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STATUTORY INSTRUMENTS

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**2016 No. 705 (L. 8)**

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

**The Criminal Procedure (Amendment No. 2) Rules 2016**

*Made* - - - - 27th June 2016  
*Laid before Parliament* 7th July 2016  
*Coming into force* - - 3rd October 2016

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

**Citation, commencement and interpretation**

1. These Rules may be cited as the Criminal Procedure (Amendment No. 2) Rules 2016 and shall come into force on 3rd October 2016.

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

**Amendments to the Criminal Procedure Rules 2015**

3. In Part 3 (Case management)—

(a) in rule 3.2 (The duty of the court), after paragraph (3) insert—

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

(a) for the conduct of a pre-trial hearing, including a pre-trial case management hearing;

(b) for the defendant’s attendance at such a hearing—

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

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

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

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

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

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

- (b) in rule 3.3 (The duty of the parties)—
  - (i) at the end of paragraph (2)(c) omit ‘and’,
  - (ii) at the end of paragraph (2)(d) insert ‘; and’, and
  - (iii) after paragraph (2)(d) insert—
    - “(e) alerting the court to any reason why—

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- (3) 1984 c. 60; section 46ZA was inserted by section 46 of the Police and Justice Act 2006 (c. 48) and amended by section 107 of the Coroners and Justice Act 2009 (c. 25). Section 47 was amended by sections 27, 29 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 46 of the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 283 of Schedule 8 to, the Courts Act 2003 (c. 39), sections 12 and 28 of, and paragraphs 1 and 10 of Schedule 1 and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), sections 10 and 46 of, and paragraphs 1, 6 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48) and section 1 of the Police (Detention and Bail) Act 2011 (c. 9).
  - (4) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48). Section 57A was amended by section 109 of the Coroners and Justice Act 2009 (c. 25) and section 105 of, and paragraphs 36 and 39 of Schedule 12 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Sections 57B, 57C and 57D were amended by section 106 of the Coroners and Justice Act 2009 (c. 25). Section 57F was inserted by section 109 of the Coroners and Justice Act 2009 (c. 25).
  - (5) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and article 3 of, and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.
  - (6) 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 102(1) of the Coroners and Justice Act 2009 (c. 25). Section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).
  - (7) 2003 c. 44.

- (i) a direction should not be made in any of the circumstances listed in rule 3.2(4) or (5) (The duty of the court: use of live link or telephone facilities), or
    - (ii) such a direction should be varied or revoked.”;
  - (c) in rule 3.5 (The court’s case management powers), for paragraph (2)(d) substitute—
    - “(d) receive applications, notices, representations and information by letter, by telephone, by live link, by email or by any other means of electronic communication, and conduct a hearing by live link, telephone or other such electronic means;”;
  - (d) in rule 3.21 (Application for joint or separate trials, etc.)—
    - (i) after paragraph (3) insert—
      - “(4) Where the same indictment charges more than one offence, the court—
        - (a) must exercise its power to order separate trials of those offences unless the offences to be tried together—
          - (i) are founded on the same facts, or
          - (ii) form or are part of a series of offences of the same or a similar character;
        - (b) may exercise its power to order separate trials of those offences if of the opinion that—
          - (i) the defendant otherwise may be prejudiced or embarrassed in his or her defence, or
          - (ii) for any other reason it is desirable that the defendant should be tried separately for any one or more of those offences.”; and
        - (ii) in the note to the rule, after ‘Rule 10.2’ insert ‘(The indictment: general rules)’;
    - (e) in rule 3.24 (Arraigning the defendant on the indictment)—
      - (i) renumber paragraphs (1)(a) and (b) as (1)(b) and (c) respectively,
      - (ii) before paragraph (1)(b), as so renumbered, insert—
        - “(a) obtain the prosecutor’s confirmation, in writing or orally—
          - (i) that the indictment (or draft indictment, as the case may be) sets out a statement of each offence that the prosecutor wants the court to try and such particulars of the conduct constituting the commission of each such offence as the prosecutor relies upon to make clear what is alleged, and
          - (ii) of the order in which the prosecutor wants the defendants’ names to be listed in the indictment, if the prosecutor proposes that more than one defendant should be tried at the same time;”;
        - (iii) in paragraph (1)(b), as so renumbered, after ‘indictment’ insert ‘or draft indictment’,
        - (iv) in paragraph (1)(c), as so renumbered, for ‘in respect of each count in the indictment’ substitute ‘in respect of each count’, and
        - (v) in the note to the rule, at the end of the first paragraph insert ‘: see in particular rule 10.2 (The indictment: general rules)’.
  - 4. In Part 6 (Reporting, etc. restrictions), in rule 6.3(1)(d)(ii) (Court’s power to vary requirements under this Part), for ‘serve a written application’ substitute ‘serve an application’.
  - 5. In Part 9 (Allocation and sending for trial)—

