connection with which they have been so engaged;
- (f) if any person under the age of 18 is concerned in the proceedings, a statement whether the magistrates' court has given a direction under section 39 of the Children and Young Persons Act 1933(**85**) (prohibition of publication of certain matter in newspapers);
- (g) a copy of any representation order previously made in the case;
- (h) a copy of any application for a representation order previously made in the case which has been refused; and
- (i) any documents relating to an appeal by the prosecution against the granting of bail.

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(81) 1998 c. 37; section 51 is substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(82) 1985 c. 23; section 7 was amended by paragraphs 129 and 130 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 287 of Schedule 8 to the Courts Act 2003 (c. 39).

(83) 1976 c. 63; section 5 was amended by section 65(4) of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60(2) and (3) of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39) and Part 2 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), and is further amended by paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36 and Part 2 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(84) 1980 c. 43; section 129(4) is amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(85) 1933 c. 12; section 39 was amended by sections 57(1) and 64(3) of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37) and sections 37(2), 39 and 46 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48), and is further amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) with effect from a date to be appointed, when it will cease to have effect in relation to criminal proceedings.

(2) The period of 4 days specified in paragraph (1) may be extended in relation to any sending for trial for so long as the Crown Court officer directs, having regard to any relevant circumstances.

*[Note. Formerly rule 11A of the Magistrates' Courts Rules 1981(86). See also section 51 of the Crime and Disorder Act 1998. On the coming into force of Schedule 3 to the Criminal Justice Act 2003(87) section 51 of the 1998 Act will apply to either way as well as indictable only offences, and section 51A will extend the section 51 procedure to children and young persons(88). For the procedure governing the service of evidence by the prosecution where an accused is sent for trial, see the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2000(89).]*

### **Time for first appearance of accused sent for trial**

**12.2.** A Crown Court officer to whom notice has been given under section 51(7) of the Crime and Disorder Act 1998, shall list the first Crown Court appearance of the person to whom the notice relates in accordance with any directions given by the magistrates' court.

*[Note. Formerly rule 24ZA of the Crown Court Rules 1982(90). The provisions of that rule regarding the listing of the first appearance within set periods of time no longer apply.]*

## **PART 13**

### **DISMISSAL OF CHARGES TRANSFERRED OR SENT TO THE CROWN COURT**

#### **Contents of this Part**

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Interpretation of this Part	rule 13.1
Written notice of oral application for dismissal	rule 13.2
Written application for dismissal	rule 13.3
Prosecution reply	rule 13.4
Determination of applications for dismissal— procedural matters	rule 13.5
Service of documents	rule 13.6

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#### **Interpretation of this Part**

##### **13.1.** In this Part:

“notice of transfer” means a notice referred to in section 4(1) of the Criminal Justice Act 1987(91) or section 53(1) of the Criminal Justice Act 1991(92); and

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(86) S.I. 1981/552, amended by S.I. 2000/3361, 2001/610 and 2003/1236.

(87) 2003 c. 44.

(88) Section 51A is inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(89) S.I. 2000/3305.

(90) S.I. 1982/1109, amended by S.I. 2000/3362.

(91) 1987 c. 38; section 4(1) was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22), and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(92) 1991 c. 53; section 53(1) was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33) and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

“the prosecution” means the authority by or on behalf of whom notice of transfer was given under the 1987 or 1991 Acts, or the authority by or on behalf of whom documents were served under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998(93).

*[Note. Formerly rule 1 of the Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988(94), rule 1 of the Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992(95) and rule 1 of the Crime and Disorder Act 1998 (Dismissal of Charges Sent) Rules 1998(96). See also section 6 of the Criminal Justice Act 1987, section 53 of, and Schedule 6 to, the Criminal Justice Act 1991 and sections 51 and 52 of, and Schedule 3 to, the Crime and Disorder Act 1998.]*

### Written notice of oral application for dismissal

**13.2.**—(1) Where notice of transfer has been given under the Criminal Justice Act 1987 or the Criminal Justice Act 1991, or a person has been sent for trial under the Crime and Disorder Act 1998, and the person concerned proposes to apply orally—

- (a) under section 6(1) of the 1987 Act(97);
- (b) under paragraph 5(1) of Schedule 6 to the 1991 Act(98); or
- (c) under paragraph 2(1) of Schedule 3 to the 1998 Act(99)

for any charge in the case to be dismissed, he shall give notice of his intention in writing to the Crown Court officer at the place specified by the notice of transfer under the 1987 or 1991 Acts or the notice given under section 51(7) of the 1998 Act as the proposed place of trial. Notice of intention to make an application under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(2) Notice of intention to make an application shall be given—

- (a) in the case of an application to dismiss charges transferred under the 1987 Act, not later than 28 days after the day on which notice of transfer was given;
- (b) in the case of an application to dismiss charges transferred under the 1991 Act, not later than 14 days after the day on which notice of transfer was given; and
- (c) in the case of an application to dismiss charges sent under the 1998 Act, not later than 14 days after the day on which the documents were served under paragraph 1 of Schedule 3 to that Act,

and a copy of the notice shall be given at the same time to the prosecution and to any person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.

(3) The time for giving notice may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (4).

(4) An application for an extension of time for giving notice shall be made in writing to the Crown Court officer, and a copy thereof shall be given at the same time to the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such an application made in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

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(93) 1998 c. 37; paragraph 1 of Schedule 3 was amended by section 67(1) of, and Part III of Schedule 15 to, the Access to Justice Act 1999 (c. 22), and is further amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(94) S.I. 1988/1695, modified by S.I.1991/2684.

(95) S.I. 1992/1848.

(96) S.I. 1998/3048.

(97) Section 6 was substituted by section 144(5) of the Criminal Justice Act 1988 (c. 33) and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(98) Schedule 6 is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(99) Paragraph 2(1) of Schedule 3 is amended by paragraphs 15 and 20 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(5) The Crown Court officer shall give notice in the form set out in the Practice Direction of the judge's decision on an application under paragraph (3)—

- (a) to the applicant for dismissal;
- (b) to the prosecution; and
- (c) to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.

(6) A notice of intention to make an application under section 6(1) of the 1987 Act, paragraph 5(1) of Schedule 6 to the 1991 Act or paragraph 2(1) of Schedule 3 to the 1998 Act shall be accompanied by a copy of any material on which the applicant relies and shall—

- (a) specify the charge or charges to which it relates;
- (b) state whether the leave of the judge is sought under section 6(3) of the 1987 Act, paragraph 5(4) of Schedule 6 to the 1991 Act or paragraph 2(4) of Schedule 3 to the 1998 Act(100) to adduce oral evidence on the application, indicating what witnesses it is proposed to call at the hearing; and
- (c) in the case of a transfer under the 1991 Act, confirm in relation to each such witness that he is not a child to whom paragraph 5(5) of Schedule 6 to that Act applies.

(7) Where leave is sought from the judge for oral evidence to be given on an application, notice of his decision, indicating what witnesses are to be called if leave is granted, shall be given in writing by the Crown Court officer to the applicant for dismissal, the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Notice of a decision in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(8) Where an application for dismissal under section 6(1) of the 1987 Act, paragraph 5(1) of Schedule 6 to the 1991 Act or paragraph 2(1) of Schedule 3 to the 1998 Act is to be made orally, the Crown Court officer shall list the application for hearing before a judge of the Crown Court and the prosecution shall be given the opportunity to be represented at the hearing.

*[Note. Formerly rule 2 of the Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, rule 2 of the Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992 and rule 2 of the Crime and Disorder Act 1998 (Dismissal of Charges Sent) Rules 1998.]*

### **Written application for dismissal**

**13.3.**—(1) Application may be made for dismissal under section 6(1) of the Criminal Justice Act 1987, paragraph 5(1) of Schedule 6 to the Criminal Justice Act 1991 or paragraph 2(1) of Schedule 3 to the Crime and Disorder Act 1998 without an oral hearing. Such an application shall be in writing, and in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(2) The application shall be sent to the Crown Court officer and shall be accompanied by a copy of any statement or other document, and identify any article, on which the applicant for dismissal relies.

(3) A copy of the application and of any accompanying documents shall be given at the same time to the prosecution and to any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged.

(4) A written application for dismissal shall be made—

- (a) not later than 28 days after the day on which notice of transfer was given under the 1987 Act;

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(100) Paragraph 2(4) of Schedule 3 is repealed by paragraphs 15 and 20 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

- (b) not later than 14 days after the day on which notice of transfer was given under the 1991 Act; or
- (c) not later than 14 days after the day on which documents required by paragraph 1 of Schedule 3 to the 1998 Act were served

unless the time for making the application is extended, either before or after it expires, by the Crown Court; and rule 13.2(4) and (5) shall apply for the purposes of this paragraph as if references therein to giving notice of intention to make an oral application were references to making a written application under this rule.

*[Note. Formerly rule 3 of the Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, rule 3 of the Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992 and rule 3 of the Crime and Disorder Act 1998 (Dismissal of Charges Sent) Rules 1998.]*

### **Prosecution reply**

**13.4.**—(1) Not later than seven days from the date of service of notice of intention to apply orally for the dismissal of any charge contained in a notice of transfer or based on documents served under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998, the prosecution may apply to the Crown Court under section 6(3) of the Criminal Justice Act 1987, paragraph 5(4) of Schedule 6 to the Criminal Justice Act 1991 or paragraph 2(4) of Schedule 3 to the 1998 Act for leave to adduce oral evidence at the hearing of the application, indicating what witnesses it is proposed to call.

(2) Not later than seven days from the date of receiving a copy of an application for dismissal under rule 13.3, the prosecution may apply to the Crown Court for an oral hearing of the application.

(3) An application under paragraph (1) or (2) shall be served on the Crown Court officer in writing and, in the case of an application under paragraph (2), shall state whether the leave of the judge is sought to adduce oral evidence and, if so, shall indicate what witnesses it is proposed to call. Where leave is sought to adduce oral evidence under paragraph 5(4) of Schedule 6 to the 1991 Act, the application should confirm in relation to each such witness that he is not a child to whom paragraph 5(5) of that Schedule applies. Such an application in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(4) Notice of the judge's determination upon an application under paragraph (1) or (2), indicating what witnesses (if any) are to be called shall be served in writing by the Crown Court officer on the prosecution, on the applicant for dismissal and on any other party to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such a notice in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

(5) Where, having received the material specified in rule 13.2 or, as the case may be, rule 13.3, the prosecution proposes to adduce in reply thereto any written comments or any further evidence, the prosecution shall serve any such comments, copies of the statements or other documents outlining the evidence of any proposed witnesses, copies of any further documents and, in the case of an application to dismiss charges transferred under the 1991 Act, copies of any video recordings which it is proposed to tender in evidence, on the Crown Court officer not later than 14 days from the date of receiving the said material, and shall at the same time serve copies thereof on the applicant for dismissal and any other person to whom the notice of transfer relates or with whom the applicant is jointly charged. In the case of a defendant acting in person, copies of video recordings need not be served but shall be made available for viewing by him.

(6) The time for—

- (a) making an application under paragraph (1) or (2) above; or
- (b) serving any material on the Crown Court officer under paragraph (5) above

may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (7) below.

(7) An application for an extension of time under paragraph (6) above shall be made in writing and shall be served on the Crown Court officer, and a copy thereof shall be served at the same time on to the applicant for dismissal and on any other person to whom the notice of transfer relates or with whom the applicant for dismissal is jointly charged. Such an application in proceedings under the 1987 or 1991 Acts shall be in the form set out in the Practice Direction.

*[Note. Formerly rule 4 of the Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, rule 4 of the Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992 and rule 4 of the Crime and Disorder Act 1998 (Dismissal of Charges Sent) Rules 1998.]*

### **Determination of applications for dismissal—procedural matters**

**13.5.**—(1) A judge may grant leave for a witness to give oral evidence on an application for dismissal notwithstanding that notice of intention to call the witness has not been given in accordance with the foregoing provisions of this Part.

(2) Where an application for dismissal is determined otherwise than at an oral hearing, the Crown Court officer shall as soon as practicable, send to all the parties to the case written notice of the outcome of the application. Such a notice in proceedings under the 1987 and 1991 Acts shall be in the form set out in the Practice Direction.

*[Note. Formerly rule 5 of the Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, rule 5 of the Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992 and rule 5 of the Crime and Disorder Act 1998 (Dismissal of Charges Sent) Rules 1998.]*

### **Service of documents**

**13.6.**—(1) Any notice or other document which is required by this Part to be given to any person may be served personally on that person or sent to him by post at his usual or last known residence or place of business in England and Wales or, in the case of a company, at the company's registered office in England or Wales.

(2) If the person to be served is acting by a solicitor, the notice or other document may be served by delivering it, or sending it by post, to the solicitor's address for service.

*[Note. Formerly rule 6 of the Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, rule 6 of the Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992 and rule 6 of the Crime and Disorder Act 1998 (Dismissal of Charges Sent) Rules 1998.]*

## **PART 14**

### **THE INDICTMENT**

#### **Contents of this Part**

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Method of preferring an indictment	rule 14.1
Time for preferring an indictment	rule 14.2
Committal documents to be made available to person wishing to prefer an indictment	rule 14.3

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#### **Method of preferring an indictment**

**14.1.** Subject as hereinafter provided, a bill of indictment shall be preferred before the Crown Court by delivering the bill to the Crown Court officer:

Provided that where with the assent of the prosecutor the bill is prepared by, or under the supervision of, the court officer it shall not be necessary for the bill to be delivered to the court officer but as soon as it has been settled to his satisfaction it shall be deemed to have been duly preferred.

*[Note. Formerly rule 4 of the Indictments (Procedure) Rules 1971(101). See also section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(102). As to the procedure for applying for a voluntary bill of indictment, see rules 6 to 10 of the Indictments (Procedure) Rules 1971 and direction IV.35 of the Practice Direction. For the form of the indictment see the Indictment Rules 1971(103) and direction IV.34 of the Practice Direction.]*

### Time for preferring an indictment

**14.2.**—(1) Subject to the provisions of this Part, a bill of indictment shall be preferred—

- (a) where a defendant has been committed for trial, within a period of 28 days commencing with the date of committal;
- (b) where a notice of transfer has been given under section 4 of the Criminal Justice Act 1987(104) (serious fraud), within a period of 28 days commencing with the date on which notice is given;
- (c) where a notice of transfer has been served under section 53 of the Criminal Justice Act 1991(105) (certain cases involving children), within a period of 28 days commencing with the date on which notice is served; and
- (d) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(106), within a period of 28 days commencing with the date on which copies of the documents containing the evidence on which the charge or charges are based are served under paragraph 1 of Schedule 3 to that Act(107).

(2) The period referred to in paragraph (1) may, on the application of the person preferring the bill of indictment or otherwise, be extended by a judge of the Crown Court before or after it has expired; and any period so extended may be further extended in like manner.

(3) Notwithstanding paragraph (2), the first extension of the period may be granted by the Crown Court officer provided that the period of the extension does not exceed 28 days; but if the court officer is of the opinion that the first extension of the period should not be granted, he shall refer the application to a judge of the Crown Court who shall determine the application himself.

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(101) S.I. 1971/2084; amending instruments relevant to this Part are S.I. 1983/284, 1988/1738, 1992/2197, 1997/711 and 2000/3360.

(102) 1933 c. 36; section 2 was amended by section 56(4) of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 152(1) of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54), section 31(6) of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23), section 15 of, and paragraph 1 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 170(1) of, and paragraph 10 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 119 of, and paragraph 5 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and article 3 of, and paragraph 1 of the Schedule to, S.I. 2004/2035.

(103) S.I. 1971/1253.

(104) 1987 c. 38; section 4 was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), paragraph 29 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 68 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraphs 38 and 39 of Schedule 4 to the Access to Justice Act 1999 (c. 22), and is repealed by paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(105) 1991 c. 53; section 53 was amended by paragraph 49 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 93 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 47 of Schedule 4 to the Access to Justice Act 1999 (c. 22), and is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(106) 1998 c. 37; section 53 is substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(107) Paragraph 1 of Schedule 3 was amended by section 67(1) of, and Part III of Schedule 15 to, the Access to Justice Act 1999 (c. 22), and is further amended by paragraphs 15 and 20 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.



- (4) An application under paragraph (2) above shall—
- (a) be in writing unless a judge of the Crown Court otherwise directs; and
  - (b) include a statement of the reasons why an extension of the period referred to in paragraph (1) is necessary.

(5) Where an application under paragraph (2) is made after the expiry of the period referred to in paragraph (1) or, as the case may be, the expiry of that period as extended under paragraph (2), the application shall in addition include a statement of the reasons why the application was not made before the expiry of the period or, as the case may be, the extended period.

*[Note. Formerly rule 5 of the Indictments (Procedure) Rules 1971.]*

### **Committal documents to be made available to person wishing to prefer an indictment**

**14.3.** It shall be the duty of any person in charge of any committal documents to give to any person desiring to make an application for leave to prefer a bill of indictment against a person in respect of whom committal proceedings have taken place, a reasonable opportunity to inspect the committal documents and, if so required by him, to supply him with copies of the documents or any part thereof.

*[Note. Formerly rule 11 of the Indictments (Procedure) Rules 1971. On the coming into force of Schedule 3 to the Criminal Justice Act 2003(108)committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998(109)in the same way as cases triable only on indictment.]*

## **PART 15**

### **PREPARATORY HEARINGS IN CASE OF SERIOUS FRAUD AND OTHER COMPLEX OR LENGTHY CASES IN THE CROWN COURT**

#### **Contents of this Part**

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Application for a preparatory hearing	rule 15.1
Time for making application	rule 15.2
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Determination of application	rule 15.4
Disclosure of prosecution case	rule 15.5
Defence disclosure	rule 15.6
Content of order	rule 15.7
Service of documents	rule 15.8

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#### **Application for a preparatory hearing**

**15.1.—(1)** An application under section 7(2) of the Criminal Justice Act 1987(**110**) or section 29(4) of the Criminal Procedure and Investigations Act 1996(**111**) (for an order that a

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(108) 2003 (c. 44).

(109) Section 51 is substituted, and section 51A inserted, by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(110) 1987 c. 38.

preparatory hearing be held) shall be made in the form set out in the Practice Direction, shall be served on the Crown Court officer, and shall include a concise statement of the grounds, having regard to the matters specified in section 7(1) of the 1987 Act<sup>(112)</sup>, or section 29(1) and (2) of the 1996 Act<sup>(113)</sup>, for the making of the application.

(2) The person making the application shall, at the same time as he serves the application on the Crown Court officer, as referred to in paragraph (1), serve a copy of the application on the other party or, if there is more than one, each of the other parties in the case.

*[Note. Formerly rule 3 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997<sup>(114)</sup> and rule 3 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997<sup>(115)</sup>. See also sections 7 to 9A of the Criminal Justice Act 1987 and sections 29 to 32 of the Criminal Procedure and Investigations Act 1996. On the coming into force of section 309 of the Criminal Justice Act 2003<sup>(116)</sup> seriousness will be added to length and complexity as grounds for holding a preparatory hearing in cases other than fraud.]*

### **Time for making application**

**15.2.**—(1) Subject to paragraphs (2) and (3), an application under section 7(2) of the Criminal Justice Act 1987 or section 29(4) of the Criminal Procedure and Investigations Act 1996 shall be made within 28 days of—

- (a) committal for trial;
- (b) transfer of proceedings for trial; or
- (c) preferment of a bill of indictment under the authority of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933<sup>(117)</sup>.

(2) Where paragraph (1)(b) above would otherwise apply and an application for dismissal of the offence charged is made within 28 days of the transfer of proceedings for trial, then an application under section 7(2) of the 1987 Act or section 29(4) of the 1996 Act shall be made—

- (a) within 28 days of the transfer of proceedings for trial; or
- (b) no later than 7 days after the said application for dismissal is determined or withdrawn, if the last mentioned period expires later than the period referred to in paragraph (2)(a).

(3) The time for making an application under section 7(2) of the 1987 Act or section 29(4) of the 1996 Act may be extended by the Crown Court, either before or after it expires, on an application made in accordance with paragraph (4).

(4) An application for an extension of time under paragraph (3) shall be made in the form set out in the Practice Direction, specifying the grounds of the application and shall be served on the Crown Court officer, and a copy of the application shall at the same time as it is served on that officer be served on the other party, or if there is more than one, each of the other parties in the case.

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<sup>(111)</sup> 1996 c. 25; section 29(4) is amended by section 45 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

<sup>(112)</sup> Section 7(1) was amended by section 168(1) of, and paragraph 30 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), and is further amended by sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

<sup>(113)</sup> Section 29(1) is amended by section 309 of, and paragraphs 65 and 66 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 29(2) is amended by sections 45 and 310 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

<sup>(114)</sup> S.I. 1997/1051.

<sup>(115)</sup> S.I. 1997/1052.

<sup>(116)</sup> 2003 c. 44.

<sup>(117)</sup> 1933 c. 36; section 2(2)(b) was amended by section 152(1) of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54) and section 31(6) of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23).

(5) An application for an extension of time under paragraph (3) shall be determined by a judge of the Crown Court without a hearing unless the judge otherwise directs, and the Crown Court officer shall serve notice on the parties in the case of the time and place of any such hearing.

(6) The Crown Court officer shall serve notice of the judge's decision on an application under paragraph (3) on the parties in the case.

*[Note. Formerly rule 4 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997 and rule 4 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997.]*

### **Representations concerning an application**

**15.3.** Where a party receives a copy of an application as referred to in rule 15.1 (made under section 7(2) of the Criminal Justice Act 1987 or section 29(4) of the Criminal Procedure and Investigations Act 1996) and proposes to make written representations to the Crown Court concerning the application, he shall serve any such representations on the Crown Court officer within 7 days of receipt of the copy application, and shall, at the same time as he serves the representations on the court officer, serve a copy thereof on the other party, or if there is more than one, each of the other parties in the case.

*[Note. Formerly rule 5 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997 and rule 5 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997.]*

### **Determination of application**

**15.4.—(1)** An application under section 7(2) of the Criminal Justice Act 1987 or section 29(4) of the Criminal Procedure and Investigations Act 1996 shall be determined without a hearing unless a judge of the Crown Court otherwise directs, and the Crown Court officer shall serve notice on the parties in the case of the time and place of any such hearing.

(2) The Crown Court officer shall serve notice of the determination of an application, or of an order for a preparatory hearing made of a judge's own motion, in the form set out in the Practice Direction, on the parties in the case.

*[Note. Formerly rule 6 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997 and rule 6 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997.]*

### **Disclosure of prosecution case**

**15.5.** Where an order is made under section 9(4) of the Criminal Justice Act 1987(**118**) or section 31(4) of the Criminal Procedure and Investigations Act 1996(**119**) for the prosecution to prepare and serve any documents, the order shall identify the documents to be served and require the prosecution to serve a copy of each such document on the other party, or if there is more than one, each of the other parties in the case, and the Crown Court officer shall serve notice of the order on the parties in the case.

*[Note. Formerly rule 7 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997 and rule 7 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997.]*

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(118) Section 9 was amended by section 170(2) of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6(8) of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is further amended by sections 45 and 310(2) of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(119) Section 31 is amended by section 310(5) of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Part 3 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

*1997. Under section 9(4) of the 1987 Act and section 31(4) of the 1996 Act the judge can require the prosecution to set out its case in a written statement, to arrange its evidence in a form that will be easiest for the jury to understand, to prepare a list of agreed facts, and to amend the case statement as directed by the judge following representations from the defence.]*

### **Defence disclosure**

**15.6.**—(1) Where an order is made under section 9(5) of the Criminal Justice Act 1987 or section 31(6) or (7) of the Criminal Procedure and Investigations Act 1996, or a requirement is imposed under section 31(9) of the 1996 Act in relation to an order made under section 31(7) of that Act, the Crown Court officer shall serve notice of the order in the form set out in the Practice Direction on each party to whom the order applies and on the prosecution.

(2) Except to the extent that disclosure is required—

- (a) by section 5(7) of the 1996 Act(**120**) (alibi); or
- (b) by rules under section 81 of the Police and Criminal Evidence Act 1984(**121**) (expert evidence),

a statement required by virtue of an order under section 9(5)(i) of the 1987 Act or section 31(6)(a) of the 1996 Act, or a notice required by virtue of an order under section 9(5)(ii) or (iv) of the 1987 Act or section 31(6)(b) or section 31(7) of the 1996 Act (including a requirement imposed under section 31(9) of that Act in relation to such an order), need not disclose who will give evidence; and the notice referred to in paragraph (1) shall include a statement to that effect.

(3) The notice referred to in paragraph (1) shall include a warning that if any party departs from the case he disclosed in pursuance of an order made under section 9 of the 1987 Act or section 31 of the 1996 Act or fails to comply with such an order—

- (a) the judge or, with the leave of the judge, any other party may make such comment as appears to him appropriate and the jury may draw such inference as appears proper; and
- (b) where the court is satisfied that any such departure or failure by a party constitutes an unnecessary or improper act or omission on his part, and that another party to the proceedings has incurred costs as a result thereof, the court may make an order as to the payment of those costs by the party concerned under the Costs in Criminal Cases (General) Regulations 1986(**122**).

*[Note. Formerly rule 8 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997 and rule 8 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997. Under section 9(5) of the 1987 Act and section 31(6) and (7) of the 1996 Act the judge can require the defence to set out its case in a written statement, to make any objection to the prosecution case statement in writing, to give written notice of any points of law that will be taken, and to agree the facts listed by the prosecution or explain why they cannot be agreed.]*

### **Content of order**

**15.7.** Where a judge makes an order under section 9 of the Criminal Justice Act 1987 or section 31(4), (6) or (7) of the Criminal Procedure and Investigations Act 1996, the order shall so far as practicable express the matters required to be done thereunder by reference to the relevant provisions of section 9(4) or, as the case may be, (5) of the 1987 Act or section 31(4) or, as the case may be, (6) or (7) of the 1996 Act.

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(120) Section 5 is repealed by paragraphs 20 and 23 of Schedule 36 and Part 3 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(121) 1984 c. 60; section 81 was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c. 39).

(122) S.I. 1986/1335.

*[Note. Formerly rule 9 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997 and rule 9 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997.]*

### **Service of documents**

**15.8.**—(1) Any notice or other document which is required by this Part to be served on any person may be served personally on that person or sent to him by post in a letter addressed to him at his usual or last known residence or place of business in England or Wales; in the case of a company, such a letter may also be addressed to the company at its registered office in England or Wales (if it has such a registered office).

(2) If the person to be served is acting by a solicitor, the notice or other document may be served by delivering it, or sending it by post, to the solicitor’s address for service.

(3) Where there is inscribed on the writing paper of the person to be served with a notice or other document or on the writing paper of his solicitor (where the person to be served is acting by a solicitor) a document exchange box number, and that person or his solicitor (as the case may be) has not indicated in writing to the person serving the document that he is unwilling to accept service through a document exchange, service of the notice or document may be effected by leaving the notice or document addressed to the numbered box of that person or his solicitor at the document exchange in question or at a document exchange which transmits documents every business day to that document exchange; and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(4) In this rule:

“document exchange” means any document exchange for the time being approved by the Lord Chancellor for the purposes of the service of documents;

“business day” means a day other than a day which is to be excluded for the purposes of reckoning a period of 7 days or less; and

“solicitor” includes a body corporate which is recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985(**123**) (a “recognised body”) and, in the case of a recognised body, (notwithstanding anything in the Solicitors’ Incorporated Practices Order 1991(**124**)), the reference in paragraph (2) to the solicitor’s address for service shall be construed as a reference to the address specified by the recognised body as its address for the purposes of the proceedings relating to the application for a preparatory hearing under section 7(2) of the Criminal Justice Act 1987 and/or the order for such a hearing under section 7(1) of that Act (including an address specified for the general purposes of the criminal proceedings in relation to which the application or order for a preparatory hearing is made), or, in the absence of such a specified address, to its registered office.

*[Note. Formerly rule 10 of the Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997 and rule 10 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997.]*

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(**123**) 1985 c. 61; section 9 was amended by paragraph 54 of Schedule 18 to the Courts and Legal Services Act 1990 and Part II of Schedule 15 to the Access to Justice Act 1999 (there are other amendments not relevant to this rule).

(**124**) S.I. 1991/2684.

## PART 16

### RESTRICTIONS ON REPORTING AND PUBLIC ACCESS

#### Contents of this Part

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Application for reporting direction under section 46(6) of the Youth Justice and Criminal Evidence Act 1999	rule 16.1
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Extending time for application under section 46 of the 1999 Act	rule 16.6
Decision of court on application under section 46 of the 1999 Act	rule 16.7
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#### **Application for a reporting direction under section 46(6) of the Youth Justice and Criminal Evidence Act 1999**

**16.1.**—(1) An application for a reporting direction made by a party to any criminal proceedings, in relation to a witness in those proceedings, must be made in the form set out in the Practice Direction or orally under rule 16.3.

(2) If an application for a reporting direction is made in writing, the applicant shall send that application to the court officer and copies shall be sent at the same time to every other party to those proceedings.

*[Note. Formerly rule 2 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004(125) and rule 2 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004(126). Section 46 of the Youth Justice and Criminal Evidence Act 1999(127) applies to adult witnesses the quality of whose evidence, or whose co-operation, is likely to be diminished if their identity is made public. For reporting restrictions generally see direction I.3 in the Practice Direction.]*

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(125) S.I. 2004/2419.

(126) S.I. 2004/2420.

(127) 1999 c. 23.

### **Opposing an application for a reporting direction under section 46(6) of the Youth Justice and Criminal Evidence Act 1999**

**16.2.**—(1) If an application for a reporting direction is made in writing, any party to the proceedings who wishes to oppose that application must notify the applicant and the court officer in writing of his opposition and give reasons for it.

(2) A person opposing an application must state in the written notification whether he disputes that the—

- (a) witness is eligible for protection under section 46 of the Youth Justice and Criminal Evidence Act 1999; or
- (b) granting of protection would be likely to improve the quality of the evidence given by the witness or the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case.

(3) The notification under paragraph (1) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 16.6.

*[Note. Formerly rule 3 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004 and rule 3 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004.]*

### **Urgent action on an application under section 46(6) of the Youth Justice and Criminal Evidence Act 1999**

**16.3.**—(1) The court may give a reporting direction under section 46 of the Youth Justice and Criminal Evidence Act 1999 in relation to a witness in those proceedings, notwithstanding that the five business days specified in rule 16.2(3) have not expired if—

- (a) an application is made to it for the purposes of this rule; and
- (b) it is satisfied that, due to exceptional circumstances, it is appropriate to do so.

(2) Any party to the proceedings may make the application under paragraph (1) whether or not an application has already been made under rule 16.1.

(3) An application under paragraph (1) may be made orally or in writing.

(4) If an application is made orally, the court may hear and take into account representations made to it by any person who in the court's view has a legitimate interest in the application before it.

(5) The application must specify the exceptional circumstances on which the applicant relies.

*[Note. Formerly rule 4 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004 and rule 4 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004.]*

### **Excepting direction under section 46(9) of the Youth Justice and Criminal Evidence Act 1999**

**16.4.**—(1) An application for an excepting direction under section 46(9) of the Youth Justice and Criminal Evidence Act 1999 (a direction dispensing with restrictions imposed by a reporting direction) may be made by—

- (a) any party to those proceedings; or
- (b) any person who, although not a party to the proceedings, is directly affected by a reporting direction given in relation to a witness in those proceedings.

(2) If an application for an excepting direction is made, the applicant must state why—

- (a) the effect of a reporting direction imposed places a substantial and unreasonable restriction on the reporting of the proceedings; and
- (b) it is in the public interest to remove or relax those restrictions.

(3) An application for an excepting direction may be made in writing, pursuant to paragraph (4), at any time after the commencement of the proceedings in the court or orally at a hearing of an application for a reporting direction.

(4) If the application for an excepting direction is made in writing it must be in the form set out in the Practice Direction and the applicant shall send that application to the court officer and copies shall be sent at the same time to every party to those proceedings.

(5) Any person served with a copy of an application for an excepting direction who wishes to oppose it, must notify the applicant and the court officer in writing of his opposition and give reasons for it.

(6) The notification under paragraph (5) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 16.6.

*[Note. Formerly rule 5 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004 and rule 5 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004.]*

#### **Variation or revocation of a reporting or excepting direction under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.5.—**(1) An application for the court to—

- (a) revoke a reporting direction; or
- (b) vary or revoke an excepting direction,

may be made to the court at any time after the commencement of the proceedings in the court.

(2) An application under paragraph (1) may be made by a party to the proceedings in which the direction was issued, or by a person who, although not a party to those proceedings, is in the opinion of the court directly affected by the direction.

(3) An application under paragraph (1) must be made in writing and the applicant shall send that application to the officer of the court in which the proceedings commenced, and at the same time copies of the application shall be sent to every party or, as the case may be, every party to the proceedings.

(4) The applicant must set out in his application the reasons why he seeks to have the direction varied or, as the case may be, revoked.

(5) Any person served with a copy of an application who wishes to oppose it, must notify the applicant and the court officer in writing of his opposition and give reasons for it.

(6) The notification under paragraph (5) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 16.6.

*[Note. Formerly rule 6 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004 and rule 6 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004.]*

#### **Application for an extension of time in proceedings under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.6.—**(1) An application may be made in writing to extend the period of time for notification under rule 16.2(3), rule 16.4(6) or rule 16.5(6) before that period has expired.

(2) An application must be accompanied by a statement setting out the reasons why the applicant is unable to give notification within that period.

(3) An application must be sent to the court officer and a copy of the application must be sent at the same time to the applicant.



*[Note. Formerly rule 7 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004 and rule 7 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004.]*

### **Decision of the court on an application under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.7.**—(1) The court may—

- (a) determine any application made under rules 16.1 and rules 16.3 to 16.6 without a hearing; or
- (b) direct a hearing of any application.

(2) The court officer shall notify all the parties of the court's decision as soon as reasonably practicable.

(3) If a hearing of an application is to take place, the court officer shall notify each party to the proceedings of the time and place of the hearing.

(4) A court may hear and take into account representations made to it by any person who in the court's view has a legitimate interest in the application before it.

*[Note. Formerly rule 8 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004 and rule 8 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004.]*

### **Proceedings sent or transferred to the Crown Court with direction under section 46 of the Youth Justice and Criminal Evidence Act 1999 in force**

**16.8.** Where proceedings in which reporting directions or excepting directions have been ordered are sent or transferred from a magistrates' court to the Crown Court, the magistrates' court officer shall forward copies of all relevant directions to the Crown Court officer at the place to which the proceedings are sent or transferred.

*[Note. Formerly rule 9 of the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004.]*

### **Hearings in camera and applications under section 46 of the Youth Justice and Criminal Evidence Act 1999**

**16.9.** If in any proceedings, a prosecutor or defendant has served notice under rule 16.10 of his intention to apply for an order that all or part of a trial be held in camera, any application under this Part relating to a witness in those proceedings need not identify the witness by name and date of birth.

*[Note. Formerly rule 9 of the Crown Court (Reports Relating to Adult Witnesses) Rules 2004.]*

### **Application to hold a Crown Court trial in camera**

**16.10.**—(1) Where a prosecutor or a defendant intends to apply for an order that all or part of a trial be held in camera for reasons of national security or for the protection of the identity of a witness or any other person, he shall not less than 7 days before the date on which the trial is expected to begin serve a notice in writing to that effect on the Crown Court officer and the prosecutor or the defendant as the case may be.

(2) On receiving such notice, the court officer shall forthwith cause a copy thereof to be displayed in a prominent place within the precincts of the Court.

(3) An application by a prosecutor or a defendant who has served such a notice for an order that all or part of a trial be heard in camera shall, unless the Court orders otherwise, be made in camera, after the defendant has been arraigned but before the jury has been sworn and, if such an order is made, the trial shall be adjourned until whichever of the following shall be appropriate—

- (a) 24 hours after the making of the order, where no application for leave to appeal from the order is made; or
- (b) after the determination of an application for leave to appeal, where the application is dismissed; or
- (c) after the determination of the appeal, where leave to appeal is granted.

*[Note. Formerly rule 24A of the Crown Court Rules 1982(128). As to the procedure for appealing against an order, see rule 67.2.]*

### **Crown Court hearings in chambers**

**16.11.**—(1) The criminal jurisdiction of the Crown Court specified in the following paragraph may be exercised by a judge of the Crown Court sitting in chambers.

- (2) The said jurisdiction is—
  - (a) hearing applications for bail;
  - (b) issuing a summons or warrant;
  - (c) hearing any application relating to procedural matters preliminary or incidental to criminal proceedings in the Crown Court, including applications relating to legal aid;
  - (d) jurisdiction under rules 12.2 (listing first appearance of accused sent for trial), 28.3 (application for witness summons), 63.2(5) (extending time for appeal against decision of magistrates' court), and 64.7 (application to state case for consideration of High Court);
  - (e) hearing an application under section 41(2) of the Youth Justice and Criminal Evidence Act 1999 (evidence of complainant's previous sexual history);
  - (f) hearing applications under section 22(3) of the Prosecution of Offences Act 1985(129) (extension or further extension of custody time limit imposed by regulations made under section 22(1) of that Act);
  - (g) hearing an appeal brought by an accused under section 22(7) of the 1985 Act against a decision of a magistrates' court to extend, or further extend, such a time limit, or brought by the prosecution under section 22(8) of the same Act against a decision of a magistrates' court to refuse to extend, or further extend, such a time limit;
  - (h) hearing appeals under section 1 of the Bail (Amendment) Act 1993(130) (against grant of bail by magistrates' court); and
  - (i) hearing appeals under section 16 of the Criminal Justice Act 2003(131) (against condition of bail imposed by magistrates' court).

*[Note. Formerly rule 27 of the Crown Court Rules 1982. As to hearing restraint and receivership proceedings under the Proceeds of Crime Act 2002(132) in chambers see rule 61.4.]*

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(128) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1988/1635, 1989/1103, 1994/1480, 2000/2987, 2000/3362, 2003/1664 and 2004/1292.

(129) 1985 c. 23; section 22(3), (7) and (8) was amended by section 43 of the Crime and Disorder Act 1998 (c. 37).

(130) 1993 c. 26; section 1 was amended by section 200 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), and is further amended by section 18 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(131) 2003 c. 44.

(132) 2002 c. 29.

## PART 17

### EXTRADITION

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#### Refusal to make an order of committal

**17.1.**—(1) Where a magistrates' court refuses to make an order of committal in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates and the state, country or colony seeking the surrender of that person immediately informs the court that it intends to make an application to the court to state a case for the opinion of the High Court, if the magistrates' court makes an order in accordance with section 10(2) of the Extradition Act 1989(**133**) releasing that person on bail, the court officer shall forthwith send a copy of that order to the Administrative Court Office.

(2) Where a magistrates' court refuses to make an order of committal in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates and the state, country or colony seeking his surrender wishes to apply to the court to state a case for the opinion of the High Court under section 10(1) of the 1989 Act, such application must be made to the magistrates' court within the period of 21 days following the day on which the court refuses to make the order of committal unless the court grants a longer period within which the application is to be made.

(3) Such an application shall be made in writing and shall identify the question or questions of law on which the opinion of the High Court is sought.

(4) Within 21 days after receipt of an application to state a case under section 10(1) of the 1989 Act, the magistrates' court officer shall send a draft case to the solicitor for the state, country or colony and to the person whose surrender is sought or his solicitor and shall allow each party 21

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(133) 1989 c. 33; the whole Act was repealed by section 218(b) of, and Schedule 4 to, the Extradition Act 1989 (c. 41).

days within which to make representations thereon; within 21 days after the latest day on which such representations may be made the court of committal shall, after considering any such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case which the court officer shall forthwith send to the solicitor for the state, country or colony.

*[Note. Formerly rule 4 of the Magistrates' Courts (Extradition) Rules 1989(134). This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### Notice of waiver

**17.2.**—(1) A notice given under section 14 of, or paragraph 9 of Schedule 1 to, the Extradition Act 1989(**135**) (notice of waiver under the simplified procedure) shall be in the form set out in the Practice Direction or a form to the like effect.

(2) Such a notice shall be signed in the presence of the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the Act, a justice of the peace or a justices' clerk.

(3) Any such notice given by a person in custody shall be delivered to the Governor of the prison in whose custody he is.

(4) If a person on bail gives such notice he shall deliver it to, or send it by post in a registered letter or by recorded delivery service addressed to, the Under Secretary of State, Home Office, London SW1H 9AT.

*[Note. Formerly rule 5 of the Magistrates' Courts (Extradition) Rules 1989. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### Notice of consent

**17.3.**—(1) A person arrested in pursuance of a warrant under section 8 of or paragraph 5 of Schedule 1 to the Extradition Act 1989(**136**) may at any time consent to his return; and where such consent is given in accordance with the following provisions of this rule, the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the Act may order the committal for return of that person in accordance with section 14(2) of that Act or, as the case may be, paragraph 9(2) of Schedule 1 to the Act.

(2) A notice of consent for the purposes of this rule shall be given in the form set out in the Practice Direction and shall be signed in the presence of the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the 1989 Act.

*[Note. Formerly rule 6 of the Magistrates' Courts (Extradition) Rules 1989. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

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(134) S.I. 1989/1597; amending instruments relevant to this Part are S.I. 2000/1872, 2001/615 and 2002/1135.

(135) Section 14 was amended by section 109(1) of, and paragraph 328 of Schedule 8 to, the Courts Act 2003 (c. 39); paragraph 9 of Schedule 1 was amended by section 109(1) of, and paragraph 329 of Schedule 8 to, the Courts Act 2003 (c. 39).

(136) Section 8 was amended by section 158(4) of the Criminal Justice and Public Order Act 1994 (c. 33), article 6(1) of, and paragraph 9 of Schedule 5 to, S.I. 1999/1750, section 78(2) of, and paragraphs 31 and 32 of Schedule 11 and Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 325 of Schedule 8 to, the Courts Act 2003 (c. 39); paragraph 5 of Schedule 1 was amended by section 78(2) of, and paragraphs 31 and 36 of Schedule 11 and Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 329 of Schedule 8 to, the Courts Act 2003 (c. 39).

### **Notice of consent (parties to 1995 Convention)**

**17.4.**—(1) This rule applies as between the United Kingdom and states other than the Republic of Ireland that are parties to the Convention drawn up on the basis of Article 31 of the Treaty on European Union on Simplified Extradition Procedures between the Member States of the European Union, in relation to which section 14A of the Extradition Act 1989 applies by virtue of section 34A and Schedule 1A of that Act(**137**).

(2) Notice of consent for the purposes of section 14A(3) of the 1989 Act shall be given in the form set out in the Practice Direction and shall be signed in the presence of the Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of that Act.

(3) A Senior District Judge (Chief Magistrate) or another District Judge (Magistrates' Courts) designated by him for the purposes of the Act may order the committal for return of a person if he gives consent under section 14A of the 1989 Act in accordance with paragraph (2) above before he is committed under section 9 of that Act(**138**).

*[Note. Formerly rule 7 of the Magistrates' Courts (Extradition) Rules 1989. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Consent to early removal to Republic of Ireland**

**17.5.**—(1) A notice given under section 3(1)(a) of the Backing of Warrants (Republic of Ireland) Act 1965(**139**) (consent to surrender earlier than is otherwise permitted) shall be signed in the presence of a justice of the peace or a justices' clerk.

(2) Any such notice given by a person in custody shall be delivered to the Governor of the prison in whose custody he is.

(3) If a person on bail gives such notice, he shall deliver it to, or send it by post in a registered letter or by recorded delivery service addressed to, the police officer in charge of the police station specified in his recognizance.

(4) Any such notice shall be attached to the warrant ordering the surrender of that person.

*[Note. Formerly rule 2 of the Magistrates' Courts (Backing of Warrants) Rules 1965(**140**). This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Bail pending removal to Republic of Ireland**

**17.6.**—(1) The person taking the recognizance of a person remanded on bail under section 2(1) or 4(3) of the Backing of Warrants (Republic of Ireland) Act 1965(**141**) shall furnish a copy of the recognizance to the police officer in charge of the police station specified in the recognizance.

(2) The court officer for a magistrates' court which ordered a person to be surrendered and remanded him on bail shall deliver to, or send by post in a registered letter or by recorded delivery service addressed to, the police officer in charge of the police station specified in the recognizance the warrant ordering the person to be surrendered.

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(137) Section 34A and Schedule 1A were inserted by regulation 2(1) of, and paragraph 1 of Schedule 9 to, S.I. 2002/419.

(138) Section 9 was amended by article 6(1) of, and paragraph 9 of Schedule 5 to, S.I. 1999/1750, section 158(5) of the Criminal Justice and Public Order Act 1994 (c. 33), section 78(2) of, and paragraphs 31 and 36 of Schedule 11 and Table (3) in Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 326 of Schedule 8 to, the Courts Act 2003 (c. 39).

(139) 1965 c. 45; the whole Act was repealed by section 218(a) of, and Schedule 4 to, the Extradition Act 2003 (c. 41).

(140) S.I. 1965/1906; amending instruments relevant to this Part are S.I. 1989/1596 and 2001/615.

(141) Section 4(3) was amended by section 159(4) of the Criminal Justice and Public Order Act 1994 (c. 33).

(3) The court officer for a magistrates' court which refused to order a person to be delivered under section 2 of the 1965 Act but made an order in accordance with section 2A(2) of that Act<sup>(142)</sup> releasing that person on bail, upon the chief officer of police immediately informing the court that he intended to make an application to the court to state a case for the opinion of the High Court, shall forthwith send a copy of that order to the Administrative Court Office.

*[Note. Formerly rule 3 of the Magistrates' Courts (Backing of Warrants) Rules 1965. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Delivery of warrant issued in Republic of Ireland**

**17.7.**—(1) The court officer for a magistrates' court which ordered a person to be surrendered under section 2(1) of the Backing of Warrants (Republic of Ireland) Act 1965 shall deliver to, or send by post in a registered letter or by recorded delivery service addressed to—

- (a) if he is remanded in custody under section 5(1)(a) of the 1965 Act, the prison Governor to whose custody he is committed;
- (b) if he is remanded on bail under section 5(1)(b) of the 1965 Act<sup>(143)</sup>, the police officer in charge of the police station specified in the recognizance; or
- (c) if he is committed to the custody of a constable pending the taking from him of a recognizance under section 5(1) of the 1965 Act, the police officer in charge of the police station specified in the warrant of commitment,

the warrant of arrest issued by a judicial authority in the Republic of Ireland and endorsed in accordance with section 1 of the 1965 Act<sup>(144)</sup>.

(2) The Governor or police officer to whom the said warrant of arrest is delivered or sent shall arrange for it to be given to the member of the police force of the Republic into whose custody the person is delivered when the person is so delivered.

*[Note. Formerly rule 4 of the Magistrates' Courts (Backing of Warrants) Rules 1965. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

### **Verification of warrant etc. issued in Republic of Ireland**

**17.8.**—(1) A document purporting to be a warrant issued by a judicial authority in the Republic of Ireland shall, for the purposes of section 7(a) of the Backing of Warrants (Republic of Ireland) Act 1965, be verified by a certificate purporting to be signed by a judicial authority, a clerk of a court or a member of the police force of the Republic and certifying that the document is a warrant and is issued by a judge or justice of a court or a peace commissioner.

(2) A document purporting to be a copy of a summons issued by a judicial authority in the Republic shall, for the purposes of section 7(a) of the 1965 Act, be verified by a certificate purporting to be signed by a judicial authority, a clerk of a court or a member of the police force of the Republic and certifying that the document is a true copy of such a summons.

(3) A deposition purporting to have been made in the Republic, or affidavit or written statement purporting to have been sworn therein, shall, for the purposes of section 7(c) of the 1965 Act,

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<sup>(142)</sup>Section 2 was amended by section 4(4) of, and paragraph 1 of Schedule 3 to, the Criminal Jurisdiction Act 1975 (c. 59), section 72(2) of the Criminal Justice Act 1993 (c. 36) and sections 159(3) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33); section 2A was inserted by section 1(9) of, and paragraph 5 of Schedule 1 to, the Criminal Justice Act 1988 (c. 33).

<sup>(143)</sup>Section 5(1)(b) was amended by sections 12 and 13 of, and paragraph 33 of Schedule 2 to, the Bail Act 1976 (c. 63).

<sup>(144)</sup>Section 1 was amended by section 109(1) of, and paragraph 119 of Schedule 8 to, the Courts Act 2003 (c. 39).

be verified by a certificate purporting to be signed by the person before whom it was sworn and certifying that it was so sworn.

*[Note. Formerly rule 5 of the Magistrates' Courts (Backing of Warrants) Rules 1965. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

#### **Application to state a case where court declines to order removal to Republic of Ireland**

**17.9.**—(1) Where a magistrates' court refuses to make an order in relation to a person under section 2 of the Backing of Warrants (Republic of Ireland) Act 1965, any application to the court under section 2A(1) of that Act to state a case for the opinion of the High Court on any question of law arising in the proceedings must be made to the court by the chief officer of police within the period of 21 days following the day on which the order was refused, unless the court grants a longer period within which the application is to be made.

(2) Such an application shall be made in writing and shall identify the question or questions of law on which the opinion of the High Court is sought.

*[Note. Formerly rule 5A of the Magistrates' Courts (Backing of Warrants) Rules 1965. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

#### **Draft case where court declines to order removal to Republic of Ireland**

**17.10.** Within 21 days after receipt of an application to state a case under section 2A(1) of the Backing of Warrants (Republic of Ireland) Act 1965, the magistrates' court officer shall send a draft case to the applicant or his solicitor and to the person to whom the warrant relates or his solicitor and shall allow each party 21 days within which to make representations thereon; within 21 days after the latest day on which such representations may be made the court shall, after considering such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case which the court officer shall forthwith send to the applicant or his solicitor.

*[Note. Formerly rule 5B of the Magistrates' Courts (Backing of Warrants) Rules 1965. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

#### **Forms for proceedings for removal to Republic of Ireland**

**17.11.** Where a requirement is imposed by the Backing of Warrants (Republic of Ireland) Act 1965 for the use of a form, and an appropriate form is contained in the Practice Direction, that form shall be used.

*[Note. Formerly rule 1 of the Magistrates' Courts (Backing of Warrants) Rules 1965. This rule has effect only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003.]*

## **PART 18**

### **WARRANTS**

#### **Contents of this Part**

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### Warrant to be signed

**18.1.** Except where signature by the clerk of a magistrates' court is permitted by rule 5.3, every warrant under the Magistrates' Courts Act 1980(**145**) shall be signed by the justice issuing it.

*[Note. Formerly rule 95 of the Magistrates' Courts Rules 1981(**146**).]*

### Warrant issued out of hours

**18.2.** Where a warrant is issued by a justice of the peace for any local justice area at a time when the court office for that area is closed, the applicant for the warrant shall within 72 hours serve upon the court officer any information on which the warrant was issued.

*[Note. Formerly rule 95A of the Magistrates' Courts Rules 1981.]*

### Warrant of arrest

**18.3.—(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 civilian enforcement officers for the area in which they are employed, 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.

(3) A warrant to which this rule applies may be executed by the persons to whom it was directed or by any of the following persons, whether or not the warrant was directed to them—

- (a) a constable for any police area in England and Wales, acting in his own police area;
- (b) where the warrant is one to which section 125A of the Magistrates' Courts Act 1980(**147**) applies, a civilian enforcement officer within the meaning of that section; and
- (c) where the warrant is one to which section 125A of the 1980 Act applies, any of the individuals described in section 125B(1) of that Act(**148**),

and in this rule any reference to the person charged with the execution of a warrant includes any of the above persons who is for the time being authorised to execute the warrant, whether or not they have the warrant in their possession at the time.

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(145) 1980 c. 43.

(146) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1988/2132, 1990/1190, 1993/1183, 2001/167, 2001/610 and 2003/1236.

(147) Section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22).

(148) Section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22).



(4) A person executing a warrant of arrest shall, upon arresting the person against whom the warrant is issued—

- (a) either
  - (i) if he has the warrant with him, show it to the person against whom the warrant is issued, or
  - (ii) otherwise, state where the warrant is and what arrangements may be made to allow the person arrested to inspect it;
- (b) explain, in ordinary language, the offence or default with which the person is charged and the reason for the arrest;
- (c) where the person executing the warrant is one of the persons referred to in paragraph (3) (b) or (c), show the person arrested a written statement under section 125A(4) or 125B(4) of the 1980 Act as appropriate; and
- (d) in any case, show documentary proof of his identity.

(5) A warrant of arrest issued under any of the provisions in paragraph (6) shall cease to have effect when—

- (a) the sum in respect of which the warrant is issued is paid to the person charged with the execution of the warrant;
- (b) that sum is tendered to and refused by the person charged with the execution of the warrant; or
- (c) a receipt for that sum given by—
  - (i) the court officer for the court which issued the warrant, or
  - (ii) the charging or billing authority,is produced to the person charged with the execution of the warrant.

(6) Those provisions are sections 83(1), 83(2), and 86(4) of the 1980 Act(149).

*[Note. Formerly rule 96 of the Magistrates' Courts Rules 1981.]*

### **Records to be kept where warrant is endorsed for bail**

**18.4.**—(1) Where a person is arrested and released on bail pursuant to a warrant endorsed for bail in accordance with section 117 of the Magistrates' Courts Act 1980(150), the person executing the warrant shall make a record stating the matters set out in paragraph (2).

- (2) Those matters are—
  - (a) the name of the person arrested;
  - (b) the offence or default with which the person arrested is charged and the reason for the arrest;
  - (c) the fact that that person is to be released on bail;
  - (d) the date, time and place at which that person is to appear before the court; and
  - (e) any other details which in the opinion of the person executing the warrant are relevant.
- (3) After making the record, the person executing the warrant shall—
  - (a) sign the record;
  - (b) invite the person arrested to sign the record;

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(149) Section 86(4) was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

(150) Section 117 was amended by section 47 of the Police and Criminal Evidence Act 1984 (c. 60).

- (c) if the person arrested refuses to sign the record, annotate the record to show the fact of that refusal;
- (d) make a copy of the record and give it to the person arrested; and
- (e) send the original record to the court officer for the court which issued the warrant.

*[Note. Formerly rule 90B of the Magistrates' Courts Rules 1981.]*

### **Committal to custody to be by warrant**

**18.5.** A justice of the peace shall not commit any person to a prison, young offender institution or a remand centre, or to detention at a police station under section 128(7) of the Magistrates' Courts Act 1980(**151**), or to customs detention under section 152 of the Criminal Justice Act 1988(**152**) except by warrant of commitment.