- (a) in rule 9.6 (Prosecutor’s notice requiring Crown Court trial), in paragraph (2) omit ‘written’; and
- (b) for the final paragraph of the note to rule 9.10 (Adult defendant: not guilty plea) substitute—

*“The Sentencing Council may issue allocation guidelines under section 122 of the Coroners and Justice Act 2009(8). The definitive allocation guideline which took effect on 1<sup>st</sup> March, 2016 provides:*

- (1) *In general, either way offences should be tried summarily unless—*
  - (a) *the outcome would clearly be a sentence in excess of the court’s powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or*
  - (b) *for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.*

*(2) In cases with no factual or legal complications the court should bear in mind its power to commit for sentence after a trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers.*

*(3) Cases may be tried summarily even where the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.*

*(4) All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence, including any personal mitigation to which the defence wish to refer.*

*Where the court decides that the case is suitable to be dealt with in the magistrates’ court, it must warn the defendant that all sentencing options remain open and, if the defendant consents to summary trial and is convicted by the court or pleads guilty, the defendant may be committed to the Crown Court for sentence.”*

- 6. For Part 10 (The indictment) substitute the Part set out in the Schedule to these Rules.
- 7. In Part 14 (Bail and custody time limits)—
  - (a) for the first paragraph of the note to rule 14.7 (The duty of the court) substitute—
 

*“Note. The Practice Direction sets out a form of application for use in connection with this rule, and forms of application, draft order and certificate for use where an applicant wants the court to exercise the powers to which rule 14.16 applies (Bail condition to be enforced in another European Union member State).”*;
  - (b) in rule 14.16 (Bail condition to be enforced in another European Union member State)—
    - (i) at the end of paragraph (4)(b)(i) insert ‘, or’,
    - (ii) after paragraph (4) insert—
 

*“(5) A party who wants the court to exercise the power to which this rule applies must serve with an application under rule 14.7 (Notice of application to consider bail)—*

      - (a) a draft order; and

- (b) a draft certificate in the form required by EU Council Framework Decision 2009/829/JHA.”, and
- (iii) for the first paragraph of the note to the rule substitute—
- “Note. The Practice Direction sets out a form of application under rule 14.7 and forms of draft order and certificate for use in connection with this rule.*
- See regulations 77 to 84 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(9).”.*
8. In Part 16 (Written witness statements), for rule 16.3 (Reference to exhibit) substitute—
- “16.3.** Where the statement refers to a document or object as an exhibit, it must identify that document or object clearly.
- [Note. See section 9(7) of the Criminal Justice Act 1967(10).]”.*
9. In Part 18 (Measures to assist a witness or defendant to give evidence), in rule 18.4 (Decisions and reasons)—
- (a) renumber paragraph (2) as (3),
- (b) after paragraph (1) insert—
- “(2) The court must—
- (a) promptly determine an application; and
- (b) allow a party sufficient time to comply with the requirements of—
- (i) paragraph (1), and
- (ii) the code of practice issued under section 32 of the Domestic Violence, Crime and Victims Act 2004(11).”; and
- (c) in the note to the rule, after the first paragraph insert—
- “Under section 32 of the Domestic Violence, Crime and Victims Act 2004, the Secretary of State for Justice must issue a code of practice as to the services to be provided by specified persons to a victim of criminal conduct.”.*
10. In Part 29 (Road traffic penalties), after the first paragraph of the note to rule 29.1 (Representations about obligatory disqualification or endorsement) insert—
- “For the circumstances in which the period of a disqualification from driving must or may be extended where the court also imposes a custodial sentence, see sections 35A and 35B of the 1988 Act(12).”.*
11. In Part 31 (Behaviour orders)—
- (a) in the first paragraph of the note to rule 31.1 (When this Part applies), after subparagraph (a)(viii) insert—
- “(ix) section 19 of the Psychoactive Substances Act 2016(13) (prohibition orders).”;*
- (b) in rule 31.3 (Application for behaviour order and notice of terms of proposed order: special rules)—

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(9) S.I. 2014/3141.

(10) 1967 c. 80.