*[Note. Formerly rule 94 of the Magistrates' Courts Rules 1981.]*

### **Warrant of commitment**

**18.6.—(1)** A warrant of commitment or detention, other than a warrant committing a person to customs detention under section 152 of the Criminal Justice Act 1988, issued by a justice of the peace—

- (a) shall name or otherwise describe the person committed or detained;
- (b) shall contain a statement of the offence with which the person committed or detained is charged, or of which he has been convicted, or of any other ground on which he is committed; and
- (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 civilian enforcement officers for the area in which they are employed 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 civilian enforcement officers to arrest the person committed or detained, if he is at large, and convey him to that prison or place and deliver him with the warrant to the governor or keeper, and
  - (ii) the governor or keeper to keep in his custody the person committed or detained 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 issued by a justice of the peace committing a person to customs detention under section 152 of the 1988 Act—

- (a) shall name or otherwise describe the person committed;
- (b) shall contain a statement of the offence with which the person committed is charged; and
- (c) shall be directed to the officers of Her Majesty's Customs and Excise and shall require those officers to keep the person committed in their custody, unless in the meantime he be otherwise delivered in due course of law, for a period (not exceeding 192 hours) specified in the warrant.

(3) A warrant of commitment or detention other than a warrant committing a person to customs detention under section 152 of the 1988 Act may be executed by the persons to whom it was directed or by any of the following persons, whether or not the warrant was directed to them—

- (a) a constable for any police area in England and Wales, acting in his own police area;

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(151) Section 128(7) was amended by section 48 of the Police and Criminal Evidence Act 1984 (c. 60).  
 (152) 1988 c. 33.

- (b) where the warrant is one to which section 125A of the Magistrates' Courts Act 1980 applies, a civilian enforcement officer within the meaning of that section; and
- (c) where the warrant is one to which section 125A of the 1980 Act applies, any of the individuals described in section 125B(1) of that Act;

and in this rule any reference to the person charged with the execution of a warrant includes any of the above persons who is for the time being authorised to execute the warrant, whether or not they have the warrant in their possession at the time.

(4) A person executing a warrant of commitment or detention shall, upon arresting the person against whom the warrant is issued—

- (a) either
  - (i) if he has the warrant with him, show it to the person against whom the warrant is issued, or
  - (ii) otherwise, state where the warrant is and what arrangements may be made to allow the person against whom the warrant was issued to inspect it;
- (b) explain, in ordinary language, the offence or default with which the person is charged and the reason for the commitment or detention;
- (c) where the person executing the warrant is one of the persons referred to in paragraph (3) (b) or (c), show the person against whom the warrant was issued a written statement under section 125A(4) or 125B(4) of the 1980 Act as appropriate; and
- (d) in any case, show documentary proof of his identity.

(5) A warrant of commitment or detention, other than a warrant committing a person to customs detention under section 152 of the 1988 Act, may be executed by conveying the person committed or detained 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 the other prison or place were the prison or place specified in it.

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

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

(8) 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.

(9) A warrant of commitment or detention issued under any of the provisions in paragraph (10) shall cease to have effect if, at any time before the person for whose commitment or detention the warrant was issued is placed in custody—

- (a) the sum in respect of which the warrant is issued, together with the costs and charges, if any, of the commitment, is paid to the person charged with the execution of the warrant;
- (b) that sum is tendered to and refused by the person charged with the execution of the warrant; or
- (c) a receipt for that sum given by—
  - (i) the court officer for the court which issued the warrant, or

(ii) the charging or billing authority,

is produced to the person charged with the execution of the warrant.

(10) Those provisions are sections 76 and 136 of the 1980 Act<sup>(153)</sup>;

*[Note. Formerly rule 97 of the Magistrates' Courts Rules 1981.]*

### **Form of warrant of commitment in a youth court**

**18.7.** Where a young person is remanded or committed under section 23(4) of the Children and Young Persons Act 1969<sup>(154)</sup> to—

- (a) local authority accommodation with a requirement that he be placed and kept in secure accommodation;
- (b) a remand centre; or
- (c) a prison,

the court shall record in the warrant of commitment that it has declared as mentioned in that subsection.

*[Note. Formerly rule 28 of the Magistrates' Courts (Children and Young Persons) Rules 1992<sup>(155)</sup>.]*

### **Warrant of commitment where recognizances not taken**

**18.8.** Where a magistrates' court, with a view to a person's being remanded on bail under section 128(6)(a) of the Magistrates' Courts Act 1980<sup>(156)</sup> 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.

*[Note. Formerly rule 23 of the Magistrates' Courts Rules 1981.]*

## **PART 19**

### **BAIL IN MAGISTRATES' COURTS AND THE CROWN COURT**

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<sup>(153)</sup>Section 76 was amended by section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48); section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 95(2) of the Access to Justice Act 1999 (c. 22) and paragraph 78 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by section 75 of, and paragraphs 58 and 68 of Schedule 7, and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

<sup>(154)</sup>1969 c. 54; section 23(4) was amended by section 97(1) of the Crime and Disorder Act 1998 (c. 37) and section 201 of the Extradition Act 2003 (c. 41).

<sup>(155)</sup>S.I. 1992/2071, amended by S.I. 1999/1343.

<sup>(156)</sup>Section 128(6) was amended by section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

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### **Application to a magistrates' court to vary conditions of police bail**

**19.1.**—(1) An application under section 43B(1) of the Magistrates' Courts Act of 1980(157) shall—

- (a) be made in writing;
- (b) contain a statement of the grounds upon which it is made;
- (c) specify the offence with which the applicant was charged before his release on bail;
- (d) specify, or be accompanied by a copy of the note of, the reasons given by the custody officer for imposing or varying the conditions of bail; and
- (e) specify the name and address of any surety provided by the applicant before his release on bail to secure his surrender to custody.

(2) Any such application shall be sent to the court officer for—

- (a) the magistrates' court (if any) appointed by the custody officer as the court before which the applicant has a duty to appear; or
- (b) if no such court has been appointed, a magistrates' court acting for the local justice area in which the police station at which the applicant was granted bail or at which the conditions of his bail were varied, as the case may be, is situated,

and, in either case, a copy shall be sent to a custody officer appointed for that police station.

(3) The court officer to whom an application is sent under paragraph (2) above shall send a notice in writing of the date, time and place fixed for the hearing of the application to—

- (a) the applicant;
- (b) the prosecutor; and
- (c) any surety in connection with bail in criminal proceedings granted to, or the conditions of which were varied by a custody officer in relation to, the applicant.

(4) The time fixed for the hearing shall be not later than 72 hours after receipt of the application. In reckoning for the purposes of this paragraph any period of 72 hours, no account shall be taken of Christmas Day, Good Friday, any bank holiday, or any Saturday or Sunday.

(5) Any notice required by this rule to be sent to any person shall either be delivered to him or be sent by post in a letter and, if sent by post to the applicant or a surety of his, shall be addressed to him at his last known or usual place of abode.

(6) If the magistrates' court hearing an application under section 43B(1) of the 1980 Act discharges or enlarges any recognizance entered into by any surety or increases or reduces the amount in which that person is bound, the court officer shall forthwith give notice thereof to the applicant and to any such surety.

(7) In this rule, “the applicant” means the person making an application under section 43B(1) of the 1980 Act.

*[Note. Formerly rule 84A of the Magistrates' Courts Rules 1981(158). See also section 43B of the Magistrates' Courts Act 1980.]*

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(157) 1980 c. 43; section 43B was inserted by paragraph 3 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33).  
 (158) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1984/1552, 1985/1944, 1988/2132, 1992/2072, 1993/1183, 1994/1481, 1995/585, 2000/3361, 2001/167, 2001/610 and 2003/1236.

### **Application to a magistrates' court to reconsider grant of police bail**

**19.2.**—(1) The appropriate court for the purposes of section 5B of the Bail Act 1976(159) in relation to the decision of a constable to grant bail shall be—

- (a) the magistrates' court (if any) appointed by the custody officer as the court before which the person to whom bail was granted has a duty to appear; or
- (b) if no such court has been appointed, a magistrates' court acting for the local justice area in which the police station at which bail was granted is situated.

(2) An application under section 5B(1) of the 1976 Act shall—

- (a) be made in writing;
- (b) contain a statement of the grounds on which it is made;
- (c) specify the offence which the proceedings in which bail was granted were connected with, or for;
- (d) specify the decision to be reconsidered (including any conditions of bail which have been imposed and why they have been imposed); and
- (e) specify the name and address of any surety provided by the person to whom the application relates to secure his surrender to custody.

(3) Where an application has been made to a magistrates' court under section 5B of the 1976 Act,

- (a) the clerk of that magistrates' court shall fix a date, time and place for the hearing of the application; and
- (b) the court officer shall—
  - (i) give notice of the application and of the date, time and place so fixed to the person affected, and
  - (ii) send a copy of the notice to the prosecutor who made the application and to any surety specified in the application.

(4) The time fixed for the hearing shall be not later than 72 hours after receipt of the application. In reckoning for the purpose of this paragraph any period of 72 hours, no account shall be taken of Christmas Day, Good Friday, any bank holiday or any Sunday.

(5) Service of a notice to be given under paragraph (3) to the person affected may be effected by delivering it to him.

(6) At the hearing of an application under section 5B of the 1976 Act the court shall consider any representations made by the person affected (whether in writing or orally) before taking any decision under that section with respect to him; and, where the person affected does not appear before the court, the court shall not take such a decision unless it is proved to the satisfaction of the court, on oath or in the manner set out by rule 4.2(1), that the notice required to be given under paragraph (3) of this rule was served on him before the hearing.

(7) Where the court proceeds in the absence of the person affected in accordance with paragraph (6)—

- (a) if the decision of the court is to vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally, the court officer shall notify the person affected;
- (b) if the decision of the court is to withhold bail, the order of the court under section 5B(5) (b) of the 1976 Act (surrender to custody) shall be signed by the justice issuing it or state his name and be authenticated by the signature of the clerk of the court.

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(159) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

(8) Service of any of the documents referred to in paragraph (7) may be effected by delivering it to the person to whom it is directed or by leaving it for him with some person at his last known or usual place of abode.

*[Note. Formerly rule 93B of the Magistrates' Courts Rules 1981. See also section 5B of the Bail Act 1976.]*

### **Notice of change of time for appearance before magistrates' court**

**19.3.** Where—

- (a) a person has been granted bail under the Police and Criminal Evidence Act 1984(**160**) subject to a duty to appear before a magistrates' court and the court before which he is to appear appoints a later time at which he is to appear; or
- (b) a magistrates' court further remands a person on bail under section 129 of the Magistrates' Courts Act 1980(**161**) in his absence,

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

*[Note. Formerly rule 91 of the Magistrates' Courts Rules 1981.]*

### **Directions by a magistrates' court as to security, etc**

**19.4.** Where a magistrates' court, under section 3(5) or (6) of the Bail Act 1976(**162**), 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.

*[Note. Formerly rule 85 of the Magistrates' Courts Rules 1981. See also section 3 of the Bail Act 1976. As to the estreatment of recognizances in magistrates' courts on failure to surrender see section 120 of the Magistrates' Courts Act 1980. For the procedure where a defendant fails to surrender see also direction I.13 in the Practice Direction.]*

### **Requirements to be complied with before release on bail granted by a magistrates' court**

**19.5.—(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 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(**163**);
- (b) in any other case, before a justice of the peace, a justices' clerk, a magistrates' court officer, 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; or
- (c) where a person other than a police officer is authorised under section 125A or 125B of the Magistrates' Courts Act 1980 to execute a warrant of arrest providing for a recognizance to be entered into by the person arrested (but not by any other person), before the person executing the warrant.

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(**160**) 1984 c. 60.

(**161**) Section 129 is amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(**162**) Section 3(5) was amended by sections 54(1) and 120(2) of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37); section 3(6) was amended by sections 27(2) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 54(2) of the Crime and Disorder Act 1998 (c. 37) and section 13(1) of, and Part 2 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(**163**) Section 8(4) was amended by section 109(1) of, and paragraph 186 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).



(2) The court officer for 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), (6) or (6A) of the 1976 Act(164) imposed any requirement to be complied with before a person's release on bail or any condition of bail shall issue a certificate showing the amount and conditions, if any, of the recognizance, or as the case may be, containing a statement of the requirement or condition of bail; and a person authorised to take the recognizance or do anything in relation to the compliance with such requirement or condition of bail 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 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 court officer for 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 43.1(1), the person taking the recognizance shall send it to the Crown Court officer.

*[Note. Formerly rule 86 of the Magistrates' Courts Rules 1981.]*

#### **Notice to governor of prison, etc, where release from custody is ordered by a magistrates' court**

**19.6.** 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), (6) or (6A) of the Bail Act 1976, imposed any requirement to be complied with before his release or any condition of bail—

- (a) the magistrates' court officer 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 19.5(2); and
- (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 and, in the case of a recognizance of a surety, shall give a copy of the notice to the surety.

*[Note. Formerly rule 87 of the Magistrates' Courts Rules 1981.]*

#### **Release when notice received by governor of prison that recognizances have been taken or requirements complied with**

**19.7.** 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 this Part 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, and unless he is in custody for some other cause, release him.

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(164)Section 3(6A) was inserted by section 34 of the Mental Health (Amendment) Act 1982 (c. 51).

*[Note. Formerly rule 88 of the Magistrates' Courts Rules 1981.]*

### **Notice from a magistrates' court of enlargement of recognizances**

**19.8.**—(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 Magistrates' Courts Act 1980 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 1980 Act, enlarges the recognizance of a surety for a person committed for trial on bail, it shall give the surety notice thereof.

*[Note. Formerly rule 84 of the Magistrates' Courts Rules 1981. See also section 129 of the Magistrates' Courts Act 1980.]*

### **Further remand of minors by a youth court**

**19.9.** Where a child or young person has been remanded, and the period of remand is extended in his absence in accordance with section 48 of the Children and Young Persons Act 1933(**165**), notice shall be given to him and his sureties (if any) of the date at which he will be required to appear before the court.

*[Note. Formerly rule 12 of the Magistrates' Courts (Children and Young Persons) Rules 1992(166).]*

### **Notes of argument in magistrates' court bail hearings**

**19.10.** Where a magistrates' court hears full argument as to bail, the clerk of the court shall take a note of that argument.

*[Note. Formerly rule 90A of the Magistrates' Courts Rules 1981.]*

### **Bail records to be entered in register of magistrates' court**

**19.11.** Any record required by section 5 of the Bail Act 1976(**167**) to be made by a magistrates' court (together with any note of reasons required by section 5(4) to be included and the particulars set out in any certificate granted under section 5(6A)) shall be made by way of an entry in the register.

*[Note. Formerly rule 90 of the Magistrates' Courts Rules 1981. See also section 5 of the Bail Act 1976. As to the general requirement to keep a register, see rule 6.1.]*

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

**19.12.** 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(**168**) before a justice of the

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(165) 1933 c. 12; section 48 was amended by section 79 of, and Schedule 9 to, the Criminal Justice Act 1948 (c. 58), Part III of Schedule 7 to the Justices of the Peace Act 1949 (c. 101), section 64 of, and paragraph 12 of Schedule 3 and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), section 72(4) of, and Schedule 6 to, the Children and Young Persons Act 1969 (c. 54), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraphs 14 and 15 of Schedule 10 and Part V of Schedule 15 to the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 75 of Schedule 8 to, the Courts Act 2003 (c. 39).

(166) S.I. 1992/2071.

(167) Section 5 was amended by section 65(4) of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60(2) and (3) of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39) and Part 2 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), and is further amended by paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36 and Part 2 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(168) Section 7(4)(a) was amended by section 109 of, and paragraph 185 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).

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(**169**) in respect of that person to be sent to the court officer for that court:

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

*[Note. Formerly rule 92 of the Magistrates' Courts Rules 1981. See also section 7 of the Bail Act 1976.]*

### **Transfer of remand hearings**

**19.13.**—(1) Where a magistrates' court, under section 130(1) of the Magistrates' Courts Act 1980(**170**), orders that an accused who has been remanded in custody be brought up for any subsequent remands before an alternate magistrates' court, the court officer for 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 court officer for 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 representation order previously made in the same case;
- (d) a copy of any application for a representation order;
- (e) if the first-mentioned court has made an order under section 8(2) of the 1980 Act(**171**) (removal of restrictions on reports of committal proceedings), a statement to that effect.
- (f) a statement indicating whether or not the accused has a solicitor acting for him in the case and has consented to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) and 18(4) of the 1980(**172**) Act together with a statement indicating whether or not that consent has been withdrawn;
- (g) a statement indicating the occasions, if any, on which the accused has been remanded under section 128(3A) of the 1980 Act(**173**) without being brought before the first-mentioned court; and
- (h) if the first-mentioned court remands the accused under section 128A(**174**) of the 1980 Act on the occasion upon which it makes the order under section 130(1) of that Act, a statement indicating the date set under section 128A(2) of that Act.

(2) Where the first-mentioned court is satisfied as mentioned in section 128(3A) of the 1980 Act, paragraph (1) shall have effect as if for the words “an accused who has been remanded in custody be brought up for any subsequent remands before” there were substituted the words “applications for any subsequent remands of the accused be made to”.

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(**169**) Section 7(5) was amended by section 198 of the Extradition Act 2003 (c. 41).

(**170**) Section 130(1) was amended by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and is further amended by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(**171**) Section 8(2) was amended by sections 1 of the Criminal Justice (Amendment) Act 1981 (c. 27) and is repealed by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(**172**) Section 5 was amended by section 59 of, and paragraph 1(a) of Schedule 9 to, the Criminal Justice Act 1982 (c. 48); section 18(4) was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48).

(**173**) Section 128(3A) was inserted by section 59 of, and paragraph 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and amended by section 170(1) of, and Schedule 15 to, the Criminal Justice Act 1988 and sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).

(**174**) Section 128A was inserted by section 155(1) of the Criminal Justice Act 1988 (c. 33) and amended by section 52(2) and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).

(3) The court officer for 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 court officer for the magistrates' court which made the order—

- (a) a copy of the record made by the alternate court in pursuance of section 5 of the 1976 Act relating to the grant or withholding of bail in respect of the accused when he was last remanded in custody or on bail;
- (b) a copy of any representation order made by the alternate court;
- (c) a copy of any application for a representation order made to the alternate court;
- (d) if the alternate court has made an order under section 8(2) of the 1980 Act (removal of restrictions on reports of committal proceedings), a statement to that effect;
- (e) a statement indicating whether or not the accused has a solicitor acting for him in the case and has consented to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) and 18(4) of the 1980 Act together with a statement indicating whether or not that consent has been withdrawn; and
- (f) a statement indicating the occasions, if any, on which the accused has been remanded by the alternate court under section 128(3A) of the 1980 Act without being brought before that court.

(4) Where the alternate court is satisfied as mentioned in section 128(3A) of the 1980 Act paragraph (2) above shall have effect as if for the words “an accused who has been remanded in custody is brought up for any subsequent remands” there shall be substituted the words “applications for the further remand of the accused are to be made”.

*[Note. Formerly rule 25 of the Magistrates' Court Rules 1981.]*

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

**19.14.** Where a transfer direction has been given by the Secretary of State under section 47 of the Mental Health Act 1983(175) in respect of a person remanded in custody by a magistrates' court and the direction has not ceased to have effect, the court officer shall give notice in writing to the managers of the hospital where he is detained of any further remand under section 128 of the Magistrates' Courts Act 1980.

*[Note. Formerly rule 26 of the Magistrates' Courts Rules 1981.]*

#### **Cessation of transfer direction**

**19.15.** Where a magistrates' court directs, under section 52(5) of the Mental Health Act 1983(176), that a transfer direction given by the Secretary of State under section 48 of that Act in respect of a person remanded in custody by a magistrates' court shall cease to have effect, the court officer shall give notice in writing of the court's direction to the managers of the hospital specified in the Secretary of State's direction and, where the period of remand has not expired or the person has been committed to the Crown Court for trial or to be otherwise dealt with, to the Governor of the prison to which persons of the sex of that person are committed by the court if remanded in custody or committed in custody for trial.

*[Note. Formerly rule 110 of the Magistrates' Courts Rules 1981. As to the requirement to give notice to the prison governor and hospital authorities when a defendant subject to a transfer direction is transferred, committed or sent to the Crown Court for trial, see rules 11.3 and 19.20.]*

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(175) 1983 c. 20; section 47 was amended by sections 49(3) and 56(2) of, and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43).  
 (176) Section 52(5) is amended by paragraph 55 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

### **Lodging an appeal against a grant of bail by a magistrates' court**

**19.16.**—(1) Where the prosecution wishes to exercise the right of appeal, under section 1 of the Bail (Amendment) Act 1993(177), to a judge of the Crown Court against a decision to grant bail, the oral notice of appeal must be given to the justices' clerk and to the person concerned, at the conclusion of the proceedings in which such bail was granted and before the release of the person concerned.

(2) When oral notice of appeal is given, the justices' clerk shall announce in open court the time at which such notice was given.

(3) A record of the prosecution's decision to appeal and the time the oral notice of appeal was given shall be made in the register and shall contain the particulars set out.

(4) Where an oral notice of appeal has been given the court shall remand the person concerned in custody by a warrant of commitment.

(5) On receipt of the written notice of appeal required by section 1(5) of the 1993 Act, the court shall remand the person concerned in custody by a warrant of commitment, until the appeal is determined or otherwise disposed of.

(6) A record of the receipt of the written notice of appeal shall be made in the same manner as that of the oral notice of appeal under paragraph (3).

(7) If, having given oral notice of appeal, the prosecution fails to serve a written notice of appeal within the two hour period referred to in section 1(5) of the 1993 Act the justices' clerk shall, as soon as practicable, by way of written notice (served by a court officer) to the persons in whose custody the person concerned is, direct the release of the person concerned on bail as granted by the magistrates' court and subject to any conditions which it imposed.

(8) If the prosecution serves notice of abandonment of appeal on a court officer, the justices' clerk shall, forthwith, by way of written notice (served by the court officer) to the governor of the prison where the person concerned is being held, or the person responsible for any other establishment where such a person is being held, direct his release on bail as granted by the magistrates' court and subject to any conditions which it imposed.

(9) A court officer shall record the prosecution's failure to serve a written notice of appeal, or its service of a notice of abandonments.

(10) Where a written notice of appeal has been served on a magistrates' court officer, he shall provide as soon as practicable to a Crown Court officer a copy of that written notice, together with—

- (a) the notes of argument made by the court officer for the court under rule 19.10; and
- (b) a note of the date, or dates, when the person concerned is next due to appear in the magistrates' court, whether he is released on bail or remanded in custody by the Crown Court.

(11) References in this rule to “the person concerned” are references to such a person within the meaning of section 1 of the 1993 Act.

*[Note. Formerly rule 93A of the Magistrates' Courts Rules 1981.]*

### **Crown Court procedure on appeal against grant of bail by a magistrates' court**

**19.17.**—(1) This rule shall apply where the prosecution appeals under section 1 of the Bail (Amendment) Act 1993 against a decision of a magistrates' court granting bail and in this rule “the person concerned” has the same meaning as in that Act.

(2) The written notice of appeal required by section 1(5) of the 1993 Act shall be in the form set out in the Practice Direction and shall be served on—

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(177) 1993 c. 26; section 1 was amended by section 200 of, and Schedule 4 to, the Extradition Act 2003 (c. 41) and is further amended by section 18 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

- (a) the magistrates' court officer; and
  - (b) the person concerned.
- (3) The Crown Court officer shall enter the appeal and give notice of the time and place of the hearing to—
- (a) the prosecution;
  - (b) the person concerned or his legal representative; and
  - (c) the magistrates' court officer.
- (4) The person concerned shall not be entitled to be present at the hearing of the appeal unless he is acting in person or, in any other case of an exceptional nature, a judge of the Crown Court is of the opinion that the interests of justice require his to be present and gives him leave to be so.
- (5) Where a person concerned has not been able to instruct a solicitor to represent him at the appeal, he may give notice to the Crown Court requesting that the Official Solicitor shall represent him at the appeal, and the court may, if it thinks fit, assign the Official Solicitor to act for the person concerned accordingly.
- (6) At any time after the service of written notice of appeal under paragraph (2), the prosecution may abandon the appeal by giving notice in writing in the form set out in the Practice Direction.
- (7) The notice of abandonment required by the preceding paragraph shall be served on—
- (a) the person concerned or his legal representative;
  - (b) the magistrates' court officer; and
  - (c) the Crown Court officer.
- (8) Any record required by section 5 of the Bail Act 1976 (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 file relating to the case in question and the record shall include the following particulars, namely—
- (a) the effect of the decision;
  - (b) a statement of any condition imposed in respect of bail, indicating whether it is to be complied with before or after release on bail; and
  - (c) where bail is withheld, a statement of the relevant exception to the right to bail (as provided in Schedule 1 to the 1976 Act) on which the decision is based.
- (9) The Crown Court officer shall, as soon as practicable after the hearing of the appeal, give notice of the decision and of the matters required by the preceding paragraph to be recorded to—
- (a) the person concerned or his legal representative;
  - (b) the prosecution;
  - (c) the police;
  - (d) the magistrates' officer; and
  - (e) the governor of the prison or person responsible for the establishment where the person concerned is being held.
- (10) Where the judge hearing the appeal grants bail to the person concerned, the provisions of rule 19.18(9) (informing the Court of any earlier application for bail) and rule 19.22 (conditions attached to bail granted by the Crown Court) shall apply as if that person had applied to the Crown Court for bail.
- (11) In addition to the methods of service permitted by rule 4.3 (service of documents in Crown Court proceedings), the notices required by paragraphs (3), (5), (7) and (9) of this rule may be sent by way of facsimile transmission and the notice required by paragraph (3) may be given by telephone.

[*Note. Formerly rule 11A of the Crown Court Rules 1982(178).*]

### **Applications to Crown Court relating to bail**

**19.18.**—(1) This rule applies where an application to the Crown Court relating to bail is made otherwise than during the hearing of proceedings in the Crown Court.

(2) Subject to paragraph (7) below, notice in writing of intention to make such an application to the Crown Court shall, at least 24 hours before it is made, be given to the prosecutor and if the prosecution is being carried on by the Crown Prosecution Service, to the appropriate Crown Prosecutor or, if the application is to be made by the prosecutor or a constable under section 3(8) of the Bail Act 1976(179), to the person to whom bail was granted.

(3) On receiving notice under paragraph (2), the prosecutor or appropriate Crown Public Prosecutor or, as the case may be, the person to whom bail was granted shall—

- (a) notify the Crown Court officer and the applicant that he wishes to be represented at the hearing of the application;
- (b) notify the Crown Court officer and the applicant that he does not oppose the application; or
- (c) give to the Crown Court officer, for the consideration of the Crown Court, a written statement of his reasons for opposing the application, at the same time sending a copy of the statement to the applicant.

(4) A notice under paragraph (2) shall be in the form set out in the Practice Direction or a form to the like effect, and the applicant shall give a copy of the notice to the Crown Court officer.

(5) Except in the case of an application made by the prosecutor or a constable under section 3(8) of the 1976 Act, the applicant shall not be entitled to be present on the hearing of his application unless the Crown Court gives him leave to be present.

(6) Where a person who is in custody or has been released on bail desires to make an application relating to bail and has not been able to instruct a solicitor to apply on his behalf under the preceding paragraphs of this rule, he may give notice in writing to the Crown Court of his desire to make an application relating to bail, requesting that the Official Solicitor shall act for him in the application, and the Court may, if it thinks fit, assign the Official Solicitor to act for the applicant accordingly.

(7) Where the Official Solicitor has been so assigned the Crown Court may, if it thinks fit, dispense with the requirements of paragraph (2) and deal with the application in a summary manner.

(8) Any record required by section 5 of the 1976 Act (together with any note of reasons required by section 5(4) to be included) shall be made by way of an entry in the file relating to the case in question and the record shall include the following particulars, namely—

- (a) the effect of the decision;
- (b) a statement of any condition imposed in respect of bail, indicating whether it is to be complied with before or after release on bail;
- (c) where conditions of bail are varied, a statement of the conditions as varied; and
- (d) where bail is withheld, a statement of the relevant exception to the right to bail (as provided in Schedule 1 to the 1976 Act) on which the decision is based.

(9) Every person who makes an application to the Crown Court relating to bail shall inform the Court of any earlier application to the High Court or the Crown Court relating to bail in the course of the same proceedings.

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(178) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1988/1635, 1994/1480, 1998/2168 and 2001/614.

(179) Section 3(8) was amended by section 65(4) of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and is further amended by paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

*[Note. Formerly rule 19 and paragraph (1) of rule 20 of the Crown Court Rules 1982. As to applications for bail before committal for trial see also direction V.53, and for bail during trial see also direction III.25, in the Practice Direction.]*

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

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

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

*[Note. Formerly rule 9 of the Magistrates' Courts Rules 1981. For the equivalent provision where a defendant is transferred for trial, see rule 11.2. On the coming into force of Schedule 3 to the Criminal Justice Act 2003(180)committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998(181)in the same way as cases triable only on indictment.]*

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

**19.20.** Where a transfer direction has been given by the Secretary of State under section 48 of the Mental Health Act 1983(182) in respect of a person remanded in custody by a magistrates' court and, before the direction ceases to have effect, that person is committed or sent for trial, a magistrates' court officer shall give notice—

- (a) to the governor of the prison to which persons of the sex of that person are committed or sent by that court if committed or sent in custody for trial; and
- (b) to the managers of the hospital where he is detained.

*[Note. Formerly rule 10 of the Magistrates' Courts Rules 1981. For the equivalent provision where a defendant is transferred for trial see rule 11.3. On the coming into force of Schedule 3 to the Criminal Justice Act 2003 committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998 in the same way as cases triable only on indictment.]*

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

**19.21.** Where a magistrates' court has committed or sent a person on bail to the Crown Court for trial or under any of the enactments mentioned in rule 43.1(1) and subsequently varies any conditions of the bail or imposes any conditions in respect of the bail, the magistrates' court officer shall send to the Crown Court officer a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such variation or imposition of conditions.

*[Note. Formerly rule 93 of the Magistrates' Courts Rules 1981. See also section 5 of the Bail Act 1976. For the equivalent provision where a defendant is transferred to the Crown Court, see rule 11.4. On the coming into force of Schedule 3 to the Criminal Justice Act 2003 committal for trial will be abolished and cases triable either way will be sent to the Crown Court under sections 51 and 51A of the Crime and Disorder Act 1998 in the same way as cases triable only on indictment.]*

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(180)2003 c. 44.

(181)1998 c. 37.

(182)Section 47 was amended by sections 49(3) and 56(2) of, and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43).



### **Conditions attached to bail granted by the Crown Court**

**19.22.**—(1) Where the Crown Court grants bail, the recognizance of any surety required as a condition of bail may be entered into before an officer of the Crown Court or, where the person who has been granted bail 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 specified in section 8(4) of the Bail Act 1976.

(2) Where the Crown Court under section 3(5) or (6) of the 1976 Act imposes a 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.

(3) A person who, in pursuance of an order made by the Crown Court for the grant of bail, proposes to enter into a recognizance or give security must, unless the Crown Court otherwise directs, give notice to the prosecutor at least 24 hours before he enters into the recognizance or gives security as aforesaid.

(4) Where, in pursuance of an order of the Crown Court, a recognizance is entered into or any requirement imposed under section 3(5) or (6) of the 1976 Act is complied with (being a requirement to be complied with before a person's release on bail) before any person, it shall be his duty to cause the recognizance or, as the case may be, a statement of the requirement to be transmitted forthwith to the court officer; and a copy of the recognizance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the person named in the order is detained, unless the recognizance was entered into or the requirement was complied with before such governor or keeper.

(5) Where, in pursuance of section 3(5) of the 1976 Act, security has been given in respect of a person granted bail with a duty to surrender to the custody of the Crown Court and either—

- (a) that person surrenders to the custody of the Court; or
- (b) that person having failed to surrender to the custody of the Court, the Court decides not to order the forfeiture of the security,

the court officer shall as soon as practicable give notice of the surrender to custody or, as the case may be, of the decision not to forfeit the security to the person before whom the security was given.

*[Note. Formerly paragraphs (2), (3), (5), (6) and (7) of rule 20 of the Crown Court Rules 1982.]*

### **Estreat of recognizances in respect of person bailed to appear before the Crown Court**

**19.23.**—(1) Where a recognizance has been entered into in respect of a person granted bail to appear before the Crown Court and it appears to the Court that a default has been made in performing the conditions of the recognizance, other than by failing to appear before the Court in accordance with any such condition, the Court may order the recognizance to be estreated.

(2) Where the Crown Court is to consider making an order under paragraph (1) for a recognizance to be estreated, the court officer shall give notice to that effect to the person by whom the recognizance was entered into indicating the time and place at which the matter will be considered; and no such order shall be made before the expiry of 7 days after the notice required by this paragraph has been given.

*[Note. Formerly rule 21 of the Crown Court Rules 1982. As to forfeiture of recognizances on failure to surrender, see rule 19.24.]*

### **Forfeiture of recognizances in respect of person bailed to appear before the Crown Court**

**19.24.**—(1) Where a recognizance is conditioned for the appearance of an accused before the Crown Court and the accused fails to appear in accordance with the condition, the Court shall declare the recognizance to be forfeited.

(2) Where the Crown Court declares a recognizance to be forfeited under paragraph (1), the court officer shall issue a summons to the person by whom the recognizance was entered into requiring him to appear before the Court at a time and place specified in the summons to show cause why the Court should not order the recognizance to be estreated.

(3) At the time specified in the summons the Court may proceed in the absence of the person by whom the recognizance was entered into if it is satisfied that he has been served with the summons.

*[Note. Formerly rule 21A of the Crown Court Rules 1982. As to the estreat of recognizances on failure to comply with conditions of bail, see rule 19.23. For the procedure where a defendant fails to surrender see also direction I.13 in the Practice Direction.]*

## PART 20

### CUSTODY TIME LIMITS

#### Contents of this Part

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Appeal to Crown Court against decision on custody time limit	rule 20.1
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#### **Appeal to the Crown Court against a decision of a magistrates' court in respect of a custody time limit**

**20.1.**—(1) This rule applies—

- (a) to any appeal brought by an accused, under section 22(7) of the Prosecution of Offences Act 1985(**183**), against a decision of a magistrates' court to extend, or further extend, a custody time limit imposed by regulations made under section 22(1) of the 1985 Act; and
- (b) to any appeal brought by the prosecution, under section 22(8) of the 1985 Act, against a decision of a magistrates' court to refuse to extend, or further extend, such a time limit.

(2) An appeal to which this rule applies shall be commenced by the appellant's giving notice in writing of appeal—

- (a) to the court officer for the magistrates' court which took the decision;
- (b) if the appeal is brought by the accused, to the prosecutor and, if the prosecution is to be carried on by the Crown Prosecution Service, to the appropriate Crown Prosecutor;
- (c) if the appeal is brought by the prosecution, to the accused; and
- (d) to the Crown Court officer.

(3) The notice of an appeal to which this rule applies shall state the date on which the custody time limit applicable to the case is due to expire and, if the appeal is brought by the accused under section 22(7) of the 1985 Act, the date on which the custody time limit would have expired had the court decided not to extend or further extend that time limit.

(4) On receiving notice of an appeal to which this rule applies, the Crown Court officer shall enter the appeal and give notice of the time and place of the hearing to—

- (a) the appellant;
- (b) the other party to the appeal; and
- (c) the court officer for the magistrates' court which took the decision.

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(183) 1985 c. 23; section 22(7) and (8) was amended by section 43 of the Crime and Disorder Act 1998.

(5) Without prejudice to the power of the Crown Court to give leave for an appeal to be abandoned, an appellant may abandon an appeal to which this rule applies by giving notice in writing to any person to whom notice of the appeal was required to be given by paragraph (2) of this rule not later than the third day preceding the day fixed for the hearing of the appeal:

Provided that, for the purpose of determining whether notice was properly given in accordance with this paragraph, there shall be disregarded any Saturday and Sunday and any day which is specified to be a bank holiday in England and Wales under section 1(1) of the Banking and Financial Dealings Act 1971(184).

*[Note. Formerly rule 27A of the Crown Court Rules 1982(185). See also section 22 of the Prosecution of Offences Act 1985, and for the procedure for applying for an extension of a custody time limit see the Prosecution of Offences (Custody Time Limits) Regulations 1987(186).]*

## PART 21

### ADVANCE INFORMATION

#### Contents of this Part

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Scope of procedure for furnishing advance information	rule 21.1
Notice to accused regarding advance information	rule 21.2
Request for advance information	rule 21.3
Refusal of request for advance information	rule 21.4
Duty of court regarding advance information	rule 21.5
Adjournment pending furnishing of advance information	rule 21.6

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#### Scope of procedure for furnishing advance information

**21.1.** This Part applies in respect of proceedings against any person (“the accused”) for an offence triable either way.

*[Note. Formerly rule 2 of the Magistrates' Courts (Advance Information) Rules 1985(187).]*

#### Notice to accused regarding advance information

**21.2.** As soon as practicable after a person has been charged with an offence in proceedings in respect of which this Part applies or a summons has been served on a person in connection with such an offence, the prosecutor shall provide him with a notice in writing explaining the effect of rule 21.3 and setting out the address at which a request under that section may be made.

*[Note. Formerly rule 3 of the Magistrates' Courts (Advance Information) Rules 1985.]*

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(184) 1971 c. 80.

(185) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1988/1635 and 2001/614.

(186) S.I. 1987/299.

(187) S.I. 1985/601; amended by S.I. 1992/2072.

### **Request for advance information**

**21.3.**—(1) If, in any proceedings in respect of which this Part applies, either before the magistrates' court considers whether the offence appears to be more suitable for summary trial or trial on indictment or, where the accused has not attained the age of 18 years when he appears or is brought before a magistrates' court, before he is asked whether he pleads guilty or not guilty, the accused or a person representing the accused requests the prosecutor to furnish him with advance information, the prosecutor shall, subject to rule 21.4, furnish him as soon as practicable with either—

- (a) a copy of those parts of every written statement which contain information as to the facts and matters of which the prosecutor proposes to adduce evidence in the proceedings; or
- (b) a summary of the facts and matters of which the prosecutor proposes to adduce evidence in the proceedings.

(2) In paragraph (1) above, “written statement” means a statement made by a person on whose evidence the prosecutor proposes to rely in the proceedings and, where such a person has made more than one written statement one of which contains information as to all the facts and matters in relation to which the prosecutor proposes to rely on the evidence of that person, only that statement is a written statement for purposes of paragraph (1) above.

(3) Where in any part of a written statement or in a summary furnished under paragraph (1) above reference is made to a document on which the prosecutor proposes to rely, the prosecutor shall, subject to rule 21.4, when furnishing the part of the written statement or the summary, also furnish either a copy of the document or such information as may be necessary to enable the person making the request under paragraph (1) above to inspect the document or a copy thereof.

*[Note. Formerly rule 4 of the Magistrates' Courts (Advance Information) Rules 1985.]*

### **Refusal of request for advance information**

**21.4.**—(1) If the prosecutor is of the opinion that the disclosure of any particular fact or matter in compliance with the requirements imposed by rule 21.3 might lead to any person on whose evidence he proposes to rely in the proceedings being intimidated, to an attempt to intimidate him being made or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements in relation to that fact or matter.

(2) Where, in accordance with paragraph (1) above, the prosecutor considers that he is not obliged to comply with the requirements imposed by rule 21.3 in relation to any particular fact or matter, he shall give notice in writing to the person who made the request under that section to the effect that certain advance information is being withheld by virtue of that paragraph.

*[Note. Formerly rule 5 of the Magistrates' Courts (Advance Information) Rules 1985.]*

### **Duty of court regarding advance information**

**21.5.**—(1) Subject to paragraph (2), where an accused appears or is brought before a magistrates' court in proceedings in respect of which this Part applies, the court shall, before it considers whether the offence appears to be more suitable for summary trial or trial on indictment, satisfy itself that the accused is aware of the requirements which may be imposed on the prosecutor under rule 21.3.

(2) Where the accused has not attained the age of 18 years when he appears or is brought before a magistrates' court in proceedings in respect of which this rule applies, the court shall, before the accused is asked whether he pleads guilty or not guilty, satisfy itself that the accused is aware of the requirements which may be imposed on the prosecutor under rule 21.3.

*[Note. Formerly rule 6 of the Magistrates' Courts (Advance Information) Rules 1985.]*

### **Adjournment pending furnishing of advance information**

**21.6.**—(1) If, in any proceedings in respect of which this Part applies, the court is satisfied that, a request under rule 21.3 having been made to the prosecutor by or on behalf of the accused, a requirement imposed on the prosecutor by that section has not been complied with, the court shall adjourn the proceedings pending compliance with the requirement unless the court is satisfied that the conduct of the case for the accused will not be substantially prejudiced by non-compliance with the requirement.

(2) Where, in the circumstances set out in paragraph (1) above, the court decides not to adjourn the proceedings, a record of that decision and of the reasons why the court was satisfied that the conduct of the case for the accused would not be substantially prejudiced by non-compliance with the requirement shall be entered in the register kept under rule 6.1.

*[Note. Formerly rule 7 of the Magistrates' Courts (Advance Information) Rules 1985.]*

## **PART 22**

### **DISCLOSURE BY THE PROSECUTION**

#### **Contents of this Part**

*[Note. There are currently no rules in this Part. As to the duty of the prosecution to make initial disclosure see sections 3 and 4 of the Criminal Procedure and Investigations Act 1996(188). As to the continuing duty of disclosure see section 7A of the same Act.]*

## **PART 23**

### **DISCLOSURE BY THE DEFENCE**

#### **Contents of this Part**

*[Note. There are currently no rules in this Part. As to the duty of the accused to make disclosure see sections 5 to 6E of the Criminal Procedure and Investigations Act 1996(189), and as to timing see the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(190).]*

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**(188)** 1996 c. 25; section 3(7) was amended by the Regulation of Investigatory Powers Act 2000 (c. 23), Schedule 4, paragraph 7(1); sections 3 and 4 are amended by the Criminal Justice Act 2003 (c. 44), section 32 and Schedule 36, Part 3, paragraphs 20, 21 and 22, with effect from a date to be appointed; section 7A is inserted by the Criminal Justice Act 2003 (c. 44), section 37, with effect from a date to be appointed.

**(189)** 1996 c. 25; section 5(3A) was inserted by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 126; sections 5 and 6 are amended by, and sections 6A to 6E are inserted by, the Criminal Justice Act 2003 (c. 44), sections 33 to 36 and Schedule 3, Part 2, paragraph 66(1) and (3), Schedule 36, Part 3, paragraphs 20, 23 and 24 and Schedule 37, Parts 3 and 4, with effect from a date to be appointed.

**(190)** S.I. 1997/684.

## PART 24

### DISCLOSURE OF EXPERT EVIDENCE

#### Contents of this Part

Requirement to disclose expert evidence	rule 24.1
Withholding evidence	rule 24.2
Effect of failure to disclose	rule 24.3

#### Requirement to disclose expert evidence

##### 24.1.—(1) Following—

- (a) a plea of not guilty by any person to an alleged offence in respect of which a magistrates' court proceeds to summary trial;
- (b) the committal for trial of any person;
- (c) the transfer to the Crown Court of any proceedings for the trial of a person by virtue of a notice of transfer given under section 4 of the Criminal Justice Act 1987(**191**);
- (d) the transfer to the Crown Court of any proceedings for the trial of a person by virtue of a notice of transfer served on a magistrates' court under section 53 of the Criminal Justice Act 1991(**192**);
- (e) the sending of any person for trial under section 51 of the Crime and Disorder Act 1998(**193**);
- (f) the preferring of a bill of indictment charging a person with an offence under the authority of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933(**194**); or
- (g) the making of an order for the retrial of any person,

if any party to the proceedings proposes to adduce expert evidence (whether of fact or opinion) in the proceedings (otherwise than in relation to sentence) he shall as soon as practicable, unless in relation to the evidence in question he has already done so or the evidence is the subject of an application for leave to adduce such evidence in accordance with section 41 of the Youth Justice and Criminal Evidence Act 1999(**195**)—

- (i) furnish the other party or parties with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence, and
- (ii) where a request in writing is made to him in that behalf by any other party, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to

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(191) 1987 c. 38; section 4 was amended by the Criminal Justice Act 1988 (c. 33), section 144(1) and (2), the Legal Aid Act 1988 (c. 34), Schedule 5, paragraph 22, the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 29, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 65 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraphs 38 and 39. Section 4 is repealed by the Criminal Justice Act 2003 (c. 44), section 41 and Schedule 3, Part 2, paragraph 58(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

(192) 1991 c. 53; section 53 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 49, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 93 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraph 47. Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

(193) 1998 c. 37; section 51 is substituted by new sections 51 and 51A to 51E by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15 and 18, with effect from a date to be appointed.

(194) 1933 c. 36; section 2(2)(b) was amended by the Criminal Appeal Act 1964 (c. 43), Schedule 2, the Supreme Court Act 1981 (c. 54), Schedule 5 and the Prosecution of Offences Act 1985 (c. 23), Schedule 2.

(195) 1999 c. 23.

be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.

(2) A party may by notice in writing waive his right to be furnished with any of the matters mentioned in paragraph (1) and, in particular, may agree that the statement mentioned in paragraph (1)(a) may be furnished to him orally and not in writing.

(3) In paragraph (1), “document” means anything in which information of any description is recorded.

*[Note. Formerly rule 3 of the Magistrates' Courts (Advance Notice of Expert Evidence) Rules 1997(196) and rule 3 of the Crown Court (Advance Notice of Expert Evidence) Rules 1987(197). For the equivalent requirement in Crown Court proceedings under Part 2 of the Proceeds of Crime Act 2002 see rule 57.9.]*

### **Withholding evidence**

**24.2.**—(1) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with the requirements imposed by rule 24.1 might lead to the intimidation, or attempted intimidation, of any person on whose evidence he intends to rely in the proceedings, or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements in relation to that evidence.

(2) Where, in accordance with paragraph (1), a party considers that he is not obliged to comply with the requirements imposed by rule 24.1 with regard to any evidence in relation to any other party, he shall give notice in writing to that party to the effect that the evidence is being withheld and the grounds for doing so.

*[Note. Formerly rule 4 of the Magistrates' Courts (Advance Notice of Expert Evidence) Rules 1997 and rule 4 of the Crown Court (Advance Notice of Expert Evidence) Rules 1987. For the equivalent exception in Crown Court proceedings under Part 2 of the Proceeds of Crime Act 2002 see rule 57.10.]*

### **Effect of failure to disclose**

**24.3.** A party who seeks to adduce expert evidence in any proceedings and who fails to comply with rule 24.1 shall not adduce that evidence in those proceedings without the leave of the court.

*[Note. Formerly rule 5 of the Magistrates' Courts (Advance Notice of Expert Evidence) Rules 1997 and rule 5 of the Crown Court (Advance Notice of Expert Evidence) Rules 1987.]*

## **PART 25**

### **APPLICATIONS FOR PUBLIC INTEREST IMMUNITY AND SPECIFIC DISCLOSURE**

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### **Public interest: application by prosecutor**

**25.1.**—(1) This rule applies to the making of an application by the prosecutor under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(**198**).

(2) Notice of such an application shall be served on the court officer and shall specify the nature of the material to which the application relates.

(3) Subject to paragraphs (4) and (5) below, a copy of the notice of application shall be served on the accused by the prosecutor.

(4) Where the prosecutor has reason to believe that to reveal to the accused the nature of the material to which the application relates would have the effect of disclosing that which the prosecutor contends should not in the public interest be disclosed, paragraph (3) above shall not apply but the prosecutor shall notify the accused that an application to which this rule applies has been made.

(5) Where the prosecutor has reason to believe that to reveal to the accused the fact that an application is being made would have the effect of disclosing that which the prosecutor contends should not in the public interest be disclosed, paragraph (3) above shall not apply.

(6) Where an application is made in the Crown Court to which paragraph (5) above applies, notice of the application may be served on the trial judge or, if the application is made before the start of the trial, on the judge, if any, who has been designated to conduct the trial instead of on the court officer.

*[Note. Formerly rule 2 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997(**199**) and rule 2 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997(**200**).]*

### **Public interest: hearing of application by prosecutor**

**25.2.**—(1) This rule applies to the hearing of an application by the prosecutor under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996.

(2) Where notice of such an application is served on the Crown Court officer, the officer shall on receiving it refer it—

- (a) if the trial has started, to the trial judge; or
- (b) if the application is received before the start of the trial either—
  - (i) to the judge who has been designated to conduct the trial, or

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(**198**) 1996 c. 25; section 7A is inserted by the Criminal Justice Act 2003 (c. 44), section 37, with effect from a date to be appointed.  
 (**199**) S.I. 1997/703; amended by S.I. 2001/615.  
 (**200**) S.I. 1997/698.



(ii) if no judge has been designated for that purpose, to such judge as may be designated for the purposes of hearing the application.

(3) Where such an application is made and a copy of the notice of application has been served on the accused in accordance with rule 25.1(3), then subject to paragraphs (4) and (5) below—

- (a) the court officer shall on receiving notice of the application give notice to—
  - (i) the prosecutor,
  - (ii) the accused, and
  - (iii) any person claiming to have an interest in the material to which the application relates who has applied under section 16(b) of the 1996 Act(201) to be heard by the court, of the date and time when and the place where the hearing will take place and, unless the court orders otherwise, such notice shall be given in writing;
- (b) the hearing shall be inter partes; and
- (c) the prosecutor and the accused shall be entitled to make representations to the court.

(4) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(5) Subject to rule 25.5(4) (interested party entitled to make representations), where a copy of the notice of application has not been served on the accused in accordance with rule 25.1(3)—

- (a) the hearing shall be ex parte;
- (b) only the prosecutor shall be entitled to make representations to the court;
- (c) the accused shall not be given notice as specified in paragraph (3)(a)(ii) of this rule; and
- (d) where notice of the application has been served in the Crown Court in pursuance of rule 25.1(6), the judge on whom it is served shall take such steps as he considers appropriate to ensure that notice is given as required by paragraph (3)(a)(i) and (iii) of this rule.

*[Note. Formerly rule 3 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 3 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]*

### **Public interest: non-disclosure order**

**25.3.—**(1) This rule applies to an order under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996.

(2) On making an order to which this rule applies, the court shall state its reasons for doing so. Where such an order is made in the Crown Court, a record shall be made of the statement of the court's reasons.

- (3) In a case where such an order is made following—
- (a) an application to which rule 25.1(4) (nature of material not to be revealed) applies; or
  - (b) an application notice of which has been served on the accused in accordance with rule 25.1(3) but the accused has not appeared or been represented at the hearing of that application,

the court officer shall notify the accused that an order has been made. No notification shall be given in a case where an order is made following an application to which rule 25.1(5) (fact of application not to be revealed) applies.

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(201) 1996 c. 25; section 16 is amended by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 3, paragraphs 20 and 32, with effect from a date to be appointed.

*[Note. Formerly rule 4 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 4 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]*

### **Review of non-disclosure order: application by accused**

**25.4.**—(1) This rule applies to an application by the accused under section 14(2) or section 15(4) of the Criminal Procedure and Investigations Act 1996(202).

(2) Such an application shall be made by notice in writing to the court officer for the court that made the order under section 3(6), 7A(8) or 8(5) of the 1996 Act and shall specify the reason why the accused believes the court should review the question whether it is still not in the public interest to disclose the material affected by the order.

(3) A copy of the notice referred to in paragraph (2) shall be served on the prosecutor at the same time as it is sent to the court officer.

(4) Where such an application is made in a magistrates' court, the court officer shall take such steps as he thinks fit to ensure that the court has before it any document or other material which was available to the court which made the order mentioned in section 14(2) of the 1996 Act.

(5) Where such an application is made in the Crown Court, the court officer shall refer it—

- (a) if the trial has started, to the trial judge; or
- (b) if the application is received before the start of the trial either—
  - (i) to the judge who has been designated to conduct the trial, or
  - (ii) if no judge has been designated for that purpose, to the judge who made the order to which the application relates.

(6) The judge to whom such an application has been referred under paragraph (5) shall consider whether the application may be determined without a hearing and, subject to paragraph (7), may so determine it if he thinks fit.

(7) No application to which this rule applies shall be determined by the Crown Court without a hearing if it appears to the judge that there are grounds on which the court might conclude that it is in the public interest to disclose material to any extent.

(8) Where a magistrates' court considers that there are no grounds on which it might conclude that it is in the public interest to disclose material to any extent it may determine an application to which this rule applies without hearing representations from the accused, the prosecutor or any person claiming to have an interest in the material to which the application relates.

(9) Subject to paragraphs (10) and (11) of this rule and to rule 25.5(4) (interested party entitled to make representations), the hearing of an application to which this rule applies shall be *inter partes* and the accused and the prosecutor shall be entitled to make representations to the court.

(10) Where after hearing the accused's representations the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(11) Subject to rule 25.5(4), where the order to which the application relates was made following an application of which the accused was not notified under rule 25.1(3) or (4), the hearing shall be *ex parte* and only the prosecutor shall be entitled to make representations to the court.

(12) The court officer shall give notice in writing to—

- (a) the prosecutor;
- (b) except where a hearing takes place in accordance with paragraph (11), the accused; and

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(202) 1996 c. 25; section 14(2) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 3, paragraphs 20 and 30, with effect from a date to be appointed.

(c) any person claiming to have an interest in the material to which the application relates who has applied under section 16(b) of the 1996 Act to be heard by the court, of the date and time when and the place where the hearing of an application to which this rule applies will take place and of any order which is made by the court following its determination of the application.

(13) Where such an application is determined without a hearing in pursuance of paragraph (6), the court officer shall give notice in writing in accordance with paragraph (12) of any order which is made by the judge following his determination of the application.

*[Note. Formerly rule 5 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 5 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]*

### **Public interest applications: interested persons**

**25.5.**—(1) Where the prosecutor has reason to believe that a person who was involved (whether alone or with others and whether directly or indirectly) in the prosecutor's attention being brought to any material to which an application under section 3(6), 7A(8), 8(5), 14(2) or 15(4) of the Criminal Procedure and Investigations Act 1996 relates may claim to have an interest in that material, the prosecutor shall—

- (a) in the case of an application under section 3(6), 7A(8) or 8(5) of the 1996 Act, at the same time as notice of the application is served under rule 25.1(2) or (6); or
- (b) in the case of an application under section 14(2) or 15(4) of the 1996 Act, when he receives a copy of the notice referred to in rule 25.4(2),

give notice in writing to—

- (i) the person concerned of the application, and
- (ii) the court officer or, as the case may require, the judge of his belief and the grounds for it.

(2) An application under section 16(b) of the 1996 Act shall be made by notice in writing to the court officer or, as the case may require, the judge as soon as is reasonably practicable after receipt of notice under paragraph (1)(i) above or, if no such notice is received, after the person concerned becomes aware of the application referred to in that sub-paragraph and shall specify the nature of the applicant's interest in the material and his involvement in bringing the material to the prosecutor's attention.

(3) A copy of the notice referred to in paragraph (2) shall be served on the prosecutor at the same time as it is sent to the court officer or the judge as the case may require.

(4) At the hearing of an application under section 3(6), 7A(8), 8(5), 14(2) or 15(4) of the 1996 Act a person who has made an application under section 16(b) in accordance with paragraph (2) of this rule shall be entitled to make representations to the court.

*[Note. Formerly rule 6 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 6 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]*

### **Disclosure: application by accused and order of court**

**25.6.**—(1) This rule applies to an application by the accused under section 8(2) of the Criminal Procedure and Investigations Act 1996(**203**).