(11) 2004 c. 28; section 32 was amended by article 8 of, and paragraph 10 of the Schedule to, S.I. 2007/2128.

(12) 1988 c. 53; sections 35A and 35B were inserted by section 137 of, and paragraph 2 of Schedule 16 to, the Coroners and Justice Act 2009 (c. 25). Section 35A was amended by sections 89, 111 and 126 of, and paragraph 5 of Schedule 10, paragraph 1 of Schedule 14 and paragraph 4 of Schedule 21 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and sections 6 and 30 of, and paragraph 11 of Schedule 1 to, the Criminal Justice and Courts Act 2015 (c. 2).

(13) 2016 c. 2.

- (i) at the end of paragraph (1)(a)(ii) omit ‘or’,
  - (ii) after paragraph (1)(a)(iii) insert—
    - “(iv) a prohibition order; or”,
  - (iii) in paragraph (4)(a) omit ‘written’,
  - (iv) in paragraph (6), for ‘or a criminal behaviour order’ substitute ‘, a criminal behaviour order or a prohibition order’, and
  - (v) in the note to the rule, at the end of the fourth paragraph insert ‘, and under section 33 of the Psychoactive Substances Act 2016(14) the court may do so in proceedings for a prohibition order’;
- (c) in rule 31.4 (Evidence to assist the court: special rules), in paragraph (2)(a) omit ‘in writing’;
  - (d) in rule 31.5 (Application to vary or revoke behaviour order), in paragraph (3)(a) omit ‘in writing’;
  - (e) in rule 31.6 (Notice of hearsay evidence), in paragraph (1)(a), for ‘serve a notice in writing’ substitute ‘serve notice’; and
  - (f) in rule 31.8 (Credibility and consistency of maker of hearsay statement)—
    - (i) in paragraph (2)(a), for ‘serve a written notice’ substitute ‘serve notice’, and
    - (ii) in paragraph (3)(b), for ‘serve a notice’ substitute ‘serve notice’.
- 12.** In Part 34 (Appeal to the Crown Court), in rule 34.2 (Service of appeal notice)—
- (a) for paragraph (4) substitute—
    - “(4) Where both the magistrates’ court and the Crown Court can grant bail or suspend a disqualification pending appeal, an application must indicate by which court the appellant wants the application determined.”; and
  - (b) in the note to the rule, after the first paragraph insert—
    - “*Under section 113 of the Magistrates’ Courts Act 1980(15), the magistrates’ court may grant an appellant bail pending appeal. Under section 81(1)(b) of the Senior Courts Act 1981(16), the Crown Court also may do so. See also rule 14.7.*”.
- 13.** In Part 35 (Appeal to the High Court by case stated), after the first paragraph of the note to rule 35.2 (Application to state a case) insert—
- “*Under section 113 of the Magistrates’ Courts Act 1980, the magistrates’ court may grant an appellant bail pending appeal. Under section 81(1)(d) of the Senior Courts Act 1981(17), the Crown Court may do so. See also rule 14.7.*”.
- 14.** In Part 45 (Costs)—
- (a) in rule 45.6 (Costs on appeal), in paragraph (5)(b) omit ‘written’;
  - (b) in rule 45.8 (Costs resulting from unnecessary or improper act), in paragraph (6)(b) omit ‘written’;
  - (c) in rule 45.9 (Costs against a legal representative), in paragraph (6)(b) omit ‘written’;
  - (d) in rule 45.10 (Costs against a third party), in paragraph (6)(b) omit ‘written’; and

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(14) 2016 c. 2.

(15) 1980 c. 43; section 113 was amended by section 168 of, and paragraph 44 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 165 of, and paragraph 72 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(16) 1981 c.54.

(17) 1981 c.54.

- (e) in rule 45.11 (Assessment and re-assessment), in paragraph (7)(c)(vi) omit ‘written’.
15. In Part 47 (Investigation orders and warrants)—
- (a) in rule 47.1 (When this Part applies), for ‘and 47.50’ substitute ‘, 47.50 and 47.53’;
  - (b) after rule 47.52 (Application for approval for authorisation or notice), insert—

*“SECTION 8: ORDERS FOR ACCESS TO DOCUMENTS,  
ETC. UNDER THE CRIMINAL APPEAL ACT 1995*

**When this Section applies**

**47.53.** This Section applies where the Crown Court can order a person to give the Criminal Cases Review Commission access to a document or other material under section 18A of the Criminal Appeal Act 1995**(18)**.