- (2) Such an application shall be made by notice in writing to the court officer and shall specify—

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(203) 1996 c. 25; section 8(2) is substituted by the Criminal Justice Act 2003 (c. 44), section 38, with effect from a date to be appointed.

- (a) the material to which the application relates;
  - (b) that the material has not been disclosed to the accused;
  - (c) the reason why the material might be expected to assist the applicant's defence as disclosed by the defence statement given under section 5 or 6 of the 1996 Act(204); and
  - (d) the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3).
- (3) A copy of the notice referred to in paragraph (2) shall be served on the prosecutor at the same time as it is sent to the court officer.
- (4) Where such an application is made in the Crown Court, the court officer shall refer it—
- (a) if the trial has started, to the trial judge, or
  - (b) if the application is received before the start of the trial—
    - (i) to the judge who has been designated to conduct the trial, or
    - (ii) if no judge has been designated for that purpose, to such judge as may be designated for the purposes of determining the application.
- (5) A prosecutor receiving notice under paragraph (3) of an application to which this rule applies shall give notice in writing to the court officer within 14 days of service of the notice that—
- (a) he wishes to make representations to the court concerning the material to which the application relates; or
  - (b) if he does not so wish, that he is willing to disclose that material,
- and a notice under paragraph 5(a) shall specify the substance of the representations he wishes to make.
- (6) A court may determine an application to which this rule applies without hearing representations from the applicant or the prosecutor unless—
- (a) the prosecutor has given notice under paragraph (5)(a) and the court considers that the representations should be made at a hearing; or
  - (b) the court considers it necessary to hear representations from the applicant or the prosecutor in the interests of justice for the purposes of determining the application.
- (7) Subject to paragraph (8), where a hearing is held in pursuance of this rule—
- (a) the court officer shall give notice in writing to the prosecutor and the applicant of the date and time when and the place where the hearing will take place;
  - (b) the hearing shall be *inter partes*; and
  - (c) the prosecutor and the applicant shall be entitled to make representations to the court.
- (8) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.
- (9) A copy of any order under section 8(2) of the 1996 Act shall be served on the prosecutor and the applicant.

*[Note. Formerly rule 7 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 7 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]*

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(204) 1996 c. 25; section 5 was amended by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 126; sections 5 and 6 are amended by the Criminal Justice Act 2003 (c. 44), section 33(1), Schedule 3, Part 2, paragraphs 60(1) and (3), Schedule 36, Part 3, paragraphs 20, 23 and 24 and Schedule 37, Parts 3 and 4, with effect from a date to be appointed.

### **Disclosure: application for extension of time limit and order of the court**

**25.7.**—(1) This rule applies to an application under regulation 3(2) of the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(205), including that regulation as applied by regulation 4(2).

(2) An application to which this rule applies shall be made by notice in writing to the court officer and shall, in addition to the matters referred to in regulation 3(3)(a) to (c) of the 1997 Regulations, specify the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3) of this rule.

(3) A copy of the notice referred to in paragraph (2) of this rule shall be served on the prosecutor at the same time as it is sent to the court officer.

(4) The prosecutor may make representations to the court concerning the application and if he wishes to do so he shall do so in writing within 14 days of service of a notice under paragraph (3) of this rule.

(5) On receipt of representations under paragraph (4) above, or on the expiration of the period specified in that paragraph if no such representations are received within that period, the court shall consider the application and may, if it wishes, do so at a hearing.

(6) Where a hearing is held in pursuance of this rule—

- (a) the court officer shall give notice in writing to the prosecutor and the applicant of the date and time when and the place where the hearing will take place;
- (b) the hearing shall be inter partes; and
- (c) the prosecutor and the applicant shall be entitled to make representations to the court.

(7) A copy of any order under regulation 3(1) or 4(1) of the 1997 Regulations shall be served on the prosecutor and the applicant.

*[Note. Formerly rule 8 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 8 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]*

### **Public interest and disclosure applications: general**

**25.8.**—(1) Any hearing held under this Part may be adjourned from time to time.

(2) Any hearing referred to in paragraph (1) other than one held under rule 25.7 may be held in private.

(3) Where a Crown Court hearing, or any part thereof, is held in private under paragraph (2), the court may specify conditions subject to which the record of its statement of reasons made in pursuance of rule 25.3(2) is to be kept.

(4) Where an application or order to which any provision of this rule applies is made after the start of a trial in the Crown Court, the trial judge may direct that any provision of this rule requiring notice of the application or order to be given to any person shall not have effect and may give such direction as to the giving of notice in relation to that application or order as he thinks fit.

*[Note. Formerly rule 9 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 9 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]*

## PART 26

### CONFIDENTIAL MATERIAL

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#### Application for permission to use or disclose object or information

**26.1.**—(1) This rule applies to an application under section 17(4) of the Criminal Procedure and Investigations Act 1996(206).

(2) Such an application shall be made by notice in writing to the court officer for the court which conducted or is conducting the proceedings for whose purposes the applicant was given, or allowed to inspect, the object to which the application relates.

(3) The notice of application shall—

- (a) specify the object which the applicant seeks to use or disclose and the proceedings for whose purposes he was given, or allowed to inspect, it;
- (b) where the applicant seeks to use or disclose any information recorded in the object specified in pursuance of paragraph (3)(a), specify that information;
- (c) specify the reason why the applicant seeks permission to use or disclose the object specified in pursuance of paragraph (3)(a) or any information specified in pursuance of paragraph (3)(b);
- (d) describe any proceedings in connection with which the applicant seeks to use or disclose the object or information referred to in paragraph (3)(c); and
- (e) specify the name and address of any person to whom the applicant seeks to disclose the object or information referred to in paragraph (3)(c).

(4) Where the court officer receives an application to which this rule applies, the court officer or the clerk of the magistrates' court shall fix a date and time for the hearing of the application.

(5) The court officer shall give the applicant and the prosecutor at least 28 days' notice of the date fixed in pursuance of paragraph (4) and shall at the same time send to the prosecutor a copy of the notice given to him in pursuance of paragraph (2).

(6) Where the prosecutor has reason to believe that a person may claim to have an interest in the object specified in a notice of application in pursuance of paragraph (3)(a), or in any information so specified in pursuance of paragraph (3)(b), he shall, as soon as reasonably practicable after receipt of a copy of that notice under paragraph (5), send a copy of the notice to that person and inform him of the date fixed in pursuance of paragraph (4).

*[Note. Formerly rule 2 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997(207) and rule 2 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997(208).]*

### **Prosecutor or interested party wishing to be heard**

**26.2.**—(1) This rule applies to an application under section 17(6)(b) of the Criminal Procedure and Investigations Act 1996.

(2) An application to which this rule applies shall be made by notice in writing to the court officer of the court referred to in rule 26.1(2) not less than 7 days before the date fixed in pursuance of rule 26.1(4).

(3) The applicant shall at the same time send to the person whose application under section 17(4) of the 1996 Act is concerned a copy of the notice given in pursuance of paragraph (2).

*[Note. Formerly rule 3 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997 and rule 3 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997.]*

### **Decision on application for use or disclosure**

**26.3.**—(1) Where no application to which rule 26.2 applies is made in accordance with paragraph (2) of that rule, the court shall consider whether the application under section 17(4) of the Criminal Procedure and Investigations Act 1996 may be determined without hearing representations from the accused, the prosecutor or any person claiming to have an interest in the object or information to which the application relates, and may so determine it if the court thinks fit.

(2) Where an application to which rule 26.1 applies is determined without hearing any such representations the court officer shall give notice in writing to the person who made the application and to the prosecutor of any order made under section 17(4) of the 1996 Act or, as the case may be, that no such order has been made.

*[Note. Formerly rule 4 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997 and rule 4 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997.]*

### **Unauthorised use or disclosure**

**26.4.**—(1) This rule applies to proceedings to deal with a contempt of court under section 18 of the Criminal Procedure and Investigations Act 1996.

(2) In such proceedings before a magistrates' court the Magistrates' Courts Act 1980(209) shall have effect subject to the modifications contained in paragraphs (3) to (7) (being provisions equivalent to those in Schedule 3 to the Contempt of Court Act 1981(210) subject to modifications which the Lord Chancellor considered appropriate after consultation with the rule committee for magistrates' courts).

(3) Where proceedings to which this rule applies are taken of the court's own motion the provisions of the 1980 Act listed in paragraph (4) shall apply as if a complaint had been made against the person against whom the proceedings are taken and subject to the modifications specified in paragraphs (5) and (6).

(4) The provisions referred to in paragraph (3) are—

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(207) S.I. 1997/704; amended by S.I. 2001/615.

(208) S.I. 1997/699; amended by S.I. 1999/598.

(209) 1980 c. 43.

(210) 1981 c. 49.

- (a) section 51 (issue of summons)(**211**);
  - (b) section 53(1) and (2) (procedure on hearing);
  - (c) section 54 (adjournment);
  - (d) section 55 (non-appearance of defendant);
  - (e) section 97(1) (summons to witness)(**212**);
  - (f) section 101 (onus of proving exceptions etc);
  - (g) section 121(1) and (3)(a) (constitution and place of sitting of court)(**213**); and
  - (h) section 123 (defect in process).
- (5) In—
- (a) section 55(1) for the words “the complainant appears but the defendant does not” there shall be substituted the words “the defendant does not appear”; and
  - (b) section 55(2) the words “if the complaint has been substantiated on oath, and” shall be omitted.
- (6) In section 123(1) and (2) the words “adduced on behalf of the prosecutor or complainant” shall be omitted.
- (7) Where proceedings to which this rule applies are taken by way of complaint for an order—
- (a) section 127 of the 1980 Act (limitation of time) shall not apply to the complaint;
  - (b) the complaint may be made by the prosecutor or by any other person claiming to have an interest in the object, or in any information recorded in an object, the use or disclosure of which is alleged to contravene section 17 of the 1996 Act(**214**); and
  - (c) the complaint shall be made to the magistrates' court officer for the magistrates' court which conducted or is conducting the proceedings for whose purposes the object mentioned in paragraph (7)(b) was given or inspected.
- (8) An application to the Crown Court for an order of committal or for the imposition of a fine in proceedings to which this rule applies may be made by the prosecutor or by any other person claiming to have an interest in the object, or in any information recorded in an object, the use or disclosure of which is alleged to contravene section 17 of the 1996 Act. Such an application shall be made in accordance with paragraphs (9) to (20).
- (9) An application such as is referred to in paragraph (8) shall be made by notice in writing to the court officer at the same place as that in which the Crown Court sat or is sitting to conduct the proceedings for whose purposes the object mentioned in paragraph (2) was given or inspected.
- (10) The notice referred to in paragraph (9) shall set out the name and a description of the applicant, the name, description and address of the person sought to be committed or fined and the grounds on which his committal or the imposition of a fine is sought and shall be supported by an affidavit verifying the facts.
- (11) Subject to paragraph (12), the notice referred to in paragraph (9), accompanied by a copy of the affidavit in support of the application, shall be served personally on the person sought to be committed or fined.

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(211) Section 51 is substituted by the Courts Act 2003 (c. 39), section 47(1), with effect from a date to be appointed.

(212) Section 97(1) was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), Schedule 1, Part 1, paragraph 7 and Schedule 5 and partially repealed by S.I. 1996/675. It is further amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 230 and Schedule 10, with effect from a date to be appointed.

(213) Section 121(3) is repealed by the Courts Act 2003 (c. 39), Schedule 8, paragraph 237(1) and (2) and Schedule 10, with effect from a date to be appointed.

(214) Section 17(1)(a) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 3, paragraphs 20 and 33, with effect from a date to be appointed.



(12) The court may dispense with service of the notice under this rule if it is of the opinion that it is necessary to do so in order to protect the applicant or for another purpose identified by the court.

(13) Nothing in the foregoing provisions of this rule shall be taken as affecting the power of the Crown Court to make an order of committal or impose a fine of its own motion against a person guilty of a contempt under section 18 of the 1996 Act.

(14) Subject to paragraph (15), proceedings to which this rule applies shall be heard in open court.

(15) Proceedings to which this rule applies may be heard in private where—

- (a) the object, the use or disclosure of which is alleged to contravene section 17 of the 1996 Act, is; or
- (b) the information, the use or disclosure of which is alleged to contravene that section, is recorded in,

an object which is, or forms part of, material in respect of which an application was made under section 3(6), 7A(8) or 8(5) of the 1996 Act(215), whether or not the court made an order that the material be not disclosed:

Provided that where the court hears the proceedings in private it shall nevertheless, if it commits any person to custody or imposes a fine on him in pursuance of section 18(3) of the 1996 Act, state in open court the name of that person, the period specified in the order of committal or, as the case may be, the amount of the fine imposed, or both such period and such amount where both are ordered.

(16) Except with the leave of the court hearing an application for an order of committal or for the imposition of a fine no grounds shall be relied upon at the hearing except the grounds set out in the notice referred to in paragraph (9).

(17) If on the hearing of the application the person sought to be committed or fined expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

(18) The court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(19) Where execution of an order of committal is suspended by an order under paragraph (18), the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

(20) The court may, on the application of any person committed to custody for a contempt under section 18 of the 1996 Act, discharge him.

*[Note. Formerly rule 5 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997 and rule 5 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997.]*

### **Forfeiture of object used or disclosed without authority**

**26.5.**—(1) Where the Crown Court finds a person guilty of contempt under section 18 of the Criminal Procedure and Investigations Act 1996 and proposes to make an order under section 18(4) or (7), the court may adjourn the proceedings.

(2) Where the court adjourns the proceedings under paragraph (1), the court officer shall give notice to the person found guilty and to the prosecutor—

- (a) that the court proposes to make such an order and that, if an application is made in accordance with paragraph (5), it will before doing so hear any representations made by

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(215) Section 7A is inserted by the Criminal Justice Act 2003 (c. 44), section 37, with effect from a date to be appointed.

the person found guilty, or by any person in respect of whom the prosecutor gives notice to the court under paragraph (3); and

(b) of the time and date of the adjourned hearing.

(3) Where the prosecutor has reason to believe that a person may claim to have an interest in the object which has been used or disclosed in contravention of section 17 of the 1996 Act he shall, on receipt of notice under paragraph (2), give notice of that person's name and address to the court office for the court which made the finding of guilt.

(4) Where the court officer receives a notice under paragraph (3), he shall, within 7 days of the finding of guilt, notify the person specified in that notice—

(a) that the court has made a finding of guilt under section 18 of the 1996 Act, that it proposes to make an order under section 18(4) or, as the case may be, 18(7) and that, if an application is made in accordance with paragraph (5), it will before doing so hear any representations made by him; and

(b) of the time and date of the adjourned hearing.

(5) An application under section 18(6) of the 1996 Act shall be made by notice in writing to the court officer not less than 24 hours before the time set for the adjourned hearing.

*[Note. Formerly rule 6 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997.]*

## PART 27

### WITNESS STATEMENTS

#### Contents of this Part

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Witness statements in magistrates' courts	rule 27.1
Right to object to evidence being read in Crown Court trial	rule 27.2

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#### Witness statements in magistrates' courts

**27.1.**—(1) Written statements to be tendered in evidence in accordance with section 5B of the Magistrates' Courts Act 1980(**216**) or section 9 of the Criminal Justice Act 1967(**217**) shall be in the form set out in the Practice Direction.

(2) When a copy of any of the following evidence, namely—

(a) evidence tendered in accordance with section 5A of the 1980 Act (committal for trial)(**218**); or

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**(216)** 1980 c. 43; section 5B was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), Schedule 1, Part 1, paragraph 3 and amended by the Children and Young Persons Act 1969 (c. 54), Schedule 5, paragraph 55 (as amended by the Criminal Procedure and Investigations Act 1996, Schedule 1, paragraph 21). It is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 51(1) and (3) and Schedule 37, Part 4, with effect from a date to be appointed.

**(217)** 1967 c. 80; section 9 was amended by the Children and Young Persons Act 1969 (c. 54), Schedule 5, paragraph 55, the Courts Act 1971 (c. 23), Schedule 8, Part 2, paragraph 49, the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 6(1), the Criminal Procedure and Investigations Act 1996 (c. 25) section 69(1) and S.I. 2001/1090. It is further amended by the Courts Act 2003 (c. 39), Schedule 4, paragraph 1 and the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 43(1), (2) and Schedule 37, Part 4, with effect from dates to be appointed.

**(218)** Section 5A was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), Schedule 1, Part 1, paragraph 3. It is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 51(1) and (3) and Schedule 37, Part 4, with effect from a date to be appointed.

- (b) a written statement tendered in evidence under section 9 of the 1967 Act (proceedings other than committal for trial),

is given to or served on any party to the proceedings a copy of the evidence in question shall be given to the court officer as soon as practicable thereafter, and where a copy of any such statement as is referred to in sub-paragraph (b) is given or served by or on behalf of the prosecutor, the accused shall be given notice by or on behalf of the prosecutor of his right to object to the statement being tendered in evidence.

- (3) Where—

- (a) a statement or deposition to be tendered in evidence in accordance with section 5A of the 1980 Act; or  
(b) a written statement to be tendered in evidence under section 9 of the 1967 Act,

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 or deposition, and before a magistrates' court treats any document or object referred to as an exhibit in such a statement or deposition as an exhibit produced and identified in court by the maker of the statement or deposition, the court shall be satisfied that the document or object is sufficiently described in the statement or deposition for it to be identified.

(4) If it appears to a magistrates' court that any part of any evidence tendered in accordance with section 5A of the 1980 Act or a written statement tendered in evidence under section 9 of the 1967 Act is inadmissible there shall be written against that part—

- (a) in the case of any evidence tendered in accordance with section 5A of the 1980 Act, but subject to paragraph (5) of this rule, the words “Treated as inadmissible” together with the signature and name of the examining justice or, where there is more than one examining justice, the signature and name of one of the examining justices by whom the evidence is so treated;  
(b) in the case of a written statement tendered in evidence under section 9 of the 1967 Act the words “Ruled inadmissible” together with the signature and name of one of the justices who ruled the statement to be inadmissible.

(5) Where the nature of the evidence referred to in paragraph (4)(a) is such that it is not possible to write on it, the words set out in that sub-paragraph shall instead be written on a label or other mark of identification which clearly identifies the part of the evidence to which the words relate and contains the signature and name of an examining justice in accordance with that sub-paragraph.

- (6) Where, before a magistrates' court—

- (a) a statement or deposition is tendered in evidence in accordance with section 5A of the 1980 Act; or  
(b) a written statement is tendered in accordance with section 9 of the 1967 Act,

the name of the maker of the statement or deposition shall be read aloud unless the court otherwise directs.

- (7) Where—

- (a) under section 5B(4), 5C(4), 5D(5) or 5E(3) of the 1980 Act<sup>(219)</sup>; or  
(b) under section 9(6) of the 1967 Act,

in any proceedings before a magistrates' court any part of the evidence has to be read out aloud, or an account has to be given orally of so much of any evidence as is not read out aloud, the evidence shall be read or the account given by or on behalf of the party which has tendered the evidence.

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<sup>(219)</sup>Sections 5B(4), 5C(4), 5D(5) and 5E(3) were inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), Schedule 1, paragraph 3. These sections are repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 51(1), (3) and Schedule 37, Part 4, with effect from a date to be appointed.

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

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(8) Statements and depositions tendered in evidence in accordance with section 5A of the 1980 Act before a magistrates' court acting as examining justices shall be authenticated by a certificate signed by one of the examining justices.

(9) Where, before a magistrates' court—

- (a) evidence is tendered as indicated in paragraph (2)(a) of this rule, retained by the court, and not sent to the Crown Court under rule 10.5; or
- (b) a written statement is tendered in evidence as indicated in paragraph (2)(b) of this rule and not sent to the Crown Court under rule 43.1 or 43.2,

all such evidence shall, subject to any direction of the court in respect of non-documentary exhibits falling within paragraph (9)(a), be preserved for a period of three years by the magistrates' court officer for the magistrates' court.

*[Note. Formerly rule 70 of the Magistrates' Courts Rules 1981(220). See also section 9 of the Criminal Justice Act 1967 and section 5A of the Magistrates' Courts Act 1980. On the editing of witness statements, see also direction III.24 in the Practice Direction.]*

### **Right to object to evidence being read in Crown Court trial**

**27.2.**—(1) The prosecutor shall, when he serves on any other party a copy of the evidence to be tendered in committal proceedings, notify that party that if he is committed for trial he has the right to object, by written notification to the prosecutor and the Crown Court within 14 days of being so committed unless the court in its discretion permits such an objection to be made outside that period, to a statement or deposition being read as evidence at the trial without oral evidence being given by the person who made the statement or deposition and without the opportunity to cross-examine that person.

(2) The prosecutor shall, on notifying a party as indicated in paragraph (1), send a copy of such notification to the magistrates' court officer.

(3) Any objection under paragraph 1(3)(c) or paragraph 2(3)(c) of Schedule 2 to the Criminal Procedure and Investigations Act 1996(221) to the reading out at the trial of a statement or deposition without further evidence shall be made in writing to the prosecutor and the Crown Court within 14 days of the accused being committed for trial unless the court at its discretion permits such an objection to be made outside that period.

*[Note. Formerly rule 4B of the Magistrates' Courts Rules 1981 and rule 22 of the Crown Court Rules 1982(222). On the coming into force of Schedule 3 to the Criminal Justice Act 2003(223) committal for trial will be abolished and cases will be sent for trial under sections 51 and 51A of the Crime and Disorder Act 1998(224).]*

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(220) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1997/706 and 2001/610.

(221) 1996 c. 25; Schedule 2 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 66(1), (8) and Schedule 37, Part 4, with effect from a date to be appointed.

(222) S.I. 1982/1109; amended by S.I. 1997/701; there are other amending instruments but none is relevant.

(223) 2003 c. 44.

(224) 1998 c. 37.

## PART 28

### WITNESS SUMMONSES AND ORDERS

#### Contents of this Part

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Application to a magistrates' court for summons to witness or warrant for his arrest	rule 28.1
Taking a deposition in a magistrates' court	rule 28.2
Application to Crown Court for witness summons	rule 28.3
Application to set aside Crown Court witness summons where no longer needed	rule 28.4
Application to set aside witness summons issued on application to the Crown Court	rule 28.5
Application to set aside witness summons issued of Crown Court's own motion	rule 28.6

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#### **Application to a magistrates' court for summons to witness or warrant for his arrest**

**28.1.**—(1) An application for the issue of a summons or warrant under section 97 or 97A of the Magistrates' Courts Act 1980(**225**) or paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998(**226**) 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 magistrates' court officer.

*[Note. Formerly rule 107 of the Magistrates' Courts Rules 1981(227).]*

#### **Taking a deposition in a magistrates' court**

**28.2.**—(1) Where a person attends before a justice of the peace in pursuance of section 97A of the Magistrates' Courts Act 1980 or paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998 the justice shall—

- (a) where that person attends for the purpose of giving evidence, cause his evidence to be put in writing;
- (b) where that person attends for the purpose of producing a document or other exhibit, cause the document or exhibit to be handed over for examination and any evidence given by that person in respect of it to be put in writing;

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(225) 1980 c. 43; relevant amendments were made to section 97 by the Criminal Justice (International Co-operation) Act 1990, Schedule 4, paragraph 2, the Criminal Procedure and Investigations Act 1996 (c. 25), section 51 and Schedule 1, Part 1, paragraph 7 and Schedule 5 and by S.I. 1996/675, Schedule, paragraph 2(4). Section 97 is further amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 230 and Schedule 10, with effect from a date to be appointed. Section 97A was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), Schedule 1, paragraph 8; it was amended by the Access to Justice Act 1999 (c. 22), Schedule 13, paragraphs 95 and 111. Section 97A is further amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 231 and Schedule 10, and is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 51(1), (6)(a) and Schedule 37, Part 4, with effect from dates to be appointed.

(226) 1998 c. 37; paragraph 4 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), Schedule 13, paragraph 179(1) and (2) and by S.I. 2004/2035, Schedule, paragraphs 35, 37(1) and (3). It is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15, 20(1), (4) and Part 2, paragraphs 68 and 72, with effect from a date to be appointed.

(227) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1997/706, 2001/610 and 2001/3361.

- (c) where that person refuses to have his evidence taken or to produce the document or other exhibit, as the case may be, explain to him the consequences of so refusing without just excuse, and ask him to explain why he has so refused; and
- (d) cause a record of any such refusal to be made in writing.

(2) As soon as practicable after the examination by the prosecutor of a witness whose evidence is put in writing the justice shall cause his deposition to be read to him, and shall require the witness to sign the deposition.

(3) Any such deposition shall be authenticated by a certificate signed by the justice.

(4) Subject to rule 10.5 (material to be sent to Crown Court following committal) the court officer, on sending a copy of any deposition or documentary exhibit to the prosecutor under section 97A(9) or (10) of the 1980 Act, as the case may be—

- (a) shall retain the original deposition or documentary exhibit; and
- (b) may retain any other exhibit produced in pursuance of that section.

*[Note. Formerly rule 4A of the Magistrates' Courts Rules 1981(228).]*

### **Application to the Crown Court for witness summons**

**28.3.**—(1) This rule applies to an application under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(229) for the issue of a witness summons and in this rule references to “the application” and “the applicant” shall be construed accordingly.

(2) Subject to paragraphs (8) to (10), the application shall be made in writing to the Crown Court officer and shall—

- (a) contain a brief description of the stipulated evidence, document or thing;
- (b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material evidence;
- (c) set out the reason why the applicant considers that the directed person will not voluntarily attend as a witness or produce the document or thing; and
- (d) if the witness summons is proposed to require the directed person to produce a document or thing—
  - (i) inform the directed person of his right to make representations in writing and at a hearing, under paragraph (5), and
  - (ii) state whether the applicant seeks a requirement also to be imposed under section 2A of the 1965 Act (advance production)(230) and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.

(3) The application shall be supported by an affidavit—

- (a) setting out any charge on which the proceedings concerned are based;
- (b) specifying the stipulated evidence, document or thing in such a way as to enable the directed person to identify it;
- (c) specifying grounds for believing that the directed person is likely to be able to give the stipulated evidence or to produce the stipulated evidence or thing; and

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(228) S.I. 1981/552; relevant amending instruments are S.I. 1997/706, 2001/610 and 2001/3361.

(229) 1965 c. 69; section 2 was substituted, together with sections 2A-2E, by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1) and (2). Section 2 was amended by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 8 and the Courts Act 2003 (c. 39), Schedule 8, paragraph 126(a). It is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 42(a), with effect from a date to be appointed.

(230) Section 2A was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1) and (2).

(d) specifying grounds for believing that the stipulated evidence is likely to be material evidence or, as the case may be, that the stipulated document or thing is likely to be material evidence.

(4) A copy of the application and the supporting affidavit shall be served on the directed person at the same time as it is served on the court officer.

(5) The directed person may, within 7 days of receiving a copy of the application under paragraph (4) above, inform the court officer whether or not he wishes to make representations, concerning the issue of the witness summons proposed to be directed to him, at a hearing and may also make written representations to the court officer.

(6) The court officer shall—

- (a) if the directed person indicates that he wishes to have the application considered at a hearing, fix a time, date and place for the hearing;
- (b) if the directed person does not indicate in accordance with paragraph (5) that he wishes to make representations at a hearing, refer the application to a judge of the Crown Court for determination with or without a hearing; and
- (c) notify the applicant and, where paragraph (6)(a) above applies, the directed person of the time, date and place fixed for any hearing of the application.

(7) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(8) In the case of an application for a witness summons which it is proposed shall require the directed person to give evidence but not to produce any document or thing, that application may be made orally to a judge or in writing and, in such a case—

- (a) paragraphs (3) to (7) shall not have effect; and
- (b) the application shall, in addition to the matters set out in paragraph (2)(a) to (c), specify—
  - (i) any charge on which the proceedings concerned are based, and
  - (ii) the grounds for believing that the directed person is likely to be able to give the stipulated evidence.

(9) Subject to paragraph (10), in the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made within 7 days of the date fixed for trial, the court officer shall refer the notice of application to the trial judge, or such other judge as may be available, to determine the application or to give such directions as the judge to whom the notice is referred considers appropriate, and paragraphs (2)(d) (i) and (4) to (6) shall not have effect.

(10) In the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made during the trial, such application shall be made orally to the trial judge, to determine the application or to give such directions as he considers appropriate, and in such a case—

- (a) paragraphs (3) to (7) shall not have effect; and
- (b) the application shall, in addition to the matters set out in paragraph (2)(a) to (c), specify the grounds for believing that the directed person is likely to be able to produce the document or thing.

(11) In this rule references to “the directed person” and “the stipulated evidence, document or thing” shall be construed in accordance with section 2(10) of the 1965 Act.

*[Note. Formerly rule 23 of the Crown Court Rules 1982(231).]*

### **Application to set aside Crown Court witness summons where no longer needed**

**28.4.**—(1) This rule applies to an application under section 2B of the Criminal Procedure (Attendance of Witnesses) Act 1965(232) and references in this rule to “the applicant” and “the application” shall be construed accordingly.

(2) The application shall be made in writing to the Crown Court officer as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under section 2A of the 1965 Act.

(3) The application shall state that the applicant concludes that the requirement imposed by the witness summons under section 2(2) of the 1965 Act is no longer needed.

(4) If a direction is given under section 2B of the 1965 Act following the application, the court officer shall notify the person to whom the witness summons is directed as to the effect of the direction.

*[Note. Formerly rule 23ZA of the Crown Court Rules 1982.]*

### **Application to set aside witness summons issued on application to the Crown Court**

**28.5.**—(1) This rule applies to an application under section 2C of the Criminal Procedure (Attendance of Witnesses) Act 1965(233) and in this rule references to “the application” and “the applicant” shall, unless the contrary intention appears, be construed accordingly.

(2) The application shall be made in writing to the Crown Court officer and shall—

- (a) state that the applicant was not served with notice of the application to issue the summons and that he was neither present nor represented at any hearing of that application; and
- (b) set out the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence.

(3) On receiving the application, the court officer shall serve notice of the application on the person on whose application the witness summons was issued.

(4) The court shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons has been issued have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(5) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

- (a) the applicant can produce that document or thing; but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

the applicant must, unless the judge directs otherwise, arrange for the document or thing to be available at the hearing of the application.

(6) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(7) The court officer shall notify the applicant and the person on whose application the witness summons was issued of the decision of the court in relation to the application.

*[Note. Formerly rule 23ZB of the Crown Court Rules 1982.]*

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(232) Section 2B was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1) and (2) and amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 126(b).

(233) Section 2C was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1) and (2) and amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 126(c).



### **Application to set aside witness summons issued of Crown Court’s own motion**

**28.6.**—(1) Rule 28.5 shall apply to an application under section 2E of the Criminal Procedure (Attendance of Witnesses) Act 1965(**234**) as it applies to an application under section 2C, subject to the following modifications.

(2) Paragraphs (2)(a) and (3) shall be omitted.

(3) In paragraphs (4) and (7), the words “and the person on whose application the witness summons was issued” shall be omitted.

(4) In paragraph (4), for the words “(where they agree to do so)”, there shall be substituted the words “(where he agrees to do so)”.

*[Note. Formerly rule 23ZC of the Crown Court Rules 1982.]*

## **PART 29**

### **SPECIAL MEASURES DIRECTIONS**

#### **Contents of this Part**

Application for special measures directions	rule 29.1
Application for an extension of time	rule 29.2
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Vulnerable witness to give evidence by live television link	rule 29.6
Video recording of testimony from witnesses	rule 29.7
Expert evidence	rule 29.8
Intermediaries	rule 29.9

### **Application for special measures directions**

**29.1.**—(1) An application by a party in criminal proceedings for a magistrates' court or the Crown Court to give a special measures direction under section 19 of the Youth Justice and Criminal Evidence Act 1999(**235**) must be made in writing in the form set out in the Practice Direction.

(2) If the application is for a special measures direction—

- (a) enabling a witness to give evidence by means of a live link, the information sought in Part B of that form must be provided;
- (b) providing for any examination of a witness to be conducted through an intermediary, the information sought in Part C of that form must be provided; or

(**234**) Section 2E was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1) and (2) and amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 126(d).

(**235**) 1999 c. 23.

- (c) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part D of that form must be provided.
- (3) The application under paragraph (1) above must be sent to the court officer and at the same time a copy thereof must be sent by the applicant to every other party to the proceedings.
- (4) The court officer must receive the application—
- (a) in the case of an application to a youth court, within 28 days of the date on which the defendant first appears or is brought before the court in connection with the offence;
  - (b) in the case of an application to a magistrates' court, within 14 days of the defendant indicating his intention to plead not guilty to any charge brought against him and in relation to which a special measures direction may be sought; and
  - (c) in the case of an application to the Crown Court, within 28 days of
    - (i) the committal of the defendant, or
    - (ii) the consent to the preferment of a bill of indictment in relation to the case, or
    - (iii) the service of a notice of transfer under section 53 of the Criminal Justice Act 1991(236), or
    - (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(237), the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to that Act, or
    - (v) the service of a Notice of Appeal from a decision of a youth court or a magistrates' court.
- (5) A party to whom an application is sent in accordance with paragraph (3) may oppose the application for a special measures direction in respect of any, or any particular, measure available in relation to the witness, whether or not the question whether the witness is eligible for assistance by virtue of section 16 or 17 of the 1999 Act is in issue.
- (6) A party who wishes to oppose the application must, within 14 days of the date the application was served on him, notify the applicant and the court officer, as the case may be, in writing of his opposition and give reasons for it.
- (7) Paragraphs (5) and (6) do not apply in respect of an application for a special measures direction enabling a child witness in need of special protection to give evidence by means of a live link if the opposition is that the special measures direction is not likely to maximise the quality of the witness's evidence.
- (8) In order to comply with paragraph (6)—
- (a) a party must in the written notification state whether he—
    - (i) disputes that the witness is eligible for assistance by virtue of section 16 or 17 of the 1999 Act,
    - (ii) disputes that any of the special measures available would be likely to improve the quality of evidence given by the witness or that such measures (or a combination of them) would be likely to maximise the quality of that evidence, and
    - (iii) opposes the granting of a special measures direction; and

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(236) 1991 c. 53; section 53 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 49, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 93 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraph 47. Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

(237) 1998 c. 37; section 51 is substituted by new sections 51 to 51E by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15 and 18, with effect from a date to be appointed. Paragraph 1 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), section 67(1) and Schedule 15, Part 3; it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15, 20(1) and (2), with effect from a date to be appointed.

- (b) where the application relates to the admission of a video recording, a party who receives a recording must provide the information required by rule 29.7(7) below.
- (9) Except where notice is received in accordance with paragraph (6), the court (including, in the case of an application to a magistrates' court, a single justice of the peace) may—
- (a) determine the application in favour of the applicant without a hearing; or
- (b) direct a hearing.
- (10) Where a party to the proceedings notifies the court in accordance with paragraph (6) of his opposition to the application, the justices' clerk or the Crown Court must direct a hearing of the application.
- (11) Where a hearing of the application is to take place in accordance with paragraph (9) or (10) above, the court officer shall notify each party to the proceedings of the time and place of the hearing.
- (12) A party notified in accordance with paragraph (11) may be present at the hearing and be heard.
- (13) The court officer must, within 3 days of the decision of the court in relation to an application under paragraph (1) being made, notify all the parties of the decision, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification must state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.
- (14) In this Part:
- “an intermediary” has the same meaning as in section 29 of the 1999 Act<sup>(238)</sup>; and
- “child witness in need of protection” shall be construed in accordance with section 21(1) of the 1999 Act.

*[Note. Formerly rules 1 and 2 of the Magistrates' Courts (Special Measures Directions) Rules 2002<sup>(239)</sup> and rules 1 and 2 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002<sup>(240)</sup>. See also chapter I of Part II of the Youth Justice and Criminal Evidence Act 1999.]*

### **Application for an extension of time**

- 29.2.**—(1) An application may be made in writing for the period of 14 days or, as the case may be, 28 days specified in rule 29.1(4) to be extended.
- (2) The application may be made either before or after that period has expired.
- (3) The application must be accompanied by a statement setting out the reasons why the applicant is or was unable to make the application within that period and a copy of the application and the statement must be sent to every other party to the proceedings.
- (4) An application for an extension of time under this rule shall be determined by a single justice of the peace or a judge of the Crown Court without a hearing unless the justice or the judge otherwise directs.
- (5) The court officer shall notify all the parties of the court's decision.

*[Note. Formerly rule 3 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 3 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]*

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<sup>(238)</sup>Section 29 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 384(d).  
<sup>(239)</sup>S.I. 2002/1687; amended by S.I. 2004/184.  
<sup>(240)</sup>S.I. 2002/1688; amended by S.I. 2004/185.

### **Late applications**

- 29.3.**—(1) Notwithstanding the requirements of rule 29.1—
- (a) an application may be made for a special measures direction orally at the trial; or
  - (b) a magistrates' court or the Crown Court may of its own motion raise the issue whether a special measures direction should be given.
- (2) Where an application is made in accordance with paragraph (1)(a)—
- (a) the applicant must state the reasons for the late application; and
  - (b) the court must be satisfied that the applicant was unable to make the application in accordance with rule 29.1.
- (3) The court shall determine before making a special measures direction—
- (a) whether to allow other parties to the proceedings to make representations on the question;
  - (b) the time allowed for making such representations (if any); and
  - (c) whether the question should be determined following a hearing at which the parties to the proceedings may be heard.
- (4) Paragraphs (2) and (3) do not apply in respect of an application made orally at the trial for a special measures direction—
- (a) enabling a child witness in need of special protection to give evidence by means of a live link; or
  - (b) enabling a video recording of such a child to be admitted as evidence in chief of the witness, if the opposition is that the special measures direction will not maximise the quality of the witness's evidence.

*[Note. Formerly rule 4 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 4 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]*

### **Discharge or variation of a special measures direction**

- 29.4.**—(1) An application to a magistrates' court or the Crown Court to discharge or vary a special measures direction under section 20(2) of the Youth Justice and Criminal Evidence Act 1999 must be in writing and each material change of circumstances which the applicant alleges has occurred since the direction was made must be set out.
- (2) An application under paragraph (1) must be sent to the court officer as soon as reasonably practicable after the change of circumstances occurs.
- (3) The applicant must also send copies of the application to each party to the proceedings at the same time as the application is sent to the court officer.
- (4) A party to whom an application is sent in accordance with paragraph (3) may oppose the application on the ground that it discloses no material change of circumstances.
- (5) Rule 29.1(6) to (13) shall apply to an application to discharge or vary a special measures direction as it applies to an application for a direction.

*[Note. Formerly rule 5 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 5 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]*

### **Renewal application following a material change of circumstances**

**29.5.**—(1) Where an application for a special measures direction has been refused by a magistrates' court or the Crown Court, the application may only be renewed (“renewal application”) where there has been a material change of circumstances since the court refused the application.

(2) The applicant must—

- (a) identify in the renewal application each material change of circumstances which is alleged to have occurred; and
- (b) send the renewal application to the court officer as soon as reasonably practicable after the change occurs.

(3) The applicant must also send copies of the renewal application to each of the parties to the proceedings at the same time as the application is sent to the court officer.

(4) A party to whom the renewal application is sent in accordance with paragraph (3) above may oppose the application on the ground that it discloses no material change of circumstances.

(5) Rules 29.1(6) to (13), 29.6 and 29.7 apply to a renewal application as they apply to the application which was refused.

*[Note. Formerly rule 6 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 6 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]*

### **Application for special measures direction for witness to give evidence by means of a live television link**

**29.6.**—(1) Where the application for a special measures direction is made, in accordance with rule 29.1(2)(a), for a witness to give evidence by means of a live link, the following provisions of this rule shall also apply.

(2) A party who seeks to oppose an application for a child witness to give evidence by means of a live link must, in order to comply with rule 29.1(5), state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness's evidence.

(3) However, paragraph (2) does not apply in relation to a child witness in need of special protection.

(4) Where a special measures direction is made enabling a witness to give evidence by means of a live link, the witness shall be accompanied at the live link only by persons acceptable to the court.

(5) If the special measures directions combine provisions for a witness to give evidence by means of a live link with provision for the examination of the witness to be conducted through an intermediary, the witness shall be accompanied at the live link only by—

- (a) the intermediary; and
- (b) such other persons as may be acceptable to the court.

*[Note. Formerly rule 7 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 7 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002. As to the provision of support for witnesses giving evidence by live television link see also direction III.29 in the Practice Direction.]*

### **Video recording of testimony from witnesses**

**29.7.**—(1) Where an application is made to a magistrates' court or the Crown Court for a special measures direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the following provisions of this rule shall also apply.

(2) The application made in accordance with rule 29.1(1) must be accompanied by the video recording which it is proposed to tender in evidence and must include—

- (a) the name of the defendant and the offence to be charged;
- (b) the name and date of birth of the witness in respect of whom the application is made;
- (c) the date on which the video recording was made;
- (d) a statement as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness;
- (e) a statement that, in the opinion of the applicant, either—
  - (i) the witness is available for cross-examination, or
  - (ii) the witness is not available for cross-examination and the parties have agreed that there is no need for the witness to be so available;
- (f) a statement of the circumstances in which the video recording was made which complies with paragraph (4) of this rule; and
- (g) the date on which the video recording was disclosed to the other party or parties.

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, the application must specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4) of this rule.

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) of this rule shall include the following information, except in so far as it is contained in the recording itself—

- (a) the times at which the recording commenced and finished, including details of interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) in relation to each person present at any point during, or immediately before, the recording—
  - (i) their name, age and occupation,
  - (ii) the time for which each person was present, and
  - (iii) the relationship, if any, of each person to the witness and to the defendant;
- (d) in relation to the equipment used for the recording—
  - (i) a description of the equipment,
  - (ii) the number of cameras used,
  - (iii) whether the cameras were fixed or mobile,
  - (iv) the number and location of the microphones,
  - (v) the video format used; and
  - (vi) whether it offered single or multiple recording facilities and, if so, which were used; and
- (e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) If the special measures directions enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the examination of the witness to be conducted through an intermediary, the information to be provided under paragraph (4)(c) shall

be the same as that for other persons present at the recording but with the addition of details of the declaration made by the intermediary under rule 29.9.

(6) If the special measures directions enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the witness, in accordance with section 30 of the Youth Justice and Criminal Evidence Act 1999, to be provided with a device as an aid to communication during the video recording of the interview the information to be included under paragraph (4)(d) shall include also details of any such device used for the purposes of recording.

(7) A party who receives a recording under paragraph (2) must within 14 days of its receipt, notify the applicant and the court officer, in writing—

- (a) whether he objects to the admission under section 27 of the 1999 Act(241) of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted;
- (b) whether he would agree to the admission of part of the video recording or recordings and, if so, which part or parts; and
- (c) whether he wishes to be represented at any hearing of the application.

(8) A party who seeks to oppose an application for a special measures direction enabling a video recording of an interview of a child witness to be admitted as evidence in chief of the witness must, in order to comply with rule 29.1(6), state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness's evidence.

(9) However, paragraph (8) does not apply if the witness is a child witness in need of special protection.

(10) Notwithstanding the provisions of rule 29.1 and this rule, any video recording which the defendant proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the trial.

(11) The court may determine an application by the defendant to tender in evidence a video recording even though the recording has not, in accordance with paragraph (10), been served upon the prosecution.

(12) Where a video recording which is the subject of a special measures direction is sent to the prosecution after the direction has been made, the prosecutor may apply to the court for the direction to be varied or discharged.

(13) An application under paragraph (12) may be made orally to the court.

(14) A prosecutor who makes an application under paragraph (12) must state—

- (a) why he objects to the admission under section 27 of the 1999 Act of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted; and
- (b) whether he would agree to the admission of part of the video recording or recordings and, if so, which part or parts.

(15) The court must, before determining the application—

- (a) direct a hearing of the application; and
- (b) allow all the parties to the proceedings to be present and be heard on the application.

(16) The court officer must notify all parties to the proceedings of the decision of the court as soon as may be reasonable after the decision is given.

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(241) Section 27 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 384(b); it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 73(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

(17) Any decision varying a special measures direction must state whether the whole or specified parts of the video recording or recordings subject to the application are to be admitted in evidence.

*[Note. Formerly rule 8 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 8 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002. As to the use of video-recorded evidence in chief see also direction IV.40 in the Practice Direction.]*

### **Expert evidence in connection with special measures directions**

**29.8.** Any party to proceedings in a magistrates' court or the Crown Court who proposes to adduce expert evidence (whether of fact or opinion) in connection with an application or renewal application for, or for varying or discharging, a special measures direction must, not less than 14 days before the date set for the trial to begin—

- (a) furnish the other party or parties to those proceedings with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) where a request is made to him in that behalf by any other party to those proceedings, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.

*[Note. Formerly rule 9 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 9 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]*

### **Intermediaries**

**29.9.** The declaration required to be made by an intermediary in accordance with section 29(5) of the Youth Justice and Criminal Evidence Act 1999(**242**) shall be in the following form:

“I solemnly, sincerely and truly declare that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.”

*[Note. Formerly rule 9A of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 9A of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]*

## **PART 30**

### **USE OF LIVE TELEVISION LINK OTHER THAN FOR VULNERABLE WITNESSES**

#### **Contents of this Part**

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Overseas witness giving evidence in the Crown Court rule 30.1

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## **Evidence by live television link in the Crown Court where witness is outside the United Kingdom**

**30.1.**—(1) Any party may apply for leave under section 32(1) of the Criminal Justice Act 1988(243) for evidence to be given through a live television link by a witness who is outside the United Kingdom.

(2) An application under paragraph (1), and any matter relating thereto which, by virtue of the following provisions of this rule, falls to be determined by the Crown Court, may be dealt with in chambers by any judge of the Crown Court.

(3) An application under paragraph (1) shall be made by giving notice in writing, which shall be in the form set out in the Practice Direction.

(4) An application under paragraph (1) shall be made within 28 days after the date of the committal of the defendant or, as the case may be, of the giving of a notice of transfer under section 4(1)(c) of the Criminal Justice Act 1987(244), or of the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998(245), or of the preferring of a bill of indictment in relation to the case.

(5) The period of 28 days in paragraph (4) may be extended by the Crown Court, either before or after it expires, on an application made in writing, specifying the grounds of the application. The court officer shall notify all the parties of the decision of the Crown Court.

(6) The notice under paragraph (3) or any application under paragraph (5) shall be sent to the court officer and at the same time a copy thereof shall be sent by the applicant to every other party to the proceedings.

(7) A party who receives a copy of a notice under paragraph (3) shall, within 28 days of the date of the notice, notify the applicant and the court officer, in writing—

- (a) whether or not he opposes the application, giving his reasons for any such opposition; and
- (b) whether or not he wishes to be represented at any hearing of the application.

(8) After the expiry of the period referred to in paragraph (7), the Crown Court shall determine whether an application under paragraph (1) is to be dealt with—

- (a) without a hearing; or
- (b) at a hearing at which the applicant and such other party or parties as the court may direct may be represented;
- (c) and the court officer shall notify the applicant and, where necessary, the other party or parties, of the time and place of any such hearing.

(9) The court officer shall notify all the parties of the decision of the Crown Court in relation to an application under paragraph (1) and, where leave is granted, the notification shall state—

- (a) the country in which the witness will give evidence;
- (b) if known, the place where the witness will give evidence;

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(243) 1988 c. 33; section 32(1) was amended by the Criminal Justice Act 1991 (c. 53), section 55(2) and the Youth Justice and Crime Evidence Act 1999 (c. 23), section 67(3), (4), Schedule 6 and Schedule 7, paragraph 3.

(244) 1987 c. 38; relevant amendments to section 4(1) were made by the Criminal Justice Act 1988 (c. 33), section 144(1), (2), the Legal Aid Act 1988 (c. 34), Schedule 5, paragraph 22 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraphs 38 and 39. Section 4 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraphs 58(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

(245) 1998 c. 37; paragraph 1 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), section 67(1) and Schedule 15, Part 3; it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15, 20(1) and (2), with effect from a date to be appointed.

- (c) where the witness is to give evidence on behalf of the prosecutor, or where disclosure is required by section 5(7) of the Criminal Procedure and Investigations Act 1996(246) (alibi) or by rules under section 81 of the Police and Criminal Evidence Act 1984(247) (expert evidence), the name of the witness;
- (d) the location of the Crown Court at which the trial should take place; and
- (e) any conditions specified by the Crown Court in accordance with paragraph (10).

(10) The Crown Court dealing with an application under paragraph (1) may specify that as a condition of the grant of leave the witness should give the evidence in the presence of a specified person who is able and willing to answer under oath or affirmation any questions the trial judge may put as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

*[Note. Formerly rule 23B of the Crown Court Rules 1982(248). For the corresponding rule in the Court of Appeal see rule 68.19.]*

## PART 31

### RESTRICTION ON CROSS-EXAMINATION BY A DEFENDANT ACTING IN PERSON IN THE CROWN COURT

#### Contents of this Part

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Restrictions on cross-examination of witness	rule 31.1
Appointment of legal representative by the court	rule 31.2
Appointment arranged by the accused	rule 31.3
Prohibition on cross-examination of witness	rule 31.4

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#### Restrictions on cross-examination of witness in the Crown Court

**31.1.**—(1) This rule and rules 31.2 and 31.3 apply where an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36 of the Youth Justice and Criminal Evidence Act 1999(249).

(2) The court shall explain to the accused as early in the proceedings as is reasonably practicable that he—

- (a) is prevented from cross-examining a witness in person; and
- (b) should arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The accused shall notify the court officer within 7 days of the court giving its explanation, or within such other period as the court may in any particular case allow, of the action, if any, he has taken.

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(246) 1996 c. 25; section 5(7) is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 3, paragraphs 20, 23 and Schedule 37, Part 3, with effect from a date to be appointed.

(247) 1984 c. 60; section 81 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 286.

(248) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1990/2157 and 2000/3362.

(249) 1999 c. 23; section 35 was amended by the Sexual Offences Act 2003 (c. 42), Schedule 6, paragraph 41(1), (2) and Schedule 7.

(4) Where he has arranged for a legal representative to act for him, the notification shall include details of the name and address of the representative.

(5) The notification shall be in writing.

(6) The court officer shall notify all other parties to the proceedings of the name and address of the person, if any, appointed to act for the accused.

(7) Where the court gives its explanation under paragraph (2) to the accused either within 7 days of the day set for the commencement of any hearing at which a witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies may be cross-examined or after such a hearing has commenced, the period of 7 days shall be reduced in accordance with any directions issued by the court.

(8) Where at the end of the period of 7 days or such other period as the court has allowed, the court has received no notification from the accused it may grant the accused an extension of time, whether on its own motion or on the application of the accused.

(9) Before granting an extension of time, the court may hold a hearing at which all parties to the proceedings may attend and be heard.

(10) Any extension of time shall be of such period as the court considers appropriate in the circumstances of the case.

(11) The decision of the court as to whether to grant the accused an extension of time shall be notified to all parties to the proceedings by the court officer.

*[Note. Formerly rule 24B of the Crown Court Rules 1982(250).]*

### **Appointment of legal representative by the Crown Court**

**31.2.**—(1) Where the court decides, in accordance with section 38(4) of the Youth Justice and Criminal Evidence Act 1999, to appoint a qualified legal representative, the court officer shall notify all parties to the proceedings of the name and address of the representative.

(2) An appointment made by the court under section 38(4) of the 1999 Act shall, except to such extent as the court may in any particular case determine, terminate at the conclusion of the cross-examination of the witness or witnesses in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

*[Note. Formerly rule 24C of the Crown Court Rules 1982.]*

### **Appointment arranged by the accused in the Crown Court**

**31.3.**—(1) The accused may arrange for the qualified legal representative, appointed by the court under section 38(4) of the Youth Justice and Criminal Evidence Act 1999, to be appointed to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

(2) Where such an appointment is made—

- (a) both the accused and the qualified legal representative appointed shall notify the court of the appointment; and
- (b) the qualified legal representative shall, from the time of his appointment, act for the accused as though the arrangement had been made under section 38(2)(a) of the 1999 Act and shall cease to be the representative of the court under section 38(4).

(3) Where the court receives notification of the appointment either from the qualified legal representative or from the accused but not from both, the court shall investigate whether the

appointment has been made, and if it concludes that the appointment has not been made, paragraph (2)(b) shall not apply.

(4) An accused may, notwithstanding an appointment by the court under section 38(4) of the 1999 Act, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

(5) Where the accused arranges for, or informs the court of his intention to arrange for, a legal representative to act for him, he shall notify the court, within such period as the court may allow, of the name and address of any person appointed to act for him.

(6) Where the court is notified within the time allowed that such an appointment has been made, any qualified legal representative appointed by the court in accordance with section 38(4) of the 1999 Act shall be discharged.

(7) The court officer shall, as soon as reasonably practicable after the court receives notification of an appointment under this rule or, where paragraph (3) applies, after the court is satisfied that the appointment has been made, notify all the parties to the proceedings—

- (a) that the appointment has been made;
- (b) where paragraph (4) applies, of the name and address of the person appointed; and
- (c) that the person appointed by the Crown Court under section 38(4) of the 1999 Act has been discharged or has ceased to act for the court.

*[Note. Formerly rule 24D of the Crown Court Rules 1982.]*

### **Prohibition on cross-examination of particular witness in the Crown Court**

**31.4.**—(1) An application by the prosecutor for the court to give a direction under section 36 of the Youth Justice and Criminal Evidence Act 1999 in relation to any witness must be sent to the court officer and at the same time a copy thereof must be sent by the applicant to every other party to the proceedings.

(2) In his application the prosecutor must state why, in his opinion—

- (a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the accused in person;
- (b) the evidence would be improved if a direction were given under section 36(2) of the 1999 Act; and
- (c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application the court officer must refer it—

- (a) if the trial has started, to the trial judge; or
- (b) if the trial has not started when the application is received—
  - (i) to the judge who has been designated to conduct the trial, or
  - (ii) if no judge has been designated for that purpose, to such judge who may be designated for the purposes of hearing that application.

(4) Where a copy of the application is received by a party to the proceedings more than 14 days before the date set for the trial to begin, that party may make observations in writing on the application to the court officer, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties to the proceedings.

(5) A party to whom an application is sent in accordance with paragraph (1) who wishes to oppose the application must give his reasons for doing so to the court officer and the other parties to the proceedings.

(6) Those reasons must be notified—

- (a) within 14 days of the date the application was served on him, if that date is more than 14 days before the date set for the trial to begin;
  - (b) if the trial has begun, in accordance with any directions issued by the trial judge; or
  - (c) if neither paragraph (6)(a) nor (b) applies, before the date set for the trial to begin.
- (7) Where the application made in accordance with paragraph (1) is made before the date set for the trial to begin and—
- (a) is not contested by any party to the proceedings, the court may determine the application without a hearing;
  - (b) is contested by a party to the proceedings, the court must direct a hearing of the application.
- (8) Where the application is made after the trial has begun—
- (a) the application may be made orally; and
  - (b) the trial judge may give such directions as he considers appropriate to deal with the application.
- (9) Where a hearing of the application is to take place, the court officer shall notify each party to the proceedings of the time and place of the hearing.
- (10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.
- (11) The court officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), give notice of the decision and the reasons for it to all the parties to the proceedings.
- (12) A person making an oral application under paragraph (8)(a) must—
- (a) give reasons why the application was not made before the trial commenced; and
  - (b) provide the court with the information set out in paragraph (2).