*[Note. Under section 18A of the Criminal Appeal Act 1995, on an application by the Criminal Cases Review Commission the court may order that the Commission be given access to a document or material in a person’s possession or control if the court thinks that that document or material may assist the Commission in the exercise of any of their functions.]*

**Exercise of court’s powers**

**47.54.—**(1) Subject to paragraphs (2), (3) and (4), the court may determine an application by the Criminal Cases Review Commission for an order—

- (a) at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and
  - (b) in the absence of—
    - (i) the Commission,
    - (ii) the respondent,
    - (iii) any other person affected by the order.
- (2) The court must not determine such an application in the Commission’s absence if—
- (a) the Commission asks for a hearing; or
  - (b) it appears to the court that the application is so complex or serious as to require the court to hear the Commission.
- (3) The court must not determine such an application in the absence of any respondent or other person affected, unless—
- (a) the absentee has had at least 2 business days in which to make representations; or
  - (b) the court is satisfied that—
    - (i) the Commission cannot identify or contact the absentee,
    - (ii) it would prejudice the exercise of the Commission’s functions to adjourn or postpone the application so as to allow the absentee to attend, or
    - (iii) the absentee has waived the opportunity to attend.
- (4) The court must not determine such an application in the absence of any respondent who, if the order sought by the Commission were made, would be required to produce

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**(18)** 1995 c. 35; section 18A was inserted by section 1 of the Criminal Cases Review Commission (Information) Act 2016 (c. 17).

or give access to journalistic material, unless that respondent has waived the opportunity to attend.

(5) The court officer must arrange for the court to hear such an application no sooner than 2 business days after it was served, unless—

- (a) the court directs that no hearing need be arranged; or
- (b) the court gives other directions for the hearing.

(6) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(7) If the court so directs, the parties to an application may attend a hearing by live link or telephone.

(8) The court must not make an order unless an officer of the Commission states, in writing or orally, that to the best of that officer's knowledge and belief—

- (a) the application discloses all the information that is material to what the court must decide; and
- (b) the content of the application is true.

(9) Where the statement required by paragraph (8) is made orally—

- (a) the statement must be on oath or affirmation, unless the court otherwise directs; and
- (b) the court must arrange for a record of the making of the statement.

(10) The court may shorten or extend (even after it has expired) a time limit under this Section.

#### **Application for an order for access**

**47.55.**—(1) Where the Criminal Cases Review Commission wants the court to make an order for access to a document or other material, the Commission must—

- (a) apply in writing and serve the application on the court officer;
- (b) give the court an estimate of how long the court should allow—
  - (i) to read the application and prepare for any hearing, and
  - (ii) for any hearing of the application;
- (c) attach a draft order in the terms proposed by the Commission; and
- (d) serve the application and draft order on the respondent.

(2) The application must—

- (a) identify the respondent;
- (b) describe the document, or documents, or other material sought;
- (c) explain the reasons for thinking that—
  - (i) what is sought is in the respondent's possession or control, and
  - (ii) access to what is sought may assist the Commission in the exercise of any of its functions; and
- (d) explain the Commission's proposals for—
  - (i) the manner in which the respondent should give access, and
  - (ii) the period within which the order should take effect.

(3) The Commission must serve any order made on the respondent.



*[Note. Under section 18A(3) of the Criminal Appeal Act 1995, the court may give directions for the manner in which access to a document or other material must be given, and may direct that the Commission must be allowed to take away such a document or material, or to make copies. Under section 18A(4) of the Act, the court may direct that the respondent must not destroy, damage or alter a document or other material before the direction is withdrawn by the court.]*

#### **Application containing information withheld from a respondent or other person**

**47.56.**—(1) This rule applies where—

- (a) the Criminal Cases Review Commission serves an application under rule 47.55 (Application for an order for access); and
- (b) the application includes information that the Commission thinks ought not be revealed to a recipient.

(2) The Commission must—

- (a) omit that information from the part of the application that is served on that recipient;
- (b) mark the other part, to show that it is only for the court; and
- (c) in that other part, explain why the Commission has withheld it from that recipient.

(3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of that recipient and any other person.

(4) At a hearing of an application to which this rule applies—

- (a) the general rule is that the court must consider, in the following sequence—
  - (i) representations first by the Commission and then by the other parties, in the presence of them all, and then
  - (ii) further representations by the Commission, in the others' absence; but
- (b) the court may direct other arrangements for the hearing.