*[Note. Formerly rule 24E of the Crown Court Rules 1982.]*

## PART 32

### INTERNATIONAL CO-OPERATION

#### Contents of this Part

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Notice required to accompany overseas process and translations	rule 32.1
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### **Notice required to accompany process served outside the United Kingdom and translations**

**32.1.**—(1) The notice which by virtue of section 3(4)(b) of the Crime (International Co-operation) Act 2003 (**251**) (general requirements for service of process) must accompany any process served outside the United Kingdom must give the information specified in paragraphs (2) and (4) below.

(2) The notice must—

- (a) state that the person required by the process to appear as a party or attend as a witness can obtain information about his rights in connection therewith from the relevant authority; and
- (b) give the particulars specified in paragraph (4) about that authority.

(3) The relevant authority where the process is served—

- (a) at the request of the prosecuting authority, is that authority; or
- (b) at the request of the defendant or the prosecutor in the case of a private prosecution, is the court by which the process is served.

(4) The particulars referred to in paragraph (2) are—

- (a) the name and address of the relevant authority, together with its telephone and fax numbers and e-mail address; and
- (b) the name of a person at the relevant authority who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.

(5) The justices' clerk or Crown Court officer must send, together with any process served outside the United Kingdom—

- (a) any translation which is provided under section 3(3)(b) of the 2003 Act; and
- (b) any translation of the information required to be given by this rule which is provided to him.

(6) In this rule “process” has the same meaning as in section 51(3) of the 2003 Act.

*[Note. Formerly rule 3 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004(252) and rule 30 of the Crown Court Rules 1982(253).]*

### **Proof of service outside the United Kingdom**

**32.2.**—(1) A statement in a certificate given by or on behalf of the Secretary of State—

- (a) that process has been served on any person under section 4(1) of the Crime (International Co-operation) Act 2003 (service of process otherwise than by post);
- (b) of the manner in which service was effected; and
- (c) of the date on which process was served;

shall be admissible as evidence of any facts so stated.

(2) In this rule “process” has the same meaning as in section 51(3) of the 2003 Act.

*[Note. Formerly rule 4 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 31 of the Crown Court Rules 1982.]*

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(251) 2003 c. 32.

(252) S.I. 2004/1048.

(253) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1991/1288 and 2004/1047.

### **Supply of copy of notice of request for assistance abroad**

**32.3.** Where a request for assistance under section 7 of the Crime (International Co-operation) Act 2003 is made by a justice of the peace or a judge exercising the jurisdiction of the Crown Court and is sent in accordance with section 8(1) of the 2003 Act, the justices' clerk or the Crown Court officer shall send a copy of the letter of request to the Secretary of State as soon as practicable after the request has been made.

*[Note. Formerly rule 5 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 32 of the Crown Court Rules 1982.]*

### **Persons entitled to appear and take part in proceedings before a nominated court and exclusion of public**

**32.4.** A court nominated under section 15(1) of the Crime (International Co-operation) Act 2003 (nominating a court to receive evidence) may—

- (a) determine who may appear or take part in the proceedings under Schedule 1 to the 2003 Act before the court and whether a party to the proceedings is entitled to be legally represented; and
- (b) direct that the public be excluded from those proceedings if it thinks it necessary to do so in the interests of justice.

*[Note. Formerly rule 6 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 32A of the Crown Court Rules 1982.]*

### **Record of proceedings to receive evidence before a nominated court**

**32.5.—(1)** Where a court is nominated under section 15(1) of the Crime (International Co-operation) Act 2003 the justices' clerk or Crown Court officer shall enter in an overseas record—

- (a) details of the request in respect of which the notice under section 15(1) of the 2003 Act was given;
- (b) the date on which, and place at which, the proceedings under Schedule 1 to the 2003 Act in respect of that request took place;
- (c) the name of any witness who gave evidence at the proceedings in question;
- (d) the name of any person who took part in the proceedings as a legal representative or an interpreter;
- (e) whether a witness was required to give evidence on oath or (by virtue of section 5 of the Oaths Act 1978(254)) after making a solemn affirmation; and
- (f) whether the opportunity to cross-examine any witness was refused.

(2) When the court gives the evidence received by it under paragraph 6(1) of Schedule 1 to the 2003 Act to the court or authority that made the request or to the territorial authority for forwarding to the court or authority that made the request, the justices' clerk or Crown Court officer shall send to the court, authority or territorial authority (as the case may be) a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

*[Note. Formerly rule 7 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 32B of the Crown Court Rules 1982. As to the keeping of an overseas record see rule 32.9.]*

### **Interpreter for the purposes of proceedings involving a television or telephone link**

**32.6.**—(1) This rule applies where a court is nominated under section 30(3) (hearing witnesses in the UK through television links) or section 31(4) (hearing witnesses in the UK by telephone) of the Crime (International Co-operation) Act 2003.

(2) Where it appears to the justices' clerk or the Crown Court officer that the witness to be heard in the proceedings under Part 1 or 2 of Schedule 2 to the 2003 Act (“the relevant proceedings”) is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the proceedings to translate what is said into English.

(3) Where it appears to the justices' clerk or the Crown Court officer that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the proceedings of the court referred to in section 30(1) or, as the case may be, 31(1) of the 2003 Act (“the external court”) will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is either given in a language other than English or is not translated into English by an interpreter, the court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

(5) Where a court in Wales understands Welsh—

- (a) paragraph (2) does not apply where it appears to the justices' clerk or Crown Court officer that the witness in question is likely to give evidence in Welsh;
- (b) paragraph (4) does not apply where the evidence is given in Welsh; and
- (c) any translation which is provided pursuant to paragraph (2) or (4) may be into Welsh instead of English.

*[Note. Formerly rule 8 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 32C of the Crown Court Rules 1982.]*

### **Record of television link hearing before a nominated court**

**32.7.**—(1) This rule applies where a court is nominated under section 30(3) of the Crime (International Co-operation) Act 2003.

(2) The justices' clerk or Crown Court officer shall enter in an overseas record—

- (a) details of the request in respect of which the notice under section 30(3) of the 2003 Act was given;
- (b) the date on which, and place at which, the proceedings under Part 1 of Schedule 2 to that Act in respect of that request took place;
- (c) the technical conditions, such as the type of equipment used, under which the proceedings took place;
- (d) the name of the witness who gave evidence;
- (e) the name of any person who took part in the proceedings as a legal representative or an interpreter; and
- (f) the language in which the evidence was given.

(3) As soon as practicable after the proceedings under Part 1 of Schedule 2 to the 2003 Act took place, the justices' clerk or Crown Court officer shall send to the external authority that made the request a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.



*[Note. Formerly rule 9 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 32D of the Crown Court Rules 1982. As to the keeping of an overseas record see rule 32.9.]*

#### **Record of telephone link hearing before a nominated court**

**32.8.**—(1) This rule applies where a court is nominated under section 31(4) of the Crime (International Co-operation) Act 2003.

- (2) The justices' clerk or Crown Court officer shall enter in an overseas record—
- (a) details of the request in respect of which the notice under section 31(4) of the 2003 Act was given;
  - (b) the date, time and place at which the proceedings under Part 2 of Schedule 2 to the 2003 Act took place;
  - (c) the name of the witness who gave evidence;
  - (d) the name of any interpreter who acted at the proceedings; and
  - (e) the language in which the evidence was given.

*[Note. Formerly rule 10 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 32E of the Crown Court Rules 1982. As to the keeping of an overseas record see rule 32.9.]*

#### **Overseas record**

**32.9.**—(1) The overseas records of a magistrates' court shall be part of the register (within the meaning of section 150(1) of the Magistrates' Courts Act 1980(**255**)) and shall be kept in a separate book.

- (2) The overseas records of any court shall not be open to inspection by any person except—
- (a) as authorised by the Secretary of State; or
  - (b) with the leave of the court.

*[Note. Formerly rule 11 of the Magistrates' Courts (Crime (International Co-operation)) Rules 2004 and rule 32F of the Crown Court Rules 1982. As to the keeping of a register by a magistrates' court see rule 6.1.]*

## **PART 33**

### **EXPERT EVIDENCE**

#### **Contents of this Part**

*[Note. There are currently no rules in this Part. For the obligation to disclose expert evidence see Part 24.]*

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(255) 1980 c. 43; a relevant amendment was made to section 150(1) by the Courts Act 2003 (c. 39), Schedule 8, paragraphs 250(1), (2) and Schedule 10.

## PART 34

### HEARSAY EVIDENCE

#### Contents of this Part

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When the prosecutor must give notice of hearsay evidence	rule 34.3
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Methods of giving notice	rule 34.6
Court's power to vary requirements under this Part	rule 34.7
Waiving the requirement to give a notice of hearsay evidence	rule 34.8

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#### When this Part applies

**34.1.** This Part applies in a magistrates' court and in the Crown Court where a party wants to introduce evidence on one or more of the grounds set out in section 114(1)(a) to (d) of the Criminal Justice Act 2003(256), and in this Part that evidence is called “hearsay evidence”.

*[Note. Section 114 of the 2003 Act provides that a statement not made in oral evidence in criminal proceedings is admissible as evidence of any matter stated only on certain conditions. The meaning of “statements” and “matter stated” is explained in section 115 of the 2003 Act. “Oral evidence” is defined in section 134(1) of that Act. For the introduction of hearsay evidence in the Court of Appeal, see rule 68.20.]*

#### Notice of hearsay evidence

**34.2.** The party who wants to introduce hearsay evidence must give notice in the form set out in the Practice Direction to the court officer and all other parties.

#### When the prosecutor must give notice of hearsay evidence

**34.3.** The prosecutor must give notice of hearsay evidence—

- (a) in a magistrates' court, at the same time as he complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996(257) (disclosure by prosecutor); or
- (b) in the Crown Court, not more than 14 days after—
  - (i) the committal of the defendant, or
  - (ii) the consent to the preferment of a bill of indictment in relation to the case, or

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(256) 2003 c. 44.

(257) 1996 c. 25; section 3 is amended the Regulation of Investigatory Powers Act 2000 (c. 23), Schedule 4, paragraph 7(1). It is further amended by the Criminal Justice Act 2003 (c. 44), section 32 and Schedule 36, Part 3, paragraphs 20 and 21, with effect from a date to be appointed.

- (iii) the service of a notice of transfer under section 4 of the Criminal Justice Act 1987(258) (serious fraud cases) or under section 53 of the Criminal Justice Act 1991(259) (certain cases involving children), or
- (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(260) (indictable-only offences sent for trial), the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to the 1998 Act.

### **When a defendant must give notice of hearsay evidence**

**34.4.** A defendant must give notice of hearsay evidence not more than 14 days after the prosecutor has complied with or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996 (disclosure by prosecutor).

### **Opposing the introduction of hearsay evidence**

**34.5.** A party who receives a notice of hearsay evidence may oppose it by giving notice within 14 days in the form set out in the Practice Direction to the court officer and all other parties.

### **Methods of giving notice**

**34.6.** Where this Part requires a notice to be given it may, with the consent of the addressee, be sent by fax or other means of electronic communication.

### **Court's power to vary requirements under this Part**

**34.7.** The court may—

- (a) dispense with the requirement to give notice of hearsay evidence;
- (b) allow notice to be given in a different form, or orally; or
- (c) shorten a time limit or extend it (even after it has expired).

### **Waiving the requirement to give a notice of hearsay evidence**

**34.8.** A party entitled to receive a notice of hearsay evidence may waive his entitlement by so informing the court and the party who would have given the notice.

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(258) 1987 c. 38; section 4 was amended by the Criminal Justice Act 1988 (c. 33), section 144(1) and (2), the Legal Aid Act 1988 (c. 34), Schedule 5, paragraph 22, the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 29, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 65 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraphs 38 and 39. Section 4 is repealed by the Criminal Justice Act 2003 (c. 44), section 41 and Schedule 3, Part 2, paragraph 58(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

(259) 1991 c. 53; section 53 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 49, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 93 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraph 47. Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

(260) 1998 c. 37; section 51 is substituted, together with new sections 51A to 51E, by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14 and 18, with effect from a date to be appointed. Paragraph 1 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), section 67(1) and Schedule 15, Part 3; it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14, 20(1) and (2), with effect from a date to be appointed.

## PART 35

### EVIDENCE OF BAD CHARACTER

#### Contents of this Part

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When this Part applies	rule 35.1
Introducing evidence of non-defendant’s bad character	rule 35.2
Opposing introduction of evidence of non-defendant’s bad character	rule 35.3
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Defendant applying to exclude evidence of his own bad character	rule 35.6
Methods of giving notice	rule 35.7
Courts power to vary requirements under this Part	rule 35.8
Defendant waiving right to receive notice	rule 35.9

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#### When this Part applies

**35.1.** This Part applies in a magistrates' court and in the Crown Court when a party wants to introduce evidence of bad character as defined in section 98 of the Criminal Justice Act 2003**(261)**.

*[Note. For the introduction of evidence of bad character in the Court of Appeal see rule 68.21.]*

#### Introducing evidence of non-defendant’s bad character

**35.2.** A party who wants to introduce evidence of a non-defendant’s bad character or who wants to cross-examine a witness with a view to eliciting that evidence, under section 100 of the Criminal Justice Act 2003 must apply in the form set out in the Practice Direction and the application must be received by the court officer and all other parties to the proceedings—

- (a) not more than 14 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996**(262)** (disclosure by the prosecutor); or
- (b) as soon as reasonably practicable, where the application concerns a non-defendant who is to be invited to give (or has given) evidence for a defendant.

*[Note. Formerly rule 72A(1) of the Magistrates' Courts Rules 1981**(263)** and rule 23E(1) of the Crown Court Rules 1982**(264)**.]*

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**(261)** 2003 c. 44.

**(262)** 1996 c. 25; section 3 is amended the Regulation of Investigatory Powers Act 2000 (c. 23), Schedule 4, paragraph 7(1). It is further amended by the Criminal Justice Act 2003 (c. 44), section 32 and Schedule 36, Part 3, paragraphs 20 and 21, with effect from a date to be appointed.

**(263)** S.I. 1981/552; amended by S.I. 2004/2993; there are other amending instruments but none is relevant to this Part.

**(264)** S.I. 1982/1109, amended by S.I. 2004/2991; there are other amending instruments but none is relevant to this Part.

### **Opposing introduction of evidence of non-defendant's bad character**

**35.3.** A party who receives a copy of an application under rule 35.2 may oppose that application by giving notice in writing to the court officer and all other parties to the proceedings not more than 14 days after receiving that application.

*[Note. Formerly rule 72A(2) of the Magistrates' Courts Rules 1981 and rule 23E(2) of the Crown Court Rules 1982.]*

### **Prosecutor introducing evidence of defendant's bad character**

**35.4.—(1)** A prosecutor who wants to introduce evidence of a defendant's bad character or who wants to cross-examine a witness with a view to eliciting that evidence, under section 101 of the Criminal Justice Act 2003 must give notice in the form set out in the Practice Direction to the court officer and all other parties to the proceedings.

(2) Notice under paragraph (1) must be given—

- (a) in a case to be tried in a magistrates' court, at the same time as the prosecutor complies or purports to comply with section 3 of the Criminal Procedure and Investigations Act 1996; and
- (b) in a case to be tried in the Crown Court, not more than 14 days after—
  - (i) the committal of the defendant, or
  - (ii) the consent to the preferment of a bill of indictment in relation to the case, or
  - (iii) the service of notice of transfer under section 4(1) of the Criminal Justice Act 1987(**265**) (notices of transfer) or under section 53(1) of the Criminal Justice Act 1991(**266**) (notices of transfer in certain cases involving children), or
  - (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(**267**) (sending cases to the Crown Court) the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to that Act(**268**).

*[Note. Formerly rule 72A(3) of the Magistrates' Courts Rules 1981 and rule 23E(3) of the Crown Court Rules 1982.]*

### **Co-defendant introducing evidence of defendant's bad character**

**35.5.** A co-defendant who wants to introduce evidence of a defendant's bad character or who wants to cross-examine a witness with a view to eliciting that evidence under section 101 of the Criminal Justice Act 2003 must give notice in the form set out in the Practice Direction to the court officer and all other parties to the proceedings not more than 14 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996.

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(265) 1987 c. 38; section 4 was amended by the Criminal Justice Act 1988 (c. 33), section 144(1) and (2), the Legal Aid Act 1988 (c. 34), Schedule 5, paragraph 22, the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 29, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 65 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraphs 38 and 39. Section 4 is repealed by the Criminal Justice Act 2003 (c. 44), section 41 and Schedule 3, Part 2, paragraph 58(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

(266) 1991 c. 53; section 53 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 49, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 93 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraph 47. Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

(267) 1998 c. 37; section 51 is substituted, together with new sections 51A to 51E, by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14 and 18, with effect from a date to be appointed.

(268) Paragraph 1 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), section 67(1) and Schedule 15, Part 3; it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14, 20(1) and (2), with effect from a date to be appointed.

*[Note. Formerly rule 72A(4) of the Magistrates' Courts Rules 1981 and rule 23E(4) of the Crown Court Rules 1982.]*

### **Defendant applying to exclude evidence of his own bad character**

**35.6.** A defendant's application to exclude bad character evidence must be in the form set out in the Practice Direction and received by the court officer and all other parties to the proceedings not more than 7 days after receiving a notice given under rules 35.4 or 35.5.

*[Note. Formerly rule 72A(5) of the Magistrates' Courts Rules 1981 and rule 23E(5) of the Crown Court Rules 1982.]*

### **Methods of giving notice**

**35.7.** Where this rule requires a notice or application to be given or sent it may, with the consent of the addressee, be sent by fax or other means of electronic communication.

*[Note. Formerly rule 72A(8) of the Magistrates' Courts Rules 1981 and rule 23E(8) of the Crown Court Rules 1982.]*

### **Court's power to vary requirements under this Part**

**35.8.** The court may—

- (a) allow a notice or application required under this rule to be given in a different form, or orally; or
- (b) shorten a time-limit under this rule or extend it even after it has expired.

*[Note. Formerly rule 72A(7) of the Magistrates' Courts Rules 1981 and rule 23E(7) of the Crown Court Rules 1982.]*

### **Defendant waiving right to receive notice**

**35.9.** A defendant entitled to receive a notice under this Part may waive his entitlement by so informing the court and the party who would have given the notice.

*[Note. Formerly rule 72A(6) of the Magistrates' Courts Rules 1981 and rule 23E(6) of the Crown Court Rules 1982.]*

## **PART 36**

### **EVIDENCE OF A COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR**

#### **Contents of this Part**

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Evidence in the Crown Court of complainant's previous behaviour      rule 36.1

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#### **Evidence in the Crown Court of a complainant's previous sexual behaviour**

**36.1.—(1)** An application for leave under section 41(2) of the Youth Justice and Criminal Evidence Act 1999(**269**) must be made in writing to the Crown Court officer and must either—

- (a) be received by the court officer within 28 days of—
    - (i) the committal of the defendant, or
    - (ii) the consent to the preferment of a bill of indictment in relation to the case, or
    - (iii) the service of notice of transfer under section 53 of the Criminal Justice Act 1991(270), or
    - (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(271), the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to the 1998 Act(272),
    - (v) or within such period as the court may in any particular case determine; or
  - (b) be accompanied by a full written explanation specifying the reasons why the application could not have been made within the 28 days mentioned above.
- (2) Such an application must contain the following—
- (a) a summary of the evidence it is proposed to adduce and of the questions it is proposed to put to any witness;
  - (b) a full explanation of the reasons why it is considered that the evidence and questions fall within section 41(3) or (5) of the 1999 Act;
  - (c) a summary of any document or other evidence to be submitted in support of such evidence and questions; and
  - (d) where it is proposed that a witness at the trial give evidence as to the complainant's sexual behaviour, the name and date of birth of any such witness.
- (3) A copy of the application must be sent to all the parties to the proceedings at the same time as it is sent to the court officer.
- (4) Where a copy of the application is received by the prosecutor more than 14 days before the date set for the trial to begin, the prosecutor must, within 14 days of the receipt of the application, notify the other parties to the proceedings and the court officer in writing whether or not—
- (a) he opposes the application, giving reasons for any such opposition; and
  - (b) he wishes to be represented at any hearing of the application.
- (5) Where a copy of the application is received by a party to the proceedings other than the prosecutor more than 14 days before the date set for the trial to begin, that party may make observations in writing on the application to the court officer, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties to the proceedings.
- (6) In considering any application under this rule, the court may request a party to the proceedings to provide the court with such information as it may specify and which the court considers would assist it in determining the application.
- (7) Where the court makes such a request, the person required to provide the information must do so within 14 days of the court making the request or by such time as the court considers appropriate in the circumstances of the case.

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(270) 1991 c. 53; section 53 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 49, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 93 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraph 47. Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

(271) 1998 c. 37; section 51 is substituted, together with new sections 51A to 51E, by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14 and 18, with effect from a date to be appointed.

(272) Paragraph 1 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), section 67(1) and Schedule 15, Part 3; it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 14, 20(1) and (2), with effect from a date to be appointed.

(8) An application under paragraph (1) must be determined by a judge of the Crown Court following a hearing if—

- (a) the prosecutor has notified the court officer that he opposes the application; or
- (b) the copy of the application was received by any of the parties to the proceedings less than 14 days before the date set for the trial to begin.

(9) An application under paragraph (1) must be determined by a judge of the Crown Court following a hearing in any case where he considers such a hearing is appropriate in the circumstances of the particular case.

(10) The date and time of the hearing must be—

- (a) determined by the court or the court officer after taking into consideration—
  - (i) any time which a party to the proceedings has been given to respond to a request for information, and
  - (ii) the date fixed for any other hearing relevant to the proceedings; and
- (b) notified by the court officer to all the parties to the proceedings.

(11) Except where paragraph (8) or (9) above applies, an application under paragraph (1) must be determined by a judge of the Crown Court without a hearing.

(12) The court officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), give notice of the decision and the reasons for it to all the parties to the proceedings.

(13) An application under section 41(2) of the 1999 Act may be made orally where the application is made after the trial has begun.

(14) The person making the application under paragraph (13) must—

- (a) give reasons why the applicant failed to make the application in writing in accordance with paragraph (1); and
- (b) provide the court with the information set out in paragraph (2)(a) to (d).

*[Note. Formerly rule 23D of the Crown Court Rules 1982(273). See also section 43 of the Youth Justice and Criminal Evidence Act 1999(274).]*

## PART 37

### SUMMARY TRIAL

#### Contents of this Part

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Order of evidence and speeches: information	rule 37.1
Procedure where accused is not legally represented	rule 37.2
Adjournment of trial of information	rule 37.3
Formal admissions	rule 37.4
Notice of intention to cite previous convictions	rule 37.5
Preservation of depositions after summary trial	rule 37.6

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(273) S.I. 1982/1109; amended by S.I. 2000/2987; there are other amending instruments, but none is relevant to this Part.

(274) Section 43 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 284(9).



Order of evidence and speeches: complaint      rule 37.7

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

**37.1.**—(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 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 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.

*[Note. Formerly rule 13 of the Magistrates' Courts Rules 1981(275).]*

### **Procedure on information where accused is not legally represented**

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

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

*[Note. Formerly rule 13A of the Magistrates' Courts Rules 1981.]*

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

**37.3.**—(1) Where in the absence of the accused a magistrates' court adjourns the trial of an information, the court officer 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 rule 4.1(1) or (3).

*[Note. Formerly rule 15 of the Magistrates' Court Rules 1981.]*

### **Formal admissions**

**37.4.** Where under section 10 of the Criminal Justice Act 1967(276) 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 the court shall cause the admission to be written down and signed by or on behalf of the party making the admission.

*[Note. Formerly rule 71 of the Magistrates' Courts Rules 1981.]*

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(275) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1992/729, 1993/1183, 1997/706, 2001/610 and 2003/1236.  
(276) 1967 c. 80.

### Notice of intention to cite previous convictions

**37.5.** Service on any person of a notice of intention to cite previous convictions under section 104 of the Magistrates' Courts Act 1980(277) or section 13 of the Road Traffic Offenders Act 1988(278) may be effected by delivering it to him or by sending it by post in a registered letter or by recorded delivery service, or by first class post addressed to him at his last known or usual place of abode.

*[Note. Formerly rule 72 of the Magistrates' Courts Rules 1981.]*

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

**37.6.** The magistrates' court officer for 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.

*[Note. Formerly rule 22 of the Magistrates' Courts Rules 1981.]*

### Order of evidence and speeches: complaint

**37.7.—(1)** On the hearing of a complaint, except where the court determines under section 53(3) of the Magistrates' Courts Act 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.

*[Note. Formerly rule 14 of the Magistrates' Courts Rules 1981. For criminal proceedings commenced by complaint see rules 50.3 (variation or discharge of certain orders), 53.1 (review of compensation order) and 55.2 (removal of driving disqualification).]*

## PART 38

### TRIAL OF CHILDREN AND YOUNG PERSONS

#### Contents of this Part

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Application of this Part	rule 38.1
Assistance in conducting case	rule 38.2
Duty of court to explain nature of proceedings	rule 38.3

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(277) 1980 c. 43; section 104 was amended by the Criminal Justice Act 1991 (c. 53), Schedule 11, paragraph 40(1) and (2)(n).  
 (278) 1988 c. 53; relevant amendments were made to section 13 by the Criminal Procedure and Investigations Act (c. 25), Schedule 1, paragraph 36 and S.I. 2004/2035, Schedule, paragraphs 29 and 31. It is further amended by the Road Traffic (Consequential Provisions) Act 1988 (c. 54), Schedule 2, paragraph 20 and the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 61(1), (3) and Schedule 37, Part 4, with effect from dates to be appointed.

Duty of court to take plea to charge	rule 38.4
Evidence in support of charge	rule 38.5
Evidence in reply	rule 38.6

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### Application of this Part

**38.1.**—(1) This Part applies, subject to paragraph (3) of this rule, where proceedings to which paragraph (2) applies are brought in a magistrates' court in respect of a child or young person (“the relevant minor”).

(2) This paragraph applies to proceedings in which the relevant minor is charged with an offence, and, where he appears or is brought before the court, to proceedings under—

- (a) Paragraphs 1, 2, 5 and 6 of Schedule 7 to the Powers of Criminal Courts (Sentencing) Act 2000(**279**) (breach, revocation and amendment of supervision orders);
- (b) Part II, III or IV of Schedule 3 to the 2000 Act (breach, revocation and amendment of certain community orders)(**280**);
- (c) Paragraphs 4, 5, 6 and 7 of Schedule 5 to the 2000 Act (breach, revocation and amendment of attendance centre orders); and
- (d) Schedule 8 to the 2000 Act (breach, revocation and amendment of action plan orders and reparation orders)(**281**).

(3) Where the court is inquiring into an offence as examining justices, only rules 38.2, 38.3 and 38.5(3) apply, and where the proceedings are of a kind mentioned in paragraph (2)(a), (b) or (c) rule 38.4 does not apply.

*[Note. Formerly rule 4 of the Magistrates' Courts (Children and Young Persons) Rules 1992(282).]*

### Assistance in conducting case

**38.2.**—(1) Except where the relevant minor is legally represented, the magistrates' court shall allow his parent or guardian to assist him in conducting his case.

(2) Where the parent or guardian cannot be found or cannot in the opinion of the court reasonably be required to attend, the court may allow any relative or other responsible person to take the place of the parent or guardian for the purposes of this Part.

*[Note. Formerly rule 5 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

### Duty of court to explain nature of proceedings etc

**38.3.**—(1) The magistrates' court shall explain to the relevant minor the nature of the proceedings and, where he is charged with an offence, the substance of the charge.

(2) The explanation shall be given in simple language suitable to his age and understanding.

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(279)2000 c. 6; relevant amendments to Schedule 7 were made by the Anti-Social Behaviour Act 2003 (c. 38), Schedule 2, paragraph 6 and Schedule 3. It is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 24, paragraph 3, with effect from a date to be appointed.

(280) Schedule 3 is amended by the Criminal Justice and Court Services Act 2000 (c. 43), sections 53, 54, 70(5), Schedule 7, Part 1, paragraphs 1(1), (2), 3(1), (2) and 4(1), (2), Schedule 7, Part 2, paragraph 199 and Schedule 8. Schedule 3 is substituted by the Criminal Justice Act 2003 (c. 44), Schedule 32, Part 1, paragraphs 90 and 125, with effect from a date to be appointed.

(281) Schedule 8 was amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part 2, paragraphs 160, 202 and Schedule 8. It is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, Part 1, paragraphs 90, 129 and Schedule 37, Part 7, with effect from a date to be appointed.

(282) S.I. 1992/2071; amended by S.I. 2003/1236; there are other amending instruments but none is relevant to this Part.

*[Note. Formerly rule 6 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

**Duty of court to take plea to charge**

**38.4.** Where the relevant minor is charged with an offence the magistrates' court shall, after giving the explanation required by rule 38.3, ask him whether he pleads guilty or not guilty to the charge.

*[Note. Formerly rule 7 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

**Evidence in support of charge**

**38.5.—**(1) Where—

- (a) the relevant minor is charged with an offence and does not plead guilty, or
- (b) the proceedings are of a kind mentioned in rule 38.1(2)(a), (b) or (c),

the magistrates' court shall hear the witnesses in support of the charge or, as the case may be, the application.

(2) Except where—

- (a) the proceedings are of a kind mentioned in rule 38.1(2)(a), (b) or (c), and
- (b) the relevant minor is the applicant,

each witness may at the close of his evidence-in-chief be cross-examined by or on behalf of the relevant minor.

(3) If in any case where the relevant minor is not legally represented or assisted as provided by rule 38.2, the relevant minor, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the relevant minor and may for this purpose question the relevant minor in order to bring out or clear up any point arising out of any such assertions.

*[Note. Formerly rule 8 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

**Evidence in reply**

**38.6.** If it appears to the magistrates' court after hearing the evidence in support of the charge or application that a prima facie case is made out, the relevant minor shall, if he is not the applicant and is not legally represented, be told that he may give evidence or address the court, and the evidence of any witnesses shall be heard.

*[Note. Formerly rule 9 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

**PART 39**

**TRIAL ON INDICTMENT**

**Contents of this Part**

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Time limits for beginning of trials	rule 39.1
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### Time limits for beginning of trials

**39.1.** The periods set out for the purposes of section 77(2)(a) and (b) of the Supreme Court Act 1981(**283**) shall be 14 days and 8 weeks respectively and accordingly the trial of a person committed by a magistrates' court—

- (a) shall not begin until the expiration of 14 days beginning with the date of his committal, except with his consent and the consent of the prosecution; and
- (b) shall, unless the Crown Court has otherwise ordered, begin not later than the expiration of 8 weeks beginning with the date of his committal.

*[Note. Formerly rule 24 of the Crown Court Rules 1982(284). For time limits for the listing of plea and directions hearings see direction IV.42 in the Practice Direction.]*

## PART 40

### TAINTED ACQUITTALS

#### Contents of this Part

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Time of certification	rule 40.1
Form of certification in the Crown Court	rule 40.2
Service of copy of certification	rule 40.3
Entry in register or records in relation to conviction	rule 40.4
Entry in register or records in relation to acquittal	rule 40.5
Display of copy certification form	rule 40.6
Entry in register or records in relation to decision of High Court	rule 40.7
Display of copy of notice received from High Court Service	rule 40.8

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### Time of certification

**40.1.** Where a person is convicted of an offence as referred to in section 54(1)(b) of the Criminal Procedure and Investigations Act 1996(**285**) and it appears to the court before which the conviction has taken place that the provisions of section 54(2) are satisfied, the court shall make the certification referred to in section 54(2) at any time following conviction but no later than—

- (a) immediately after the court sentences or otherwise deals with that person in respect of the offence; or
- (b) where the court, being a magistrates' court, commits that person to the Crown Court, or remits him to another magistrates' court, to be dealt with in respect of the offence, immediately after he is so committed or remitted, as the case may be; or

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(**283**) 1981 c. 54; section 77(2) was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 18. It is further amended by the Prosecution of Offences Act 1985 (c. 23), Schedule 2 and the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 54(1) and (3)(b), with effect from dates to be appointed.

(**284**) S.I. 1982/1109.

(**285**) 1996 c. 25.

- (c) where that person is a child or young person and the court, being the Crown Court, remits him to a youth court to be dealt with in respect of the offence, immediately after he is so remitted.

*[Note. Formerly rule 2 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997(286) and rule 2 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997(287).]*

### **Form of certification in the Crown Court**

**40.2.** A certification referred to in section 54(2) of the Criminal Procedure and Investigations Act 1996 by the Crown Court shall be drawn up in the form set out in the Practice Direction.

*[Note. Formerly rule 3 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997.]*

### **Service of a copy of the certification**

**40.3.—(1)** Where a magistrates' court or the Crown Court makes a certification as referred to in section 54(2) of the Criminal Procedure and Investigations Act 1996, the court officer shall, as soon as practicable after the drawing up of the form, serve a copy on the acquitted person referred to in the certification, on the prosecutor in the proceedings which led to the acquittal, and, where the acquittal has taken place before a court other than, or at a different place to, the court where the certification has been made, on—

- (a) the clerk of the magistrates' court before which the acquittal has taken place; or
- (b) the Crown Court officer at the place where the acquittal has taken place.

(2) Service as referred to in paragraph (1) above may be made by delivering the copy of the form to the person to be served (where that person is an individual), or by sending it by post in a letter addressed to him at his usual or last known residence or place of business in England or Wales; in the case of a company, such a letter may also be addressed to the company at its registered office in England or Wales (if it has such a registered office).

(3) If the person to be served is acting by a solicitor, the copy of the form may be served by delivering it, or by sending it by post, to the solicitor's address for service.

(4) In paragraph (3) "solicitor" includes a body corporate which is recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985 (**288**) (a "recognised body") and, in the case of a recognised body, the reference to the solicitor's address for service shall be construed as a reference to the address specified by the recognised body as its address for the purposes of the service of the copy of the form (including where the person to be served is a party to the proceedings which led to the conviction referred to in the form, an address specified for the general purposes of those proceedings), or, in the absence of such a specified address, to its registered office.

*[Note. Formerly rule 4 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997 and rule 4 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997.]*

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(286) S.I. 1997/1055; amended by S.I. 2001/615 and 2003/1236.

(287) S.I. 1997/1054.

(288) 1985 c. 61; section 9 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 54 and Schedule 20, the Access to Justice Act 1999 (c. 22), Schedule 15, Part 2, S.I. 2001/1090, Schedule 5, paragraph 12 and S.I. 2003/1887, Schedule 2, paragraph 6(a).

### **Entry in register or records in relation to the conviction which occasioned certification**

**40.4.** A clerk of a magistrates' court or an officer of a Crown Court which has made a certification under section 54(2) of the Criminal Procedure and Investigations Act 1996 shall enter in the register or records, in relation to the conviction which occasioned the certification, a note of the fact that certification has been made, the date of certification, the name of the acquitted person referred to in the certification, a description of the offence of which the acquitted person has been acquitted, the date of the acquittal, and the name of the court before which the acquittal has taken place.

*[Note. Formerly rule 5 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997 and rule 5 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997. As to the requirement for a magistrates' court to keep a register, see rule 6.1.]*

### **Entry in the register or records in relation to the acquittal**

**40.5.** The court officer of the court before which an acquittal has taken place shall, as soon as practicable after receipt of a copy of a form recording a certification under section 54(2) of the Criminal Procedure and Investigations Act 1996 relating to the acquittal, enter in the register or records a note that the certification has been made, the date of the certification, the name of the court which has made the certification, the name of the person whose conviction occasioned the making of the certification, and a description of the offence of which that person has been convicted. Where the certification has been made by the same court as the court before which the acquittal has occurred, sitting at the same place, the entry shall be made as soon as practicable after the making of the certification. In the case of an acquittal before a magistrates' court the entry in the register shall be signed by the clerk of the court.

*[Note. Formerly rule 6 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997 and rule 6 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997. As to the requirement for a magistrates' court to keep a register, see rule 6.1.]*

### **Display of copy certification form**

**40.6.—(1)** Where a court makes a certification as referred to in section 54(2) of the Criminal Procedure and Investigations Act 1996, the court officer shall, as soon as practicable after the drawing up of the form, display a copy of that form at a prominent place within court premises to which place the public has access.

(2) Where an acquittal has taken place before a court other than, or at a different place to, the court which has made the certification under section 54(2) of the 1996 Act in relation to the acquittal, the court officer at the court where the acquittal has taken place shall, as soon as practicable after receipt of a copy of the form recording the certification, display a copy of it at a prominent place within court premises to which place the public has access.

(3) The copy of the form referred to in paragraph (1), or the copy referred to in paragraph (2), shall continue to be displayed as referred to, respectively, in those paragraphs at least until the expiry of 28 days from, in the case of paragraph (1), the day on which the certification was made, or, in the case of paragraph (2), the day on which the copy form was received at the court.

*[Note. Formerly rule 7 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997 and rule 7 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997.]*

### **Entry in the register or records in relation to decision of High Court**

**40.7.**—(1) The court officer at the court where an acquittal has taken place shall, on receipt from the Administrative Court Office of notice of an order made under section 54(3) of the Criminal Procedure and Investigations Act 1996 quashing the acquittal, or of a decision not to make such an order, enter in the register or records, in relation to the acquittal, a note of the fact that the acquittal has been quashed by the said order, or that a decision has been made not to make such an order, as the case may be.

(2) The court officer of the court which has made a certification under section 54(2) of the 1996 Act shall, on receipt from the Administrative Court Office of notice of an order made under section 54(3) of that Act quashing the acquittal referred to in the certification, or of a decision not to make such an order, enter in the register or records, in relation to the conviction which occasioned the certification, a note that the acquittal has been quashed by the said order, or that a decision has been made not to make such an order, as the case may be.

(3) The entries in the register of a magistrates' court referred to, respectively, in paragraphs (1) and (2) above shall be signed by the magistrates' court officer.

*[Note. Formerly rule 8 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997 and rule 8 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997. As to the requirement on a magistrates' court to keep a register, see rule 6.1. As to the procedure to be followed in the High Court, see RSC Order 116 in Schedule 1 to the Civil Procedure Rules 1998(289).]*

### **Display of copy of notice received from High Court**

**40.8.**—(1) Where the court officer of a court which has made a certification under section 54(2) of the Criminal Procedure and Investigations Act 1996 or before which an acquittal has occurred to which such a certification refers, receives from the Administrative Court Office notice of an order quashing the acquittal concerned, or notice of a decision not to make such an order, he shall, as soon as practicable after receiving the notice, display a copy of it at a prominent place within court premises to which place the public has access.

(2) The copy notice referred to in paragraph (1) shall continue to be displayed as referred to in that paragraph at least until the expiry of 28 days from the day on which the notice was received at the court.

*[Note. Formerly rule 9 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997 and rule 9 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997. As to the procedure to be followed in the High Court, see RSC Order 116 in Schedule 1 to the Civil Procedure Rules 1998.]*

## **PART 41**

### **RETRIAL FOLLOWING ACQUITTAL FOR SERIOUS OFFENCE**

#### **Contents of this Part**

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Interpretation	rule 41.1
Notice of a section 76 application	rule 41.2
Response of the acquitted person	rule 41.3

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Examination of witnesses or evidence by the Court of Appeal	rule 41.4
Bail or custody hearings in the Crown Court	rule 41.5
Further provisions regarding bail and custody in the Crown Court	rule 41.6
Bail or custody orders in the Court of Appeal	rule 41.7
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Variation or revocation of restrictions on publication	rule 41.9
Powers exercisable by a single judge of the Court of Appeal	rule 41.10
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Notice of application to set aside order for retrial	rule 41.14
Leave to arraign	rule 41.15
Abandonment of the application	rule 41.16
Service	rule 41.17

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## Interpretation

### 41.1. In this Part:

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971, in England and Wales<sup>(290)</sup>; and

“section 76 application” means an application made by a prosecutor under section 76(1) or (2) of the Criminal Justice Act 2003<sup>(291)</sup>.

## Notice of a section 76 application

**41.2.—**(1) A prosecutor who wants to make a section 76 application must serve notice of that application in the form set out in the Practice Direction on the Registrar and the acquitted person.

(2) That notice shall, where practicable, be accompanied by—

- (a) relevant witness statements which are relied upon as forming new and compelling evidence of guilt of the acquitted person as well as any relevant witness statements from the original trial;
- (b) any unused statements which might reasonably be considered capable of undermining the section 76 application or of assisting an acquitted person’s application to oppose that application under rule 41.3;
- (c) a copy of the indictment and paper exhibits from the original trial;

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<sup>(290)</sup> 1971 c. 80.  
<sup>(291)</sup> 2003 c. 44.

- (d) copies of the transcript of the summing up and any other relevant transcripts from the original trial; and
- (e) any other documents relied upon to support the section 76 application.

(3) The prosecutor must, as soon as practicable after service of that notice on the acquitted person, file with the Registrar a witness statement or certificate of service which exhibits a copy of that notice.

### **Response of the acquitted person**

**41.3.**—(1) An acquitted person who wants to oppose a section 76 application must serve a response in the form set out in the Practice Direction on the Registrar and the prosecutor which—

- (a) indicates if he is also seeking an order under section 80(6) of the Criminal Justice Act 2003(292) for—
  - (i) the production of any document, exhibit or other thing, or
  - (ii) a witness to attend for examination and to be examined before the Court of Appeal; and
- (b) exhibits any relevant documents.

(2) The acquitted person must serve that response not more than 28 days after receiving notice under rule 41.2.

(3) The Court of Appeal may extend the period for service under paragraph (2), either before or after that period expires.

### **Examination of witnesses or evidence by the Court of Appeal**

**41.4.**—(1) Prior to the hearing of a section 76 application, a party may apply to the Court of Appeal for an order under section 80(6) of the Criminal Justice Act 2003 for—

- (a) the production of any document, exhibit or other thing; or
- (b) a witness to attend for examination and to be examined before the Court of Appeal.

(2) An application under paragraph (1) must be in the form set out in the Practice Direction and must be sent to the Registrar and a copy sent to each party to the section 76 application.

(3) An application must set out the reasons why the order was not sought from the Court when—

- (a) the notice was served on the Registrar under rule 41.2, if the application is made by the prosecutor; or
- (b) the response was served on the Registrar under rule 41.3, if the application is made by the acquitted person.

(4) An application must be made at least 14 days before the day of the hearing of the section 76 application.

(5) If the Court of Appeal makes an order under section 80(6) of the 2003 Act on its own motion or on application from the prosecutor, it must serve notice and reasons for that order on all parties to the section 76 application.

### **Bail or custody hearings in the Crown Court**

**41.5.**—(1) Rules 19.18, 19.22 and 19.23 shall apply where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the Criminal Justice Act 2003(**293**) (with the modification as set out in paragraph (2)), as if they were applications under rule 19.18(1).

(2) Substitute the following for Rule 19.18:

“Where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the Criminal Justice Act 2003, the prosecutor must serve notice of the need for such a hearing on the court officer.”

(3) Where a person is to appear or be brought before the Crown Court pursuant to sections 88 or 89 of the 2003 Act the Crown Court may order that the person shall be released from custody on entering into a recognizance, with or without sureties, or giving other security before—

(a) the Crown Court officer; or

(b) any other person authorised by virtue of section 119(1) of the Magistrates' Courts Act 1980(**294**) to take a recognizance where a magistrates' court having power to take the recognizance has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound.

(4) The court officer shall forward to the Registrar a copy of any record made in pursuance of section 5(1) of the Bail Act 1976(**295**).

### **Further provisions regarding bail and custody in the Crown Court**

**41.6.**—(1) The prosecutor may only apply to extend or further extend the relevant period before it expires and that application must be served on the Crown Court officer and the acquitted person.

(2) A prosecutor's application for a summons or a warrant under section 89(3)(a) or (b) of the Criminal Justice Act 2003 must be served on the court officer and the acquitted person.

### **Bail or custody orders in the Court of Appeal**

**41.7.** Rules 68.8 and 68.9 shall apply to bail or custody orders made in the Court of Appeal under section 90 of the Criminal Justice Act 2003(**296**) as if they were orders made pursuant to an application under rule 68.7.

### **Application for restrictions on publication**

**41.8.**—(1) An application by the Director of Public Prosecutions, under section 82 of the Criminal Justice Act 2003(**297**), for restrictions on publication must be in the form set out in the Practice Direction and be served on the Registrar and the acquitted person.

(2) If notice of a section 76 application has not been given and the Director of Public Prosecution has indicated that there are reasons why the acquitted person should not be notified of the application for restrictions on publication, the Court of Appeal may order that service on the acquitted person is not to be effected until notice of a section 76 application is served on that person.

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(293)2003 c. 44.

(294)1980 c. 43.

(295)1976 c. 63; section 5(1) was amended by section 27 of and paragraph 1(a) of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), and is further amended by Part 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(296)2003 c. 44.

(297)2003 c. 44.

(3) If the Court of Appeal makes an order for restrictions on publication of its own motion or on application of the Director of Public Prosecutions, the Registrar must serve notice and reasons for that order on all parties, unless paragraph (2) applies.

#### **Variation or revocation of restrictions on publication**

**41.9.**—(1) A party who wants to vary or revoke an order for restrictions on publication, under section 82(7) of the Criminal Justice Act 2003(**298**), may apply to the Court of Appeal in writing at any time after that order was made.

(2) A copy of the application to vary or revoke shall be sent to all parties to the section 76 application unless paragraph (3) applies.

(3) If the application to vary or revoke is made by the Director of Public Prosecutions and—

- (a) the notice of a section 76 application has not been given under rule 41.2; and
- (b) the Director of Public Prosecutions has indicted that there are reasons why the acquitted person should not be notified of an application for restrictions on publication, the Court of Appeal may order that service on the acquitted person is not to be effected until notice of a section 76 application is served on that person.

(4) If the Court of Appeal varies or revokes an order for restrictions on publication of its own motion or on application, it must serve notice and reasons for that order on all parties, unless paragraph (3) applies.

#### **Powers exercisable by a single judge of the Court of Appeal**

**41.10.**—(1) The following powers under the Criminal Justice Act 2003 and under this Part may be exercised by a single judge in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions, namely to—

- (a) order the production of any document, exhibit or thing under section 80(6)(a) of the 2003 Act;
- (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the Court of Appeal under section 80(6)(b) of the 2003 Act;
- (c) extend the time for service under rule 41.3(2); and
- (d) delay the requirement of service on the acquitted person of an application for restrictions on publication under rules 41.8(2) and 41.9(3).

(2) A single judge may, for the purposes of exercising any of the powers specified in paragraph (1), sit in such place as he appoints and may sit otherwise than in open court.

(3) Where a single judge exercises one of the powers set out in paragraph (1), the Registrar must serve notice of the single judge's decision on all parties to the section 76 application.

#### **Powers exercisable by the Registrar**

**41.11.**—(1) The Registrar may require the Crown Court at the place of original trial to provide the Court of Appeal with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 10 of the Criminal Justice Act 2003(**299**) or this Part.

(2) The following powers may be exercised by the Registrar in the same manner as the Court of Appeal and subject to the same provisions?

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(298)2003 c. 44.

(299)2003 c. 44.

- (a) order the production of any document, exhibit or thing under section 80(6)(a) of the 2003 Act;
- (b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the Court of Appeal under section 80(6)(b) of the 2003 Act; and
- (c) extend the time for service under rule 41.3(2).

(3) Where the Registrar exercises one of the powers set out in paragraph (2) the Registrar must serve notice of that decision on all parties to the section 76 application.

(4) Where the Registrar has refused an application to exercise any of the powers referred to in paragraph (2), the party making the application may have it determined by a single judge by serving a renewal in the form set out in the Practice Direction within 14 days of the day on which notice of the Registrar's decision is served on the party making the application, unless that period is extended by the Court of Appeal.

#### **Determination by full court**

**41.12.**—(1) Where a single judge has refused an application to exercise any of the powers referred to in rule 41.10, the applicant may have that application determined by the Court of Appeal by serving a notice of renewal in the form set out in the Practice Direction.

(2) A notice under paragraph (1) must be served on the Registrar within 14 days of the day on which notice of the single judge's decision is served on the party making the application, unless that period is extended by the Court of Appeal.

(3) If a notice under paragraph (1) is not served on the Registrar within the period specified in paragraph (2) or such extended period as the Court of Appeal has allowed, the application shall be treated as having been refused by the Court of Appeal.

#### **Notice of the determination of the application**

**41.13.**—(1) The Court of Appeal may give its determination of the section 76 application at the conclusion of the hearing.

(2) If determination is reserved, the Registrar shall as soon as practicable, serve notice of the determination on the parties to the section 76 application.

(3) If the Court of Appeal orders under section 77 of the Criminal Justice Act 2003(300) that a retrial take place, the Registrar must as soon as practicable, serve notice on the Crown Court officer at the appropriate place of retrial.

#### **Notice of application to set aside order for retrial**

**41.14.**—(1) If an acquitted person has not been arraigned before the end of 2 months after the date of an order under section 77 of the Criminal Justice Act 2003 he may apply in the form set out in the Practice Direction to the Court of Appeal to set aside the order.

(2) An application under paragraph (1) must be served on the Registrar and the prosecutor.

#### **Leave to arraign**

**41.15.**—(1) If the acquitted person has not been arraigned before the end of 2 months after the date of an order under section 77 of the Criminal Justice Act 2003, the prosecutor may apply in the form set out in the Practice Direction to the Court of Appeal for leave to arraign.

(2) An application under paragraph (1) must be served on the Registrar and the acquitted person.

### **Abandonment of the application**

**41.16.**—(1) A section 76 application may be abandoned by the prosecutor before the hearing of that application by serving a notice in the form set out in the Practice Direction on the Registrar and the acquitted person.

(2) The Registrar must, as soon as practicable, after receiving a notice under paragraph (1) send a copy of it endorsed with the date of receipt to the prosecutor and acquitted person.

### **Service**

**41.17.**—(1) Where this Part requires service of a document on the Registrar then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of an acquitted person in custody, by delivering it to the person who has custody of him;
- (b) by addressing it to the Registrar and delivering it at, or sending it by first class post to his office at the Royal Courts of Justice London WC2A 2LL; or
- (c) if the Registrar has indicated that he is willing to accept service by facsimile or other means of electronic communication, by sending a legible copy of the document by such means to the Registrar.

(2) Where this Part requires service of a document on the Crown Court officer then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of an acquitted person in custody, by delivering it to the person who has custody of him;
- (b) by delivering it to, or sending it by first class post to the court officer at the Crown Court at which the ruling appealed against was made; or
- (c) if the court officer has indicated that he is willing to accept service by facsimile or other means of electronic communication, by sending a legible copy of the document by such means to that officer.

(3) A person who has custody of an acquitted person and to whom the acquitted person delivers a document under paragraph (1)(a) or (2)(a) must endorse on it the date of delivery and forward it to the Registrar or the court officer as the case may be.

(4) Where this Part requires the service of a document on any other person then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) personally on that person or their solicitor;
- (b) by first class post to that person's last known residence or place of business or to their solicitor's business address;
- (c) leaving it at that person's known address or place of business;
- (d) if the party has indicated that he is willing to accept service by facsimile or other means of electronic communication, by sending a legible copy of the document by such means to that party; and
- (e) where the person or their solicitor has given a number of a box at a document exchange and has not indicated that they are unwilling to accept service through a document exchange, by leaving it at the document exchange addressed to the box number.

(5) Where a document is served under this Part by any method other than personal service it is deemed to be served—

- (a) in the case of a document left at an address, on the next business day after the day on which it was left;
- (b) in the case of a document sent by first class post, on the second business day after the day on which it was posted;
- (c) in the case of a document left at a document exchange, on the second business day after the day on which it was left;
- (d) in the case of a document transmitted by fax or other electronic means on a business day before 5 p.m., on that day; and
- (e) in the case of a document transmitted by fax or other electronic means at any time other than that specified in paragraph (d), on the next business day after the day on which it was transmitted.

## PART 42

### REMITTAL FROM ONE MAGISTRATES' COURT TO ANOTHER FOR SENTENCE

#### Contents of this Part

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Remittal for sentence	rule 42.1
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#### Remittal for sentence

**42.1.**—(1) Where a magistrates' court remits an offender to some other magistrates' court under section 10 of the Powers of Criminal Courts (Sentencing) Act 2000(**301**) after convicting him of an offence, the court officer for the convicting court shall send to the court officer for the other court—

- (a) a copy signed by the court officer for 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(**302**) 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 148 of the 2000 Act(**303**) (restitution orders), a copy signed by the court officer for the convicting court of the minute or memorandum of the order entered in the register;

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**(301)**2000 c. 6.

**(302)**1976 c. 63; section 5 was amended by section 27 of and paragraph 1(a) of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16) and Part 2 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and is further amended by Part 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed (there are other amendments not relevant to this rule).

**(303)**2000 c. 6; section 148 is amended by paragraph 74(1) and (5) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

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- (g) a copy of any representation order previously made in the same case; and
- (h) a copy of any application for a representation order.

(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 section 10(5) of the 2000 Act, the court officer for the other court shall send to the court officer for the convicting court—

- (a) a copy signed by the court officer for 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; and
- (c) all documents and articles sent in pursuance of paragraph (1) of this rule.

(3) In this rule “the offender”, “the convicting court” and “the other court” have the same meanings as in section 10 of the 2000 Act.

*[Formerly rule 19 of the Magistrates' Courts Rules 1981(304).]*

## PART 43

### COMMITTAL TO THE CROWN COURT FOR SENTENCE

#### Contents of this Part

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Committal for sentence	rule 43.1
Committal for order restricting discharge	rule 43.2

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#### Committals for sentence, etc

**43.1.**—(1) Where a magistrates' court commits an offender to the Crown Court under the Vagrancy Act 1824(305), sections 3, 6, 116(3)(b) or 120(2)(a) of the Powers of Criminal Courts (Sentencing) Act 2000(306) or section 6 of the Bail Act 1976(307) after convicting him of an offence, the magistrates' court officer shall send to the Crown Court officer—

- (a) a copy signed by the magistrates' court officer of the minute or memorandum of the conviction entered in the register;
- (b) 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;

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(304) S.I. 1981/552; amending instruments relevant to this Part are S.I. 2001/610 and 2003/1236.

(305) 1824 c. 83; section 5 was amended by the Statute Law (Repeals) Act 1989 (c. 43), section 77 of and paragraph 1 of Schedule 14 to the Criminal Justice Act 1982 (c. 48) and paragraph 1 of Schedule 6 to the Criminal Justice Act 1967 (c. 80), paragraph 5 of Part II of Schedule 8 to the Courts Act 1971 (c. 23); section 5 is repealed by Part 9 of Schedule 37 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; there are other amendments not relevant to this rule.

(306) 2000 c. 6; section 3 is amended by paragraphs 21 and 22 of Part 1 of Schedule 3 of the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 6 is amended by paragraphs 90 and 91 of Part 1 of Schedule 32 and paragraphs 21 and 28 of Part 1 and Part 9 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 116(3) is repealed by paragraphs 90 and 116 of Part 1 to Schedule 32 and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 120(2)(a) is repealed by section 303(d)(v) and part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(307) 1976 c. 63; section 6 is amended by paragraphs 48(1) and 48(4) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).



- (e) if the offender is committed on bail, a copy of the record made in pursuance of section 5 of the 1976 Act relating to such bail and also any recognizance entered into by any person as his surety;
- (f) if the court imposes under section 26 of the Road Traffic Offenders Act 1988(308) an interim disqualification for holding or obtaining a licence under Part III of the Road Traffic Act 1988(309), a statement of the date of birth and sex of the offender;
- (g) if the court makes an order under section 148 of the 2000 Act (restitution orders), a copy signed by the clerk of the convicting court of the minute or memorandum of the order entered in the register; and
- (h) any documents relating to an appeal by the prosecution against the granting of bail.

(2) Where a magistrates' court commits an offender to the Crown Court under the Vagrancy Act 1824 or sections 3, 6 or 120(2) of the 2000 Act and the magistrates' court on that occasion imposes, under section 26 of the Road Traffic Offenders Act 1988, an interim disqualification for holding or obtaining a licence under Part III of the Road Traffic Act 1988, the magistrates' court officer shall give notice of the interim disqualification to the Crown Court officer.

(3) Where a magistrates' court commits a person on bail to the Crown Court under any of the enactments mentioned in paragraph (2) of this rule or under section 6 of the Bail Act 1976 the magistrates' court officer 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.

*[Note. Formerly rule 17 of the Magistrates' Courts Rules 1981(310). See also direction V.52 in the Practice Direction.]*

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

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

- (a) under section 43 of the Mental Health Act 1983(311) with a view to the making of a hospital order with an order restricting his discharge; or
- (b) under section 3 of the Powers of Criminal Courts (Sentencing) Act 2000, as modified by section 43(4) of the 1983 Act, 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 magistrates' court officer shall send to the Crown Court officer—

- (i) the copies, documents and articles specified in rule 43.1,
- (ii) any written evidence about the offender given by a medical practitioner under section 37 of the 1983 Act(312) or a copy of a note of any oral evidence so given,

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(308) 1988 c. 53; section 26 was amended by paragraphs 119(1), (2)(a), 2(b) and (3) of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 140, 143(1), (2) and (3) of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 312(b) of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 2 of Schedule 2 to S.I. 1996/1974, and is further amended by paragraphs 32 and 34 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) with effect from a date to be appointed.

(309) 1988 c. 52 (as amended).

(310) S.I. 1981/552; amending instruments relevant to this Part are 1983/523, 1992/2072, 1994/1481, 2001/6001, and 2003/1236.

(311) 1983 c. 20; section 43 was amended by paragraph 91 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraphs 55(1) and (2) of Part 2 of Schedule 3 and Part 9 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(312) 1983 c. 20; section 37 was amended by Schedule 6 and paragraph 12 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 11 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23) and is further amended by Part 7 and paragraphs 37 and 38 of Part 1 of Schedule 32 to the Criminal Justice Act 2003 (c. 44).

- (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 37 of the 1983 Act, the name and address of that hospital.

*[Note. Formerly rule 18 of the Magistrates' Courts Rules 1981.]*

## PART 44

### SENTENCING CHILDREN AND YOUNG PERSONS

#### Contents of this Part

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Procedure after finding of guilt in a magistrates' court rule 44.1

Duty of court to explain proposed sentence and effect rule 44.2

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#### **Procedure after finding against minor in a magistrates' court**

**44.1.**—(1) This rule applies where—

- (a) the relevant minor (as defined in rule 38.1) is found guilty by a magistrates' court of an offence, whether after a plea of guilty or otherwise; or
- (b) in proceedings of a kind mentioned in rule 38.1(2)(a), (b) or (c) the court is satisfied that the case for the applicant—
  - (i) if the relevant minor is not the applicant, has been made out, or
  - (ii) if he is the applicant, has not been made out.

(2) Where this rule applies—

- (a) the relevant minor and his parent or guardian, if present, shall be given an opportunity of making a statement;
- (b) the court shall take into consideration all available information as to the general conduct, home surroundings, school record and medical history of the relevant minor and, in particular, shall take into consideration such information as aforesaid which is provided in pursuance of section 9 of the Children and Young Persons Act 1969(313);
- (c) if such information as aforesaid is not fully available, the court shall consider the desirability of adjourning the proceedings for such inquiry as may be necessary;
- (d) any written report of a probation officer, local authority, local education authority, educational establishment or registered medical practitioner may be received and considered by the court without being read aloud; and
- (e) if the court considers it necessary in the interests of the relevant minor, it may require him or his parent or guardian, if present, to withdraw from the court.

(3) The court shall arrange for copies of any written report before the court to be made available to—

- (a) the legal representative, if any, of the relevant minor;
- (b) any parent or guardian of the relevant minor who is present at the hearing; and

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(313) 1969 c. 54; section 9 was amended by Schedule 15 to the Children Act 1989 (c. 41).

- (c) the relevant minor, except where the court otherwise directs on the ground that it appears to it impracticable to disclose the report having regard to his age and understanding or undesirable to do so having regard to potential serious harm which might thereby be suffered by him.
- (4) In any case in which the relevant minor is not legally represented and where a report which has not been made available to him in accordance with a direction under paragraph (3)(c) has been considered without being read aloud in pursuance of paragraph (2)(d) or where he or his parent or guardian has been required to withdraw from the court in pursuance of paragraph (2)(e), then—
- (a) the relevant minor shall be told the substance of any part of the information given to the court bearing on his character or conduct which the court considers to be material to the manner in which the case should be dealt with unless it appears to it impracticable so to do having regard to his age and understanding; and
- (b) the parent or guardian of the relevant minor, if present, shall be told the substance of any part of such information which the court considers to be material as aforesaid and which has reference to his character or conduct or to the character, conduct, home surroundings or health of the relevant minors, and if such a person, having been told the substance of any part of such information, desires to produce further evidence with reference thereto, the court, if it thinks the further evidence would be material, shall adjourn the proceedings for the production thereof and shall, if necessary in the case of a report, require the attendance at the adjourned hearing of the person who made the report.

*[Note. Formerly rule 10 of the Magistrates' Courts (Children and Young Persons) Rules 1992(314).]*

#### **Duty of magistrates' court to explain manner in which it proposes to deal with case and effect of order**

**44.2.**—(1) Before finally disposing of the case or before remitting the case to another court in pursuance of section 8 of the Powers of Criminal Courts (Sentencing) Act 2000(**315**), the magistrates' court shall inform the relevant minor and his parent or guardian, if present, or any person assisting him in his case, of the manner in which it proposes to deal with the case and allow any of those persons so informed to make representations; but the relevant minor shall not be informed as aforesaid if the court considers it undesirable so to do.

(2) On making any order, the court shall explain to the relevant minor the general nature and effect of the order unless, in the case of an order requiring his parent or guardian to enter into a recognizance, it appears to it undesirable so to do.

*[Note. Formerly rule 11 of the Magistrates' Courts (Children and Young Persons) Rules 1992.]*

## **PART 45**

### **DEFERRED SENTENCE**

#### **Contents of this Part**

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Further conviction in magistrates' court after sentence deferred	rule 45.1
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(314) S.I. 1992/2071; amended by S.I. 2003/1236; there are other amending instruments but none is relevant to this Part.  
(315) 2000 c. 6; section 8 is amended by paragraphs 74(1) and (2) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

### Further conviction in magistrates' court after sentence deferred

**45.1.** Where under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(**316**) 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 court officer for the convicting 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 court officer for that court.

*[Note. Formerly rule 27 of the Magistrates' Courts Rules 1981(317).]*

## PART 46

### CUSTODIAL SENTENCES

#### Contents of this Part

*[Note. There are currently no rules in this Part.]*

## PART 47

### SUSPENDED SENTENCES OF IMPRISONMENT

#### Contents of this Part

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Entries in magistrates' court register	rule 47.1
Suspended sentence supervision orders	rule 47.2

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#### Entries in magistrates' court register in respect of suspended sentences

**47.1.**—(1) Where under section 119 of the Powers of Criminal Courts (Sentencing) Act 2000(**318**) a magistrates' court deals with a person in respect of a suspended sentence otherwise than by making an order under section 119(1)(a), 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 section 119 of the 2000 Act in respect of a suspended sentence passed by a magistrates' court, the court officer shall note this in the register, or where the suspended sentence was not passed by that court, shall notify the court officer for the court by which it was passed who shall note it in the register.

*[Note. Formerly rule 29 of the Magistrates' Court Rules 1981(319). As to the requirement to keep a register, see rule 6.1.]*

#### Suspended sentence supervision orders

**47.2.**—(1) Where a magistrates' court makes an order under section 119(1)(a) or (b) of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of a person who is subject to a suspended

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(316) 2000 c. 6; section 1 is amended by paragraph 1 of Schedule 23 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(317) S.I. 1981/552; amending instruments relevant to this Part are S.I. 2001/610 and 2003/1236.

(318) 2000 c. 6; section 119 is repealed by Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(319) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1982/245, 1992/2072, 2001/610 and 2003/1236.

sentence supervision order, the court officer shall note this in the register, or where that order was not made by that court, shall—

- (a) if the order was made by another magistrates' court, notify the court officer for that court who shall note the court register accordingly; or
- (b) if the order was made by the Crown Court, notify the Crown Court officer.

(2) Where a magistrates' court discharges a suspended sentence supervision order under section 124(1) of the 2000 Act(**320**), the court officer shall note this in the register, or where that order was not made by that court, shall—

- (a) if the order was made by another magistrates' court, notify the court officer for that court who shall note the court register accordingly; or
- (b) if the order was made by the Crown Court, notify the Crown Court officer.

(3) Where a magistrates' court fines a person under section 123 of the 2000 Act(**321**) for breach of the requirements of a suspended sentence supervision order which was not made by that court, the court officer shall—

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

*[Note. Formerly rule 30 of the Magistrates' Court Rules 1981. As to the requirement to keep a register, see rule 6.1.]*

## PART 48

### COMMUNITY PENALTIES

#### Contents of this Part

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Curfew order or requirement with electronic monitoring requirement	rule 48.1
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#### Curfew order or requirement with electronic monitoring requirement

**48.1.**—(1) This rule applies where the Crown Court makes—

- (a) a curfew order with an electronic monitoring requirement under section 35 of the Crime (Sentences) Act 1997(**322**) or under sections 37 and 36B of the Powers of Criminal Courts (Sentencing) Act 2000(**323**); or
- (b) a community rehabilitation order with curfew and electronic monitoring requirements under section 41 of and paragraph 7 of Schedule 2 to the 2000 Act.

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**(320)** Section 124 is repealed by Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

**(321)** Section 123 is repealed by Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

**(322)** 1997 c. 43; section 35 was amended by paragraph 184 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 1 and 32(1) and (2) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29), paragraph 132(1) of Schedule 8 and paragraphs 50(1) and (6) of Schedule 7 to the Crime and Disorder Act 2002 (c. 37), and is further amended by paragraphs 135 and 139(a) of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 of the Criminal Justice Act 2003 (c. 44) with effect from dates to be appointed.

**(323)** 2000 c. 6; section 36B was amended by paragraphs 90, 96(1) and (2) of Part 1 of Schedule 32 to the Criminal Justice Act 2003 (c. 44) (amendments in force for some purposes only), and is further amended by paragraphs 90, 96(1), (3)(a) and (4) of Part 1 of Schedule 32 and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed; section 37 was amended by paragraphs 160 and 162 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and by paragraphs 2(1), (2) and (3) of Schedule 2 and Schedule 3 to the Anti-social Behaviour Act 2003 (c. 38), and is further amended by paragraphs 90, 96(1), (3)(a) and (4) of Part 1 of Schedule 32 and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

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(2) The court officer shall serve notice of the order on the person in respect of whom it is made by way of pages 1 and 2 of the form set out in the Practice Direction.

(3) The court officer shall serve notice of the order on the person responsible for electronically monitoring compliance with it by way of the form set out in the Practice Direction.

(4) Where any community order additional to the curfew order has been made in respect of the offender, the court officer shall serve a copy of the notice required by paragraph (3) on the local probation board or Youth Offending Team responsible for the offender.

*[Note. Formerly rules 37 and 37A of the Crown Court Rules 1982(324).]*

## PART 49

### HOSPITAL AND GUARDIANSHIP ORDERS

#### Contents of this Part

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Remand by magistrates' court for medical inquiries	rule 49.1
Hospital or guardianship orders imposed by magistrates' court	rule 49.2

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#### Remand by magistrates' court for medical inquiries

**49.1.** On exercising the powers conferred by section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(325) a magistrates' court shall—

- (a) where the accused is remanded in custody, send to the institution or place to which he is committed; or
- (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.

*[Note. Formerly rule 24 of the Magistrates' Courts Rules 1981(326).]*

#### Hospital or guardianship order imposed by a magistrates' court

**49.2.**—(1) The magistrates' court by which a hospital order is made under section 37 of the Mental Health Act 1983(327) 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.

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(324) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1999/3040 and 2003/1664.

(325) 2000 c. 6.

(326) S.I. 1981/552; amended by S.I. 2003/1236; there are other amending instruments but none is relevant to this Part.

(327) 1983 c. 20; section 37 was amended by section 55 and paragraphs 12 (1), (2) and (3) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), and paragraphs 90 (1), (2), (3), (4) and (6) of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and paragraph 11 of Schedule 4 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) and is further amended by paragraphs 37 and 38 of Part 1 of Schedule 32 and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(2) The magistrates' court by which a guardianship order is made under section 37 of the 1983 Act 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 magistrates' court by which an offender is ordered to be admitted to hospital under section 44 of the 1983 Act 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.

*[Note. Formerly rule 31 of the Magistrates' Court Rules 1981.]*

## PART 50

### SUPPLEMENTARY ORDERS MADE ON CONVICTION

#### Contents of this Part

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Sexual offences prevention orders made on conviction	rule 50.1
Parenting orders made on conviction	rule 50.2
Variation of certain orders by a magistrates' court	rule 50.3
Anti-social behaviour orders made on conviction	rule 50.4

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#### Sexual offences prevention orders made by a magistrates' court on conviction

**50.1.**—(1) A sexual offences prevention order made by a magistrates' court under section 104 of the Sexual Offences Act 2003(**328**) shall be in the form set out in the Practice Direction.

(2) An interim sexual offences prevention order made by a magistrates' court under section 109 of the 2003 Act shall be in the form set out in the Practice Direction.

(3) As soon as reasonably practicable after a sexual offences prevention order or an interim sexual offences prevention order has been made, the court officer shall serve a copy of that order on the defendant. Any copy of an order required to be sent under this rule to the defendant shall be either given to him in person or sent by post to his last known address and, if so given or sent, shall be deemed to have been received by him, unless the defendant proves that it was not received by him.

*[Note. Formerly rule 4 of the Magistrates' Courts (Sexual Offences Prevention Orders) Rules 2004(329). See also sections 104 to 113 of the Sexual Offences Act 2003(330).]*

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(328)2003 c. 42.  
(329)S.I. 2004/1054.  
(330)2003 c. 42.

### **Parenting orders made by a magistrates' court on conviction**

**50.2.**—(1) A parenting order made by a magistrates' court under section 8 of the Crime and Disorder Act 1998(**331**) shall be in the form set out in the Practice Direction.

(2) A parenting order made by a magistrates' court under paragraph 9D of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000(**332**) shall be in the form set out in the Practice Direction.

*[Note. Formerly rules 7 and 8 of the Magistrates' Courts (Parenting Orders) Rules 2004(**333**).]*

### **Variation of certain orders by a magistrates' court**

**50.3.**—(1) An application to a magistrates' court for variation or discharge of any of the following orders shall be by complaint:

- (a) A parenting order made under section 9(5) of the Crime and Disorder Act 1998;
- (b) A parenting order made under paragraph 9D of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000(**334**);
- (c) a reparation order, under paragraph 5 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000; or
- (d) an action plan order, under that paragraph.

(2) An application under paragraph (1)(b) above shall be made to the magistrates' court which made the order, and shall specify the reason why the applicant for variation or discharge believes the court should vary or discharge the order, as the case may be.

*[Note. Formerly rule 114 of the Magistrates' Courts Rules 1981(**335**) and rule 9 of the Magistrates' Courts (Parenting Orders) Rules 2004.]*

### **Anti-social behaviour orders made by the Crown Court on conviction**

**50.4.** An order made by the Crown Court under section 1C of the Crime and Disorder Act 1998(**336**) on conviction in criminal proceedings shall be in the form set out in the Practice Direction.

*[Note. Formerly rule 38 of the Crown Court Rules 1982(**337**).]*

## **PART 51**

### **FINES**

#### **Contents of this Part**

*[Note. There are currently no rules in this Part.]*

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**(331)** 1998 c. 37; section 8 amended by paragraph 194 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 1 of Schedule 34 and Part 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 18 of the Anti-social Behaviour Act 2003 (c. 38), section 73 and paragraphs 4(1)(a), and (2) of Part 1 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43).

**(332)** 2000 c. 6.

**(333)** S.I. 2004/247.

**(334)** Paragraph 9D of Schedule 1 was inserted by paragraph 6 of Schedule 34 of the Criminal Justice Act 2003.

**(335)** S.I. 1981/552; amended by S.I. 1998/2167; there are other amending instruments but none is relevant to this Part.

**(336)** 1998 c. 37; section 1C was amended by section 64 of the Police Reform Act 2002 (c. 30) and section 86(1), (2), (3) and (4) of the Anti-social Behaviour Act 2003 (c. 38).

**(337)** S.I. 1982/1109; amended by S.I. 2002/2783; there are other amending instruments but none is relevant.



## PART 52

### ENFORCEMENT OF FINES

#### Contents of this Part

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Notice to defendant from magistrates' court	rule 52.1
Payment of fine to be made to magistrates' court officer	rule 52.2
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Fine enforcement to be entered in magistrates' court register	rule 52.13
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#### Notice to defendant of fine or forfeited recognizance

**52.1.**—(1) Where under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(**338**) or section 67(2) of the Criminal Justice Act 1988(**339**) a magistrates' court is required to enforce payment of a fine imposed or recognizance forfeited by the Crown Court 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 magistrates' court officer shall serve on the offender notice in writing stating the amount of the sum and, if it is to be paid by instalments, the amount of the instalments, the date on which the sum, or each of the instalments, is to be paid and the places and

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(**338**)2000 c. 6; section 40(1) is amended by paragraph 74(1) and (4) of Part 2 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.  
(**339**)1988 c. 33.

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.

*[Note. Formerly rule 46 of the Magistrates' Courts Rules 1981(340).]*

#### **Payment of fine to be made to magistrates' court officer**

**52.2.**—(1) A person adjudged by the conviction 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 court officer.

(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 court officer, 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 court officer so requires, pay over the sum or instalment to the court officer.

(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 court officer for another court, the court officer for 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 court officer for that other court.

*[Note. Formerly rule 48 of the Magistrates' Courts Rules 1981.]*

#### **Duty of magistrates' court officer to give receipt**

**52.3.** The court officer for 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.

*[Note. Formerly rule 49 of the Magistrates' Courts Rules 1981.]*

#### **Application to magistrates' court for further time**

**52.4.** An application under section 75(2) of the Magistrates' Courts Act 1980(341) (further time to pay) may, unless the court requires the applicant to attend, be made in writing.

*[Note. Formerly rule 51 of the Magistrates' Courts Rules 1981.]*

#### **Notice of date of hearing of means inquiry, etc in magistrates' court**

**52.5.** Where a magistrates' court, under section 86(1) of the Magistrates' Courts Act 1980 (power of magistrates' court to fix day for appearance of offender at means inquiry etc)(342), has fixed a day on which an offender must appear in person before the court and, under section 86(3), 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 4.1(1).

*[Note. Formerly rule 52 of the Magistrates' Courts Rules 1981.]*

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(340) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1988/2132, 1989/384, 1990/1190, 1991/1991, 1992/457, 1992/2072, 1993/1183, 1999/2765, 2001/167, 2001/160 and 2003/1236.

(341) 1980 c. 43.

(342) Section 86 (1) was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48).

### **Review of terms of postponement of warrant of commitment by magistrates' court**

**52.6.** An application under section 77(5) of the Magistrates' Courts Act 1980(**343**) may be made in writing or in person and where under that section a justice of the peace refers such an application to the court, notice of the time and place fixed under section 77(6)(**344**) for the hearing of the application may be deemed to have been given if it is sent by registered post or the recorded delivery service addressed to the applicant at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by the applicant.

*[Note. Formerly rule 52A of the Magistrates' Courts Rules 1981.]*

### **Notice to defendant before enforcing magistrates' court order**

**52.7.—**(1) 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 an order to pay money.

(2) 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.

*[Note. Formerly rule 53 of the Magistrates' Courts Rules 1981.]*

### **Execution of magistrates' court distress warrant**

**52.8.—**(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 civilian enforcement officers for the area in which they are employed, 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; and
- (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 court officer for the court that issued the warrant.

(4) A warrant to which this rule applies may be executed by the persons to whom it was directed or by any of the following persons, whether or not the warrant was directed to them—

- (a) A constable for any police area in England and Wales, acting in his own police area;
- (b) where the warrant is one to which section 125A of the Magistrates' Courts Act 1980(**345**) applies, a civilian enforcement officer within the meaning of section 125A of the 1980 Act; and

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(343) Section 77(5) is amended by paragraph 218(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39) with effect from a date to be appointed.

(344) Section 77(6) was substituted by article 3 of S.I. 2001/618.

(345) Section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22).

- (c) where the warrant is one to which section 125A of the 1980 Act applies, any of the individuals described in section 125B(1) of the 1980 Act<sup>(346)</sup>;

and in this rule any reference to the person charged with the execution of a warrant includes any of the above persons who is for the time being authorised to execute the warrant, whether or not they have the warrant in their possession at the time.

- (5) A person executing a warrant of distress shall—

- (a) either—

- (i) if he has the warrant with him, show it to the person against whom the distress is levied, or  
(ii) otherwise, state where the warrant is and what arrangements may be made to allow the person against whom distress is levied to inspect it;

- (b) explain, in ordinary language, the sum for which distress is levied and the reason for the distress;

- (c) where the person executing the warrant is one of the persons referred to in paragraph (4) (b) or (c) above, show the person against whom distress is levied a written statement under section 125A(4) or 125B(4) as appropriate; and

- (d) in any case, show documentary proof of his identity.

(6) There shall not be taken under the warrant the clothing or bedding of any person or his family or the tools, books, vehicles or other equipment which he personally needs to use in his employment, business or vocation, provided that in this paragraph the word “person” shall not include a corporation.

(7) 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.

(8) The clerk of the court which issued the warrant may, on the application of the person charged with the execution of it, extend the period within which the distress must be sold by any number of days not exceeding 60; but following the grant of such an application there shall be no further variation or extension of that period.

(9) 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.

(10) 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.

(11) 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.

(12) The 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

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<sup>(346)</sup>Section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22).

the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant.

(13) The person charged with the execution of any such warrant as aforesaid shall as soon as practicable send to the court officer for the court that issued it a written account of the costs and charges incurred in executing it; and the court officer 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.

(14) If any person pays or tenders to the 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 court officer for 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 person as aforesaid shall not execute the warrant, or shall cease to execute it, as the case may be.

*[Note. Formerly rule 54 of the Magistrates' Courts Rules 1981.]*

### **Payment after imprisonment imposed by magistrates' court**

**52.9.**—(1) The persons authorised for the purposes of section 79(2) of the Magistrates' Courts Act 1980(**347**) to receive a part payment are—

- (a) unless there has been issued a warrant of distress or commitment, the court officer for 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 court officer for another magistrates' court, that court officer;
- (c) any constable holding a warrant of distress or commitment or, where the warrant is directed to some other person, that person; and
- (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 section 79(2) of the 1980 Act 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 magistrates' court officer for a court other than the court enforcing payment of the sums receives payment of any sum he shall inform the magistrates' court officer for the other court.

(4) Where a person appointed under section 88 of the 1980 Act(**348**) to supervise an offender receives payment of any sum, he shall send it forthwith to the magistrates' court officer for the court which appointed him.

*[Note. Formerly rule 55 of the Magistrates' Courts Rules 1981.]*

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(**347**) Section 79(2) was amended by paragraph 219(b) of Schedule 8 to the Courts Act 2003 (c. 39).

(**348**) Section 88 was amended by paragraph 53(a)(i),(ii) and (b) of Schedule 14 to the Criminal Justice Act 1982 (c. 48) and by paragraph 68 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraphs 58 and 64(a) of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

### **Order for supervision made by magistrates' court**

**52.10.**—(1) Unless an order under section 88(1) of the Magistrates' Courts Act 1980 is made in the offender's presence, the court officer for 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.

*[Note. Formerly rule 56 of the Magistrates' Courts Rules 1981.]*

### **Transfer of magistrates' court fine order**

**52.11.**—(1) The court officer for a magistrates' court which has made a transfer of fine order under section 89(349) or 90(350) or section 90 as applied by section 91(351) of the Magistrates' Courts Act 1980 shall send to the clerk of the court having jurisdiction under the order a copy of the order.

(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 court officer 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 a court officer receives a copy of a transfer of fine order (whether made in England and Wales, or in Scotland or in Northern Ireland) specifying his 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.

(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 court officer shall send it to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be; or
- (b) if the sum is not paid, the court officer 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.

*[Note. Formerly rule 57 of the Magistrates' Courts Rules 1981.]*

### **Directions by magistrates' court that money found on defaulter shall not be applied in satisfaction of debt**

**52.12.** 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 Magistrates' Courts Act 1980 shall be endorsed on the warrant of commitment.

*[Note. Formerly rule 64 of the Magistrates' Courts Rules 1981.]*

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(349) Section 89 was amended by section 47(1) of the Criminal Justice and Public Order Act 1994 (c. 33), paragraphs 95 and 107 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 225(1), (2), (3) and (4) of Schedule 8 to the Courts Act 2003 (c. 39).

(350) Section 90 was amended by paragraphs 95 and 108 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 226 of Schedule 8 to the Courts Act 2003 (c. 39) and section 47(2) of the Criminal Justice and Public Order Act 1994 (c. 33).

(351) Section 91 was amended by paragraph 227(1), (2) and (3) of Schedule 8 to the Courts Act 2003, paragraphs 95 and 109 of Schedule 13 to the Access to Justice Act 1999, and paragraph 69 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (there are other amendments not relevant to this rule).

### Particulars of fine enforcement to be entered in magistrates' court register

**52.13.**—(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 Magistrates' Courts Act 1980(**352**), 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 1980 Act(**353**);
  - (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 including any direction varying the number of instalments payable, the amount of any instalments payable and the date on which any instalment becomes payable;
  - (e) distress for the enforcement of such a sum;
  - (f) attachment of earnings order for the enforcement of such a sum;
  - (g) decision of the Secretary of State to make deductions from income support under section 24 of the Criminal Justice Act 1991(**354**);
  - (h) order under the 1980 Act placing a person under supervision pending payment of such a sum;
  - (i) order under section 85(1) of the 1980 Act(**355**) remitting the whole or any part of a fine;
  - (j) order under section 120(4) of the 1980 Act(**356**) remitting the whole or any part of any sum enforceable under that section (forfeiture of recognizance);
  - (k) authority granted under section 87(3) of the 1980 Act(**357**) 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;
  - (l) transfer of fine order made by the court;
  - (m) order transferring a fine to the court;
  - (n) order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(**358**) specifying the court for the purpose of enforcing a fine imposed or a recognizance forfeited by the Crown Court; and
  - (o) any fine imposed or recognizance forfeited by a coroner which has to be treated as imposed or forfeited by the court;

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**(352)** Section 77(2) was amended by paragraph 50 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraph 66 Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by Schedule 7 and paragraphs 58 and 62 of Part II of Schedule 8 to the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

**(353)** Section 82 was amended by section 61(1), (3) and (4) and paragraph 52(b) of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraphs (1) and (2) of Schedule 8 to the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10(1) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43) and is further amended by paragraphs 58 and 63(b) of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), and paragraphs 220(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39) with effect from dates to be appointed (there are other amendments which are not relevant to this rule).

**(354)** 1991 c. 53.

**(355)** Section 85(1) substituted by section 61(1) and (5) of the Criminal Justice Act 1988 (c. 44).

**(356)** Section 120 was amended by section 55 of the Crime and Disorder Act 1998 (c. 37).

**(357)** Section 87(3) was amended by paragraph 223(1) and (3) of Schedule 8 to the Courts Act 2003 (c. 39).

**(358)** 2000 c. 6; section 140(1) is amended by paragraph 71(1) and (4)(a) of Part 2 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

- (p) reference by a justice of the peace of an application under section 77(5) of the 1980 Act(359) for a review of the terms on which a warrant of commitment is postponed; or
- (q) order under section 77(3) of the 1980 Act(360) varying the time for which or the conditions subject to which a warrant of commitment is postponed.

*[Note. Formerly rule 65 of the Magistrates' Courts Rules 1981. As to the requirement to keep a register, see rule 6.1.]*

### **Attendance Centre Order imposed by magistrates' court in default of payment of a financial penalty**

**52.14.**—(1) Where any person is ordered, under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000(361), to attend at an attendance centre in default of payment of a sum of money, payment may thereafter be made—

- (a) of the whole of the said sum, to the court officer for the magistrates' court which made the order, or
- (b) of the whole or, subject to paragraph (2), any part of the said sum, to the officer in charge of the attendance centre specified in the order (“the officer in charge”).

(2) The officer in charge may not accept a part payment that would not secure the reduction by one or more complete hours of the period of attendance specified in the order.

(3) On receiving a payment under paragraph (1) the court officer shall forthwith notify the officer in charge.

(4) The officer in charge shall pay any money received by him under paragraph (1) above to the court officer and shall note the receipt of the money in the register maintained at the attendance centre.

*[Note. Formerly rule 3 of the Magistrates' Courts (Attendance Centre) Rules 1992(362) and rule 27 of the Magistrates' Courts (Children and Young Persons) Rules 1992(363).]*

## PART 53

### COMPENSATION ORDERS

#### Contents of this Part

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Review of compensation order made by a magistrates' court	rule 53.1
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#### **Review of compensation order made by a magistrates' court**

**53.1.**—(1) An application under section 133 of the Powers of Criminal Courts (Sentencing) Act 2000(364) for the review of a compensation order shall be by complaint.

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(359) Section 77(5) was inserted by section 61(1) and (2) of the Criminal Justice Act 1988 (c. 44) and is amended by paragraph 218(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39) with effect from a date to be appointed.

(360) Section 77(3) was inserted by section 61(1) and (2) of the Criminal Justice Act 1988 (c. 33).

(361) Section 60 was amended by article 5(1) and (4) of S.I. 2001/618 and is further amended by paragraphs 90 and 102 of Part 1 of Schedule 32 and Part 7 of Schedule 37 and Paragraphs 160 and 173 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

(362) S.I. 1992/2069; amended by 2001/615.

(363) S.I. 1992/2071; amended by 2001/615 and 2003/1236.

(364) 2000 c. 6; section 133 was amended by paragraphs 1 and 37(1) and (3) of Schedule 11 of the Proceeds of Crime Act 2002 (c. 29).



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

*[Note. Formerly rule 104 Magistrates' Courts Rules 1981(365).]*

## PART 54

### CONDITIONAL DISCHARGE

#### Contents of this Part

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Further offence after conditional discharge by magistrates' court	rule 54.1
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#### **Further offence committed after offender conditionally discharged by a magistrates' court**

**54.1.**—(1) Where a magistrates' court deals with a person under section 13 of the Powers of Criminal Courts (Sentencing) Act 2000(366) in relation to an order for conditional discharge which was not made by that court the court officer shall give notice of the result of the proceedings to the court officer for the court by which the order was made.

(2) The court officer for a magistrates' court receiving a notice under this rule shall note the decision of the other court in the register.

*[Note. Formerly rule 28 of the Magistrates' Courts Rules 1981(367). For the requirement to keep a register see rule 6.1.]*

## PART 55

### ROAD TRAFFIC PENALTIES

#### Contents of this Part

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(365) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1993/1183, 2001/610 and 2003/1236.

(366) 2000 c. 6.

(367) S.I. 1981/552; amended by S.I. 2003/1236; there are other amending instruments but none is relevant to this Part.

### **Endorsement of driving licence by magistrates' court**

**55.1.**—(1) Where a magistrates' court convicts a person of an offence and, under section 44 of the Road Traffic Offenders Act 1988(**368**) 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 local justice 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; and
- (d) particulars of the sentence of the court (including the period of disqualification, if any).

(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 43.1(1)(f) and the court officer knows or is informed of the date of birth and sex of the offender, the court officer shall send the information to the licensing authority which granted the licence.

*[Note. Formerly rule 32 of the Magistrates' Courts Rules 1981(369).]*

### **Application to magistrates' court for removal of disqualification**

**55.2.**—(1) An application under section 42 of the Road Traffic Offenders Act 1988 or paragraph 7 of Schedule 4 to the Road Traffic (Consequential Provisions) Act 1988(**370**) 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 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.

*[Note. Formerly rule 101 of the Magistrates' Courts Rules 1981.]*

### **Application to magistrates' court for review of course organiser's refusal to issue certificate of satisfactory completion of driving course**

**55.3.**—(1) An application to the supervising court under section 34B(6) or (7) of the Road Traffic Offenders Act 1988(**371**) shall be served on the court officer within 28 days after the date specified in an order under section 34A(2) of the 1988 Act, where that date falls on or after 24th May 1993.

(2) An application under section 34B(6) of the 1988 Act shall be accompanied by the notice under section 34B(5) of the 1988 Act.

(3) Where such an application is served on the court officer—

- (a) he shall fix a date and time for the hearing of the application; and
- (b) he shall—
  - (i) serve a copy of the application on the course organiser, and
  - (ii) serve notice of the hearing on the applicant and course organiser.

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(368) 1988 c. 53.

(369) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1986/1332, 1993/1183, 2001/610.

(370) 1988 c. 54.

(371) Sections 34A, 34B and 34C were inserted by the Road Traffic Act 1991 (c. 40), section 30 and section 34B was amended by the Access to Justice Act 1999 (c. 22), Schedule 13, paragraphs 140, 145 and 146 and Schedule 15, Part V.

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

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

*[Note. Formerly rule 101A of the Magistrates' Courts Rules 1981.]*

#### **Notice of registration to defaulter under section 71(6) of the Road Traffic Offenders Act 1988**

**55.4.** Where a magistrates' court officer gives notice of registration to a defaulter under section 71(6) of the Road Traffic Offenders Act 1988 (registration of sums payable in default for enforcement as a fine) the court officer shall send the notice by delivering it at, or by sending it by post to, the defaulter's address as given in the certificate of registration issued under section 70(4) of that Act.

*[Note. Formerly rule 111 of the Magistrates' Courts Rules 1981.]*

## **PART 56**

### **CONFISCATION PROCEEDINGS UNDER THE CRIMINAL JUSTICE ACT 1988 AND THE DRUG TRAFFICKING ACT 1994**

#### **Contents of this Part**

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#### **Statements etc, relevant to making confiscation orders**

**56.1.**—(1) Where a prosecutor or defendant—

- (a) tenders to a magistrates' court any statement or other document under section 73 of the Criminal Justice Act 1988(**372**) in any proceedings in respect of an offence listed in Schedule 4 to that Act; or
- (b) tenders to the Crown Court any statement or other document under section 11 of the Drug Trafficking Act 1994(**373**) or section 73 of the 1988 Act in any proceedings in respect of a drug trafficking offence or in respect of an offence to which Part VI of the 1988 Act applies,

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(372) 1988 c. 33; section 73 and Schedule 4 were repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(373) 1994 c. 37; section 11 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2)(a) and Schedule 12.

he must serve a copy as soon as practicable on the defendant or the prosecutor, as the case may be.

(2) Any statement tendered by the prosecutor to the magistrates' court under section 73 of the 1988 Act or to the Crown Court under section 11(1) of the 1994 Act or section 73(1A) of the 1988 Act shall include the following particular—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is made and the date on which it was made;
- (c) where the statement is not tendered immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred; and
- (d) such information known to the prosecutor as is relevant to the determination as to whether or not the defendant has benefited from drug trafficking or relevant criminal conduct and to the assessment of the value of his proceeds of drug trafficking or, as the case may be, benefit from relevant criminal conduct.

(3) Where, in accordance with section 11(7) of the 1994 Act or section 73(1C) of the 1988 Act, the defendant indicates the extent to which he accepts any allegation contained within the prosecutor's statement, if he indicates the same in writing to the prosecutor, he must serve a copy of that reply on the court officer.

(4) Expressions used in this rule shall have the same meanings as in the 1994 Act or, where appropriate, the 1988 Act.

*[Note. Formerly rule 104A of the Magistrates' Courts Rules 1981(374) and rule 25A of the Crown Court Rules 1982(375). The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Postponed determinations**

**56.2.**—(1) Where an application is made by the defendant or the prosecutor—

- (a) to a magistrates' court under section 72A(5)(a) of the Criminal Justice Act 1988(376) asking the court to exercise its powers under section 72A(4) of that Act; or
- (b) to the Crown Court under section 3(5)(a) of the Drug Trafficking Act 1994(377) asking the Court to exercise its powers under section 3(4) of that Act, or under section 72A(5)(a) of the 1988 Act asking the court to exercise its powers under section 72A(4) of the 1988 Act,

the application must be made in writing and a copy must be served on the prosecutor or the defendant, as the case may be.

(2) A party served with a copy of an application under paragraph (1) shall, within 28 days of the date of service, notify the applicant and the court officer, in writing, whether or not he proposes to oppose the application, giving his reasons for any opposition.

(3) After the expiry of the period referred to in paragraph (2), the court shall determine whether an application under paragraph (1) is to be dealt with—

- (a) without a hearing; or
- (b) at a hearing at which the parties may be represented.

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(374) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1989/300, 1994/3154, 1995/2619, 2001/610.

(375) S.I. 1982/1109; amending instruments relevant to this Part are S.I. 1986/2151, 1991/1288, 1994/3153, 1995/2618, 2003/422.

(376) Section 72A was inserted by the Criminal Justice Act 1993 (c. 36), section 28.

(377) Section 3 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2) (a) and Schedule 12.

*[Note. Formerly rule 104B of the Magistrates' Courts Rules 1981 and rule 34 of the Crown Court Rules 1982. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Confiscation orders—revised assessments**

**56.3.**—(1) Where the prosecutor makes an application under section 13, 14 or 15 of the Drug Trafficking Act 1994(**378**) or section 74A, 74B or 74C of the Criminal Justice Act 1988(**379**), the application must be in writing and a copy must be served on the defendant.

(2) The application must include the following particulars—

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

*[Note. Formerly rule 104C of the Magistrates' Courts Rules 1981 and rule 35 of the Crown Court Rules 1982. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Application to Crown Court to discharge or vary order to make material available**

**56.4.**—(1) Where an order under section 93H of the Criminal Justice Act 1988(**380**) (order to make material available), section 55 of the Drug Trafficking Act 1994(**381**) (order to make material available), or section 345 of the Proceeds of Crime Act 2002(**382**) (production orders) has been made by the Crown Court, any person affected by it may apply in writing to the court officer for the order to be discharged or varied, and on hearing such an application a circuit judge or, in the case of an order under the 2002 Act, a judge entitled to exercise the jurisdiction of the Crown Court may discharge the order or make such variations to it as he thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, he shall give a copy of the application, not later than 48 hours before the making of the application—

- (a) to a constable at the police station specified in the order; or
- (b) where the application for the order was made under the 2002 Act and was not made by a constable, to the office of the appropriate officer who made the application, as specified in the order,

in either case together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) A circuit judge or, in the case of an order under the 2002 Act, a judge entitled to exercise the jurisdiction of the Crown Court may direct that paragraph (2) need not be complied with if he is

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(**378**) Sections 13, 14 and 15 were repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2)(a) and Schedule 12.

(**379**) Sections 74A, 74B and 74C were inserted by the Proceeds of Crime Act 1995 (c. 11), sections 5, 6 and 7 respectively, and repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(**380**) Section 93H was inserted by the Proceeds of Crime Act 1995 (c. 11), section 11, and repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(**381**) Section 55 was amended by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2)(b) and Schedule 12 and by the Courts Act 2003 (c. 39), Schedule 8, paragraph 364.

(**382**) 2002 c. 29.

satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(4) In this rule:

“appropriate officer” has the meaning given to it by section 378 of the 2002 Act;

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“police station” includes a place for the time being occupied by Her Majesty’s Customs and Excise.

*[Note. Formerly rule 25B of the Crown Court Rules 1982. For further rules applicable to investigations under the 2002 Act, see Part 62. The relevant provision of the 1988 Act was repealed on 24th February 2003 but it continues to have effect in respect of proceedings for offences committed before that date.]*

### **Application to Crown Court for increase in term of imprisonment in default of payment of a confiscation order**

**56.5.**—(1) This rule applies to applications made, or that have effect as made, to the Crown Court under section 10 of the Drug Trafficking Act 1994(**383**) and section 75A of the Criminal Justice Act 1988(**384**) (interest on sums unpaid under confiscation orders).

(2) Notice of an application to which this rule applies to increase the term of imprisonment or detention fixed in default of payment of a confiscation order by a person (“the defendant”) shall be made by the prosecutor in writing to the court officer.

(3) A notice under paragraph (2) shall—

- (a) state the name and address of the defendant;
- (b) specify the grounds for the application;
- (c) give details of the enforcement measures taken, if any; and
- (d) include a copy of the confiscation order.

(4) On receiving a notice under paragraph (2), the court officer shall—

- (a) forthwith send to the defendant and the magistrates' court required to enforce payment of the confiscation order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(**385**), a copy of the said notice; and
- (b) notify in writing the applicant and the defendant of the date, time and place appointed for the hearing of the application.

(5) Where the Crown Court makes an order pursuant to an application mentioned in paragraph (1) above, the court officer shall send forthwith a copy of the order—

- (a) to the applicant;
- (b) to the defendant;
- (c) where the defendant is at the time of the making of the order in custody, to the person having custody of him; and
- (d) to the magistrates' court mentioned in paragraph (4)(a).

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(383) Section 10 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2) (a) and Schedule 12.

(384) Section 75A was inserted by the Proceeds of Crime Act 1995 (c. 11), section 9, and repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 17(1) and (2)(a) and Schedule 12.

(385) 2000 c. 6; section 140(1) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraphs 74(1) and (4) (a), (b) and Schedule 37, Part 4, with effect from a date to be appointed.

*[Note. Formerly rule 33 of the Crown Court Rules 1982. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003 but they continue to have effect in respect of proceedings for offences committed before that date.]*

### **Drug trafficking—compensation on acquittal in Crown Court**

**56.6.** Where a Crown Court cancels a confiscation order under section 22(2) of the Drug Trafficking Act 1994(**386**), the court officer shall serve notice to that effect on the High Court and on the magistrates' court which has responsibility for enforcing the order.

*[Note. Formerly rule 36 of the Crown Court Rules 1982. The relevant provision of the 1994 Act was repealed on 24th March 2003 but it continues to have effect in respect of proceedings for offences committed before that date.]*

## PART 57

### PROCEEDS OF CRIME ACT 2002—RULES APPLICABLE TO ALL PROCEEDINGS

#### Contents of this Part

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### **Interpretation**

**57.1.** In this Part and in Parts 58, 59, 60 and 61:

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(386) Section 22 was repealed, with savings, by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1, 25(1) and (2) (a) and Schedule 12.

“business day” means any day other than a Saturday, Sunday, Christmas Day or Good Friday, or a bank holiday under the Banking and Financial Dealings Act 1971(387), in England and Wales;

“document” means anything in which information of any description is recorded;

“hearsay evidence” means evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(388);

“restraint proceedings” means proceedings under sections 42 and 58(2) and (3) of the Proceeds of Crime Act 2002(389);

“receivership proceedings” means proceedings under sections 48, 49, 50, 51, 52, 53, 54(4), 56(4), 59(2) and (3), 60(2) and (3), 62 and 63 of the 2002 Act(390);

“witness statement” means a written statement signed by a person which contains the evidence, and only that evidence, which that person would be allowed to give orally; and

words and expressions used have the same meaning as in Part 2 of the 2002 Act.

*[Note. Formerly rule 2 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003(391).]*

### Calculation of time

**57.2.**—(1) This rule shows how to calculate any period of time for doing any act which is specified by this Part and Parts 58, 59, 60 and 61 for the purposes of any proceedings under Part 2 of the Proceeds of Crime Act 2002 or by an order of the Crown Court in restraint proceedings or receivership proceedings.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule “clear days” means that in computing the number of days—

(a) the day on which the period begins; and

(b) if the end of the period is defined by reference to an event, the day on which that event occurs are not included.

(4) Where the specified period is five days or less and includes a day which is not a business day that day does not count.

*[Note. Formerly rule 3 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### Court office closed

**57.3.** When the period specified by this Part or Parts 58, 59, 60 and 61, or by an order of the Crown Court under Part 2 of the Proceeds of Crime Act 2002, for doing any act at the court office falls on a day on which the office is closed, that act shall be in time if done on the next day on which the court office is open.

*[Note. Formerly rule 4 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

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(387) 1971 c. 80.

(388) 1995 c. 38.

(389) 2002 c. 29.

(390) Section 54 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 407.

(391) S.I. 2003/421.



### **Application for registration of Scottish or Northern Ireland Order**

**57.4.**—(1) This rule applies to an application for registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002(392).

- (2) The application may be made without notice.
- (3) The application must be in writing and may be supported by a witness statement which must—
  - (a) exhibit the order or a certified copy of the order; and
  - (b) to the best of the witness's ability, give full details of the realisable property located in England and Wales in respect of which the order was made and specify the person holding that realisable property.
- (4) If the court registers the order, the applicant must serve notice of the registration on—
  - (a) any person who holds realisable property to which the order applies; and
  - (b) any other person whom the applicant knows to be affected by the order.
- (5) The permission of the Crown Court under rule 57.13 is not required to serve the notice outside England and Wales.

*[Note. Formerly rule 30 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application to vary or set aside registration**

**57.5.**—(1) An application to vary or set aside registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 may be made to the Crown Court by—

- (a) any person who holds realisable property to which the order applies; and
- (b) any other person affected by the order.
- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application must be served on the person who applied for registration at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.
- (5) No property in England and Wales may be realised in pursuance of the order before the Crown Court has decided the application.

*[Note. Formerly rule 31 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Register of orders**

**57.6.**—(1) The Crown Court must keep, under the direction of the Lord Chancellor, a register of the orders registered under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002.

- (2) The register must include details of any variation or setting aside of a registration under rule 57.5 and of any execution issued on a registered order.

(3) If the person who applied for registration of an order which is subsequently registered notifies the Crown Court that the court which made the order has varied or discharged the order, details of the variation or discharge, as the case may be, must be entered in the register.

*[Note. Formerly rule 32 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Statements of truth**

**57.7.**—(1) Any witness statement required to be served by this Part or by Parts 58, 59, 60 or 61 must be verified by a statement of truth contained in the witness statement.

(2) A statement of truth is a declaration by the person making the witness statement to the effect that the witness statement is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(3) The statement of truth must be signed by the person making the witness statement.

(4) If the person making the witness statement fails to verify the witness statement by a statement of truth, the Crown Court may direct that it shall not be admissible as evidence.

*[Note. Formerly rule 54 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Use of witness statements for other purposes**

**57.8.**—(1) Except as provided by this rule, a witness statement served in proceedings under Part 2 of the Proceeds of Crime Act 2002 may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that—

- (a) the witness gives consent in writing to some other use of it;
- (b) the Crown Court gives permission for some other use; or
- (c) the witness statement has been put in evidence at a hearing held in public.

*[Note. Formerly rule 55 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Expert evidence**

**57.9.**—(1) A party to proceedings under Part 2 of the Proceeds of Crime Act 2002 who wishes to adduce expert evidence (whether of fact or opinion) in the proceedings must, as soon as practicable—

- (a) serve on the other parties a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) serve on any party who requests it in writing, a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine)—
  - (i) the record of any observation, test, calculation or other procedure on which the finding or opinion is based, and
  - (ii) any document or other thing or substance in respect of which the observation, test, calculation or other procedure mentioned in paragraph (1)(b)(i) has been carried out.
- (c) A party may serve notice in writing waiving his right to be served with any of the matters mentioned in paragraph (1) and, in particular, may agree that the statement mentioned in paragraph (1)(a) may be given to him orally and not served in writing.

- (d) If a party who wishes to adduce expert evidence in proceedings under Part 2 of the 2002 Act fails to comply with this rule he may not adduce that evidence in those proceedings without the leave of the court, except where rule 57.10 applies.

*[Note. Formerly rule 56 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Exceptions to procedure for expert evidence**

**57.10.**—(1) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with rule 57.9 might lead to the intimidation, or attempted intimidation, of any person on whose evidence he intends to rely in the proceedings, or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements in relation to that evidence, unless the Crown Court orders otherwise.

(2) Where, in accordance with paragraph (1), a party considers that he is not obliged to comply with the requirements imposed by rule 57.9 with regard to any evidence in relation to any other party, he must serve notice in writing on that party stating—

- (a) that the evidence is being withheld; and
- (b) the reasons for withholding the evidence.

*[Note. Formerly rule 57 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Service of documents**

**57.11.**—(1) Rules 4.3 (service of documents in Crown Court proceedings) and 32.1 (notice required to accompany process served outside the United Kingdom and translations) shall not apply in restraint proceedings and receivership proceedings.

(2) Where this Part or Parts 58, 59, 60 or 61 requires service of a document, then, unless the Crown Court directs otherwise, the document may be served by any of the following methods—

- (a) in all cases, by delivering the document personally to the party to be served;
- (b) if no solicitor is acting for the party to be served by delivering the document at, or by sending it by first class post to, his residence or his last-known residence; or
- (c) if a solicitor is acting for the party to be served—
  - (i) by delivering the document at, or sending it by first class post to, the solicitor's business address, or
  - (ii) where the solicitor's business address includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or
  - (iii) if the solicitor has indicated that he is willing to accept service by facsimile transmission, by sending a legible copy of the document by facsimile transmission to the solicitor's office.

(3) A document shall, unless the contrary is proved, be deemed to have been served—

- (a) in the case of service by first class post, on the second business day after posting;
- (b) in the case of service in accordance with paragraph (2)(c)(ii), on the second business day after the day on which it is left at the document exchange; and
- (c) in the case of service in accordance with paragraph (2)(c)(iii), where it is transmitted on a business day before 4 p.m., on that day and in any other case, on the next business day.

(4) An order made in restraint proceedings or receivership proceedings may be enforced against the defendant or any other person affected by it notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Crown Court is satisfied that the person had notice of the order by being present when the order was made.

*[Note. Formerly rule 58 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Service by an alternative method**

**57.12.**—(1) Where it appears to the Crown Court that there is a good reason to authorise service by a method not otherwise permitted by rule 57.11, the court may make an order permitting service by an alternative method.

(2) An application for an order permitting service by an alternative method—

- (a) must be supported by evidence; and
- (b) may be made without notice.

(3) An order permitting service by an alternative method must specify—

- (a) the method of service; and
- (b) the date when the document will be deemed to be served.

*[Note. Formerly rule 59 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Service outside the jurisdiction**

**57.13.**—(1) Where this Part requires a document to be served on someone who is outside England and Wales, it may be served outside England and Wales with the permission of the Crown Court.

(2) Where a document is to be served outside England and Wales it may be served by any method permitted by the law of the country in which it is to be served.

(3) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the document is to be served which is against the law of that country.

(4) Where this Part requires a document to be served a certain period of time before the date of a hearing and the recipient does not appear at the hearing, the hearing must not take place unless the Crown Court is satisfied that the document has been duly served.

*[Note. Formerly rule 60 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Certificates of service**

**57.14.**—(1) Where this Part requires that the applicant for an order in restraint proceedings or receivership proceedings serve a document on another person, the applicant must lodge a certificate of service with the Crown Court within seven days of service of the document.

(2) The certificate must state—

- (a) the method of service;
- (b) the date of service; and
- (c) if the document is served under rule 57.12, such other information as the court may require when making the order permitting service by an alternative method.

(3) Where a document is to be served by the Crown Court in restraint proceedings and receivership proceedings and the court is unable to serve it, the court must send a notice of non-service stating the method attempted to the party who requested service.

*[Note. Formerly rule 61 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## PART 58

### PROCEEDS OF CRIME ACT 2002—RULES APPLICABLE ONLY TO CONFISCATION PROCEEDINGS

#### Contents of this Part

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#### Statements in connection with confiscation orders

**58.1.**—(1) When the prosecutor or the Director is required, under section 16 of the Proceeds of Crime Act 2002(393), to give a statement to the Crown Court, the prosecutor or the Director, as the case may be, must also, as soon as practicable, serve a copy of the statement on the defendant.

(2) Any statement given to the Crown Court by the prosecutor or the Director under section 16 of the 2002 Act must, in addition to the information required by the 2002 Act, include the following information—

- (a) the name of the defendant;

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

(3) Where, under section 17 of the 2002 Act, the Crown Court orders the defendant to indicate the extent to which he accepts each allegation in a statement given by the prosecutor or the Director, the defendant must indicate this in writing to the prosecutor or the Director (as the case may be) and must give a copy to the Crown Court.

(4) Where the Crown Court orders the defendant to give to it any information under section 18 of the 2002 Act, the defendant must provide the information in writing and must, as soon as practicable, serve a copy of it on—

- (a) the prosecutor, if the prosecutor asked the court to proceed under section 6 of the 2002 Act<sup>(394)</sup>; or
- (b) the Director, if the Director asked the court to proceed under section 6 of the 2002 Act.

*[Note. Formerly rule 5 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003(395).]*

#### **Postponement of confiscation proceedings**

**58.2.** The Crown Court may grant a postponement under section 14(1)(b) of the Proceeds of Crime Act 2002 without a hearing.

*[Note. Formerly rule 6 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Application for reconsideration of decision to make confiscation order or benefit assessed for purposes of confiscation order**

**58.3.—**(1) This rule applies where the prosecutor or Director makes an application under section 19, 20 or 21 of the Proceeds of Crime Act 2002.

- (2) The application must be in writing and give details of—
  - (a) the name of the defendant;
  - (b) the date on which and the place where any relevant conviction occurred;
  - (c) the date on which and the place where any relevant confiscation order was made or varied;
  - (d) the grounds for the application; and
  - (e) an indication of the evidence available to support the application.

(3) The application must be lodged with the Crown Court.

(4) The application must be served on the defendant at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. Formerly rule 7 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Application for reconsideration of available amount**

**58.4.—**(1) This rule applies where the prosecutor, the Director or a receiver makes an application under section 22 of the Proceeds of Crime Act 2002 for a new calculation of the available amount.