#### **Application to punish for contempt of court**

**47.57.**—(1) This rule applies where a person is accused of disobeying an order for access made under section 18A of the Criminal Appeal Act 1995.

(2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

*[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See section 45 of the Senior Courts Act 1981(19).]"; and*

- (c) amend the table of contents correspondingly.

**16.** In rule 48.15 (Contempt of court: Credibility and consistency of maker of written witness statement or other hearsay)—

- (a) in paragraph (2)(a), for 'serve a written notice' substitute 'serve notice'; and
- (b) in paragraph (5)(b), for 'serve a notice' substitute 'serve notice'.

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(19) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

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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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*Thomas of Cwmgiedd, C.J.  
Rafferty, L.J.  
Leveson, P.  
Openshaw, J.  
Martin Picton  
Martin Edmunds  
Stephen Earl  
Louise Bryant  
Melissa Case  
Siân Jones  
Alison Saunders  
Patrick Gibbs  
Nathaniel Rudolf  
Michael Caplan  
Paul Harris  
Simon Byrne  
David Kenyon  
Matthew Evans*

I allow these Rules, which shall come into force on 3rd October 2016.

27th June 2016

*Michael Gove*  
Lord Chancellor

SCHEDULE

Rule 6

“PART 10

THE INDICTMENT

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**When this Part applies**

**10.1.** This Part applies where—

- (a) a magistrates’ court sends a defendant to the Crown Court for trial under section 51 or section 51A of the Crime and Disorder Act 1998<sup>(20)</sup>;
- (b) a prosecutor wants a High Court judge’s permission to serve a draft indictment;
- (c) the Crown Court approves a proposed indictment under paragraph 2 of Schedule 17 to the Crime and Courts Act 2013<sup>(21)</sup> and rule 11.4 (Deferred prosecution agreements: Application to approve the terms of an agreement);
- (d) a prosecutor wants to re-institute proceedings in the Crown Court under section 22B of the Prosecution of Offences Act 1985<sup>(22)</sup>;
- (e) the Court of Appeal orders a retrial, under section 8 of the Criminal Appeal Act 1968<sup>(23)</sup> or under section 77 of the Criminal Justice Act 2003<sup>(24)</sup>.

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(20) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(21) 2013 c. 22.

(22) 1985 c. 23; section 22B was inserted by section 45 of the Crime and Disorder Act 1998 (c. 37) and amended by paragraph 17 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 112 of, and Part 13 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26).

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

(24) 2003 c. 44.

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

[Note. See also sections 3, 4 and 5 of the Indictments Act 1915(25) and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(26). Under section 2(1) of the 1933 Act, a draft indictment (in the Act, a 'bill of indictment') becomes an indictment when it is 'preferred' in accordance with these rules. See rule 10.2.

Part 3 contains rules about the court's general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an indictment and for separate trials under section 5 of the Indictments Act 1915. See in particular rule 3.21 (Application for joint or separate trials, etc.).

Under section 51D of the Crime and Disorder Act 1998(27), the magistrates' court must notify the Crown Court of the offence or offences for which the defendant is sent for trial. Part 9 (Allocation and sending for trial) contains relevant rules.

A Crown Court judge may approve a proposed indictment on approving a deferred prosecution agreement. Part 11 (Deferred prosecution agreements) contains relevant rules.

A prosecutor may apply to a High Court judge for permission to serve a draft indictment under rule 10.9.

Under section 22B of the Prosecution of Offences Act 1985, one of the prosecutors listed in that section may re-institute proceedings that have been stayed under section 22(4) of that Act(28) on the expiry of an overall time limit (where such a time limit has been prescribed). Section 22B(2) requires the service of a draft indictment within 3 months of the date on which the Crown Court ordered the stay, or within such longer period as the court allows.

The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968 (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003 (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act and section 84 of the 2003 Act require the arraignment of a defendant within 2 months. See also rules 27.7 and 39.14.

With effect from 30<sup>th</sup> August 2013, Schedule 3 to the Criminal Justice Act 2003 abolished committal for trial under section 6 of the Magistrates' Courts Act 1980(29), and transfer

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- (25) 1915 c. 90; section 4 was amended by section 83 of, and Part I of Schedule 10 to, the Criminal Justice Act 1948 (c. 58) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 5 was amended by section 12 of, and paragraph 8 of Schedule 2 to, the Bail Act 1976 (c. 63), section 31 of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23) and section 331 of, and paragraph 40 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).
- (26) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), 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), 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), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).
- (27) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
- (28) 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (29) 1980 c. 43; section 6 was repealed by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

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for trial under section 4 of the Criminal Justice Act 1987<sup>(30)</sup> (serious fraud cases) or under section 53 of the Criminal Justice Act 1991<sup>(31)</sup> (certain cases involving children).