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<sup>(394)</sup> Section 6 was amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraphs 75(1), (2).  
<sup>(395)</sup> S.I. 2003/421.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the defendant;
  - (b) the receiver, if the prosecutor or the Director is making the application and a receiver has been appointed under section 50 or 52 of the 2002 Act; and
  - (c) if the receiver is making the application—
    - (i) the prosecutor, or
    - (ii) if the Director is appointed as the enforcement authority under section 34 of the 2002 Act, the Director,at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. Formerly rule 8 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Variation of confiscation order due to inadequacy of available amount**

**58.5.**—(1) This rule applies where the defendant or a receiver makes an application under section 23 of the Proceeds of Crime Act 2002 for the variation of a confiscation order.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the prosecutor, or if the Director is appointed as the enforcement authority under section 34 of the 2002 Act, the Director;
  - (b) the defendant, if the receiver is making the application; and
  - (c) the receiver, if the defendant is making the application and a receiver has been appointed under section 50 or 52 of the 2002 Act,

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. Formerly rule 9 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Application by magistrates' court officer to discharge confiscation order**

**58.6.**—(1) This rule applies where a magistrates' court officer makes an application under section 24 or 25 of the Proceeds of Crime Act 2002(**396**) for the discharge of a confiscation order.

- (2) The application must be in writing and give details of—
  - (a) the confiscation order;
  - (b) the amount outstanding under the order; and
  - (c) the grounds for the application.
- (3) The application must be served on—
  - (a) the defendant;
  - (b) the prosecutor; and

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(396) Sections 24 and 25 were amended by the Courts Act 2003 (c. 39), Schedule 8, paragraphs 406(a), (b).

(c) any receiver appointed under section 50 of the 2002 Act.

(4) The Crown Court may determine the application without a hearing unless a person listed in paragraph (3) indicates, within seven days after the application was served on him, that he would like to make representations.

(5) If the Crown Court makes an order discharging the confiscation order, the court must, at once, send a copy of the order to—

- (a) the magistrates' court officer who applied for the order;
- (b) the defendant;
- (c) the prosecutor; and
- (d) any receiver appointed under section 50 of the 2002 Act.

*[Note. Formerly rule 10 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Application for variation of confiscation order made against an absconder**

**58.7.**—(1) This rule applies where the defendant makes an application under section 29 of the Proceeds of Crime Act 2002 for the variation of a confiscation order made against an absconder.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made against an absconder under section 6 of the 2002 Act as applied by section 28 of the 2002 Act;
- (b) the circumstances in which the defendant ceased to be an absconder;
- (c) the defendant's conviction of the offence or offences concerned; and
- (d) the reason why he believes the amount required to be paid under the confiscation order was too large.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor or, if the Director is appointed as the enforcement authority under section 34 of the 2002 Act, the Director at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. Formerly rule 11 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Application for discharge of confiscation order made against an absconder**

**58.8.**—(1) This rule applies if the defendant makes an application under section 30 of the Proceeds of Crime Act 2002 for the discharge of a confiscation order.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made under section 28 of the 2002 Act;
- (b) the date on which the defendant ceased to be an absconder;
- (c) the acquittal of the defendant if he has been acquitted of the offence concerned; and
- (d) if the defendant has not been acquitted of the offence concerned—
  - (i) the date on which the defendant ceased to be an absconder,



- (ii) the date on which the proceedings taken against the defendant were instituted and a summary of steps taken in the proceedings since then, and
- (iii) any indication given by the prosecutor that he does not intend to proceed against the defendant.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor or, if the Director is appointed as the enforcement authority under section 34 of the 2002 Act, the Director at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) If the Crown Court orders the discharge of the confiscation order, the court must serve notice on the magistrates' court responsible for enforcing the order if the Director has not been appointed as the enforcement authority under section 34 of the 2002 Act.

*[Note. Formerly rule 12 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Application for increase in term of imprisonment in default**

**58.9.**—(1) This rule applies where the prosecutor or the Director makes an application under section 39(5) of the Proceeds of Crime Act 2002 to increase the term of imprisonment in default of payment of a confiscation order.

(2) The application must be made in writing and give details of—

- (a) the name and address of the defendant;
- (b) the confiscation order;
- (c) the grounds for the application; and
- (d) the enforcement measures taken, if any.

(3) On receipt of the application, the court must—

- (a) at once, send to the defendant and, if the Director has not been appointed as the enforcement authority under section 34 of the 2002 Act, the magistrates' court responsible for enforcing the order, a copy of the application; and
- (b) fix a time, date and place for the hearing and notify the applicant and the defendant of that time, date and place.

(4) If the Crown Court makes an order increasing the term of imprisonment in default, the court must, at once, send a copy of the order to—

- (a) the applicant;
- (b) the defendant;
- (c) where the defendant is in custody at the time of the making of the order, the person having custody of the defendant; and
- (d) if the Director has not been appointed as the enforcement authority under section 34 of the 2002 Act, the magistrates' court responsible for enforcing the order.

*[Note. Formerly rule 13 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Compensation—general**

**58.10.**—(1) This rule applies to an application for compensation under section 72 of the Proceeds of Crime Act 2002.

- (2) The application must be in writing and may be supported by a witness statement.
- (3) The application and any witness statement must be lodged with the Crown Court.
- (4) The application and any witness statement must be served on—
  - (a) the person alleged to be in default; and
  - (b) the person by whom the compensation would be payable under section 72(9) of the 2002 Act (or if the compensation is payable out of a police fund under section 72(9)(a), the chief officer of the police force concerned),

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court directs otherwise.

*[Note. Formerly rule 14 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Compensation—confiscation order made against absconder**

**58.11.**—(1) This rule applies to an application for compensation under section 73 of the Proceeds of Crime Act 2002.

(2) The application must be in writing and supported by a witness statement which must give details of—

- (a) the confiscation order made under section 28 of the 2002 Act;
- (b) the variation or discharge of the confiscation order under section 29 or 30 of the 2002 Act;
- (c) the realisable property to which the application relates; and
- (d) the loss suffered by the applicant as result of the confiscation order.

(3) The application and witness statement must be lodged with the Crown Court.

(4) The application and witness statement must be served on the prosecutor or, if the Director is appointed as the enforcement authority under section 34 of the 2002 Act, the Director at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. Formerly rule 15 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Payment of money in bank or building society account in satisfaction of confiscation order**

**58.12.**—(1) An order under section 67 of the Proceeds of Crime Act 2002(397) requiring a bank or building society to pay money to a magistrates' court officer (“a payment order”) shall—

- (a) be directed to the bank or building society in respect of which the payment order is made;
- (b) name the person against whom the confiscation order has been made;
- (c) state the amount which remains to be paid under the confiscation order;
- (d) state the name and address of the branch at which the account in which the money ordered to be paid is held and the sort code of that branch, if the sort code is known;
- (e) state the name in which the account in which the money ordered to be paid is held and the account number of that account, if the account number is known;
- (f) state the amount which the bank or building society is required to pay to the court officer under the payment order;
- (g) give the name and address of the court officer to whom payment is to be made; and

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(397) Section 67 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 409.

(h) require the bank or building society to make payment within a period of seven days beginning on the day on which the payment order is made, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances.

(2) The payment order shall be served on the bank or building society in respect of which it is made by leaving it at, or sending it by first class post to, the principal office of the bank or building society.

(3) A payment order which is served by first class post shall, unless the contrary is proved, be deemed to have been served on the second business day after posting.

(4) In this rule “confiscation order” has the meaning given to it by section 88(6) of the Proceeds of Crime Act 2002.

*[Note. Formerly rule 57A of the Magistrates' Courts Rules 1981(398).]*

## PART 59

### PROCEEDS OF CRIME ACT 2002—RULES APPLICABLE ONLY TO RESTRAINT PROCEEDINGS

#### Contents of this Part

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Application for restraint order	rule 59.1
Restraint orders	rule 59.2
Application for discharge or variation of order	rule 59.3
Application for variation of order by person who applied for it	rule 59.4
Application for discharge of order by person who applied for it	rule 59.5

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#### Application for restraint order

**59.1.**—(1) This rule applies where the prosecutor, the Director or an accredited financial investigator makes an application for a restraint order under section 42 of the Proceeds of Crime Act 2002(**399**).

(2) The application may be made without notice.

(3) The application must be in writing and supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) to the best of the witness’s ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
- (c) give the grounds for, and full details of, any application for an ancillary order under section 41(7) of the 2002 Act for the purposes of ensuring that the restraint order is effective; and
- (d) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act.

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(398) S.I. 1981/552; amended by S.I. 2003/423; there are other amending instruments but none is relevant.  
(399) 2002 c. 29.

*[Note. Formerly rule 16 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003(400).]*

### **Restraint orders**

**59.2.**—(1) The Crown Court may make a restraint order subject to exceptions, including, but not limited to, exceptions for reasonable living expenses and reasonable legal expenses, and for the purpose of enabling any person to carry on any trade, business or occupation.

(2) But the Crown Court must not make an exception for legal expenses where this is prohibited by section 41(4) of the Proceeds of Crime Act 2002.

(3) An exception to a restraint order may be made subject to conditions.

(4) The Crown Court must not require the applicant for a restraint order to give any undertaking relating to damages sustained as a result of the restraint order by a person who is prohibited from dealing with realisable property by the restraint order.

(5) The Crown Court may require the applicant for a restraint order to give an undertaking to pay the reasonable expenses of any person, other than a person who is prohibited from dealing with realisable property by the restraint order, which are incurred in complying with the restraint order.

(6) A restraint order must include a statement that disobedience of the order, either by a person to whom the order is addressed, or by another person, may be contempt of court and the order must include details of the possible consequences of being held in contempt of court.

(7) Unless the Crown Court directs otherwise, a restraint order made without notice has effect until the court makes an order varying or discharging the restraint order.

(8) The applicant for a restraint order must—

- (a) serve copies of the restraint order and of the witness statement made in support of the application on the defendant and any person who is prohibited from dealing with realisable property by the restraint order; and
- (b) notify any person whom the applicant knows to be affected by the restraint order of the terms of the restraint order.

*[Note. Formerly rule 17 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application for discharge or variation of restraint order by person affected by order**

**59.3.**—(1) This rule applies where a person affected by a restraint order makes an application to the Crown Court under section 42(3) of the Proceeds of Crime Act 2002 to discharge or vary the restraint order or any ancillary order made under section 41(7) of the Act.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be lodged with the Crown Court.

(4) The application and any witness statement must be served on the person who applied for the restraint order and any person who is prohibited from dealing with realisable property by the restraint order (if he is not the person making the application) at least two days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. Formerly rule 18 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application for variation of restraint order by the person who applied for the order**

**59.4.**—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to the Crown Court to vary the restraint order or any ancillary order made under section 41(7) of the 2002 Act (including where the court has already made a restraint order and the applicant is seeking to vary the order in order to restrain further realisable property).

(2) The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) The application must be in writing and must be supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) where the application is for the inclusion of further realisable property in the order give full details, to the best of the witness's ability, of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; and
- (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act.

(4) The application and witness statement must be lodged with the Crown Court.

(5) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on any person who is prohibited from dealing with realisable property by the restraint order at least 2 days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(6) If the court makes an order for the variation of a restraint order, the applicant must serve copies of the order and of the witness statement made in support of the application on—

- (a) the defendant;
- (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the variation); and
- (c) any other person whom the applicant knows to be affected by the order.

*[Note. Formerly rule 19 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application for discharge of a restraint order by the person who applied for the order**

**59.5.**—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to discharge the order or any ancillary order made under section 41(7) of the 2002 Act.

(2) The application may be made without notice.

(3) The application must be in writing and must state the grounds for the application.

(4) If the court makes an order for the discharge of a restraint order, the applicant must serve copies of the order on—

- (a) the defendant;
- (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the discharge); and
- (c) any other person whom the applicant knows to be affected by the order.

*[Note. Formerly rule 20 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

**PART 60**  
**PROCEEDS OF CRIME ACT 2002—RULES**  
**APPLICABLE ONLY TO RECEIVERSHIP PROCEEDINGS**

**Contents of this Part**

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Application for appointment of receiver	rule 60.1
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Security	rule 60.5
Remuneration	rule 60.6
Accounts	rule 60.7
Non-compliance by receiver	rule 60.8

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**Application for appointment of a management or enforcement receiver**

**60.1.**—(1) This rule applies to an application for the appointment of a management receiver under section 48(1) of the Proceeds of Crime Act 2002(**401**) and an application for the appointment of an enforcement receiver under section 50(1) of the 2002 Act.

(2) The application may be made without notice if—

- (a) the application is joined with an application for a restraint order under rule 59.1;
- (b) the application is urgent; or
- (c) there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) The application must be in writing and must be supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) give full details of the proposed receiver;
- (c) to the best of the witness's ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;
- (d) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act; and
- (e) if the proposed receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or the Commissioners of Customs and Excise and the applicant is asking the court to allow the receiver to act—
  - (i) without giving security, or
  - (ii) before he has given security or satisfied the court that he has security in place, explain the reasons why that is necessary.

(4) Where the application is for the appointment of an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be lodged with the Crown Court and served on—

- (a) the defendant;
- (b) any person who holds realisable property to which the application relates; and
- (c) any other person whom the applicant knows to be affected by the application,

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the appointment of a receiver, the applicant must serve copies of the order and of the witness statement made in support of the application on—

- (a) the defendant;
- (b) any person who holds realisable property to which the order applies; and
- (c) any other person whom the applicant knows to be affected by the order.

*[Note. Formerly rule 21 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003(402).]*

#### **Application for conferral of powers on management receiver, enforcement receiver or Director's receiver**

**60.2.**—(1) This rule applies to an application for the conferral of powers on a management receiver under section 49(1) of the Proceeds of Crime Act 2002, an enforcement receiver under section 51(1) of the 2002 Act or a Director's receiver under section 53(1) of the 2002 Act.

(2) The application may be made without notice if the application is to give the receiver power to take possession of property and—

- (a) the application is joined with an application for a restraint order under rule 59.1;
- (b) the application is urgent; or
- (c) there are reasonable grounds for believing that giving notice would cause the dissipation of the property which is the subject of the application.

(3) The application must be made in writing and supported by a witness statement which must—

- (a) give the grounds for the application;
- (b) give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; and
- (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under section 68 of the 2002 Act.

(4) Where the application is for the conferral of powers on an enforcement receiver or Director's receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on—

- (a) the defendant;

- (b) any person who holds realisable property in respect of which a receiver has been appointed or in respect of which an application for a receiver has been made;
  - (c) any other person whom the applicant knows to be affected by the application; and
  - (d) the receiver (if one has already been appointed), at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.
- (7) If the court makes an order for the conferral of powers on a receiver, the applicant must serve copies of the order on—
- (a) the defendant;
  - (b) any person who holds realisable property in respect of which the receiver has been appointed; and
  - (c) any other person whom the applicant knows to be affected by the order.

*[Note. Formerly rule 22 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Applications for discharge or variation of receivership orders and applications for other orders**

**60.3.**—(1) This rule applies to applications under section 62(3) of the Proceeds of Crime Act 2002 for orders (by persons affected by the action of receivers) and applications under section 63(1) of the 2002 Act for the discharge or variation of orders relating to receivers.

(2) The application must be made in writing and lodged with the Crown Court.

(3) The application must be served on the following persons (except where they are the person making the application)—

- (a) the person who applied for appointment of the receiver;
- (b) the defendant;
- (c) any person who holds realisable property in respect of which the receiver has been appointed;
- (d) the receiver; and
- (e) any other person whom the applicant knows to be affected by the application, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If the court makes an order for the discharge or variation of an order relating to a receiver under section 63(2) of the 2002 Act, the applicant must serve copies of the order on any persons whom he knows to be affected by the order.

*[Note. Formerly rule 23 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Sums in the hands of receivers**

**60.4.**—(1) This rule applies where the amount payable under a confiscation order has been fully paid and any sums remain in the hands of an enforcement receiver or Director's receiver.

(2) The receiver must make an application to the Crown Court for directions as to the distribution of the sums in his hands.

(3) The application and any evidence which the receiver intends to rely on in support of the application must be served on—

- (a) the defendant; and



(b) any other person who held (or holds) interests in any property realised by the receiver, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If any of the provisions listed in paragraph (5) (provisions as to the vesting of funds in a trustee in bankruptcy) apply, then the Crown Court must make a declaration to that effect.

(5) These are the provisions—

- (a) section 31B of the Bankruptcy (Scotland) Act 1985(403);
- (b) section 306B of the Insolvency Act 1986(404); and
- (c) article 279B of the Insolvency (Northern Ireland) Order 1989(405).

*[Note. Formerly rule 24 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### Security

**60.5.**—(1) This rule applies where the Crown Court appoints a receiver under section 48, 50 or 52 of the Proceeds of Crime Act 2002 and the receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or of the Commissioners of Customs and Excise (and it is immaterial whether the receiver is a permanent or temporary member or he is on secondment from elsewhere).

(2) The Crown Court may direct that before the receiver begins to act, or within a specified time, he must either—

- (a) give such security as the Crown Court may determine; or
- (b) file with the Crown Court and serve on all parties to any receivership proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(3) The Crown Court may terminate the appointment of a receiver if he fails to—

- (a) give the security; or
- (b) satisfy the court as to the security he has in force, by the date specified.

*[Note. Formerly rule 25 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### Remuneration

**60.6.**—(1) This rule applies where the Crown Court appoints a receiver under section 48, 50 or 52 of the Proceeds of Crime Act 2002 and the receiver is not a member of staff of the Assets Recovery Agency, the Crown Prosecution Service or of the Commissioners of Customs and Excise (and it is immaterial whether the receiver is a permanent or temporary member or he is on secondment from elsewhere).

(2) The receiver may only charge for his services if the Crown Court—

- (a) so directs; and
- (b) specifies the basis on which the receiver is to be remunerated.

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(403) 1985 c. 66; section 31B was inserted by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 15(1), (4).  
(404) 1986 c. 45; section 306B was inserted by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 16(1), (3).  
(405) S.I. 1989/2405; article 279B was inserted by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 20(3).

(3) Unless the Crown Court orders otherwise, in determining the remuneration of the receiver, the Crown Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—

- (a) the time properly given by him and his staff to the receivership;
- (b) the complexity of the receivership;
- (c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;
- (d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and
- (e) the value and nature of the subject matter of the receivership.

(4) The Crown Court may refer the determination of a receiver's remuneration to be ascertained by the taxing authority of the Crown Court and rules 78.4 to 78.7 shall have effect as if the taxing authority was ascertaining costs.

(5) A receiver appointed under section 48 of the 2002 Act is to receive his remuneration by realising property in respect of which he is appointed, in accordance with section 49(2)(d) of the 2002 Act.

(6) A receiver appointed under section 50 of the 2002 Act is to receive his remuneration by applying to the magistrates' court officer for payment under section 55(4)(b) of the 2002 Act.

(7) A receiver appointed under section 52 of the 2002 Act is to receive his remuneration by applying to the Director for payment under section 57(4)(b) of the 2002 Act.

*[Note. Formerly rule 26 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## **Accounts**

**60.7.**—(1) The Crown Court may order a receiver appointed under section 48, 50 or 52 of the Proceeds of Crime Act 2002 to prepare and serve accounts.

(2) A party to receivership proceedings served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) Any party to receivership proceedings may, within 14 days of being served with the accounts, serve notice on the receiver—

- (a) specifying any item in the accounts to which he objects;
- (b) giving the reason for such objection; and
- (c) requiring the receiver within 14 days of receipt of the notice, either—
  - (i) to notify all the parties who were served with the accounts that he accepts the objection, or
  - (ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he must at the same time lodge with the Crown Court—

- (a) the accounts; and
- (b) a copy of the notice served on him under this section of the rule.

(5) If the receiver fails to comply with paragraph (3)(c) of this rule, any party to receivership proceedings may apply to the Crown Court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts the court will certify the result.

*[Note. Formerly rule 27 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Non-compliance by receiver**

**60.8.**—(1) If a receiver appointed under section 48, 50 or 52 of the Proceeds of Crime Act 2002 fails to comply with any rule, practice direction or direction of the Crown Court, the Crown Court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing, the Crown Court may make any order it considers appropriate, including—

- (a) terminating the appointment of the receiver;
- (b) reducing the receiver’s remuneration or disallowing it altogether; and
- (c) ordering the receiver to pay the costs of any party.

*[Note. Formerly rule 28 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## **PART 61**

### **PROCEEDS OF CRIME ACT 2002—RULES APPLICABLE TO RESTRAINT AND RECEIVERSHIP PROCEEDINGS**

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### **Distress and forfeiture**

**61.1.**—(1) This rule applies to applications under sections 58(2) and (3), 59(2) and (3) and 60(2) and (3) of the Proceeds of Crime Act 2002(**406**) for leave of the Crown Court to levy distress against property or exercise a right of forfeiture by peaceable re-entry in relation to a tenancy, in circumstances where the property or tenancy is the subject of a restraint order or a receiver has been appointed in respect of the property or tenancy.

(2) The application must be made in writing to the Crown Court.

(3) The application must be served on—

- (a) the person who applied for the restraint order or the order appointing the receiver; and
- (b) any receiver appointed in respect of the property or tenancy,

at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

*[Note. Formerly rule 29 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003(407).]*

### **Joining of applications**

**61.2.** An application for the appointment of a management receiver or enforcement receiver under rule 60.1 may be joined with—

- (a) an application for a restraint order under rule 59.1; and
- (b) an application for the conferral of powers on the receiver under rule 60.2.

*[Note. Formerly rule 33 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Applications to be dealt with in writing**

**61.3.** Applications in restraint proceedings and receivership proceedings are to be dealt with without a hearing, unless the Crown Court orders otherwise.

*[Note. Formerly rule 34 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Business in chambers**

**61.4.** Restraint proceedings and receivership proceedings may be heard in chambers.

*[Note. Formerly rule 35 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Power of court to control evidence**

**61.5.**—(1) When hearing restraint proceedings and receivership proceedings, the Crown Court may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

(3) The court may limit cross-examination in restraint proceedings and receivership proceedings.

*[Note. Formerly rule 36 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Evidence of witnesses**

**61.6.**—(1) The general rule is that, unless the Crown Court orders otherwise, any fact which needs to be proved in restraint proceedings or receivership proceedings by the evidence of a witness is to be proved by their evidence in writing.

(2) Where evidence is to be given in writing under this rule, any party may apply to the Crown Court for permission to cross-examine the person giving the evidence.

(3) If the Crown Court gives permission under paragraph (2) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

*[Note. Formerly rule 37 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Witness summons**

**61.7.**—(1) Any party to restraint proceedings or receivership proceedings may apply to the Crown Court to issue a witness summons requiring a witness to—

- (a) attend court to give evidence; or
- (b) produce documents to the court.

(2) Rule 28.3 applies to an application under this rule as it applies to an application under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (**408**).

*[Note. Formerly rule 38 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Hearsay evidence**

**61.8.** Section 2(1) of the Civil Evidence Act 1995 (**409**) (duty to give notice of intention to rely on hearsay evidence) does not apply to evidence in restraint proceedings and receivership proceedings.

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**(408)** 1965 c. 69; section 2 was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1), (2) and (7); by the Crime and Disorder Act 1998, section 119 and Schedule 8, paragraph 8; and by the Courts Act 2003, section 109(1) and Schedule 8, paragraph 126(a) and is amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 42(a), with effect from a date to be appointed.

**(409)** 1995 c. 38.

*[Note. Formerly rule 39 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Disclosure and inspection of documents**

**61.9.**—(1) This rule applies where, in the course of restraint proceedings or receivership proceedings, an issue arises as to whether property is realisable property.

(2) The Crown Court may make an order for disclosure of documents.

(3) Part 31 of the Civil Procedure Rules 1998 (**410**) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

*[Note. Formerly rule 40 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Court documents**

**61.10.**—(1) Any order which the Crown Court issues in restraint proceedings or receivership proceedings must—

- (a) state the name and judicial title of the person who made it;
- (b) bear the date on which it is made; and
- (c) be sealed by the Crown Court.

(2) The Crown Court may place the seal on the order—

- (a) by hand; or
- (b) by printing a facsimile of the seal on the order whether electronically or otherwise.

(3) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

*[Note. Formerly rule 41 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Consent orders**

**61.11.**—(1) This rule applies where all the parties to restraint proceedings or receivership proceedings agree the terms in which an order should be made.

(2) Any party may apply for a judgment or order in the terms agreed.

(3) The Crown Court may deal with an application under paragraph (2) without a hearing.

(4) Where this rule applies—

- (a) the order which is agreed by the parties must be drawn up in the terms agreed;
- (b) it must be expressed as being “By Consent”; and
- (c) it must be signed by the legal representative acting for each of the parties to whom the order relates or by the party if he is a litigant in person.

(5) Where an application is made under this rule, then the requirements of any other rule as to the procedure for making an application do not apply.

*[Note. Formerly rule 42 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Slips and omissions**

**61.12.**—(1) The Crown Court may at any time correct an accidental slip or omission in an order made in restraint proceedings or receivership proceedings.

(2) A party may apply for a correction without notice.

*[Note. Formerly rule 43 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Supply of documents from court records**

**61.13.**—(1) No document relating to restraint proceedings or receivership proceedings may be supplied from the records of the Crown Court for any person to inspect or copy unless the Crown Court grants permission.

(2) An application for permission under paragraph (1) must be made on notice to the parties to the proceedings.

*[Note. Formerly rule 44 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Disclosure of documents in criminal proceedings**

**61.14.**—(1) This rule applies where—

- (a) proceedings for an offence have been started in the Crown Court and the defendant has not been either convicted or acquitted on all counts; and
- (b) an application for a restraint order under section 42(1) of the Proceeds of Crime Act 2002 has been made.

(2) The judge presiding at the proceedings for the offence may be supplied from the records of the Crown Court with documents relating to restraint proceedings and any receivership proceedings.

(3) Such documents must not otherwise be disclosed in the proceedings for the offence.

*[Note. Formerly rule 45 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Preparation of documents**

**61.15.**—(1) Every order in restraint proceedings or receivership proceedings will be drawn up by the Crown Court unless—

- (a) the Crown Court orders a party to draw it up;
- (b) a party, with the permission of the Crown Court, agrees to draw it up; or
- (c) the order is made by consent under rule 61.10.

(2) The Crown Court may direct that—

- (a) an order drawn up by a party must be checked by the Crown Court before it is sealed; or
- (b) before an order is drawn up by the Crown Court, the parties must lodge an agreed statement of its terms.

(3) Where an order is to be drawn up by a party—

- (a) he must lodge it with the Crown Court no later than seven days after the date on which the court ordered or permitted him to draw it up so that it can be sealed by the Crown Court; and
- (b) if he fails to lodge it within that period, any other party may draw it up and lodge it.

(4) Nothing in this rule shall require the Crown Court to accept a document which is illegible, has not been duly authorised, or is unsatisfactory for some other similar reason.

*[Note. Formerly rule 46 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Change of solicitor**

**61.16.**—(1) This rule applies where—

- (a) a party for whom a solicitor is acting in restraint proceedings or receivership proceedings wants to change his solicitor;
- (b) a party, after having represented himself in such proceedings, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
- (c) a party, after having been represented by a solicitor in such proceedings, intends to act in person.

(2) Where this rule applies, the party or his solicitor (where one is acting) must—

- (a) lodge notice of the change at the Crown Court; and
- (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former solicitor.

(3) The notice lodged at the Crown Court must state that notice has been served as required by paragraph (2)(b).

(4) Subject to paragraph (5), where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until—

- (a) notice is served in accordance with paragraph (2); or
- (b) the Crown Court makes an order under rule 61.17 and the order is served as required by paragraph (3) of that rule.

(5) Where the certificate of a LSC funded client is revoked or discharged—

- (a) the solicitor who acted for that person will cease to be the solicitor acting in the proceedings as soon as his retainer is determined under regulation 4 of the Community Legal Service (Costs) Regulations 2000 (**411**); and
- (b) if that person wishes to continue, where he appoints a solicitor to act on his behalf paragraph (2) will apply as if he had previously represented himself in the proceedings.

(6) “Certificate” in paragraph (5) means a certificate issued under the Funding Code (approved under section 9 of the Access to Justice Act 1999 (**412**)) and “LSC funded client” means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the 1999 Act.

*[Note. Formerly rule 47 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application by solicitor for declaration that solicitor has ceased to act**

**61.17.**—(1) A solicitor may apply to the Crown Court for an order declaring that he has ceased to be the solicitor acting for a party to restraint proceedings or receivership proceedings.

(2) Where an application is made under this rule—

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**(411)** S.I. 2000/441.

**(412)** 1999 c. 22; section 9 was amended by S.I. 2003/1887.



(a) notice of the application must be given to the party for whom the solicitor is acting, unless the Crown Court directs otherwise; and

(b) the application must be supported by evidence.

(3) Where the Crown Court makes an order that a solicitor has ceased to act, the solicitor must serve a copy of the order on every party to the proceedings.

*[Note. Formerly rule 48 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application by other party for declaration that solicitor has ceased to act**

**61.18.**—(1) Where—

(a) a solicitor who has acted for a party to restraint proceedings or receivership proceedings—

(i) has died,

(ii) has become bankrupt,

(iii) has ceased to practise, or

(iv) cannot be found, and

(b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 61.16,

any other party may apply to the Crown Court for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the proceedings.

(2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the Crown Court directs otherwise.

(3) Where the Crown Court makes an order under this rule, the applicant must serve a copy of the order on every other party to the proceedings.

*[Note. Formerly rule 49 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Order for costs**

**61.19.**—(1) This rule applies where the Crown Court is deciding whether to make an order for costs under rule 78.1 in restraint proceedings or receivership proceedings.

(2) The court has discretion as to—

(a) whether costs are payable by one party to another;

(b) the amount of those costs; and

(c) when they are to be paid.

(3) If the court decides to make an order about costs—

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but

(b) the court may make a different order.

(4) In deciding what order (if any) to make about costs, the court must have regard to all of the circumstances, including—

(a) the conduct of all the parties; and

(b) whether a party has succeeded on part of an application, even if he has not been wholly successful.

(5) The orders which the court may make under rule 78.1 include an order that a party must pay—

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date, including a date before the making of an order.

(6) Where the court would otherwise consider making an order under paragraph (5)(f), it must instead, if practicable, make an order under paragraph (5)(a) or (c).

(7) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

*[Note. Formerly rule 50 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

#### **Assessment of costs**

**61.20.**—(1) Where the Crown Court has made an order for costs in restraint proceedings or receivership proceedings it may either—

- (a) make an assessment of the costs itself; or
- (b) order assessment of the costs under rule 78.3.

(2) In either case, the Crown Court or the taxing authority, as the case may be, must—

- (a) only allow costs which are proportionate to the matters in issue; and
- (b) resolve any doubt which it may have as to whether the costs were reasonably incurred or reasonable and proportionate in favour of the paying party.

(3) The Crown Court or the taxing authority, as the case may be, is to have regard to all the circumstances in deciding whether costs were proportionately or reasonably incurred or proportionate and reasonable in amount.

(4) In particular, the Crown Court or the taxing authority must give effect to any orders which have already been made.

(5) The Crown Court or the taxing authority must also have regard to—

- (a) the conduct of all the parties, including in particular, conduct before, as well as during, the proceedings;
- (b) the amount or value of the property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the application; and
- (g) the place where and the circumstances in which work or any part of it was done.

*[Note. Formerly rule 51 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Time for complying with an order for costs**

**61.21.**—(1) A party to restraint proceedings or receivership proceedings must comply with an order for the payment of costs within 14 days of—

- (a) the date of the order if it states the amount of those costs;
- (b) if the amount of those costs is decided later under rule 78.3, the date of the taxing authority's decision; or
- (c) in either case, such later date as the Crown Court may specify.

*[Note. Formerly rule 52 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Application of costs rules**

**61.22.** Rules 61.19, 61.20 and 61.21 do not apply to the assessment of costs in proceedings to the extent that section 11 of the Access to Justice Act 1999 applies and provisions made under that Act make different provision.

*[Note. Formerly rule 53 of the Crown Court (Confiscation, Restraint and Receivership) Rules 2003.]*

## **PART 62**

### **PROCEEDS OF CRIME ACT 2002— RULES APPLICABLE TO INVESTIGATIONS**

#### **Contents of this Part**

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Account monitoring orders	rule 62.1
Customer information orders	rule 62.2
Proof of identity and accreditation	rule 62.3

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### **Account monitoring orders under the Terrorism Act 2000 and the Proceeds of Crime Act 2002**

**62.1.**—(1) Where a circuit judge makes an account monitoring order under paragraph 2(1) of Schedule 6A to the Terrorism Act 2000(**413**) the court officer shall give a copy of the order to the financial institution specified in the application for the order.

(2) Where any person other than the person who applied for the account monitoring order proposes to make an application under paragraph 4(1) of Schedule 6A to the 2000 Act or section 375(2) of the Proceeds of Crime Act 2002(**414**) for the discharge or variation of an account monitoring order he shall give a copy of the proposed application, not later than 48 hours before the application is to be made—

- (a) to a police officer at the police station specified in the account monitoring order; or
- (b) where the application for the account monitoring order was made under the 2002 Act and was not made by a constable, to the office of the appropriate officer who made the application, as specified in the account monitoring order,

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(413)2000 c. 11.  
(414)2002 c. 29.

in either case together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) In this rule:

“appropriate officer” has the meaning given to it by section 378 of the 2002 Act; and references to the person who applied for an account monitoring order must be construed in accordance with section 375(4) and (5) of the 2002 Act.

*[Note. Formerly rule 25C of the Crown Court Rules 1982(415).]*

### **Customer information orders under the Proceeds of Crime Act 2002**

**62.2.**—(1) Where any person other than the person who applied for the customer information order proposes to make an application under section 369(3) of the Proceeds of Crime Act 2002 for the discharge or variation of a customer information order, he shall, not later than 48 hours before the application is to be made, give a copy of the proposed application—

- (a) to a police officer at the police station specified in the customer information order; or
- (b) where the application for the customer information order was not made by a constable, to the office of the appropriate officer who made the application, as specified in the customer information order,

in either case together with a notice indicating the time and place at which the application for a discharge or variation is to be made.

(2) In this rule:

“appropriate officer” has the meaning given to it by section 378 of the 2002 Act; and references to the person who applied for the customer information order must be construed in accordance with section 369(5) and (6) of the 2002 Act.

*[Note. Formerly rule 25D of the Crown Court Rules 1982.]*

### **Proof of identity and accreditation**

**62.3.**—(1) This rule applies where—

- (a) an appropriate officer makes an application under section 345 (production orders), section 363 (customer information orders) or section 370 (account monitoring orders) of the Proceeds of Crime Act 2002 for the purposes of a confiscation investigation or a money laundering investigation; or
- (b) the Director of the Assets Recovery Agency makes an application under section 357 of the 2002 Act (disclosure orders) for the purposes of a confiscation investigation.

(2) Subject to section 449 of the 2002 Act (which makes provision for members of staff of the Assets Recovery Agency to use pseudonyms), the appropriate officer or the Director of the Assets Recovery Agency, as the case may be, must provide the judge with proof of his identity and, if he is an accredited financial investigator, his accreditation under section 3 of the 2002 Act.

(3) In this rule:

“appropriate officer” has the meaning given to it by section 378 of the 2002 Act; and “confiscation investigation” and “money laundering investigation” have the meanings given to them by section 341 of the 2002 Act.

*[Note. Formerly rule 25E of the Crown Court Rules 1982. For applications to discharge or vary a production order see also Part 56.4.]*

## PART 63

### APPEAL TO THE CROWN COURT AGAINST CONVICTION OR SENTENCE

#### Contents of this Part

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#### Application of this Part

**63.1.** This Part shall apply to any appeal under section 108(1) of the Magistrates' Courts Act 1980(**416**) (conviction and sentence), section 45(1) of the Mental Health Act 1983(**417**) (hospital or guardianship order in the absence of conviction) and paragraph 11 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000(**418**) (re-sentencing on failure to comply with supervision order).

*[Note. Formerly rule 6 of the Crown Court Rules 1982(**419**). See also direction V.52 of the Practice Direction.]*

#### Notice of appeal

**63.2.—**(1) An appeal shall be commenced by the appellant's giving notice of appeal in accordance with the following provisions of this rule.

(2) The notice required by the preceding paragraph shall be in writing and shall be given to a court officer for the magistrates' court and to any other party to the appeal.

(3) Notice of appeal shall be given not later than 21 days after the day on which the decision appealed against is given and, for this purpose, where the court has adjourned the trial of an information after conviction, that day shall be the day on which the court sentences or otherwise deals with the offender:

(416) 1980 c. 43.

(417) 1983 c. 20; section 45 was amended by the Crime (Sentences) Act 1997 (c. 43), section 46.

(418) 2000 c. 6; Schedule 3, paragraph 11 was amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part II, paragraphs 160, 199(1) and (14), and is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, paragraphs 90 and 125, with effect from a date to be appointed.

(419) S.I. 1982/1109; modified by Criminal Justice Act 1991 (c. 53), section 70; amending instruments relevant to this Part are S.I. 1988/952, 1988/1322, 1988/1635, 1994/1480, 1999/2838.

Provided that, where a court exercises its power to defer sentence under section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000(420), that day shall, for the purposes of an appeal against conviction, be the day on which the court exercises that power.

(4) A notice of appeal shall state the grounds of appeal.

(5) The time for giving notice of appeal may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (6).

(6) An application for an extension of time shall be made in writing, specifying the grounds of the application and sent to a Crown Court officer.

(7) Where the Crown Court extends the time for giving notice of appeal, the Crown Court officer shall give notice of the extension to—

- (a) the appellant; and
- (b) the magistrates' court officer,

and the appellant shall give notice of the extension to any other party to the appeal.

*[Note. Formerly rule 7 of the Crown Court Rules 1982.]*

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

**63.3.**—(1) The magistrates' court officer shall as soon as practicable send to the Crown Court officer any notice of appeal to the Crown Court given to the magistrates' court officer.

(2) The magistrates' court officer shall send to the Crown Court officer, with the notice of appeal, a copy of the extract of the magistrates' court register relating to that decision 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 magistrates' court officer for the court from whose decision the appeal is brought shall before the day fixed for the hearing of the appeal send to the Crown Court officer a copy of the record made in pursuance of section 5 of the Bail Act 1976(421).

(4) Where a notice of appeal is given in respect of a hospital order or guardianship order made under section 37 of the Mental Health Act 1983(422) (powers of courts to order hospital admission or guardianship), a magistrates' court officer for the court from which the appeal is brought shall send with the notice to the Crown Court officer any written evidence considered by the court under section 37(2) of the 1983 Act.

(5) Where a notice of appeal is given in respect of an appeal against conviction by a magistrates' court the magistrates' court officer shall send with the notice to the Crown Court officer any admission of facts made for the purposes of the summary trial under section 10 of the Criminal Justice Act 1967(423) (proof by formal admission).

(6) Where a notice of appeal is given in respect of an appeal against sentence by a magistrates' court, and where that sentence was a custodial sentence, the magistrates' court officer shall send with the notice to the Crown Court officer a statement of whether the magistrates' court obtained and considered a pre-sentence report before passing such sentence.

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(420) Section 1(1) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 23, paragraph 1, with effect from a date to be appointed.

(421) 1976 c. 63; section 5 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 27 and Schedule 3, paragraph 1(a), and by the Criminal Justice and Police Act 2001, section 129(1) and is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 12 with effect from a date to be appointed.

(422) Section 37 was amended by the Crime (Sentences) Act 1997 (c. 43), section 55 and Schedule 4, paragraph 12, by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67 and Schedule 4, paragraph 11, and by the Powers of Criminal Courts (Sentencing) Act 2000, section 165(1) and Schedule 9, paragraph 90, it was modified by the Criminal Justice and Court Services Act 2000 (c. 43), section 43 and is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, Part 1, paragraphs 37 and 38, with effect from a date to be appointed.

(423) 1967 c. 80; section 10 was modified by S.I. 1991/2684.

*[Note. Formerly rule 74 of the Magistrates' Courts Rules 1981(424).]*

### **Entry of appeal and notice of hearing**

**63.4.** On receiving notice of appeal, the Crown Court officer shall enter the appeal and give notice of the time and place of the hearing to—

- (a) the appellant;
- (b) any other party to the appeal; and
- (c) the magistrates' court officer.

*[Note. Formerly rule 8 of the Crown Court Rules 1982.]*

### **Abandonment of appeal—notice**

**63.5.—**(1) Without prejudice to the power of the Crown Court to give leave for an appeal to be abandoned, an appellant may abandon an appeal by giving notice in writing, in accordance with the following provisions of this rule, not later than the third day before the day fixed for hearing the appeal.

- (2) The notice required by the preceding paragraph shall be given—
  - (a) to the magistrates' court officer;
  - (b) to the Crown Court officer; and
  - (c) to any other party to the appeal.

(3) For the purposes of determining whether notice of abandonment was given in time there shall be disregarded any Saturday, Sunday and any day which is specified to be a bank holiday in England and Wales under section 1(1) of the Banking and Financial Dealings Act 1971(425).

*[Note. Formerly rule 11 of the Crown Court Rules 1982.]*

### **Abandonment of appeal—bail**

**63.6.** 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 court officer for that court.

*[Note. Formerly rule 75 of the Magistrates' Courts Rules 1981.]*

### **Number and qualification of justices—appeals from youth courts**

**63.7.** Subject to the provisions of rule 63.8 and to any directions under section 74(4) of the Supreme Court Act 1981(426) (directions disapplying the set out number and qualifications of justices), on the hearing of an appeal from a youth court the Crown Court shall consist of a judge sitting with two justices each of whom is a member of a youth court panel and who are chosen so that the Court shall include a man and a woman.

*[Note. Formerly rule 3 of the Crown Court Rules 1982.]*

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(424) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1992/2072, 1993/1183, 2001/610.

(425) 1971 c. 80.

(426) 1981 c. 54.

### **Number and qualification of justices—dispensation for special circumstances**

**63.8.**—(1) The Crown Court may enter on any appeal notwithstanding that the Court is not constituted as required by section 74(1) of the Supreme Court Act 1981 or rule 63.7 if it appears to the judge that the Court could not be constituted without unreasonable delay and the Court includes one justice who is a member of a youth court panel.

(2) The Crown Court may at any stage continue with any proceedings with a Court from which any one or more of the justices initially comprising the Court has withdrawn, or is absent for any reason.

*[Note. Formerly rule 4 of the Crown Court Rules 1982.]*

### **Disqualifications**

**63.9.** A justice of the peace shall not sit in the Crown Court on the hearing of an appeal in a matter on which he adjudicated.

*[Note. Formerly rule 5 of the Crown Court Rules 1982.]*

## **PART 64**

### **APPEAL TO THE HIGH COURT BY WAY OF CASE STATED**

#### **Contents of this Part**

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Consideration of a draft case by magistrates' court	rule 64.2
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Content of case stated by magistrates' court	rule 64.6
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#### **Application to a magistrates' court to state a case**

**64.1.**—(1) An application under section 111(1) of the Magistrates' Courts Act 1980(427) 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 a court officer for the magistrates' court whose decision is questioned.



*[Note. Formerly rule 76 of the Magistrates' Courts Rules 1981(428). As to the procedure to be followed in the High Court, see Part 52 of the Civil Procedure Rules 1998(429).]*

### **Consideration of a draft case by a magistrates' court**

**64.2.**—(1) Within 21 days after receipt of an application made in accordance with rule 64.1, a court officer for the magistrates' court whose decision is questioned shall, unless the justices refuse to state a case under section 111(5) of the Magistrates' Courts Act 1980, send a draft case in which are stated the matters required under rule 64.6 (content of case stated) to the applicant or his legal representative and shall send a copy thereof to the respondent or his legal representative.

(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 magistrates' court officer.

(3) Where the justices refuse to state a case under section 111(5) of the 1980 Act and they are required by a mandatory order of the High Court 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 64.1” there were substituted the words “the date on which a mandatory order under section 111(6) of the 1980 Act is made”; and
- (b) the words “unless the justices refuse to state a case under section 111(5) of the 1980 Act” were omitted.

*[Note. Formerly rule 77 of the Magistrates' Courts Rules 1981.]*

### **Preparation and submission of final case to a magistrates' court**

**64.3.**—(1) Within 21 days after the latest day on which representations may be made under rule 64.2, 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 the justices' clerk.

(3) Forthwith after the case has been stated and signed a court officer for the court shall send it to the applicant or his legal representative, together with any statement required by rule 64.4.

*[Note. Formerly rule 78 of the Magistrates' Courts Rules 1981.]*

### **Extension of time limits by a magistrates' court**

**64.4.**—(1) If a magistrates' court officer is unable to send to the applicant a draft case under rule 64.2(1) 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 a court officer shall attach to the draft case, and to the final case when it is sent to the applicant or his legal representative under rule 64.3(3), a statement of the delay and the reasons for it.

(2) If a magistrates' court officer 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 rule 64.2(2), together with reasons in writing for it, the justices' clerk may, by notice in writing sent to the applicant, or respondent as the case may be, by the magistrates' court officer, extend the time and the provisions of that paragraph and of rule 64.3 shall apply accordingly;

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(428) S.I. 1981/552, modified by S.I. 1991/2684 and amended by S.I. 2001/610; there are other amending instruments but none is relevant to this Part.

(429) S.I. 1998/3132.

but in that event the court officer shall attach to the final case, when it is sent to the applicant or his legal representative under rule 64.3(3), a statement of the extension and the reasons for it.

(3) If the justices are unable to state a case within the time required by rule 64.3(1), they shall do so as soon as practicable thereafter and the provisions of that rule shall apply accordingly; but in that event a court officer shall attach to the final case, when it is sent to the applicant or his legal representative under rule 64.3(3), a statement of the delay and the reasons for it.

*[Note. Formerly rule 79 of the Magistrates' Courts Rules 1981.]*

#### **Service of documents where application made to a magistrates' court**

**64.5.** Any document required by rules 64.1 to 64.4 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.

*[Note. Formerly rule 80 of the Magistrates' Courts Rules 1981.]*

#### **Content of case stated by a magistrates' courts**

**64.6.—(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.

*[Note. Formerly rule 81 of the Magistrates' Courts Rules 1981.]*

#### **Application to the Crown Court to state a case**

**64.7.—(1)** An application under section 28 of the Supreme Court Act 1981(**430**) to the Crown Court to state a case for the opinion of the High Court shall be made in writing to a court officer within 21 days after the date of the decision in respect of which the application is made.

(2) The application shall state the ground on which the decision of the Crown Court is questioned.

(3) After making the application, the applicant shall forthwith send a copy of it to the parties to the proceedings in the Crown Court.

(4) On receipt of the application, the Crown Court officer shall forthwith send it to the judge who presided at the proceedings in which the decision was made.

(5) On receipt of the application, the judge shall inform the Crown Court officer as to whether or not he has decided to state a case and that officer shall give notice in writing to the applicant of the judge's decision.

(6) If the judge considers that the application is frivolous, he may refuse to state a case and shall in that case, if the applicant so requires, cause a certificate stating the reasons for the refusal to be given to him.

(7) If the judge decides to state a case, the procedure to be followed shall, unless the judge in a particular case otherwise directs, be the procedure set out in paragraphs (8) to (12) of this rule.

(8) The applicant shall, within 21 days of receiving the notice referred to in paragraph (5), draft a case and send a copy of it to the Crown Court officer and to the parties to the proceedings in the Crown Court.

(9) Each party to the proceedings in the Crown Court shall, within 21 days of receiving a copy of the draft case under paragraph (8), either—

- (a) give notice in writing to the applicant and the Crown Court officer that he does not intend to take part in the proceedings before the High Court;
- (b) indicate in writing on the copy of the draft case that he agrees with it and send the copy to a court officer; or
- (c) draft an alternative case and send it, together with the copy of the applicant’s case, to the Crown Court officer.

(10) The judge shall consider the applicant’s draft case and any alternative draft case sent to the Crown Court officer under paragraph (9)(c).

(11) If the Crown Court so orders, the applicant shall, before the case is stated and delivered to him, enter before the Crown Court officer into a recognizance, with or without sureties and in such sum as the Crown Court considers proper, having regard to the means of the applicant, conditioned to prosecute the appeal without delay.

(12) The judge shall state and sign a case within 14 days after either—

- (a) the receipt of all the documents required to be sent to a court officer under paragraph (9); or
- (b) the expiration of the period of 21 days referred to in that paragraph,

whichever is the sooner.

(13) A case stated by the Crown Court shall state the facts found by the Crown Court, the submissions of the parties (including any authorities relied on by the parties during the course of those submissions), the decision of the Crown Court in respect of which the application is made and the question on which the opinion of the High Court is sought.

(14) Any time limit referred to in this rule may be extended either before or after it expires by the Crown Court.

(15) If the judge decides not to state a case but the stating of a case is subsequently required by a mandatory order of the High Court, paragraphs (7) to (14) shall apply to the stating of the case save that—

- (a) in paragraph (7) the words “If the judge decides to state a case” shall be omitted; and
- (b) in paragraph (8) for the words “receiving the notice referred to in paragraph (5)” there shall be substituted the words “the day on which the mandatory order was made”.

*[Note. Formerly rule 26 of the Crown Court Rules 1982(431).]*

## PART 65

### APPEAL TO THE COURT OF APPEAL AGAINST RULING IN PREPARATORY HEARING

#### Contents of this Part

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Notice of appeal	rule 65.1
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### Notice of appeal

**65.**—(1) An application to the judge of the Crown Court for leave to appeal under section 9(11) of the Criminal Justice Act 1987(**432**) or section 35(1) of the Criminal Procedure and Investigations Act 1996(**433**) shall be made orally within two days of the making of the order or ruling to which it relates.

(2) Unless the application is made on the occasion of the order or ruling to which it relates, the appellant shall serve notice in writing thereof, specifying the grounds of the application, on the Crown Court officer and on all parties to the hearing directly affected by the order or ruling in question.

(3) The appellant shall no later than the day referred to in paragraph (4) serve notice of appeal from an order or ruling under section 9(11) of the 1987 Act or section 31(3) of the 1996 Act or, as the case may be, of an application to the Court of Appeal for leave to appeal from such a ruling on—

- (a) the Registrar;
- (b) the Crown Court officer; and
- (c) all parties to the preparatory hearing directly affected by the said order or ruling.

(4) The day referred to is—

- (a) the day which occurs seven days after the making of the order or ruling; or
- (b) where an application is made to the judge of the Crown Court for leave to appeal under section 31(3) of the 1996 Act as in paragraph (1), the day which occurs 7 days after such application is determined or withdrawn.

(5) The time for giving notice under paragraph (3) may be extended, before or after it expires, by the Court of Appeal.

(6) A notice of appeal or of an application for leave to appeal, or an application to the Court of Appeal for an extension of time as referred to in paragraph (5), shall be in the form set out in the Practice Direction.

(7) If notice in writing of an application for leave to appeal was, under paragraph (2), served on the Crown Court, a copy thereof shall accompany the notice of appeal or, as the case may be, of an application for leave to appeal required under paragraph (3) to be served on the Registrar.

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**(432)** 1987 c. 38; section 9(11) is amended by the Criminal Justice Act 2003 (c. 44), sections 45(1), (5) and 310(3) with effect from a date to be appointed.

**(433)** 1996 c. 25; section 35(1) is amended by the Criminal Justice Act 2003 (c. 44), sections 45(1) and (9), and section 31(3) by the Criminal Justice Act 2003 (c. 44), section 310(5), with effect from a date to be appointed.

(8) Notice of appeal or of an application for leave to appeal may be given either in respect of the whole or any part of the order to which it relates and shall—

- (a) specify any question of law in respect of which the appeal is brought and, where appropriate, such facts of the case as are necessary for its proper consideration;
- (b) summarise the arguments intended to be put to the Court of Appeal; and
- (c) specify any authorities intended to be cited.

(9) Where the judge of the Crown Court has given leave to appeal the notice of appeal shall state that fact and specify the grounds on which leave is given.

(10) Notice of appeal or of an application for leave to appeal shall be accompanied by any documents or other things (or copies thereof) necessary for the proper determination of the appeal or application.

*[Note. Formerly rule 3 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988(434) and rule 3 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997(435).]*

### **Respondent's notice**

**65.2.**—(1) Upon receiving notice of appeal or of an application for leave to appeal, the respondent if he desires to oppose the appeal, shall, within seven days of receipt of the notice, serve a notice in the form set out in the Practice Direction on the Registrar—

- (a) stating the date on which the appellant's notice was received by the respondent;
- (b) summarising his response to the arguments of the appellant; and
- (c) specifying the authorities which he intends to cite,

and shall at the same time serve a copy thereof on the appellant and any other party to the proceedings directly affected by the order or ruling and on the Crown Court officer.

(2) The time for giving notice under this rule may be extended, either before or after it expires, by the Court of Appeal.

*[Note. Formerly rule 4 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 4 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### **Persons in custody**

**65.3.**—(1) A person in custody shall be entitled to be present on the hearing of an appeal, or an application for leave to appeal, under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996, to which he is a party.

(2) Except as provided by paragraph (1) above, a person in custody shall not be entitled to be present on the hearing of an appeal, or an application for leave to appeal, under section 9(11) of the 1987 Act or section 35(1) of the 1996 Act except—

- (a) on an application to the Crown Court for leave to appeal, with the leave of the judge; or
- (b) on an appeal, or an application to the Court of Appeal for leave to appeal, with the leave of that Court.

(3) An application for leave to be present under paragraph (2) shall be made—

- (a) where paragraph (2)(a) applies, orally to the judge;

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(434) S.I. 1988/1700, modified by S.I. 1991/2684.

(435) S.I. 1997/1053, amended by S.I. 1999/598.

- (b) where paragraph (2)(b) applies, by serving notice in the form set out in the Practice Direction on the Registrar, or orally to the Court.

*[Note. Formerly rule 5 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 5 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### **Supply of documentary and other exhibits**

**65.4.** Rule 68.11 (supply of documentary and other exhibits) shall apply in relation to an appellant and a respondent under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 as it applies in relation to an appellant and a respondent under Part I of the Criminal Appeal Act 1968(436).

*[Note. Formerly rule 6 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 6 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### **Abandonment of proceedings**

**65.5.** Rule 68.22 (abandonment of proceedings) shall apply for the purposes of an appeal or an application for leave to appeal by an appellant under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 as it applies to an appeal or application for leave under Part I of the Criminal Appeal Act 1968, except that—

- (a) notice thereof shall be served on the Registrar in the alternative form set out in the Practice Direction; and
- (b) the requirement under rule 68.22(3) for the Registrar to send a copy of a notice of abandonment of proceedings to the Secretary of State shall be omitted.

*[Note. Formerly rule 7 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 7 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### **Powers exercisable by single judge**

**65.6.—**(1) The following powers may be exercised by a judge of the court in the same manner as they may be exercised by the court and subject to the same provisions, namely—

- (a) to give leave to appeal under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996;
- (b) to extend, under rule 65.1, the time within which notice of appeal or of an application for leave to appeal must be given;
- (c) to extend the time within which a notice under rule 65.2 of opposition to an appeal or application for leave to appeal must be given by the respondent; and
- (d) to give leave, in pursuance of rule 65.3, for a person in custody to be present at any proceedings.

(2) A judge of the court shall, for the purpose of exercising any of the powers specified above, sit in such place as he appoints, and may sit otherwise than in open court.

*[Note. Formerly rule 8 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 8 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### **Determination by full court**

**65.7.**—(1) Where a judge of the court has refused an application on the part of an applicant to exercise in his favour any of the powers referred to in rule 65.6, the applicant may have the application determined by the court by serving a notice in the form set out in the Practice Direction on the Registrar within 7 days, or such longer period as a judge of the court may fix, from the date on which notice of the refusal was served on him by the Registrar.

(2) The notice shall be signed by, or on behalf of, the applicant.

(3) If the notice is not signed by the applicant and the applicant is in custody, the Registrar shall, as soon as practicable after receiving the notice, send a copy of it to the applicant.

(4) If such a notice is not served on the Registrar within the said 7 days or such longer period as a judge of the court may fix, the application shall be treated as having been refused by the court.

*[Note. Formerly rule 9 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 9 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### **Notice of determination of court**

**65.8.**—(1) The Registrar shall, as soon as practicable, serve notice of any determination by the Court of Appeal or by any judge of the court under rule 65.6 on—

- (a) the applicant;
- (b) the respondent; and
- (c) and any other party who is directly affected by the ruling to which the appeal or application relates,

and notice of a determination by a single judge under rule 65.6 shall be served in the form set out in the Practice Direction.

(2) The Registrar shall, as soon as practicable, serve notice on the Crown Court officer at the place of trial of the order of the Court of Appeal disposing of an appeal or application for leave to appeal.

*[Note. Formerly rule 10 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 10 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

### **Service of documents**

**65.9.**—(1) Subject to paragraphs (2) to (4), rule 68.1 (service of documents) shall apply for the purposes of an appeal or an application for leave to appeal under section 9(11) of the Criminal Justice Act 1987 or section 35(1) of the Criminal Procedure and Investigations Act 1996 as it applies for the purposes of Part I of the Criminal Appeal Act 1968.

(2) Where any document is required under this Part to be served on any party to the proceedings and that party is acting by a solicitor, service of the document may be effected by delivering it, or sending it by post, to the solicitor's address for service.

(3) Where there is inscribed on the writing paper of the person to be served with a document or on the writing paper of his solicitor (where the person to be served is a party to the proceedings and is acting by a solicitor) a document exchange box number, and that person or his solicitor (as the case may be) has not indicated in writing to the person serving the document that he is unwilling to accept service through a document exchange, service of the document may be effected by leaving the document addressed to the numbered box of that person or his solicitor at the document exchange in question or at a document exchange which transmits documents every business day to that document exchange; and any document which is left at a document exchange in accordance with this paragraph

shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(4) In this rule:

“document exchange” means any document exchange for the time being approved by the Lord Chancellor for the purposes of the service of documents;

“business day” means a day other than a day which is to be excluded for the purposes of reckoning a period of 7 days or less; and

“solicitor” includes a body corporate which is recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985 (437) (a “recognised body”) and, in the case of a recognised body, the reference in paragraph (2) above to the solicitor’s address for service shall be construed as a reference to the address specified by the recognised body as its address for the purposes of the proceedings relating to the appeal or application for leave to appeal under section 35(1) of the 1996 Act (including an address specified for the general purposes of the criminal proceedings in relation to which the appeal or application for leave to appeal is made), or, in the absence of such a specified address, to its registered office.

*[Note. Formerly rule 11 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 11 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

## The Registrar

**65.10.**—(1) The Registrar may require the Crown Court at the place of trial to furnish the Court of Appeal with any assistance or information which it may require for the purpose of exercising its jurisdiction.

(2) Subject to paragraphs (3) and (4) the Registrar shall give as long notice in advance as reasonably possible of the date of hearing of any appeal or application—

(a) to the appellant; and

(b) to the respondent and any other party directly affected by the order or ruling to which the appeal or application relates.

(3) Paragraph (2) shall not apply to proceedings before a judge of the court under rule 65.6.

(4) Where a party to whom notice is required to be given by this rule is at the material time in custody, notice shall instead be given to the person having custody of him.

*[Note. Formerly rule 12 of the Criminal Justice Act 1987 (Preparatory Hearings) (Interlocutory Appeals) Rules 1988 and rule 12 of the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997.]*

## PART 66

### APPEAL TO THE COURT OF APPEAL AGAINST RULING ADVERSE TO PROSECUTION

#### Contents of this Part

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## Interpretation

### 66.1. In this Part:

“appeal” means an appeal against a ruling under section 58 of the Criminal Justice Act 2003(438) and “application for leave to appeal” should be construed accordingly;

“business day” means any day other than a Saturday, Sunday, Christmas Day or Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(439) in England and Wales;

“defendant” means a party in whose favour the ruling was made which is the subject of the appeal;

“interested party” means a person other than the defendant who—

- (a) is a party to the proceedings in the Crown Court;
- (b) may be affected by the decision of the trial judge under section 59(1) of the 2003 Act as to whether or not the appeal should be expedited; and
- (c) is permitted by the trial judge or the Court of Appeal to make representations on that issue;

“judge of the court” means the judge of the Crown Court with conduct of the proceedings; and

“public interest ruling” means a ruling under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(440) that it is in the public interest to disclose material in the possession of the prosecutor.

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(438) 2003 c. 44.

(439) 1971 c. 80.

(440) 1996 c. 25; section 7A(8) is inserted by the Criminal Justice Act 2003 (c. 44), section 37, with effect from a date to be appointed.

### **Request for adjournment**

**66.2.**—(1) A request by the prosecutor for an adjournment under section 58(4)(a)(ii) of the Criminal Justice Act 2003 must be made to the judge of the court immediately following the making of a ruling to which section 58 of that Act refers, unless paragraph (2) applies.

(2) If that ruling is a ruling of no case to answer, an application by the prosecutor under paragraph (1) must be made immediately following that ruling of no case to answer notwithstanding that the prosecutor may also nominate earlier rulings to be the subject of an appeal.

(3) The judge of the court shall grant the request unless it is in the interests of justice for the prosecutor to indicate immediately whether or not he intends to seek leave to appeal.

(4) The adjournment shall be until the next business day after the day on which the ruling was given, unless the interests of justice require a longer adjournment.

(5) Subject to rule 66.8, as soon as is reasonably practicable after the prosecutor informs the judge of the court that he intends to seek leave to appeal or requests an adjournment to consider whether to do so, the court officer shall provide a transcript of the ruling which is the subject of the proposed appeal to—

- (a) the prosecutor;
- (b) the defendant; and
- (c) any interested party.

### **Application to the judge of the court for leave to appeal**

**66.3.**—(1) The prosecutor must inform the judge of the court immediately after the ruling or the adjournment if he intends to seek leave to appeal against a ruling and at the same time he may apply orally for leave to appeal.

(2) Before deciding whether or not to grant leave to appeal, the judge of the court shall hear oral representations from the defendant.

(3) The judge of the court shall decide whether or not to give leave to appeal on the same day on which an oral application for leave to appeal is made to that judge.

(4) The judge of the court may extend the period under paragraph (3) only if it is in the interests of justice to do so.

(5) If the judge of the court gives leave to appeal he must issue a certificate in the form set out in the Practice Direction and the court officer must forward that certificate to the Registrar.

### **Expedited appeal**

**66.4.**—(1) At the time when the prosecutor informs the judge of the court that he intends to seek leave to appeal against a ruling, he must also make oral representations as to whether or not that appeal should be expedited under section 59(1) of the Criminal Justice Act 2003.

(2) Before deciding whether or not the appeal should be expedited, the judge of the court shall hear oral representations from the defendant or any interested party.

(3) The court officer must provide a copy of the reasons given by the judge of the court, for his decision whether or not the appeal should be expedited, to the prosecutor, the defendant and all interested parties.

(4) The judge of the court may reverse his decision that the appeal should be expedited at any time before notice of appeal or application for leave to appeal is served on the Crown Court under rule 66.5(1) and must provide reasons for that reversal in writing to the prosecutor, the defendant and all interested parties.

(5) At any time after notice of appeal or application for leave to appeal has been served on the Registrar under rule 66.5(1), the prosecutor or defendant may invite the Court of Appeal to reverse a judge's decision that the appeal should be expedited under section 59(4) of the 2003 Act and written notice of such an application must be served on—

- (a) the Registrar;
- (b) the court officer;
- (c) the prosecutor
- (d) the defendant; and
- (e) any interested party.

### **Notice of appeal or application for leave to appeal**

**66.5.**—(1) Subject to rule 66.8, a notice of appeal (where the judge of the court has granted leave) or notice of application for leave to appeal shall be in the form prescribed in the Practice Direction and must be served by the prosecutor on—

- (a) the Registrar;
- (b) the court officer;
- (c) the defendant; and
- (d) any interested party.

(2) Notice of appeal or application for leave to appeal must be served—

- (a) where the judge of the court has decided that the appeal should be expedited under section 59(1) of the Criminal Justice Act 2003 and that decision has not been subsequently reversed, before 5.00 p.m. on the day on which the prosecutor informs the judge of the court that he intends to seek leave to appeal or, if the prosecutor demonstrates to that judge that it is not practical to do so, before 5.00 p.m. on the next business day; or
- (b) in any other case, within seven business days of the day on which the prosecutor informs the judge of the court that he intends to seek leave to appeal.

(3) The Court of Appeal may extend the period for service under paragraph (2), either before or after it expires, on application by the prosecutor.

(4) Notice of appeal or application for leave to appeal must be accompanied by any documents necessary for the proper determination of the appeal or application for leave to appeal including—

- (a) transcript of the ruling which is the subject of the appeal;
- (b) the skeleton arguments provided to the judge of the court by the parties in respect of the issue which gave rise to the ruling; and
- (c) if the appeal is to be expedited, a copy of the reasons given by the judge of the court under rule 66.4(3).

(5) Subject to rule 66.8, the notice of appeal or application for leave to appeal served on the defendant must be accompanied by the form set out in the Practice Direction for the defendant to complete if he wishes to oppose the appeal or application.

### **Defendant's response**

**66.6.**—(1) Upon receiving notice of an appeal or application for leave to appeal, the defendant if he wishes to oppose the appeal or application, must serve his response in the form set out in the Practice Direction on the—

- (a) Registrar;

- (b) court officer;
  - (c) prosecutor; and
  - (d) any interested party.
- (2) A defendant's response must be served on those listed in paragraph (1)—
- (a) on the next business day after the day on which the notice of appeal or application for leave to appeal is served on the defendant, where the judge of the court has decided that the appeal should be expedited under section 59(1) of the Criminal Justice Act 2003 and that decision has not been subsequently reversed under section 59(4) of that Act; or
  - (b) within seven business days of the day on which notice of the appeal or application for leave to appeal is served on the defendant in any other case.
- (3) The Court of Appeal may extend the period of service under paragraph (2) either before or after it expires.

### **Defendants in custody**

**66.7.**—(1) A defendant in custody is not entitled to be present in person at the hearing of an appeal or application for leave to appeal, unless the Court of Appeal so directs.

(2) However, a defendant in custody may participate in such a hearing, without a direction of the Court of Appeal, by way of live television link if he is able to see and hear the court and to be seen and heard by it.

(3) In directing whether a defendant in custody shall be present in person under paragraph (1) the Court of Appeal must take into account—

- (a) any representations of the prosecutor and the defendant;
- (b) the availability and reliability of live television link facilities;
- (c) any practical difficulties with the physical attendance of the defendant; and
- (d) whether or not the appeal is expedited under section 59 of the Criminal Justice Act 2003.

### **Public interest rulings**

**66.8.**—(1) This rule applies where a public interest ruling is the subject of an appeal or application for leave to appeal.

(2) In any appeal or application for leave to appeal against a public interest ruling, the prosecutor need not describe the material that is the subject of the ruling in the notice of appeal or application for leave to appeal under rule 66.5.

(3) Where the prosecutor has reason to believe that to reveal to the defendant or any interested party the category of material that is the subject of the public interest ruling would have the effect of disclosing that which the prosecutor considers should not be disclosed, the prosecutor need not describe the category of the material in the notice of appeal or application for leave to appeal under rule 66.5.

(4) Where the prosecutor has reason to believe that to reveal to the defendant or to any other interested party the fact that a public interest ruling has been made would have the effect of disclosing that which the prosecutor considers should not be disclosed, the prosecutor need not serve notice of appeal or application for leave to appeal on the defendant or any interested party as otherwise required under rule 66.5, unless the Court of Appeal otherwise directs.

(5) Where the prosecutor has taken the measures set out in paragraphs (2), (3) or (4), the notice of appeal or application for leave to appeal served on the Registrar under rule 66.5(1)(a), must be accompanied by a confidential annexe indicating that the measures have been taken and giving the prosecutor's reasons for taking them.

(6) Where the prosecutor has taken the measures set out in paragraph (4), the defendant shall not be entitled to be present in person at the hearing by the Court of Appeal of the appeal or application for leave to appeal, or appear by way of live television link, unless the Court of Appeal otherwise directs.

### **Supply of documentary and other exhibits**

**66.9.**—(1) The Registrar must, on request, supply to the prosecutor, the defendant or any interested party copies of documents or other exhibits required for the appeal or application for leave to appeal and may make charges in accordance with scales and rates fixed for the time being by the Treasury.

(2) The Registrar must, on request, make arrangements for the prosecutor, the defendant or any interested party to inspect any document or other exhibit required for the appeal.

(3) This rule shall not apply to the supply of transcripts of proceedings.

(4) This rule shall not require the Registrar to supply to the defendant or any interested party, or allow the defendant or any interested party to inspect—

- (a) material that is the subject of a public interest ruling;
- (b) a notice of appeal served by the prosecutor on the Registrar in accordance with rule 66.8(4);  
or
- (c) a confidential annexe served by the prosecutor on the Registrar in accordance with rule 66.8(5),

unless the Court of Appeal otherwise directs.

### **Abandonment of proceedings**

**66.10.** An appeal or application for leave to appeal (including an application for leave to appeal to the House of Lords) may be abandoned by the prosecutor before it is heard by the Court of Appeal by serving notice in writing on the Registrar in the form set out in the Practice Direction.

### **Powers exercisable by a single judge**

**66.11.**—(1) The following powers may be exercised by a single judge in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions—

- (a) to give leave to appeal under section 57(4) of the Criminal Justice Act 2003;
- (b) to reverse a decision of the judge of the court that an appeal should be expedited under section 59(4) of that Act;
- (c) to extend the time for service of the notice of appeal or of an application for leave to appeal under rule 66.5(3);
- (d) to extend time for service of the defendant's response under rule 66.6(3);
- (e) to direct that the defendant in custody be present in person at the hearing of the appeal or application for leave to appeal under rule 66.7(1); and
- (f) to order the acquittal of the defendant and, where appropriate, his release from custody and order payment of his costs where the prosecution has served a notice of abandonment under rule 66.10.

(2) A single judge may, for the purposes of exercising any of the powers specified in paragraph (1), sit in such place as he appoints and may sit otherwise than in open court.

(3) Where a single judge exercises one of the powers set out in paragraph (1), the Registrar must serve notice of the single judge's decision on—

- (a) the prosecutor;
- (b) the defendant;
- (c) any interested party; and
- (d) the court officer.

### **Powers exercisable by the Registrar**

**66.12.**—(1) The following powers may be exercised by the Registrar in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions—

- (a) to extend the time for service of the notice of appeal or of an application for leave to appeal under rule 66.5(3); and
- (b) to extend time for service of the defendant’s response under rule 66.6(3).

(2) Where the Registrar exercises one of the powers set out in paragraph (1), the Registrar must serve notice of that decision on—

- (a) the prosecutor;
- (b) the defendant;
- (c) any interested party; and
- (d) the court officer.

(3) Where the Registrar has refused an application to exercise any of the powers referred to in paragraph (1), the party making the application may have it determined by a single judge by serving a renewal in the form set out in the Practice Direction within seven business days of the day on which notice of the single judge’s decision is served on that party.

### **Determination by full court**

**66.13.**—(1) Where a single judge has refused an application to exercise any of the powers referred to in rule 66.11, the party making the application may have it determined by the Court of Appeal by serving a notice of renewal in the form set out in the Practice Direction.

(2) Notice of renewal must be served on the Registrar within seven business days of the day on which notice of the single judge’s decision is served on the party making the application.

(3) The Court of Appeal may extend the period for service under paragraph (2) either before or after it expires.

(4) A notice of renewal must be signed by, or on behalf of, the person making the application. If the notice is not signed by the party making the application and that party is in custody, the Registrar shall, as soon as practicable after receiving the notice, send a copy of it to that party.

(5) If the notice of renewal is not served on the Registrar within the period specified in paragraph (2) or such extended period as the Court of Appeal has allowed under paragraph (3), the application shall be treated as having been refused by the court.

### **Notice of hearing and determination of the Court of Appeal**

**66.14.**—(1) The Registrar must give notice, as far in advance as reasonably practicable, of the date fixed for the hearing by the Court of Appeal of an appeal or application to—

- (a) the prosecutor;
- (b) the defendant;
- (c) any interested party; and
- (d) the court officer.

(2) The Registrar must, as soon as reasonably practicable, serve notice of a decision of the Court of Appeal on an appeal or application on those parties listed in paragraph (1).

(3) Where a party to whom notice is required to be given under this rule is in custody, notice must instead be given to the person having custody of him.

### **Assistance from the Crown Court**

**66.15.** The Registrar may require the court officer to furnish the Court of Appeal with any assistance or information which it may require for the purposes of exercising its jurisdiction under Part 9 of the Criminal Justice Act 2003.

### **Appeal to the House of Lords**

**66.16.**—(1) An application to the Court of Appeal for leave to appeal to the House of Lords under Part 9 of the Criminal Justice Act 2003 may be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the House of Lords; or
- (b) in writing and served on the Registrar within seven business days of the reasons for the decision.

(2) If leave to appeal to the House of Lords is granted by the Court of Appeal, or a party has made an application to the House of Lords for leave, in a case where the judge of the court has decided that the appeal should be expedited under section 59(1) of the 2003 Act and that decision has not subsequently been reversed under section 59(4) of that Act, the Registrar must inform the court officer that the jury must be discharged from giving a verdict in respect of that defendant.

### **Service**

**66.17.**—(1) Where this Part requires service of a document on the Registrar then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant or interested party who is in custody, by delivering it to the person who has custody of him; or
- (b) by addressing it to the Registrar and delivering it at, or sending it by first class post or fax or other means of electronic communication, to his office at the Royal Courts of Justice, London WC2A 2LL.

(2) Where this Part requires service of a document on the court officer then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant or interested party who is in custody, by delivering it to the person who has custody of him; or
- (b) by delivering it to, or sending it by first class post or fax or other means of electronic communication, to the court officer at the Crown Court centre at which the ruling appealed against was made.

(3) A person who has custody of a defendant or interested person and to whom the defendant or interested person delivers a document under paragraph (1)(a) or (2)(a), must endorse on it the date of delivery and forward it to the Registrar or the court officer, as the case may be.

(4) Where this Part requires the service of a document on any other person then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) personally on that person or their solicitor;
  - (b) by first class post to that person’s last known residence or place of business or to their solicitor’s business address;
  - (c) leaving it at that person’s last known residence or place of business;
  - (d) if the party has indicated that he is willing to accept service by fax or other means of electronic communication, by sending a legible copy of the document by such means to that party; or
  - (e) where the person or their solicitor has given a number of a box at a document exchange and has not indicated that they are unwilling to accept service through a document exchange, by leaving it at the document exchange addressed to the box number.
- (5) Where a document is served under this Part by any method other than personal service it is deemed to be served—
- (a) in the case of a document left at an address, on the next business day after the day on which it was left;
  - (b) in the case of a document sent by first class post, on the second business day after the day on which it was posted;
  - (c) in the case of a document left at a document exchange, on the second business day after the day on which it was left;
  - (d) in the case of a document transmitted by fax or other electronic means on a business day before 5 p.m. on that day; and
  - (e) in the case of a document transmitted by fax or other electronic means at any time other than that specified in sub-paragraph (d), on the next business day after the day on which it was transmitted.

## PART 67

### APPEAL TO THE COURT OF APPEAL AGAINST ORDER RESTRICTING REPORTING OR PUBLIC ACCESS

#### Contents of this Part

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Appeal against order restricting reporting of proceedings rule 67.1

Appeal against order restricting public access to proceedings rule 67.2

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#### Appeal against order restricting reporting of proceedings

**67.1.**—(1) An application for leave to appeal under section 159(1)(a), (aa) or (c) of the Criminal Justice Act 1988(**441**) shall be made within 14 days after the date on which the order was made by serving on the Registrar a notice which shall be in the form set out in the Practice Direction.

(2) The applicant shall at the same time serve a copy of the application under paragraph (1) on the Crown Court officer at the place where the order was made, on the prosecutor and the defendant and on any other interested person.



(3) A prosecutor or a defendant or any interested person may, not later than 3 days after service of the application, notify the Registrar in writing that he wishes to be made a respondent to the appeal if leave is granted, and shall serve a copy of such notice on the applicant.

(4) The period of 14 days in paragraph (1) may be extended by the Court or a judge of the Court, before or after it expires, on an application which shall be made in writing, specifying the grounds of the application, and served on the Registrar, and a copy of the application shall be served by the applicant on every person who is to be served under paragraph (2).

(5) An application under paragraph (4) shall be determined without a hearing, unless the Court or a judge of the Court, as the case may be, directs otherwise.

(6) An application under paragraph (1) may be determined without a hearing.

(7) Where the Court grants leave to appeal—

- (a) the notice of application for leave shall stand as the notice of appeal, unless the Court otherwise orders;
- (b) without prejudice to the generality of its powers under section 159(3) of the 1988 Act, the Court shall direct that the person in whose favour the order was made is to be a respondent to the appeal and determine what, if any, other persons are to be respondents or may be respondents if they wish;
- (c) the evidence of any witness shall be given in writing, unless the Court otherwise orders;
- (d) rule 68.11 (supply of documentary and other exhibits) shall apply, with the necessary modifications; and
- (e) the Registrar shall notify the parties of the time and place of the hearing of the appeal.

*[Note. Formerly rule 16A of the Criminal Appeal Rules 1968(442).]*

### **Appeal against order restricting public access to proceedings**

**67.2.**—(1) This rule applies to proceedings in which a prosecutor or a defendant has served a notice under rule 16.10(1) of his intention to apply for an order that all or part of a trial be held in camera for reasons of national security or for the protection of a witness or any other person.

(2) Where a notice has been displayed under rule 16.10(2), a person aggrieved may serve notice on the Registrar in the form set out in the Practice Direction that he intends to appeal against any order that may be made on the prosecutor's or defendant's application, and he shall serve a copy of such notice on the Crown Court officer at the place where the trial is to take place, on the prosecutor and the defendant and on any other interested person.

(3) Subject to paragraph (4) a notice shall be served on the Registrar under paragraph (2) within 7 days of the display of the notice under rule 16.10(2) and where such an order is made at the trial, the notice shall be treated as the application for leave to appeal against the order.

(4) Where an order is made at the trial, a person aggrieved who has not served a notice under paragraph (2) may apply for leave to appeal against the order by serving notice in the form set out in the Practice Direction on the Registrar within 24 hours after the making of the order, and he shall forthwith serve a copy of such notice on each of the persons who are to be served under paragraph (2).

(5) Where an order has been made, and a person aggrieved has served a notice under paragraph (2) or (4), the Crown Court officer shall forthwith upon the making of the order notify the Registrar of its making, and the applicant for the order shall, as soon as practicable, send the Registrar a copy of any transcript or note of the application for the order and of any documents that were in evidence in the Crown Court.

(6) An application for leave to appeal shall be determined by a judge of the Court, or the Court as the case may be, without a hearing.

(7) Where leave to appeal is granted, the appeal shall be determined without a hearing.

(8) The Registrar shall, as soon as practicable, serve notice of the order of the court disposing of an appeal or application for leave to appeal on the person aggrieved and on each of the persons specified in paragraph (2).

(9) Section 159(4) of the Criminal Justice Act 1988 shall not apply to proceedings to which this rule applies.

*[Note. Formerly rule 16B of the Criminal Appeal Rules 1968.]*

## PART 68

### APPEAL TO THE COURT OF APPEAL AGAINST CONVICTION OR SENTENCE

#### Contents of this Part

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### **Service of documents**

**68.1.**—(1) Except where any other rule contains provision to the contrary, service of a document in proceedings in the Court of Appeal may be effected—

- (a) in the case of a document to be served on the Registrar—
  - (i) in the case of an appellant who is in custody, by delivering it to the person having custody of him,
  - (ii) by delivering it to the Registrar,
  - (iii) by addressing it to him and leaving it at his office in the Royal Courts of Justice, London, W.C.2, or
  - (iv) by sending it by post addressed to him at the said office;
- (b) in the case of a document to be served on a Crown Court officer—
  - (i) in the case of an appellant who is in custody, by delivering it to the person having custody of him,
  - (ii) by delivering it to, or sending it by post addressed to, a court officer at the Crown Court centre at which the conviction, verdict, finding or sentence appealed against was given or passed;
- (c) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; or
- (d) in the case of a document to be served on any other person—
  - (i) by delivering it to the person to whom it is directed,
  - (ii) by leaving it for him with some person at his last known or usual place of abode, or
  - (iii) by sending it by post addressed to him at his last known or usual place of abode.

(2) A person having custody of an appellant to whom a document is delivered in pursuance of paragraph (1)(a)(i) or (1)(b)(i) of this rule shall endorse on it the date of delivery and cause it to be forwarded forthwith to the Registrar or to a Crown Court officer, as the case may be.

(3) In this rule, a reference to an appellant includes an appellant under section 13 of the Administration of Justice Act 1960(443) (appeal in cases of contempt of court), a defendant in proceedings in the Crown Court in respect of which an application is made for leave to appeal under section 159 of the Criminal Justice Act 1988(444) (Crown Court proceedings—orders restricting or preventing reports or restricting public access) and, in the case of an application under section 8(1) or 8(1A) of the Criminal Appeal Act 1968(445), a person who has been ordered to be retried.

*[Note. Formerly rule 21 of the Criminal Appeal Rules 1968(446). For further rules of service applicable in particular circumstances see rules 41.17 (retrial following acquittal), 65.9 (appeal against ruling in preparatory hearing), 66.17 (appeal against ruling adverse to prosecution), 68.20 (hearsay evidence), 68.21 (evidence of bad character), 69.6 (Attorney General’s reference of point of law), 70.8 (Attorney General’s reference of unduly lenient sentence) and 71.11 (appeal under the Proceeds of Crime Act 2002(447)). As to appeals generally, see Part II of the Practice Direction.]*

### **Certificate of trial judge**

**68.2.**—(1) The certificate of the judge of the court of trial under section 1(2), 12 or 15(2) of the Criminal Appeal Act 1968(448) that a case is a fit case for appeal shall be in the form set out in the Practice Direction.

(2) The certificate shall be forwarded forthwith to the Registrar, whether or not the person to whom the certificate relates has applied for a certificate.

(3) A copy of the certificate shall be forwarded forthwith to the person to whom the certificate relates or to his legal representative.

*[Note. Formerly rule 1 of the Criminal Appeal Rules 1968.]*

### **Notice of appeal and application for extension of time**

**68.3.**—(1) Notice of appeal or of an application for leave to appeal under Part I of the Criminal Appeal Act 1968 or notice of appeal under section 13 (appeal in cases of contempt of court) of the Administration of Justice Act 1960 (as required by section 18A of the 1968 Act(449)) against an order or decision of the Crown Court shall be given by completing Part 1 of the form set out in the Practice Direction, and so much of Part 2 thereof as relates to the notice and serving it on a Crown court officer.

(2) A notice of appeal or of an application for leave to appeal shall be accompanied by a notice in the form set out in the Practice Direction containing the grounds of the appeal or application.

(3) A notice of the grounds of appeal or application in the form set out in the Practice Direction shall include notice—

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(443) 1960 c. 65; section 13 was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part II, paragraph 40(1) and by the Access to Justice Act 1999 (c. 22), sections 64 and 106 and Schedule 15, Part III.

(444) 1988 c. 33; section 159 was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 61(6).

(445) 1968 c. 19; section 8 was amended by the Courts Act 1971 (c. 23), section 56 and Schedule 11, Part IV and by the Criminal Justice Act 1988 (c. 33), section 43(3) and (4).

(446) S.I. 1968/1262; amending instruments relevant to this Part are S.I. 1978/1118, 1987/1977, 1988/2159, 1989/1102, 1990/2156, 1992/2757, 1997/702, 2000/2036, 2004/1293, 2004/2992.

(447) 2002 c. 29.

(448) Section 1(2) was amended by the Criminal Appeal Act 1995 (c. 35), section 1(1); section 12 was amended by the Criminal Appeal Act 1995 (c. 35), section 1(3); section 15(2) was amended by the Criminal Appeal Act 1995 (c. 35), section 1(5).

(449) Section 18A was inserted by the Criminal Justice Act 1988 (c. 33), section 170(1) and Schedule 15, paragraphs 20 and 25.

- (a) of any application to be made to the court for a declaration of incompatibility under section 4 of the Human Rights Act 1998(450); or
  - (b) of any issue for the court to decide which may lead to the court making such a declaration.
- (4) Where the grounds of appeal or application include notice in accordance with paragraph (3) (b) above, a copy of the notice shall be served on the prosecutor by the appellant.
- (5) If the appellant has been convicted of more than one offence, the notice of appeal or of an application for leave, referred to in paragraph (2), shall specify the convictions or sentences against which the appellant is appealing or applying for leave to appeal.
- (6) The grounds of an appeal or application, referred to in paragraph (2), may, with the consent of the court, be varied or amplified within such time as the court may allow.
- (7) Notice of an application to extend the time within which notice of appeal or of an application for leave to appeal may under Part I of the 1968 Act be given shall be given by completing so much of Part 2 of the form, referred to in paragraph (2), as relates to the application and by giving notice of appeal or of an application for leave to appeal in accordance with the foregoing provisions of this rule.
- (8) Notice of an application to extend the time within which notice of appeal or of an application for leave to appeal may under Part I of the 1968 Act be given shall specify the grounds of the application.
- (9) An appellant who is appealing or applying for leave to appeal against conviction shall specify in the form, referred to in paragraph (2), any exhibit produced at the trial which he wishes to be kept in custody for the purposes of his appeal.
- (10) The forms to which this rule relates, shall be signed by, or on behalf of, the appellant.
- (11) If a form is not signed by the appellant and the appellant is in custody, the Registrar shall, as soon as practicable after receiving the form from the Crown Court, send a copy of it to the appellant.
- (12) Where an appellant does not require leave to appeal, a notice of application for leave to appeal shall be treated as a notice of appeal; and where an appellant requires leave to appeal but serves only a notice of appeal, the notice of appeal shall be treated as an application for leave to appeal.

*[Note. Formerly rule 2 of the Criminal Appeal Rules 1968.]*

### **Appeal following reference by Criminal Cases Review Commission**

- 68.4.**—(1) In this rule:
- “the Commission” means the Criminal Cases Review Commission, and
  - “reference” means the reference of a conviction, verdict, finding or sentence to the Court of Appeal by the Commission under section 9 of the Criminal Appeal Act 1995(451).
- (2) The Registrar must serve on the appellant written notice of receipt of a reference.
- (3) The appellant must give notice of appeal under rule 68.3 by serving it on the Registrar within—
- (a) 28 days of the date of the notice served under paragraph (2), in the case of an appeal against sentence; or
  - (b) 56 days of the date of that notice, in the case of an appeal against conviction, verdict of not guilty by reason of insanity, finding that the appellant was under a disability, or finding that the appellant did the act or made the omission charged.

- (4) The court may extend the time for giving notice of appeal, either before or after it expires.
- (5) The grounds of appeal accompanying a notice of appeal must include—
- (a) where a ground of appeal is said to relate to a reason given by the Commission for making the reference, an explanation of how it is related; and
  - (b) where a ground of appeal is said not to be so related, notice of application for leave to appeal on that ground.
- (6) If a notice of appeal is not received within the time specified in paragraph (3), or within such longer period as the court allows under paragraph (4), the reasons given by the Commission for making the reference shall stand as the grounds of appeal.
- (7) On receiving a notice of appeal the Registrar must serve a copy on the prosecutor and on any other party to the appeal.

### **Exercise of court's powers to give leave to appeal, etc: general rules**

**68.5.**—(1) This rule and rule 68.6 apply when the Registrar or a single judge exercises a power conferred by one of these sections of the Criminal Appeal Act 1968—

- (a) section 31**(452)** (powers exercisable by a single judge);
- (b) section 31A**(453)** (powers exercisable by the Registrar);
- (c) section 31B**(454)** (procedural directions by a single judge or the Registrar); or
- (d) section 31C (appeals against procedural directions).

(2) An application to the Registrar, a single judge or the court for the exercise of any of the powers referred to in paragraph (1) should be in the relevant form set out in the Practice Direction or in the form required by the Registrar.

(3) An application by an appellant must be signed by him or on his behalf. If it is not signed by him and he is in custody, the Registrar must send him a copy as soon as practicable after receiving it.

(4) An application by an appellant must be served on the Crown Court officer if the appellant makes it when he gives notice of appeal or notice of an application for leave to appeal. In all other cases, the application must be served on the Registrar.

(5) Neither a single judge nor the Registrar need sit in court to exercise any of the powers referred to in paragraph (1) of this rule.

*[Note. Formerly rule 11 of the Criminal Appeal Rules 1968.]*

### **Further applications to a judge or to the court: additional rules**

**68.6.**—(1) Where—

- (a) an appellant renews an application for the exercise of a power conferred by section 31 of the Criminal Appeal Act 1968 (powers exercisable by a single judge) or by section 31A (powers exercisable by the Registrar); or

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**(452)** Section 31 was amended by the Costs in Criminal Cases Act 1973 (c. 14), section 21(2) and Schedule 2, by the Road Traffic Act 1974 (c. 50), Schedule 6, paragraph 10, by the Criminal Justice Act 1982 (c. 48), section 29(2), by the Criminal Justice Act 1988 (c. 33), section 170(1) and Schedule 15, paragraphs 20, 29 and 30, by the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 4 and Schedule 3, paragraph 4(1) and by the Courts Act 2003 (c. 39), section 87(1) and it is amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(1) and Schedule 4, paragraph 4(1) and (3), by the Licensing Act 2003 (c. 17), Schedule 6, paragraphs 38 and 40 and by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 6, paragraphs 86, 87 and 88 with effect from dates to be appointed.

**(453)** Section 31A was inserted by the Criminal Appeal Act 1995 (c. 35), section 6 and was amended by the Courts Act 2003 (c. 39), section 87(2) and Schedule 10.

**(454)** Sections 31B and 31C were inserted by the Courts Act 2003 (c. 39), section 87(3).

- (b) an appellant or a respondent applies for procedural directions under section 31C of the 1968 Act (appeals against procedural directions),

then he must do so within 14 days. That period begins when the Registrar serves on him notice of the decision that prompts his further application. That period may be extended before or after it expires by the Registrar, by a single judge or by the court. The general rule is that an application for an extension of that period will be considered at the same time as the further application itself.

- (2) Where—

- (a) an appellant may renew to the court an application for the exercise of a power conferred by section 31 of the 1968 Act; but

- (b) he does not do so within the period fixed by this rule or extended under it,

then his application shall be treated as having been refused by the court.

*[Note. Formerly rule 12 of the Criminal Appeal Rules 1968.]*

### **Application for bail pending appeal**

**68.7.**—(1) Notice of an application by the appellant to be granted bail pending the determination of his appeal or pending his retrial shall be in the form set out in the Practice Direction and, unless notice of appeal or of an application for leave to appeal has previously been given, shall be accompanied by such a notice and shall be served on the Registrar; save that where notice of such an application is given together with a notice of appeal or notice of application for leave to appeal, it shall be served on the Crown Court officer.

- (2) An application as aforesaid may be made to the court orally.

(3) Notice in writing of intention to make an application relating to bail to the court shall, unless the court or a judge thereof otherwise directs, at least 24 hours before it is made be served on the prosecutor and on the Director of Public Prosecutions, if the prosecution was carried on by him or, if the application is to be made by the prosecutor or a constable under section 3(8) of the Bail Act 1976(455), on the appellant.

*[Note. Formerly paragraphs (1)(a), (2) and (3) of rule 3 of the Criminal Appeal Rules 1968. For applications to the trial judge for bail pending appeal see also direction IV.50 in the Practice Direction.]*

### **Bail with condition of surety**

**68.8.**—(1) Where the court grants bail to the appellant, the recognizance of any surety required as a condition of bail may be entered into before the Registrar or, where the person who has been granted bail 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 specified in section 8(4) of the Bail Act 1976(456).

(2) The recognizance of a surety shall be in the form set out in the Practice Direction, there being an alternative form for use in relation to an appellant granted bail pending his retrial or on the issue of a writ of venire de novo.

(3) Where, under section 3(5) or (6) of the 1976 Act(457), the court imposes a 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.

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(455) 1976 c. 63; section 3(8) was amended by the Criminal Law Act 1977 (c. 45), section 65(4) and Schedule 12 and is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 48(1) and (2) with effect from a date to be appointed.

(456) Section 8(4) was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 186(1) and (2).

(457) Section 3(5) was amended by the Crime and Disorder Act 1998 (c. 37), sections 54(1) and 120(2) and Schedule 10; section 3(6) was amended by the Criminal Justice and Public Order Act 1994 (c. 33), sections 27(2) and 168(3) and Schedule 11, by

(4) A person who, in pursuance of an order for the grant of bail made by the court, proposes to enter into a recognizance as a surety or give security shall, unless the court or a judge thereof otherwise directs, give notice to the prosecutor at least 24 hours before he enters into the recognizance or gives security as aforesaid.

(5) Where the court has fixed the amount in which a surety is to be bound by a recognizance or, under section 3(5) or (6) of the 1976 Act, has imposed any requirement to be complied with before the appellant's release on bail, the Registrar shall issue a certificate in the form set out in the Practice Direction 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.

(6) Where, in pursuance of an order for the grant of bail made by the court, a recognizance is entered into or requirement complied with before any person, it shall be the duty of that person to cause the recognizance or, as the case may be, a statement that the requirement has been complied with, to be transmitted forthwith to the Registrar; and a copy of such recognizance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the appellant is detained, unless the recognizance was entered into or the requirement complied with before such governor or keeper.

(7) A person taking a recognizance in pursuance of such an order shall give a copy thereof to the person entering into the recognizance.

(8) Where the court has fixed the amount in which a surety is to be bound by a recognizance or, under section 3(5) or (6) of the 1976 Act, has imposed any requirement to be complied with before the appellant's release on bail, the governor or keeper of the prison or other place of detention in which the appellant is detained shall, on receipt of a certificate in the appropriate form stating that the recognizances of all sureties required have been taken and that all such requirements have been complied with or on being otherwise so satisfied, release the appellant.

(9) Where the court has granted bail pending retrial or on ordering the issue of a writ of venire de novo, the Registrar shall forward to the Crown Court officer a copy of any record made in pursuance of section 5 of the 1976 Act(458) relating to such bail and also all recognizances and statements sent to the Registrar under paragraph (6) of this rule.

(10) Any record required by section 5 of the 1976 Act shall be made by including in the file relating to the case in question—

- (a) where bail is granted, a copy of the form issued under paragraph (5) of this rule and a statement of the day on which, and the time and place at which, the appellant is notified to surrender to custody; and
- (b) in any other case, a copy of the notice served under rule 68.29(1) (notice of determination of court).

*[Note. Formerly rule 4 of the Criminal Appeal Rules 1968. As to forfeiture where there has been a default in performing the conditions of a recognizance, see rule 68.8.]*

### **Forfeiture of recognizances in respect of person bailed to appear**

**68.9.—**(1) Where a recognizance has been entered into in respect of an appellant and it appears to the court that a default has been made in performing the conditions of the recognizance, the court may order the recognizance to be forfeited and such an order may—

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the Crime and Disorder Act 1998 (c. 37), section 54(2) and by the Criminal Justice Act 2003 (c. 44), section 13(1) and Schedule 37, Part 2.

(458) Section 5 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 27 and Schedule 3, paragraph 1(a), and by the Criminal Justice and Police Act 2001, section 129(1), and is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 12 with effect from a date to be appointed.



- (a) allow time for the payment of the amount due under the recognizance;
- (b) direct payment of that amount by instalments of such amounts and on such dates respectively as may be specified in the order; or
- (c) discharge the recognizance or reduce the amount due thereunder.

(2) Where the court is to consider making an order under paragraph (1) for a recognizance to be forfeited, the Registrar shall give notice to that effect to the person by whom the recognizance was entered into indicating the time and place at which the matter will be considered; and no such order shall be made before the expiry of seven days after the notice required by this paragraph has been given.

*[Note. Formerly rule 6 of the Criminal Appeal Rules 1968.]*

### **Custody of exhibits**

**68.10.**—(1) On a conviction on indictment or on a coroner’s inquisition a court officer of the court of trial shall, subject to any directions of the judge of the court of trial, make arrangements for any exhibit at the trial which in his opinion may be required for the purposes of an appeal against conviction to be kept in the custody of the court, or given into the custody of the person producing it at the trial or any other person for retention, until the expiration of 35 days from the date of conviction.

(2) Where an appellant has given notice of appeal, or of an application for leave to appeal, against conviction, the Registrar shall inform a court officer of the notice and give directions concerning the continued retention in custody of any exhibit which appears necessary for the proper determination of the appeal or application.

(3) Where the court orders an appellant to be retried, it shall make arrangements pending his retrial for the continued retention in custody of exhibits.

(4) Any arrangements under this rule may include arrangements for the inspection of an exhibit by an interested party.

*[Note. Formerly rule 7 of the Criminal Appeal Rules 1968.]*

### **Supply of documentary and other exhibits**

**68.11.**—(1) The Registrar shall, on request, supply to the appellant or respondent copies of documents or other things required for the appeal and in such case may make charges in accordance with scales and rates fixed for the time being by the Treasury.

(2) The Registrar shall, on request, make arrangements for the appellant or respondent to inspect any document or other thing required for the appeal.

(3) This rule shall not apply to the supply of the transcripts of any proceedings or part thereof.

*[Note. Formerly rule 8 of the Criminal Appeal Rules 1968.]*

### **Record of proceedings at trial**

**68.12.**—(1) Except as provided by this rule, the whole of any proceedings in respect of which an appeal lies (with or without leave) to the court shall be recorded by means of shorthand notes or, with the permission of the Lord Chancellor, by mechanical means.

(2) Where such proceedings are recorded by means of shorthand notes, it shall not be necessary to record—

- (a) the opening or closing addresses to the jury on behalf of the prosecution or an accused person unless the judge of the court of trial otherwise directs; or

(b) any other part of such proceedings which the judge of the court of trial directs need not be recorded.

(3) Where it is not practicable for such proceedings to be recorded by means of shorthand notes or by mechanical means, the judge of the court of trial shall direct how and to what extent the proceedings shall be recorded.

(4) The permission of the Lord Chancellor may contain conditions concerning the custody, and supply of transcripts, of a recording made by mechanical means.

*[Note. Formerly rule 18 of the Criminal Appeal Rules 1968.]*

### **Transcripts**

**68.13.**—(1) A transcript of the record of any proceedings or part thereof in respect of which an appeal lies, with or without leave, to the court and which are recorded in accordance with the provisions of rule 68.12—

- (a) shall, on request be supplied to the Registrar or any interested party; and
- (b) may, on request, be supplied to any other person on payment of such charge as may be fixed for the time being by the Treasury.

(2) Without prejudice to the provisions of paragraph (1) of this rule, the Registrar may, on request, supply to any interested party a transcript of the record of any proceedings or part thereof which is in his possession for the purposes of the appeal or application in question and in such case may make charges in accordance with scales and rates fixed for the time being by the Treasury:

Provided that in the case of an interested party who has been granted a right to representation by the Criminal Defence Service under Schedule 3 to the Access to Justice Act 1999(459) for the purpose of the appeal or any proceedings preliminary or incidental thereto such a transcript shall be supplied free.

*[Note. Formerly rule 19 of the Criminal Appeal Rules 1968.]*

### **Verification of record of proceedings**

**68.14.**—(1) An official shorthand writer who takes shorthand notes of any proceedings or part thereof before the court of trial in respect of which an appeal lies (with or without leave) to the court shall—

- (a) at the beginning of the notes state the name of the parties to the proceedings;
- (b) in the case of shorthand notes of part of any proceedings, state the part concerned;
- (c) record his name in the notes; and
- (d) retain the shorthand notes for not less than five years.

(2) Verification of a transcript of the shorthand notes taken by an official shorthand writer of any proceedings or part thereof before the court of trial in respect of which an appeal lies (with or without leave) to the court shall be by a certificate by the person making the transcript that—

- (a) he has made a correct and complete transcript of the notes to the best of his skill and ability; and
- (b) the notes were either taken by him and were to the best of his skill and ability a complete and correct account of those proceedings or part thereof or were taken by another official shorthand writer.

(3) Verification of a transcript of the record of the proceedings or part thereof if recorded by mechanical means shall be by—

- (a) a certificate by the person making the transcript that he has made a correct and complete transcript of the recording to the best of his skill and ability; and
- (b) a certificate by a person responsible for the recording or a successor that the recording records so much of the proceedings as is specified in the certificate.

(4) Verification of a transcript of the record of the proceedings or part thereof if recorded in any other way shall be by—

- (a) a certificate by the person who made the record that he recorded the proceedings or part thereof to the best of his ability; and
- (b) a certificate by the person making the transcript that he has made a correct and complete transcript of the record to the best of his skill and ability.

*[Note. Formerly rule 20 of the Criminal Appeal Rules 1968.]*

#### **Application for a witness order and for evidence to be received**

**68.15.**—(1) Notice of an application by the appellant—

- (a) that a witness who would have been a compellable witness at the trial be ordered to attend for examination by the court; or
- (b) that the evidence of a witness be received by the court;

shall be in the form set out in the Practice Direction and shall be served on the Registrar; save that where a notice of an application under sub-paragraph (a) or (b) is given together with a notice of appeal or notice of application for leave to appeal, it shall be served on the Crown Court officer.

(2) An application as aforesaid may be made to the court orally.

*[Note. Formerly paragraphs (1)(c)-(d) and (2) of rule 3 of the Criminal Appeal Rules 1968.]*

#### **Examination of witnesses by the court**

**68.16.**—(1) An order of the court to a person to attend for examination as a witness shall be in the form set out in the Practice Direction and shall specify the time and place of attendance.

(2) The examination of a witness shall be conducted by the taking of a deposition and, unless the court directs otherwise, shall take place in public.

*[Note. Formerly rule 9 of the Criminal Appeal Rules 1968.]*

#### **Vulnerable witness giving video recorded testimony**

**68.17.**—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32A of the Criminal Justice Act 1988(**460**) to tender in evidence a video recording of testimony from a witness where—

- (a) the offence charged is one to which section 32(2) of the 1988 Act(**461**) applies;

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**(460)** 1988 c. 33; section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54 and amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 50 and Schedule 11, by the Criminal Appeal Act 1995 (c. 35), section 29 and Schedule 2, paragraph 16(3), by the Criminal Procedure and Investigations Act 1996 (c. 25), sections 47, 62(2), (3), and 80 and Schedules 1, paragraph 33 and 5, and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(3) and (4) and Schedules 6 and 7, paragraph 3.

**(461)** Section 32(2) was amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(3) and (4) and Schedules 6 and 7, paragraph 3 and by the Sexual Offences Act 2003 (c. 42), Schedule 6, paragraph 29(1) and (2) and Schedule 7.

- (b) in the case of an offence falling within section 32(2)(a) or (b) of the 1988 Act, the proposed witness is under the age of 14 or, if he was under 14 when the video recording was made, is under the age of 15;
- (c) in the case of an offence falling within section 32(2)(c) of the 1988 Act, the proposed witness is under the age of 17 or, if he was under 17 when the video recording was made, is under the age of 18; and
- (d) the video recording is of an interview conducted between an adult and a person coming within sub-paragraph (b) or (c) above (not being the accused or one of the accused) which relates to any matter in issue in the proceedings;

and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar. The application shall be accompanied by the video recording which it is proposed to tender in evidence and shall include the following, namely—

- (a) the name of the appellant and the offence or offences charged;
- (b) the name and date of birth of the witness in respect of whom the application is made;
- (c) the date on which the video recording was made;
- (d) a statement that in the opinion of the applicant the witness is willing and able to attend the appeal for cross-examination; and
- (e) a statement of the circumstances in which the video recording was made which complies with paragraph (4).

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, an application under paragraph (1) must specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4).

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(e) and (3) shall include the following information, except in so far as it is contained in the recording itself, namely—

- (a) the times at which the recording commenced and finished, including details of any interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) the name, age and occupation of any person present at any point during the recording, the time for which he was present, his relationship (if any) to the witness and to the appellant;
- (d) a description of the equipment used including the number of cameras used and whether they were fixed or mobile, the number and location of microphones, the video format used and whether there were single or multiple recording facilities; and
- (e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(6) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal. Copies of any video recording required by paragraph (2) or (3) to accompany the notice shall be provided by the applicant and sent by the Registrar to any party to the appeal not already served with a copy. In the case of an appellant acting in person, a copy shall be made available for viewing by him.

(7) An application under paragraph (1) shall be determined without a hearing, unless the Court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(8) Without prejudice to rule 68.29, the Registrar shall notify all the parties of the decision of the Court in relation to an application under paragraph (1) and, where leave is granted, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.

*[Formerly rule 9C of the Criminal Appeal Rules 1968.]*

### **Vulnerable witness giving evidence by live television link**

**68.18.**—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32(1)(b) of the Criminal Justice Act 1988(**462**) for the evidence of that witness to be given through a live television link where—

- (a) the offence charged is one to which section 32(2) of the 1988 Act applies; and
- (b) the evidence is to be given by a witness who is either—
  - (i) in the case of an offence falling within section 32(2)(a) or (b) of the 1988 Act, under the age of 14,
  - (ii) in the case of an offence falling within section 32(2)(c) of the 1988 Act, under the age of 17, or
  - (iii) a person who is to be cross-examined following the admission under section 32A of the 1988 Act of a video recording of testimony from him,and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar which shall state—

- (a) the grounds of the application;
- (b) the date of birth of the witness;
- (c) the name of the witness; and
- (d) the name, occupation and relationship (if any) to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(4) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal.

(5) An application under paragraph (1) shall be determined without a hearing, unless the Court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(6) Without prejudice to rule 68.29, the Registrar shall notify all the parties and the person who is to accompany the witness (if known) of the decision of the court in relation to an application under paragraph (1). Where leave is granted, the notification shall state the name of the witness,

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(462)Section 32(1) was amended by the Criminal Justice Act 1991 (c. 53), section 55(2) and (3) and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(3) and (4) and Schedules 6 and 7, paragraph 3.

and, if known, the name, occupation and relationship (if any) to the witness of the person who is to accompany the witness.

(7) A witness giving evidence through a television link pursuant to leave granted in accordance with this rule shall be accompanied by a person acceptable to the Court and, unless the Court otherwise directs, by no other person.

*[Note. Formerly rule 9A of the Criminal Appeal Rules 1968.]*

### **Evidence through live television link where witness is outside the United Kingdom**

**68.19.**—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32(1) of the Criminal Justice Act 1988 for the evidence of that witness to be given through a live television link where the witness is outside the United Kingdom.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar which shall state—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) the country and place where it is proposed the witness will be when giving evidence; and
- (d) the name and occupation of any person who it is proposed should be available for the purpose specified in paragraph (3).

(3) The purpose referred to in paragraph (2)(d) is that of answering any questions the court may put, before or after the evidence of the witness is given, as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

(4) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(5) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal.

(6) An application under paragraph (1) shall be determined without a hearing, unless the court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any such hearing.

(7) Without prejudice to rule 68.29, the Registrar shall notify all the parties of the decision of the court in relation to an application under paragraph (1), and, where leave is granted, the notification shall state the name of the witness and, where applicable, the name and occupation of any person specified by the court for the purpose set out in paragraph (3).

*[Formerly rule 9B of the Criminal Appeal Rules 1968. For the corresponding rule in the Crown Court see rule 30.1.]*

### **Procedure for the admission of hearsay evidence**

**68.20.**—(1) Part 34 applies where a party wants to introduce hearsay evidence in an appeal or application for leave to appeal, except for rules 34.2, 34.3 and 34.4 (relating to the notice of hearsay evidence).

(2) An appellant who wants to introduce hearsay evidence to support a ground of appeal contained in his notice under rule 68.3(2)—

- (a) must give notice in the form set out in the Practice Direction to the Crown Court officer with his notice of application for leave to appeal under rule 68.3(1); but

(b) need not give a separate notice of application under rule 68.15(1) for that same evidence to be received by the court.

(3) A party who wants to introduce hearsay evidence in any other circumstances must give notice in the form set out in the Practice Direction to the Registrar and all other parties not more than 28 days after—

(a) leave to appeal is given; or

(b) notice of appeal is given, if leave is not required.

*[Note: “Statements” and “matters stated” are defined in section 115 of the Criminal Justice Act 2003(463). “Oral evidence” is defined in section 134(1) of that Act. See also section 23 of the Criminal Appeal Act 1968 on the receipt of evidence by the Court of Appeal.]*

### **Procedure for the admission of evidence of bad character**

**68.21.** Part 35 applies to the introduction of evidence of bad character in proceedings before the Court of Appeal, except for rule 35.1 and with the following modifications—

(a) a reference to a defendant should be read as a reference to an appellant, and “non-defendant” and “co-defendant” read accordingly;

(b) a reference to a court officer should be read as a reference to the Registrar; and

(c) an application under rule 35.2 (non-defendant’s bad character) must be received, and a notice under rule 35.4 or 35.5 (defendant’s bad character) must be given, not more than 28 days after—

(i) leave to appeal is given, or

(ii) notice of appeal is given, if leave is not required.

*[Note. Formerly rule 9D of the Criminal Appeal Rules 1968.]*

### **Abandonment of proceedings**

**68.22.**—(1) An appeal or an application for leave to appeal under Part I of the Criminal Appeal Act 1968 may be abandoned before the hearing of the appeal or application by serving on the Registrar notice thereof in the form set out in the Practice Direction.

(2) The notice shall be signed by, or on behalf of, the appellant.

(3) The Registrar shall, as soon as practicable after receiving a notice under this rule, send a copy of it, endorsed with the date of receipt, to the appellant, to the Secretary of State and to a court officer of the court of trial.

(4) Where an appeal or an application for leave to appeal is abandoned, the appeal or application shall be treated as having been dismissed or refused by the court.