Where a magistrates' court sends a defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, in some circumstances the Crown Court may try the defendant for other offences: see section 2(2) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (indictable offences founded on the prosecution evidence), section 40 of the Criminal Justice Act 1988<sup>(32)</sup> (specified summary offences founded on that evidence) and paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998<sup>(33)</sup> (power of Crown Court to deal with related summary offence sent to that court).]

### The indictment: general rules

**10.2.**—(1) The indictment on which the defendant is arraigned under rule 3.24 (Arraigning the defendant on the indictment) must be in writing and must contain, in a paragraph called a 'count'—

- (a) a statement of the offence charged that—
  - (i) describes the offence in ordinary language, and
  - (ii) identifies any legislation that creates it; and
- (b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

(2) More than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

(3) The counts must be numbered consecutively.

(4) An indictment may contain—

- (a) any count charging substantially the same offence as one for which the defendant was sent for trial;
- (b) any count contained in a draft indictment served with the permission of a High Court judge or at the direction of the Court of Appeal; and
- (c) any other count charging an offence that the Crown Court can try and which is based on the prosecution evidence that has been served.

(5) For the purposes of section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933—

- (a) a draft indictment constitutes a bill of indictment;
- (b) the draft, or bill, is preferred before the Crown Court and becomes the indictment—
  - (i) where rule 10.3 applies (Draft indictment generated electronically on sending for trial), immediately before the first count (or the only count, if there is only

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<sup>(30)</sup> 1987 c. 38; section 4 was repealed by paragraph 58 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

<sup>(31)</sup> 1991 c. 53; section 53 was repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

<sup>(32)</sup> 1988 c. 33; section 40 was amended by section 4 of, and paragraph 39 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 168 of, and paragraph 35 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 47 of, and paragraph 34 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), section 119 of, and paragraph 66 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 60 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

<sup>(33)</sup> 1998 c. 37; paragraph 6 of Schedule 3 was amended by sections 90 and 106 of, and paragraph 179 of Schedule 13 and Schedule 15 to, the Access to Justice Act 1999 (c. 22), section 41 of, and paragraphs 15 and 20 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 61 of the Schedule to, S.I. 2005/886.

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one) is read to or placed before the defendant to take the defendant's plea under rule 3.24(1)(c),

(ii) when the prosecutor serves the draft indictment on the Crown Court officer, where rule 10.4 (Draft indictment served by the prosecutor after sending for trial), rule 10.5 (Draft indictment served by the prosecutor with a High Court judge's permission), rule 10.7 (Draft indictment served by the prosecutor on re-instituting proceedings) or rule 10.8 (Draft indictment served by the prosecutor at the direction of the Court of Appeal) applies,

(iii) when the Crown Court approves the proposed indictment, where rule 10.6 applies (Draft indictment approved by the Crown Court with deferred prosecution agreement).

(6) An indictment must be in one of the forms set out in the Practice Direction unless—

- (a) rule 10.3 applies; or
- (b) the Crown Court otherwise directs.

(7) Unless the Crown Court otherwise directs, the court officer must—

- (a) endorse any paper copy of the indictment made for the court with—
  - (i) a note to identify it as a copy of the indictment, and
  - (ii) the date on which the draft indictment became the indictment under paragraph (5); and
- (b) where rule 10.4, 10.5, 10.7 or 10.8 applies, serve a copy of the indictment on all parties.

(8) The Crown Court may extend the time limit under rule 10.4, 10.5, 10.7 or 10.8, even after it has expired.

*[Note. Under section 2(6) of the Administration of Justice (Miscellaneous Provisions) Act 1933, Criminal Procedure Rules may provide for the manner in which and the time at which 'bills of indictment' are to be 'preferred'.*

*Under rule 3.21 (Application for joint or separate trials, etc.), the court must order separate trials of counts in the circumstances listed in that rule.]*

### **Draft indictment generated electronically on sending for trial**

**10.3.**—(1) Unless the Crown Court otherwise directs before the defendant is arraigned, this rule applies where—

- (a) a magistrates' court sends a defendant to the Crown Court for trial;
- (b) the magistrates' court officer serves on the Crown Court officer the notice required by rule 9.5 (Duty of magistrates' court officer); and
- (c) by means of such electronic arrangements as the court officer may make for the purpose, there is presented to the Crown Court as a count—
  - (i) each allegation of an indictable offence specified in the notice, and
  - (ii) each allegation specified in the notice to which section 40 of the Criminal Justice Act 1988 applies (specified summary offences founded on the prosecution evidence).