*[Note. Formerly rule 10 of the Criminal Appeal Rules 1968.]*

### **The Registrar**

**68.23.**—(1) The Registrar may require the court of trial to furnish the court with any assistance or information which it may require for the purpose of exercising its jurisdiction.

(2) The Registrar shall give as long notice in advance as reasonably possible of the date on which the court will hear any appeal or application by an appellant to—

(a) the appellant;

- (b) any person having custody of the appellant; and
- (c) any other interested party whom the court requires to be represented at the hearing.

(3) This paragraph shall not apply to proceedings before a single judge of the court under section 31 of the Criminal Appeal Act 1968.

*[Note. Formerly rule 22 of the Criminal Appeal Rules 1968.]*

#### **Sittings in vacation**

**68.24.** The Lord Chief Justice shall determine the days on which the court shall, if necessary, sit during vacations; and the court shall sit on such days in accordance with arrangements made by the Lord Chief Justice after consultation with the Master of the Rolls.

*[Note. Formerly rule 17 of the Criminal Appeal Rules 1968.]*

#### **Opinion of court on point referred by Criminal Cases Review Commission**

**68.25.** Where the Criminal Cases Review Commission refers a point to the court under section 14(3) of the Criminal Appeal Act 1995 the court may consider the point in private if appropriate.

*[Note. Formerly rule 16 of the Criminal Appeal Rules 1968.]*

#### **Application to the Court of Appeal for leave to be present**

**68.26.**—(1) Notice of an application by the appellant to be given leave by the court to be present at proceedings for which such leave is required shall be in the form set out in the Practice Direction and shall be served on the Registrar; save that where a notice of such an application is given together with a notice of appeal or notice of application for leave to appeal, it shall be served on a Crown Court officer.

- (2) An application as aforesaid may be made to the court orally.

*[Note. Formerly paragraphs (1)(b) and (2) of rule 3 of the Criminal Appeal Rules 1968.]*

#### **Declaration of incompatibility**

**68.27.**—(1) The court shall not consider making a declaration of incompatibility under section 4 of the Human Rights Act 1998 unless it has given written notice to the Crown.

(2) Where notice has been given to the Crown, a Minister, or other person entitled under the 1998 Act to be joined as a party, shall be so joined on giving written notice to the court.

- (3) A notice given under paragraph (1) above shall be given to—

- (a) the person named in the list published under section 17(1) of the Crown Proceedings Act 1947(~~464~~); or
- (b) in the case of doubt as to whether any and if so which of those departments is appropriate, the Treasury Solicitor.

(4) A notice given under paragraph (1) above, shall provide an outline of the issues in the case and specify—

- (a) the prosecutor and appellant;
- (b) the date, judge and court of the trial in the proceedings from which the appeal lies; and
- (c) the provision of primary legislation and the Convention right under question.



(5) Any consideration of whether a declaration of incompatibility should be made, shall be adjourned for—

- (a) 21 days from the date of the notice given under paragraph (1) above; or
- (b) such other period (specified in the notice), as the court shall allow in order that the relevant Minister or other person, may seek to be joined and prepare his case.

(6) Unless the court otherwise directs, the Minister or other person entitled under the 1998 Act to be joined as a party shall, if he is to be joined, give written notice to the court and every other party.

(7) Where a Minister of the Crown has nominated a person to be joined as a party by virtue of section 5(2)(a) of the 1998 Act, a notice under paragraph (6) above shall be accompanied by a written nomination signed by or on behalf of the Minister.

*[Note. Formerly rule 14A of the Criminal Appeal Rules 1968.]*

### **Dismissal of appeal against hospital order**

**68.28.** If the court dismisses an appeal or an application for leave to appeal by an appellant who is subject to a hospital order under the Mental Health Act 1983(**465**) or an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964(**466**) (power to deal with persons not guilty by reason of insanity or unfit to plead etc.) or the court affirms the order and the appellant has been released on bail pending his appeal, the court shall give such directions as it thinks fit for his conveyance to the hospital from which he was released on bail and for his detention, if necessary, in a place of safety as defined in section 55 of the 1983 Act pending his admission to the said hospital.

*[Note. Formerly rule 14 of the Criminal Appeal Rules 1968.]*

### **Notice of determination of court**

**68.29.**—(1) The Registrar shall, as soon as practicable, serve notice of any determination by the court or by any judge of the court under section 31 of the Criminal Appeal Act 1968 (powers exercisable by a single judge) on any appeal or application by an appellant on—

- (a) the appellant;
- (b) the Secretary of State;
- (c) any person having custody of the appellant;
- (d) in the case of an appellant detained under the Mental Health Act 1983 the responsible authority; and
- (e) in the case of a declaration of incompatibility under section 4 of the Human Rights Act 1998, the declaration shall be served on—
  - (i) all of the parties to the proceedings, and
  - (ii) where a Minister of the Crown has not been joined as a party, the Crown (in accordance with rule 68.27(3) above).

(2) The Registrar shall, as soon as practicable, serve notice on a court officer of the court of trial of the order of the court disposing of an appeal or application for leave to appeal.

(3) In this rule the expression “responsible authority” means—

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**(465)**1983 c. 20; section 145(1) was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66(1) and Schedule 9, paragraph 24(9), by the Mental Health (Amendment) Act 1994 (c. 6), section 1, by the Health Authorities Act 1995 (c. 17), section 2(1) and Schedule 1, paragraph 107(14), by the Health Act 1999 (c. 8), sections 41(2) and 65 and Schedule 5, by the Care Standards Act 2000 (c. 14), section 116 and Schedule 4, paragraphs 9(1) and (10)(c), by the National Health Service Reform and Health Care Professionals Act 2002 (c. 17), section 2(5) and Schedule 2, Part 2, paragraphs 42 and 49, by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 34 and Schedule 4, paragraphs 50 and 57, and by S.I. 2000/90, 2002/2469.

**(466)**1964 c. 84; section 5 was amended by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 3.

- (a) in relation to a patient liable to be detained under the 1983 Act in a hospital or mental nursing home, the managers of the hospital or home as defined in section 145(1) of that Act; and
- (b) in relation to a patient subject to guardianship, the responsible local health authority as defined in section 34(3) of the 1983 Act.

*[Note. Formerly rule 15 of the Criminal Appeal Rules 1968.]*

### **Enforcement of fines**

**68.30.**—(1) Where the court imposes a fine on an appellant, the court shall make an order fixing a term of imprisonment, not exceeding 12 months, which the appellant is to undergo if the fine is not duly paid or recovered.

(2) Such an order may—

- (a) allow time for the payment of the fine; or
- (b) direct payment of the fine by instalments of such amounts and on such dates respectively as may be specified in the order.

*[Note. Formerly rule 13 of the Criminal Appeal Rules 1968.]*

### **Notice of application after order for retrial**

**68.31.** Notice of an application under section 8(1) of the Criminal Appeal Act 1968 for leave to arraign, and notice of an application under section 8(1A) of that Act to set aside an order for retrial shall be in the form set out in the Practice Direction and shall be served on the prosecutor or the person ordered to be retried as the case may be, and on the Registrar.

*[Note. Formerly rule 2A of the Criminal Appeal Rules 1968.]*

## **PART 69**

### **REFERENCE TO THE COURT OF APPEAL OF POINT OF LAW**

#### **Contents of this Part**

References	rule 69.1
Registrar’s notice to respondent	rule 69.2
Withdrawal or amendment of reference	rule 69.3
Anonymity of respondent	rule 69.4
Reference to House of Lords	rule 69.5
Service of documents	rule 69.6

### **References**

**69.1.**—(1) Every reference under section 36 of the Criminal Justice Act 1972(467) shall be in writing and shall—

- (a) specify the point of law referred and, where appropriate, such facts of the case as are necessary for the proper consideration of the point of law;
- (b) summarise the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited:

Provided that no mention shall be made in the reference of the proper name of any person or place which is likely to lead to the identification of the respondent.

(2) A reference shall be entitled “Reference under section 36 of the Criminal Justice Act 1972” together with the year and number of the reference.

*[Note. Formerly rule 3 of the Criminal Appeal (Reference of Points of Law) Rules 1973(468).]*

### **Registrar’s notice to respondent**

**69.2.**—(1) The Registrar shall cause to be served on the respondent notice of the reference which shall also—

- (a) inform the respondent that the reference will not affect the trial in relation to which it is made or any acquittal in that trial; and
- (b) invite the respondent, within such period as may be specified in the notice (being not less than 28 days from the date of service of the notice), to inform the Registrar if he wishes to present any argument to the court and, if so, whether he wishes to present such argument in person or by counsel on his behalf.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified in the notice has expired unless the respondent agrees or has indicated that he does not wish to present any argument to the court.

*[Note. Formerly rule 4 of the Criminal Appeal (Reference of Points of Law) Rules 1973.]*

### **Withdrawal or amendment of reference**

**69.3.** The Attorney General may withdraw or amend the reference at any time before the court have begun the hearing, or, after that, and until the court have given their opinion, may withdraw or amend the reference by leave of the court, and notice of such withdrawal or amendment shall be served on the respondent on behalf of the Attorney General.

*[Note. Formerly rule 5 of the Criminal Appeal (Reference of Points of Law) Rules 1973.]*

### **Anonymity of respondent**

**69.4.** The court shall ensure that the identity of the respondent is not disclosed during the proceedings on a reference except where the respondent has given his consent to the use of his name in the proceedings.

*[Note. Formerly rule 6 of the Criminal Appeal (Reference of Points of Law) Rules 1973.]*

### **Reference to House of Lords**

**69.5.** An application under section 36(3) of the Criminal Justice Act 1972 (reference to the House of Lords) may be made orally immediately after the court give their opinion or by notice served on the Registrar within the 14 days next following.

*[Note. Formerly rule 7 of the Criminal Appeal (Reference of Points of Law) Rules 1973.]*

## Service of documents

- 69.6.**—(1) For the purpose of this Part service of a document on the respondent may be effected—
- (a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of that body at that office; and
  - (b) in the case of a document to be served on any other person by—
    - (i) delivering it to the person to whom it is directed,
    - (ii) leaving it for him with some person at his last known or usual place of abode, or
    - (iii) sending it by post addressed to him at his last known or usual place of abode.
- (2) For the purpose of this Part, service of a document on the Registrar may be effected by—
- (a) delivering it to the Registrar;
  - (b) addressing it to him and leaving it at his office in the Royal Courts of Justice, London, WC2; or
  - (c) sending it by post addressed to him at the said office.

*[Note. Formerly rule 8 of the Criminal Appeal (Reference of Points of Law) Rules 1973.]*

## PART 70

### REFERENCE TO THE COURT OF APPEAL OF UNDULY LENIENT SENTENCE

#### Contents of this Part

Applications	rule 70.1
Notice of application	rule 70.2
Registrar’s notice to offender	rule 70.3
References	rule 70.4
Withdrawal or amendment of application or reference	rule 70.5
Registrar’s power to require information from court of trial	rule 70.6
Supply of documentary and other exhibits	rule 70.7
Service of documents	rule 70.8

#### Applications

**70.1.**—(1) Every application for a reference under section 36 of the Criminal Justice Act 1988(**469**) shall be in writing and shall—

- (a) specify—
  - (i) the name of the offender,

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**(469)** 1988 c. 33; section 36 was amended by the Crime (Sentences) Act 1997 (c. 43), section 55 and Schedule 4, paragraph 13, by the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Schedule 9, paragraph 102, and by the Criminal Justice Act 2003 (c. 44), section 272(1), and is amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, Part 1, paragraphs 45 and 46 and Schedule 36, Part 6, paragraphs 96(a) and (b) with effect from a date to be appointed.

- (ii) the date on which, and the offence of which, he was convicted,
  - (iii) the sentence passed on him in respect of that offence,
  - (iv) the date on which the sentence was passed (if later than the date under subparagraph (ii)), and
  - (v) the judge by whom, and the location of the Crown Court at which, the sentence was passed; and
- (b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient.

(2) An application shall be entitled “Reference under section 36 of the Criminal Justice Act 1988” together with the year and number of the application and the name of the offender.

*[Note. Formerly rule 3 of the Criminal Appeal (Reviews of Sentencing) Rules 1989(470).]*

### **Notice of application**

**70.2.** The sending of the application to the Registrar shall constitute the giving of notice of the application for the purpose of paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (notice to be given within 28 days of passing of sentence).

*[Note. Formerly rule 4 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]*

### **Registrar’s notice to offender**

**70.3.—**(1) The Registrar shall, as soon as practicable after receiving the application, cause to be served on the offender a copy of it together with a notice which—

- (a) informs him that the result of any reference could be that the court would quash the sentence passed on him in the proceeding and in place of it pass such sentence as they thought appropriate for the case and as the court below had power to pass when dealing with him (including a greater punishment);
- (b) informs him of the effect of paragraph 6 (entitlement of offender to be present at hearing of reference, although he may be in custody), 7 (offender in custody requires leave of court to be present at hearing of application), 8 (power of court to pass sentence on offender who is not present) and 11 (entitlement of offender to reasonable costs out of central funds) of Schedule 3 to the Criminal Justice Act 1988;
- (c) invites him, within such period as the Registrar may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the Registrar if he wishes—
  - (i) to apply to the court for leave to be present under paragraph 7 of Schedule 3 to the 1988 Act, and
  - (ii) to present any argument to the court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf;
- (d) draws to his attention the effect of rule 70.7 (supply of documentary and other exhibits); and
- (e) advises him to consult a solicitor as to his position as soon as possible.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified by the Registrar has expired unless the offender agrees or has indicated that he does not wish to present any argument to the Court.

*[Note. Formerly rule 5 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]*

### **References**

**70.4.**—(1) Every reference shall be in writing and shall—

- (a) contain the information required by rule 70.1(1)(a) to be specified in an application;
- (b) summarise the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited.

(2) The reference shall bear the same title as the application.

(3) Subject to paragraph (4), the reference shall be sent on behalf of the Attorney General to the Registrar, who shall, as soon as practicable after receiving it, cause to be served a copy of it on the offender.

(4) Where the court gives leave for a case to be referred to it and is satisfied that the document comprising the application also contains the material required by paragraph (1) to be contained in a reference, the court may order that the document be treated for the purpose of this Part as the reference; and in that case paragraph (3) shall not apply.

*[Note. Formerly rule 6 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]*

### **Withdrawal or amendment of application or reference**

**70.5.** The Attorney General may withdraw or amend an application or reference at any time before the court have begun the hearing of the application or reference as the case may be, or, after that, and until the court have given their decision, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the Registrar and on the offender on behalf of the Attorney General.

*[Note. Formerly rule 7 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]*

### **Registrar's power to require information from court of trial**

**70.6.** The Registrar may require the court of trial to furnish the Court with any assistance or information which they may require for the purpose of exercising their jurisdiction.

*[Note. Formerly rule 8 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]*

### **Supply of documentary and other exhibits**

**70.7.**—(1) The Registrar shall, on request, supply to the offender copies or reproductions of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by the Treasury.

(2) The Registrar shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.

*[Note. Formerly rule 9 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]*

### **Service of documents**

**70.8.**—(1) For the purposes of this Part service of a document on the offender may be effected—

- (a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; and

- (b) in the case of a document to be served on any other person—
    - (i) by delivering it to the person to whom it is directed,
    - (ii) by leaving it for him with some person at his last known or usual place of abode, or
    - (iii) by sending it by post addressed to him at his last known or usual place of abode.
  - (2) For the purpose of this Part service of a document on the Registrar may be effected—
    - (a) in the case of an offender who is in custody, by delivering it to the person having custody of him;
    - (b) by delivering it to the Registrar;
    - (c) by addressing it to him and leaving it at his office in the Royal Courts of Justice, London WC2; or
    - (d) by sending it by post addressed to him at the said office.
  - (3) A person having custody of an offender and to whom a document is delivered in pursuance of paragraph (2)(a) shall endorse on it the date of delivery and cause it to be forwarded to the Registrar.
- [Note. Formerly rule 10 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]*

## PART 71

### APPEAL TO THE COURT OF APPEAL UNDER THE PROCEEDS OF CRIME ACT 2002—GENERAL RULES

#### Contents of this Part

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Extension of time	rule 71.1
Other applications	rule 71.2
Examination of witness by court	rule 71.3
Supply of documentary and other exhibits	rule 71.4
Registrar’s power to require information from court of trial	rule 71.5
Hearing by single judge	rule 71.6
Determination by full court	rule 71.7
Notice of determination	rule 71.8
Record of proceedings and transcript	rule 71.9
Appeal to House of Lords	rule 71.10
Service of documents	rule 71.11

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#### **Extension of time**

**71.1.**—(1) An application to extend the time limit for giving notice of application for leave to appeal under Part 2 of the Proceeds of Crime Act 2002(**471**) must—

- (a) be included in the notice of appeal; and

(b) state the grounds for the application.

(2) The parties may not agree to extend any date or time limit set by this Part, Part 72 or Part 73, or by the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(472).

*[Note. Formerly rule 13 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003(473).]*

### **Other applications**

**71.2.** Rules 68.15 (application for witness order or for court to receive evidence) and 68.26 (application for leave to be present) shall apply in relation to an application—

- (a) by a party to an appeal under Part 2 of the Proceeds of Crime Act 2002 that, under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, a witness be ordered to attend or that the evidence of a witness be received by the Court of Appeal; or
- (b) by the defendant to be given leave by the court to be present at proceedings for which leave is required under article 6 of the 2003 Order,

as they apply in relation to applications under Part I of the Criminal Appeal Act 1968(474) and the form in which rules 68.15 and 68.26 require notice to be given may be modified as necessary.

*[Note. Formerly rule 14 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Examination of witness by court**

**71.3.**—(1) Rule 68.16 (examination of witness by court) shall apply in relation to an order of the court under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 to require a person to attend for examination as it applies in relation to such an order of the court under Part I of the Criminal Appeal Act 1968.

(2) The form set out in the Practice Direction, which relates to rule 68.16, may be modified as necessary.

*[Note. Formerly rule 15 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Supply of documentary and other exhibits**

**71.4.** Rule 68.11 (supply of documentary and other exhibits) shall apply in relation to an appellant or respondent under Part 2 of the Proceeds of Crime Act 2002 as it applies in relation to an appellant and respondent under Part I of the Criminal Appeal Act 1968.

*[Note. Formerly rule 16 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Registrar’s power to require information from court of trial**

**71.5.** The Registrar may require the Crown Court to provide the Court of Appeal with any assistance or information which they may require for the purposes of exercising their jurisdiction under Part 2 of the Proceeds of Crime Act 2002, the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, this Part or Parts 72 and 73.

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(472)S.I. 2003/82.

(473)S.I. 2003/428.

(474)1968 c. 19.



*[Note. Formerly rule 17 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Hearing by single judge**

**71.6.**—(1) Rule 68.5 (exercise of court’s power to give leave) shall apply in relation to a judge exercising any of the powers referred to in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or the powers in rules 71.12(1), (2) and (4) (service of documents), 72.2(3) and (4) (respondent’s notice), 73.2(2) (notice of appeal) and 73.3(6) (respondent’s notice), as it applies in relation to a judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

(2) The form in which rule 68.5 requires an application to be made may be modified as necessary.

*[Note. Formerly rule 18 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Determination by full court**

**71.7.** Rule 68.6 (further application to the court) shall apply where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or the power in rule 72.2(3) or (4) as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

*[Note. Formerly rule 19 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Notice of determination**

**71.8.**—(1) This rule applies where a single judge or the Court of Appeal has determined an application or appeal under the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or under Part 2 of the Proceeds of Crime Act 2002.

(2) The Registrar must, as soon as practicable, serve notice of the determination on all of the parties to the proceedings.

(3) Where a single judge or the Court of Appeal has disposed of an application for leave to appeal or an appeal under section 31 of the 2002 Act, the registrar must also, as soon as practicable, serve the order on a court officer of the court of trial and any magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

*[Note. Formerly rule 20 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Record of proceedings and transcripts**

**71.9.**—(1) Rules 68.12 (record of proceedings at trial), 68.13 (transcripts) and 68.14 (verification of record of proceedings) shall apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the Proceeds of Crime Act 2002 as they apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

(2) The Director of the Assets Recovery Agency shall be treated as an interested party for the purposes of rule 68.13 as it applies by virtue of this rule.

*[Note. Formerly rule 21 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Appeal to House of Lords

**71.10.**—(1) An application to the Court of Appeal for leave to appeal to the House of Lords under Part 2 of the Proceeds of Crime Act 2002 must be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the House of Lords; or
- (b) in the form set out in the Practice Direction, in accordance with article 12 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 and served on the Registrar.

(2) The application may be abandoned at any time before it is heard by the Court of Appeal by serving notice in writing on the Registrar.

(3) Rule 68.5(5) (hearing by single judge or Registrar) applies in relation to a single judge exercising any of the powers referred to in article 15 of the 2003 Order, as it applies in relation to a single judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

(4) Rules 68.5 (exercise of court's power to give leave to appeal, etc: general rules) and 68.6 (further applications to a judge or to the Court of Appeal: additional rules) apply where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 15 of the 2003 Order as they apply where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(5) The form in which rule 68.5 requires an application to be made may be modified as necessary.

*[Note. Formerly rule 22 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## Service of documents

**71.11.**—(1) Where this Part or Parts 72 or 73 require service of a document on the Registrar then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant who is in custody, by delivering it to the person who has custody of him; and
- (b) in any other case, by addressing it to the Registrar and delivering it at, or sending it by first class post to, his office in the Royal Courts of Justice, London WC2.

(2) Where this Part or Parts 72 or 73 require service of a document on a Crown Court officer then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant who is in custody, by delivering it to the person who has custody of him; and
- (b) in any other case, by delivering it to, or sending it by first class post to, the court officer at the Crown Court centre at which the decision being appealed against was made.

(3) A person who has custody of a defendant and to whom the defendant delivers a document under paragraph (1)(a) or (2)(a) must endorse on it the date of delivery and forward it to the Registrar or the Crown Court officer, as the case may be.

(4) Where this Part or Parts 72 or 73 require the service of a document on any other person then, unless the Registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in all cases, by delivering the document personally to the party to be served;
- (b) if no solicitor is acting for the party to be served by delivering the document at, or by sending it by first-class post to, his residence or his last-known residence; and
- (c) if a solicitor is acting for the party to be served—

- (i) by delivering the document at, or sending it by first-class post to, the solicitor's address for service, or
- (ii) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or
- (iii) if the solicitor has indicated that he is willing to accept service by facsimile transmission, by sending a legible copy of the document by facsimile transmission to the solicitor's office.

[*Note. Formerly rule 23 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.*]

## PART 72

### APPEAL TO THE COURT OF APPEAL UNDER PROCEEDS OF CRIME ACT 2002—PROSECUTOR'S APPEAL REGARDING CONFISCATION

#### Contents of this Part

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Notice of appeal	rule 72.1
Respondent's notice	rule 72.2
Amendment and abandonment of appeal	rule 72.3

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#### Notice of appeal

**72.1.**—(1) Where an appellant wishes to apply to the Court of Appeal for leave to appeal under section 31 of the Proceeds of Crime Act 2002(**475**), he must serve a notice of appeal in the form set out in the Practice Direction on—

- (a) the Crown Court officer; and
- (b) the defendant.

(2) When the notice of the appeal is served on the defendant, it must be accompanied by a respondent's notice in the form set out in the Practice Direction for the defendant to complete and a notice which—

- (a) informs the defendant that the result of an appeal could be that the Court of Appeal would increase a confiscation order already imposed on him, make a confiscation order itself or direct the Crown Court to hold another confiscation hearing;
- (b) informs the defendant of any right he has under article 6 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(**476**) to be present at the hearing of the appeal, although he may be in custody;
- (c) invites the defendant to serve notice on the registrar if he wishes—
  - (i) to apply to the Court of Appeal for leave to be present at proceedings for which leave is required under article 6 of the 2003 Order, or

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(475) 2002 c. 29.  
(476) S.I. 2003/82.

- (ii) to present any argument to the Court of Appeal on the hearing of the application or, if leave is given, the appeal, and whether he wishes to present it in person or by means of a legal representative;
- (d) draws to the defendant's attention the effect of rule 71.4 (supply of documentary and other exhibits); and
- (e) advises the defendant to consult a solicitor as soon as possible.

(3) The appellant must provide a Crown Court officer with a certificate of service stating that he has served the notice of appeal on the defendant in accordance with paragraph (1) or explaining why he has been unable to effect service.

*[Note. Formerly rule 3 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003(477).]*

### **Respondent's notice**

**72.2.**—(1) This rule applies where a defendant is served with a notice of appeal under rule 72.1.

(2) If the defendant wishes to oppose the application for leave to appeal, he must, not later than 14 days after the date on which he received the notice of appeal, serve on the Registrar and on the appellant a notice in the form set out in the Practice Direction—

- (a) stating the date on which he received the notice of appeal;
- (b) summarising his response to the arguments of the appellant; and
- (c) specifying the authorities which he intends to cite.

(3) The time for giving notice under this rule may be extended by the Registrar, a single judge or by the Court of Appeal.

(4) Where the Registrar refuses an application under paragraph (3) for the extension of time, the defendant shall be entitled to have his application determined by a single judge.

(5) Where a single judge refuses an application under paragraph (3) or (4) for the extension of time, the defendant shall be entitled to have his application determined by the Court of Appeal.

*[Note. Formerly rule 4 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Amendment and abandonment of appeal**

**72.3.**—(1) The appellant may amend a notice of appeal served under rule 72.1 or abandon an appeal under section 31 of the Proceeds of Crime Act 2002—

- (a) without the permission of the Court at any time before the Court of Appeal have begun hearing the appeal; and
- (b) with the permission of the Court after the Court of Appeal have begun hearing the appeal, by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice abandoning an appeal under paragraph (1), he must send a copy of it to—

- (a) the defendant;
- (b) a court officer of the court of trial; and
- (c) the magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

(3) Where the appellant serves a notice amending a notice of appeal under paragraph (1), he must send a copy of it to the defendant.

(4) Where an appeal is abandoned under paragraph (1), the application for leave to appeal or appeal shall be treated, for the purposes of section 85 of the 2002 Act (conclusion of proceedings), as having been refused or dismissed by the Court of Appeal.

*[Note. Formerly rule 5 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## PART 73

### APPEAL TO THE COURT OF APPEAL UNDER POCA 2002—RESTRAINT OR RECEIVERSHIP ORDERS

#### Contents of this Part

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Leave to appeal	rule 73.1
Notice of appeal	rule 73.2
Respondent's notice	rule 73.3
Amendment and abandonment of appeal	rule 73.4
Stay	rule 73.5
Striking out, setting aside and imposing conditions	rule 73.6
Hearing of appeals	rule 73.7

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#### Leave to appeal

**73.1.**—(1) Leave to appeal to the Court of Appeal under section 43 or section 65 of the Proceeds of Crime Act 2002(**478**) will only be given where—

- (a) the Court of Appeal considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(2) An order giving leave may limit the issues to be heard and be made subject to conditions.

*[Note. Formerly rule 6 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003(**479**).]*

#### Notice of appeal

**73.2.**—(1) Where an appellant wishes to apply to the Court of Appeal for leave to appeal under section 43 or 65 of the Proceeds of Crime Act 2002 Act, he must serve a notice of appeal in the form set out in the Practice Direction on the Crown Court officer.

(2) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the appellant must serve the notice of appeal, accompanied by a respondent's notice in the form set out in the Practice Direction for the respondent to complete, on—

- (a) each respondent;

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**(478)** 2002 c. 29.  
**(479)** S.I. 2003/428.

- (b) any person who holds realisable property to which the appeal relates; and
- (c) any other person affected by the appeal,

as soon as practicable and in any event not later than 7 days after the notice of appeal is served on a Crown Court officer.

- (3) The appellant must serve the following documents with his notice of appeal—
  - (a) four additional copies of the notice of appeal for the Court of Appeal;
  - (b) four copies of any skeleton argument;
  - (c) one sealed copy and four unsealed copies of any order being appealed;
  - (d) four copies of any witness statement or affidavit in support of the application for leave to appeal;
  - (e) four copies of a suitable record of the reasons for judgment of the Crown Court; and
  - (f) four copies of the bundle of documents used in the Crown Court proceedings from which the appeal lies.

(4) Where it is not possible to serve all of the documents referred to in paragraph (3), the appellant must indicate which documents have not yet been served and the reasons why they are not currently available.

(5) The appellant must provide a Crown Court officer with a certificate of service stating that he has served the notice of appeal on each respondent in accordance with paragraph (2) and including full details of each respondent or explaining why he has been unable to effect service.

*[Note. Formerly rule 7 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Respondent's notice**

**73.3.**—(1) This rule applies to an appeal under section 43 or 65 of the Proceeds of Crime Act 2002.

- (2) A respondent may serve a respondent's notice on the Registrar.
- (3) A respondent who—
  - (a) is seeking leave to appeal from the Court of Appeal; or
  - (b) wishes to ask the Court of Appeal to uphold the decision of the Crown Court for reasons different from or additional to those given by the Crown Court,

must serve a respondent's notice on the Registrar.

(4) A respondent's notice must be in the form set out in the Practice Direction and where the respondent seeks leave to appeal to the Court of Appeal it must be requested in the respondent's notice.

- (5) A respondent's notice must be served on the Registrar not later than 14 days after—
  - (a) the date the respondent is served with notification that the Court of Appeal has given the appellant leave to appeal; or
  - (b) the date the respondent is served with notification that the application for leave to appeal and the appeal itself are to be heard together.

(6) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the respondent serving a respondent's notice must serve the notice on the appellant and any other respondent—

- (a) as soon as practicable; and
- (b) in any event not later than seven days,

after it is served on the Registrar.

*[Note. Formerly rule 8 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Amendment and abandonment of appeal**

**73.4.**—(1) The appellant may amend a notice of appeal served under rule 73.2 or abandon an appeal under section 43 or 65 of the Proceeds of Crime Act 2002—

(a) without the permission of the Court at any time before the Court of Appeal have begun hearing the appeal; and

(b) with the permission of the Court after the Court of Appeal have begun hearing the appeal, by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice under paragraph (1), he must send a copy of it to each respondent.

*[Note. Formerly rule 9 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Stay**

**73.5.** Unless the Court of Appeal or the Crown Court orders otherwise, an appeal under section 43 or 65 of the Proceeds of Crime Act 2002 shall not operate as a stay of any order or decision of the Crown Court.

*[Note. Formerly rule 10 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Striking out appeal notices and setting aside or imposing conditions on leave to appeal**

**73.6.**—(1) The Court of Appeal may—

(a) strike out the whole or part of a notice of appeal served under rule 73.2; or

(b) impose or vary conditions upon which an appeal under section 43 or 65 of the Proceeds of Crime Act 2002 may be brought.

(2) The Court of Appeal will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party is present at the hearing at which leave to appeal was given, he may not subsequently apply for an order that the Court of Appeal exercise its powers under paragraph (1)(b).

*[Note. Formerly rule 11 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

### **Hearing of appeals**

**73.7.**—(1) This rule applies to appeals under section 43 or 65 of the Proceeds of Crime Act 2002.

(2) Every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(3) The Court of Appeal will allow an appeal where the decision of the Crown Court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

(4) The Court of Appeal may draw any inference of fact which it considers justified on the evidence.

(5) At the hearing of the appeal a party may not rely on a matter not contained in his notice of appeal unless the Court of Appeal gives permission.

*[Note. Formerly rule 12 of the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003.]*

## PART 74

### APPEAL TO THE HOUSE OF LORDS

#### Contents of this Part

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Application for leave to appeal from the Court of Appeal rule 74.1 of Appeal

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#### **Application for leave to appeal from the Criminal Division of the Court of Appeal to the House of Lords**

**74.1.**—(1) An application to the criminal division of the Court of Appeal—

- (a) for leave to appeal to the House of Lords under Part II of the Criminal Appeal Act 1968(**480**) or section 13 of the Administration of Justice Act 1960(**481**);
- (b) to extend the time within which an application may be made by the defendant to the House of Lords or the court under section 34(1) of the 1968 Act(**482**) or that subsection as applied by section 13(4) of the 1960 Act;
- (c) by the defendant to be given leave to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto; or
- (d) by the defendant to be granted bail pending the appeal,

shall either be made orally immediately after the decision of the court from which an appeal lies to the House of Lords or notice thereof shall be in the form set out in the Practice Direction and shall be served on the Registrar.

(2) The recognizance of a surety shall be in the form set out in the Practice Direction.

(3) Rules 68.8 (bail with condition of surety) and 68.9 (forfeiture of recognizances) shall apply with respect to a defendant pending his appeal to the House of Lords as they apply with respect to an appellant with the necessary modifications.

(4) An application to the court for leave to appeal to the House of Lords under Part II of the 1968 Act or section 13 of the 1960 Act may be abandoned before the hearing of the application by serving on the Registrar notice to that effect.

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**(480)** 1968 c. 19.

**(481)** 1960 c. 65; relevant amendments to section 13 were made by the Criminal Appeal Act 1968 (c. 19), Schedule 5, Part 1, the Courts Act 1971 (c. 23), Schedule 8, Part 2, paragraph 40, the Magistrates' Courts Act 1980 (c. 43), Schedule 7, paragraph 37, the Supreme Court Act 1981 (c. 54), Schedule 7, the County Courts Act 1984 (c. 28), Schedule 2, paragraph 25 and the Access to Justice Act 1999 (c. 22), section 64 and Schedule 15, Part 3.

**(482)** Section 34(1) is amended by the Courts Act 2003 (c. 39), section 88(4) and (5), with effect from a date to be appointed.



(5) For the purpose of having an application determined by the court in pursuance of section 44 of the 1968 Act(**483**), rules 68.5 (exercise of court’s power to give leave) and 68.6 (further application to the court) shall apply with the necessary modifications.

(6) Rule 68.29 (notice if determination of court) shall apply to a determination under Part II of the 1968 Act or section 13 of the 1960 Act with the necessary modifications.

(7) Rules 68.11 (supply of documentary and other exhibits), 68.13(2) (transcripts) and 68.23 (the Registrar) shall apply in relation to an appeal under Part II of the 1968 Act or section 13 of the 1960 Act as they apply in relation to an appeal under Part I of the 1968 Act, except that any reference to section 31 of the 1968 Act(**484**) shall be construed as a reference to section 44 of the 1968 Act.

(8) In this rule any reference to a defendant includes an appellant under section 13 of the 1960 Act.

*[Note. Formerly rule 23 of the Criminal Appeal Rules 1968(485). As to appeals to the House of Lords under Part 2 of the Proceeds of Crime Act 2002 see rule 71.10.]*

## PART 75

### REFERENCE TO THE EUROPEAN COURT

#### Contents of this Part

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Reference to the European Court	rule 75.1
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#### Reference to the European Court

**75.1.**—(1) In this rule “order” means an order referring a question to the European Court for a preliminary ruling under Article 234 of the Treaty establishing the European Community, Article 150 of the Treaty establishing Euratom or Article 41 of the Treaty establishing the Coal and Steel Community.

(2) An order may be made—

- (a) by the Crown Court of its own motion or on application by a party to proceedings in the Crown Court; or
- (b) by the Court of Appeal, on application or otherwise, at any time before the determination of an appeal or application for leave to appeal under Part I of the Criminal Appeal Act 1968.

(3) An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the court making the order may give directions as to the manner and form in which the schedule is to be prepared.

(4) When an order has been made, a copy shall be sent to the senior master of the Supreme Court (Queen’s Bench Division) for transmission to the Registrar of the European Court.

(5) The Crown Court proceedings in which an order is made shall, unless the Crown Court otherwise determines, be adjourned until the European Court has given a preliminary ruling on the question referred to it.

(6) Nothing in paragraph (5) above shall be taken as preventing the Crown Court from deciding any preliminary or incidental question that may arise in the proceedings after an order is made and before a preliminary ruling is given by the European Court.

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**(483)** 1968 c. 19; relevant amendments to section 44 were made by the Road Traffic Act 1974 (c. 50), Schedule 6, paragraph 11, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), Schedule 3, paragraph 4(2) and the Criminal Justice Act 1988 (c. 33), Schedule 15, paragraphs 20 and 31.

**(484)** Section 31 has been amended in ways that are not relevant to this Part.

**(485)** S.I. 1968/1262.

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

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(7) No appeal or application for leave to appeal, in the course of which an order is made, shall, unless the Court of Appeal otherwise orders, be determined until the European Court has given a preliminary ruling on the question referred to it.

*[Note. Formerly rule 29 of the Crown Court Rules 1982(486) and rules 3-5 of the Criminal Appeal (References to the European Court) Rules 1972(487). See also Practice Direction (ECJ references: procedure) [1999] 1 Cr App R 452 and the House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals (November 2003), paragraphs 31.1-31.7.]*

## PART 76

### REPRESENTATION ORDERS

#### Contents of this Part

*[Note. There are currently no rules in this Part.]*

## PART 77

### RECOVERY OF DEFENCE COSTS ORDERS

#### Contents of this Part

*[Note. There are currently no rules in this Part.]*

## PART 78

### COSTS ORDERS AGAINST THE PARTIES

#### Contents of this Part

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Crown Court jurisdiction to award costs on appeal	rule 78.1
Crown Court award of costs in magistrates' court proceedings	rule 78.2
Taxation of Crown Court costs	rule 78.3
Review of Crown Court costs by taxing authority	rule 78.4
Further review of Crown Court costs by taxing master	rule 78.5
Appeal to High Court judge after review of Crown Court costs	rule 78.6

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(486) S.I. 1982/1109.

(487) S.I. 1972/1786.

Supplementary provisions on Crown Court rule 78.7  
costs

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### **Crown Court's jurisdiction to award costs in appeal from magistrates' court**

**78.1.**—(1) Subject to the provisions of section 109(1) of the Magistrates' Courts Act 1980(488) (power of magistrates' courts to award costs on abandonment of appeals from magistrates' courts), no party shall be entitled to recover any costs of any proceedings in the Crown Court from any other party to the proceedings except under an order of the Court.

(2) Subject to the following provisions of this rule, the Crown Court may make such order for costs as it thinks just.

(3) No order for costs shall be made on the abandonment of an appeal from a magistrates' court by giving notice under rule 63.5.

(4) Without prejudice to the generality of paragraph (2), the Crown Court may make an order for costs on dismissing an appeal where the appellant has failed to proceed with the appeal or on the abandonment of an appeal not being an appeal to which paragraph (3) applies.

*[Note. Formerly rule 12 of the Crown Court Rules 1982(489). See also the relevant provisions of the Prosecution of Offences Act 1985(490) and the Costs in Criminal Cases (General) Regulations 1986(491). As to costs in restraint or receivership proceedings under Part 2 of the Proceeds of Crime Act 2002 see rules 61.19 to 61.22.]*

### **Crown Court's jurisdiction to award costs in magistrates' court proceedings from which appeal is brought**

**78.2.** Where an appeal is brought to the Crown Court from the decision of a magistrates' court and the appeal is successful, the Crown Court may make any order as to the costs of the proceedings in the magistrates' court which that court had power to make.

*[Note. Formerly rule 13 of the Crown Court Rules 1982. See also the relevant provisions of the Prosecution of Offences Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.]*

### **Taxation of Crown Court costs**

**78.3.**—(1) Where under these Rules the Crown Court has made an order for the costs of any proceedings to be paid by a party and the Court has not fixed a sum, the amount of the costs to be paid shall be ascertained as soon as practicable by the Crown Court officer (hereinafter referred to as the taxing authority).

(2) On a taxation under the preceding paragraph there shall be allowed the costs reasonably incurred in or about the prosecution and conviction or the defence, as the case may be.

*[Note. Formerly rule 14 of the Crown Court Rules 1982. See also the relevant provisions of the Prosecution of Offences Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.]*

### **Review of Crown Court costs by taxing authority**

**78.4.**—(1) Any party dissatisfied with the taxation of any costs by the taxing authority under rule 78.3 may apply to the taxing authority to review his decision.

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(488) 1980 c. 43; section 109 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 234.

(489) S.I. 1982/1109.

(490) 1985 c. 23.

(491) S.I. 1986/1335.

(2) The application shall be made by giving notice to the taxing authority and to any other party to the taxation within 14 days of the taxation, specifying the items in respect of which the application is made and the grounds of objection.

(3) Any party to whom notice is given under the preceding paragraph may within 14 days of the service of the notice deliver to the taxing authority answers in writing to the objections specified in that notice to the taxing authority and, if he does, shall send copies to the applicant for the review and to any other party to the taxation.

(4) The taxing authority shall reconsider his taxation in the light of the objections and answers, if any, of the parties and any oral representations made by or on their behalf and shall notify them of the result of his review.

*[Note. Formerly rule 15 of the Crown Court Rules 1982. See also the relevant provisions of the Prosecution of Offences Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.]*

### **Further review of Crown Court costs by Taxing Master**

**78.5.**—(1) Any party dissatisfied with the result of a review of taxation under rule 78.4 may, within 14 days of receiving notification thereof, request the taxing authority to supply him with reasons in writing for his decision and may within 14 days of the receipt of such reasons apply to the Chief Taxing Master for a further review and shall, in that case, give notice of the application to the taxing authority and to any other party to the taxation, to whom he shall also give a copy of the reasons given by the taxing authority.

(2) Such application shall state whether the application wishes to appear or be represented, or whether he will accept a decision given in his absence and shall be accompanied by a copy of the notice given under rule 78.4, of any answer which may have been given under paragraph (3) thereof and of the reasons given by the taxing authority for his decision, together with the bill of costs and full supporting documents.

(3) A party to the taxation who receives notice of an application under this rule shall inform the Chief Taxing Master whether he wishes to appear or be represented at a further review, or whether he will accept a decision given in his absence.

(4) The further review shall be conducted by a Taxing Master and if the applicant or any other party to the taxation has given notice of his intention to appear or be represented, the Taxing Master shall inform the parties (or their agents) of the date on which the further review will take place.

(5) Before reaching his decision the Taxing Master may consult the judge who made the order for costs and the taxing authority and, unless the Taxing Master otherwise directs, no further evidence shall be received on the hearing of the further review; and no ground of objection shall be valid which was not raised on the review under rule 78.4.

(6) In making his review, the Taxing Master may alter the assessment of the taxing authority in respect of any sum allowed, whether by increase or decrease.

(7) The Taxing Master shall communicate the result of the further review to the parties and to the taxing authority.

*[Note. Formerly rule 16 of the Crown Court Rules 1982. See also the relevant provisions of the Prosecution of Offences Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.]*

### **Appeal to High Court judge after review of Crown Court costs**

**78.6.**—(1) Any party dissatisfied with the result of a further review under rule 78.5 may, within 14 days of receiving notification thereof, appeal by originating summons to a judge of the Queen's Bench Division of the High Court if, and only if, the Taxing Master certifies that the question to be decided involves a point of principle of general importance.

(2) On the hearing of the appeal the judge may reverse, affirm or amend the decision appealed against or make such other order as he thinks appropriate.

*[Note. Formerly rule 17 of the Crown Court Rules 1982. See also the relevant provisions of the Prosecution of Offences Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.]*

### **Supplementary provisions on Crown Court costs**

**78.7.**—(1) On a further review or an appeal to a judge of the High Court the Taxing Master or judge may make such order as he thinks just in respect of the costs of the hearing of the further review or the appeal, as the case may be.

(2) The time set out by rules 78.4, 78.5 and 78.6 may be extended by the taxing authority, Taxing Master or judge of the High Court on such terms as he thinks just.

*[Note. Formerly rule 18 of the Crown Court Rules 1982. See also the relevant provisions of the Prosecution of Offences Act 1985 and the Costs in Criminal Cases (General) Regulations 1986.]*

## **GLOSSARY**

This glossary is a guide to the meaning of certain legal expressions as used in these rules.

<i>Expression</i>	<i>Meaning</i>
account monitoring order	an order requiring certain types of financial institution to provide certain information held by them relating to a customer for the purposes of an investigation
action plan order	a type of community sentence requiring a child or young person to comply with a three month plan relating to his actions and whereabouts and to comply with the directions of a responsible officer (e.g. probation officer)
admission of evidence	acceptance by the court of the evidence into proceedings (not all evidence tendered by the parties may be allowable in court)
to adduce	to put forward (in evidence)
to adjourn	to suspend or delay the hearing of a case until another day
advance information	information about the case against an accused, to which the accused may be entitled before he or she enters a plea
affidavit	a written, sworn statement of evidence
affirmation	a non-religious alternative to the oath sworn by someone about to give evidence in court or swearing a statement
appellant	person who is appealing against a decision of the court
to arraign	to put charges to the defendant in open court in the Crown Court

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<i>Expression</i>	<i>Meaning</i>
arraignment	the formal process of putting charges to the defendant in the Crown Court which consists of three parts: (1) calling him to the bar by name, (2) putting the charges to him by reading from the indictment and (3) asking him whether he pleads guilty or not guilty
authorities	judicial decisions or opinions of authors of repute used as grounds of statements of law
bill of indictment	a written accusation of a crime against one or more persons—a criminal trial in the Crown Court cannot start without a valid indictment
in camera (trial)	proceedings which are held in private
case stated	an appeal to the High Court against the decision of a magistrates court on the basis that the decision was wrong in law or in excess of the magistrates' jurisdiction
in chambers	proceedings which may be held in private
child safety order	an order made by a magistrates' court placing a child under the supervision of a responsible officer where the child has committed acts which could, had he been over 10 years old at the time, have constituted an offence or which have or are likely to cause harassment, alarm or distress
committal	sending someone to a court (usually from a magistrates' court to the Crown court) or to prison
committal for sentence	procedure whereby a person convicted in a magistrates' court is sent to the Crown Court for sentencing when the sentencing powers of the magistrates' court are not considered sufficient
committal proceedings	preliminary hearing in a magistrates' court before a case is sent to be tried before a jury in the Crown Court
compellable witness	a witness who can be forced to give evidence against an accused (not all witnesses are compellable)
compensation order	an order that a convicted person must pay compensation for loss or damage caused by the convicted person
complainant	a person who makes a formal complaint—in relation to an offence of rape or other sexual offences the complainant is the person against

<i>Expression</i>	<i>Meaning</i>
	whom the offence is alleged to have been committed
complaint	document used to start certain types of proceedings in a magistrates' court, or the process of using such a document to start proceedings
conditional discharge	an order which does not impose any immediate punishment on a person convicted of an offence, subject to the condition that he does not commit an offence in a specified period
confiscation order	an order that private property be taken into possession by the state
Convention right	a right under the European Convention on Human Rights
costs	the expenses involved in a court case, including the fees of the solicitors and barristers and of the court
counsel	a barrister
cross examination	questioning of a witness by a party other than the party who called the witness
custody time limit	the maximum period, as set down in statute, for which a person may be kept in custody before being brought to trial—these maximum periods may only be extended by an order of the judge
customer information order	an order requiring a financial institution to provide certain information held by them relating to a customer for the purposes of an investigation into the proceeds of crime
declaration of incompatibility	a declaration by a court that a piece of UK legislation is incompatible with the provisions of the European Convention of Human Rights
deferred sentence	a sentence which is determined after a delay to allow the court to assess any change in the person's conduct or circumstances after his or her conviction
deposition	written record of a witness' written evidence
estreatment (of recognizance)	forfeiture
evidence in chief	the evidence given by a witness for the party who called him
examining justice	a magistrate carrying out his or her function of checking that a case appears on the face of the prosecution case papers to exist against an accused before the case is put forward for

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<i>Expression</i>	<i>Meaning</i>
	trial in the Crown Court—see committal and sending for trial
exhibit	a document or thing presented as evidence in court
ex parte	a hearing where only one party is allowed to attend and make submissions
forfeiture by peaceable re-entry	the re-possession by a landlord of premises occupied by tenants
guardianship order	an order appointing someone to take charge of a child's affairs and property
hearsay evidence	oral or written statements made by someone who is not a witness in the case but which the court is asked to accept as proving what they say—this expression is defined further by rule 34.1 for the purposes of Part 34, and by rule 57.1 for the purposes of Parts 57–61
hospital order	an order that an offender be admitted to and detained in a specified hospital
indictment	the document containing the formal charges against a defendant—a trial in the Crown Court cannot start without this
informant	someone who lays an information
information	statement by which a magistrate is informed of the offence for which a summons or warrant is required—the procedure by which this statement is brought to the magistrates' attention is known as laying an information
interested party	a person or organisation who is not the prosecutor or defendant but who has some other legal interest in a criminal case—this expression is defined further in rule 66.1, for the purposes of Part 66 only
intermediary	a person who asks a witness (particularly a child) questions posed by the cross-examining legal representative
inter partes	a hearing where both parties attend and can make submissions
justice of the peace	a lay magistrate or District Judge (Magistrates' Courts);
justices' clerk	post in the magistrates' court of person who has various powers and duties in a magistrates' court, including giving advice to the magistrates on law and procedure
leave of the court	permission granted by the court



<i>Expression</i>	<i>Meaning</i>
leave to appeal	permission granted to appeal the decision of a court
letter of request	letter issued to a foreign court asking a judge to take the evidence of some person within that court's jurisdiction
to levy distress	to seize property from a debtor or a wrongdoer
live link	audio and/or video equipment set up in order to enable evidence to be given from outside the court room in which a case is being heard
local justice area	an area established for the purposes of the administration of magistrates' courts
mandatory order	order from the divisional Court of the Queen's Bench Division ordering a body (such as a magistrates' court) to do something (such as rehear a case)
nominated court	a court nominated to take evidence pursuant to a request by a foreign court
notice of transfer	procedure used in cases of serious and complex fraud, and in certain cases involving child witnesses, whereby the prosecution can, without seeking judicial approval, have the case sent direct to the Crown Court without the need to have the accused committed for trial
offence triable only summarily	an offence which can be tried only in a magistrates' court
offence triable either way	an offence which may be tried either in the magistrates' court or in the Crown Court
offence triable only on indictment	an offence which can be tried only in the Crown Court
in open court	in a courtroom which is open to the public
order of committal	an order sending someone to prison for contempt of court
order restricting discharge	an order restricting the discharge from hospital of patients who have been sent there for psychiatric treatment
parenting order	an order which can be made in certain circumstances where a child has been convicted of an offence which may require parents of the offender to comply with certain requirements including attendance of counselling or guidance sessions
party	a person or organisation directly involved in a criminal case, either as prosecutor or defendant

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<i>Expression</i>	<i>Meaning</i>
practice direction	direction relating to the practice and procedure of the courts
to prefer, preferment	to bring or lay a charge or indictment
preparatory hearing	a hearing forming part of the trial sometimes used in long and complex cases to settle various issues without requiring the jury to attend
prima facie case	a prosecution case which is strong enough to require the defendant to answer it
primary legislation	Acts of Parliament
realisable property	property which can be sold for money
receiver	a person appointed with certain powers in respect of the property and affairs of a person who has obtained such property in the course of criminal conduct and who has been convicted of an offence—there are various types of receiver (management receiver, director’s receiver, enforcement receiver)
receivership order	an order that a person’s assets be put into the hands of an official with certain powers and duties to deal with that property
recognizance	formal undertaking to pay the crown a specified sum if an accused fails to surrender to custody
register	the formal records kept by a magistrates’ court
to remand	to send a person away when a case is adjourned until another date—the person may be remanded on bail (when he can leave, subject to conditions) or in custody
reparation order	an order made against a child or young person who has been convicted of an offence, requiring him or her to make specific reparations to the victim or to the community at large
representation order	an order authorising payment of legal aid for a defendant
respondent	the other party (to the appellant) in a case which is the subject of an appeal
restraint order	an order prohibiting a person from dealing with any realisable property held by him
seal	a formal mark which the court puts on a document to indicate that the document has been issued by the court
security	money deposited to ensure that the defendant attends court

<i>Expression</i>	<i>Meaning</i>
sending for trial	procedure whereby indictable offences are transferred to the Crown Court without the need for a committal hearing in the magistrates' court
skeleton argument	a document prepared by a party or their legal representative setting out the basis of the party's argument, including any arguments based on law—the court may require such documents to be served on the court and on the other party prior to a trial
special measures	measures which can be put in place to provide protection and/or anonymity to a witness (e.g. a screen separating witness from the accused)
statutory declaration	a declaration made before a Commissioner for Oaths in a prescribed form
to stay	to halt proceedings, apart from taking any steps allowed by the Rules or the terms of the stay—proceedings may be continued if a stay is lifted
summons	a document signed by a magistrate after an information is laid before him which sets out the basis of the accusation against the accused and the time and place when he must appear
surety	a person who guarantees that a defendant will attend court
suspended sentence	sentence which takes effect only if the offender commits another offence punishable with imprisonment within the specified period
supervision order	an order placing a person who has been given a suspended sentence under the supervision of a local officer
tainted acquittal	an acquittal affected by interference with a witness or a juror
taxation of costs	the assessment of the expenses involved in a court case
taxing authority	a body which assesses costs
Taxing Master	a judge who assesses costs
territorial authority	the UK authority which has power to do certain things in connection with co-operation with other countries and international organisations in relation to the collection of or hearing of evidence etc
transfer direction (mental health)	a direction that a person who is serving a sentence of imprisonment who is suffering

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<i>Expression</i>	<i>Meaning</i>
	from a mental disorder be transferred to a hospital and be detained there for treatment
warrant of arrest	court order to arrest a person
warrant of commitment	court order sending someone to prison
warrant of distress	court order giving the power to seize goods from a debtor to pay his debts
warrant of detention	a court order authorising someone's detention
wasted costs order	an order that a barrister or solicitor is not to be paid fees that they would normally be paid by the Legal Services Commission
witness	a person who gives evidence, either by way of a written statement or orally in court
witness summons	a document served on a witness requiring him or her to attend court to give evidence
writ of venire de novo	an order directing a new trial after a mistrial involving a fundamental irregularity
youth court	magistrates' courts exercising jurisdiction over offences committed by and other matters related to, children and young persons.

*Woolf of Barnes, C.J.*  
*Jane Furniss*  
*Auld, L.J.*  
*Hooper, L.J.*  
*Wakerley, J.*  
*Charles Wide*  
*Roderick Denyer*  
*Anthony Evans*  
*Brenda Large*  
*Andrew Mimmack*  
*Kenneth Macdonald*  
*David Fisher*  
*Tom Little*  
*Graham White*  
*Derek French*  
*Mark Benbow*  
*Mark Harris*  
*James Riches*

I allow these Rules, which shall come into force on 4th April, 2005.

Date 7th February 2005

*Falconer of Thoroton, C.*

I concur.

Date 18th February 2005

*Charles Clarke*  
One of Her Majesty's Principal Secretaries of  
State

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## **EXPLANATORY NOTE**

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

These Rules govern the practice and procedure to be followed in the criminal courts. They represent the first step in the creation of a new, consolidated criminal procedural code. Part 1 contains the overriding objective of the Rules. Part 2 contains provisions for understanding and applying the Rules. Part 3 contains new rules to facilitate the management of criminal cases by the court in accordance with the overriding objective. The main body of the Rules (Parts 4 to 78) are a consolidation of the existing rules of court, which are for the time being re-enacted without any substantial changes as part of the Criminal Procedure Rules.