(2) Where this rule applies—

- (a) each such allegation constitutes a count;
- (b) the allegation or allegations so specified together constitute a draft indictment;

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- (c) before the draft indictment so constituted is preferred before the Crown Court under rule 10.2(5)(b)(i) the prosecutor may substitute for any count an amended count to the same effect and charging the same offence;
- (d) if under rule 9.15 (Service of prosecution evidence) the prosecutor has served copies of the documents containing the evidence on which the prosecution case relies then, before the draft indictment is preferred before the Crown Court under rule 10.2(5)(b)(i), the prosecutor may substitute or add—
  - (i) any count charging substantially the same offence as one specified in the notice, and
  - (ii) any other count charging an offence which the Crown Court can try and which is based on the prosecution evidence so served; and
- (e) a prosecutor who substitutes or adds a count under paragraph (2)(c) or (d) must serve that count on the Crown Court officer and the defendant.

*[Note. An ‘indictable offence’ is (i) an offence classified as triable on indictment exclusively, or (ii) an offence classified as triable either on indictment or summarily. See also the note to rule 9.1 (Allocation and sending for trial: When this Part applies).*

*Section 40 of the Criminal Justice Act 1988 lists summary offences which may be included in an indictment if the charge—*

- (a) *is founded on the same facts or evidence as a count charging an indictable offence; or*
- (b) *is part of a series of offences of the same or similar character as an indictable offence which is also charged.]*

#### **Draft indictment served by the prosecutor after sending for trial**

**10.4.—**(1) This rule applies where—

- (a) a magistrates’ court sends a defendant to the Crown Court for trial; and
- (b) rule 10.3 (Draft indictment generated electronically on sending for trial) does not apply.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 28 days after serving under rule 9.15 (Service of prosecution evidence) copies of the documents containing the evidence on which the prosecution case relies.

#### **Draft indictment served by the prosecutor with a High Court judge’s permission**

**10.5.—**(1) This rule applies where—

- (a) the prosecutor applies to a High Court judge under rule 10.9 (Application to a High Court judge for permission to serve a draft indictment); and
- (b) the judge gives permission to serve a proposed indictment.

(2) Where this rule applies—

- (a) that proposed indictment constitutes the draft indictment; and
- (b) the prosecutor must serve the draft indictment on the Crown Court officer not more than 28 days after the High Court judge’s decision.

#### **Draft indictment approved with deferred prosecution agreement**

**10.6.—**(1) This rule applies where—

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- (a) the prosecutor applies to the Crown Court under rule 11.4 (Deferred prosecution agreements: Application to approve the terms of an agreement); and
  - (b) the Crown Court approves the proposed indictment served with that application.
- (2) Where this rule applies, that proposed indictment constitutes the draft indictment.

#### **Draft indictment served by the prosecutor on re-instituting proceedings**

**10.7.**—(1) This rule applies where the prosecutor wants to re-institute proceedings in the Crown Court under section 22B of the Prosecution of Offences Act 1985.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 3 months after the proceedings were stayed under section 22(4) of that Act<sup>(34)</sup>.

#### **Draft indictment served by the prosecutor at the direction of the Court of Appeal**

**10.8.**—(1) This rule applies where the Court of Appeal orders a retrial.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 28 days after that order.

#### **Application to a High Court judge for permission to serve a draft indictment**

**10.9.**—(1) This rule applies where a prosecutor wants a High Court judge's permission to serve a draft indictment.

(2) Such a prosecutor must—

- (a) apply in writing;
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the proposed defendant, unless the judge otherwise directs; and
- (c) ask for a hearing, if the prosecutor wants one, and explain why it is needed.

(3) The application must—

- (a) attach—
  - (i) the proposed indictment,
  - (ii) copies of the documents containing the evidence on which the prosecutor relies, including any written witness statement or statements complying with rule 16.2 (Content of written witness statement) and any documentary exhibit to any such statement,
  - (iii) a copy of any indictment on which the defendant already has been arraigned, and
  - (iv) if not contained in such an indictment, a list of any offence or offences for which the defendant already has been sent for trial;
- (b) include—
  - (i) a concise statement of the circumstances in which, and the reasons why, the application is made, and
  - (ii) a concise summary of the evidence contained in the documents accompanying the application, identifying each passage in those documents said to evidence

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<sup>(34)</sup> 1985 c. 23; section 22(4) was amended by section 43 of the Crime and Disorder Act 1998 (c. 37).



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- each offence alleged by the prosecutor and relating that evidence to each count in the proposed indictment; and
- (c) contain a statement that, to the best of the prosecutor’s knowledge, information and belief—
- (i) the evidence on which the prosecutor relies will be available at the trial, and
  - (ii) the allegations contained in the application are substantially true
- unless the application is made by or on behalf of the Director of Public Prosecutions or the Director of the Serious Fraud Office.
- (4) A proposed defendant served with an application who wants to make representations to the judge must—
- (a) serve the representations on the court officer and on the prosecutor;
  - (b) do so as soon as practicable, and in any event within such period as the judge directs; and
  - (c) ask for a hearing, if the proposed defendant wants one, and explain why it is needed.
- (5) The judge may determine the application—
- (a) without a hearing, or at a hearing in public or in private;
  - (b) with or without receiving the oral evidence of any proposed witness.
- (6) At any hearing, if the judge so directs a statement required by paragraph (3)(c) must be repeated on oath or affirmation.
- (7) If the judge gives permission to serve a draft indictment, the decision must be recorded in writing and endorsed on, or annexed to, the proposed indictment.

*[Note. See section 2(6) of the Administration of Justice (Miscellaneous Provisions) Act 1933(35).]*”

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

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

<i>Rule</i>	<i>Amendment</i>
Part 3	Rule 3.2 is amended to require the court to conduct pre-trial hearings by live link or telephone, and to receive evidence by live link, where prescribed conditions are met. Rule 3.3 is amended to require the parties to alert the court to any reason why a hearing should not be conducted by those means. Rule 3.21 is amended to provide for the circumstances in which the Crown Court must, or may, order separate trials. Rule 3.24 is amended to require the Crown Court,

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(35) 1933 c. 36; section 2(6) was amended by Part IV of Schedule 11 to the Courts Act 1971 (c. 23), paragraph 1 of the Schedule to [S.I. 2004/2035](#) and section 82 of the Deregulation Act 2015 (c. 20).

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<i>Rule</i>	<i>Amendment</i>
	before taking the defendant's plea, to obtain the prosecutor's confirmation that the indictment, or draft indictment, is in the terms on which the prosecutor relies.
Part 9	The terms of the Sentencing Council allocation guideline are included in the note to rule 9.10.
Part 10	The rules in the current Part are substituted and rearranged to include a new rule about the generation of an indictment by electronic means from information sent by the magistrates' court to the Crown Court.
Part 14	A note is added to rule 14.7 and rule 14.16 is amended to require the submission to the court of a draft order and other documents where a defendant wants the court to make a European Supervision Order (bail with conditions to be supervised in another European Union member State).
Part 16	Rule 16.3 is amended to clarify the obligation to identify an exhibit to a written witness statement.
Part 18	Rule 18.4 is amended explicitly to require the court to take account of the parties' obligations under the Victims' Code.
Part 29	A note is added to rule 29.1 to draw attention to the provisions of the Road Traffic Offenders Act 1988 which require the court to extend a period of disqualification from driving imposed at the same time as a custodial sentence.
Part 31	A note is added to rule 31.1, and rule 31.3 is amended, to provide for prohibition orders made under the Psychoactive Substances Act 2016.
Part 34	Rule 34.2 is amended, and a note is added to the rule, to draw attention to the concurrent powers of magistrates' courts and the Crown Court to grant bail pending appeal to the Crown Court.
Part 35	A note is added to rule 35.2 to draw attention to the powers of magistrates' courts and the Crown Court to grant bail pending appeal to the High Court.
Part 47	New rules 47.53 to 47.57 are added to provide for applications by the Criminal Cases Review Commission for access to documents under section 18A of the Criminal Appeal Act 1995.

Rules 6.3(1)(d)(ii), 9.6(2), 31.3(4)(a), 31.4(2)(a), 31.5(3)(a), 31.6(1)(a), 31.8(2)(a) and (3)(b), 45.6(5)(b), 45.8(6)(b), 45.9(6)(b), 45.10(6)(b), 45.11(7)(c)(vi) and 48.15(2)(a) and (3)(b) all are

amended to omit superfluous references to ‘writing’ and ‘written’ and to make consistent the expression of those rules.

These Rules come into force on 3rd October 2016.