

## 1978 No. 147 (L.2)

## MAGISTRATES' COURTS

## PROCEDURE

**The Magistrates' Courts (Amendment) Rules 1978**

*Made* - - - - - 1st February 1978

*Laid before Parliament* 14th February 1978

*Coming into Operation* 17th April 1978

The Lord Chancellor, in exercise of the power conferred on him by section 15 of the Justices of the Peace Act 1949(a), as extended by section 122 of the Magistrates' Courts Act 1952(b), and sections 5(1) and 8(4) of the Bail Act 1976(c), after consultation with the Rule Committee appointed under the said section 15, hereby makes the following Rules:—

1. These Rules may be cited as the Magistrates' Courts (Amendment) Rules 1978 and shall come into operation on 17th April 1978.

2. The Magistrates' Courts Rules 1968(d), as amended(e), shall have effect subject to the amendments specified in the Schedule to these Rules:

Provided that the said amendments shall not have effect in relation to bail granted before 17th April 1978 (the date on which the Bail Act 1976 comes into force) and, accordingly, the said Rules of 1968 shall have effect in relation to bail so granted as if these Rules had not been made.

Dated 1st February 1978.

*Elwyn-Jones, C.*

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(a) 1949 c. 101. (b) 1952 c. 55. (c) 1976 c. 63. (d) S.I. 1968/1920.  
(e) The relevant amending instruments are S.I. 1969/1711, 1973/790.

## Rule 2

## SCHEDULE

## AMENDMENTS TO MAGISTRATES' COURTS RULES 1968

1. In Rule 10(2)—
  - (a) for sub-paragraph (e) there shall be substituted the following sub-paragraph:—

“(e) a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to the grant or withholding of bail in respect of the accused on the occasion of the committal;”;
  - (b) in sub-paragraph (f) at the end there shall be inserted the words “, together with a statement of any enlargement thereof under section 106(4) of the Act”.
2. In Rule 16—
  - (a) in paragraph (1)—
    - (i) after the words “Criminal Justice Act 1967” (where they first appear) there shall be inserted the words “or section 6 of the Bail Act 1976”;
    - (ii) in sub-paragraph (e) for the words “his recognizance and” there shall be substituted the words “a copy of the record made in pursuance of section 5 of the said Act of 1976 relating to such bail and also”;
  - (b) in paragraph (3) after the words “Criminal Justice Act 1948” there shall be inserted the words “or under section 6 of the Bail Act 1976”.
3. In Rule 54 after paragraph (2) there shall be inserted the following paragraph:—

“(2A) Particulars of any entry relating to a decision about bail and the reasons therefor 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. In Rule 62—
  - (a) for paragraph (3) there shall be substituted the following paragraph:—

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

    - (a) in the case of bail in criminal proceedings, a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such bail;
    - (b) in the case of bail otherwise than in criminal proceedings, the recognizance entered into by the appellant relating to such bail.”;
  - (b) in paragraph (4) for the words “any such recognizance” there shall be substituted the words “, in any such case as is referred to in paragraph (3)(b) of this Rule, the recognizance in question”.
5. For the heading “RECOGNIZANCE” which appears before Rule 69 there shall be substituted the heading “RECOGNIZANCES AND BAIL”.
6. Rule 71 shall be re-numbered as paragraph (1) of Rule 71 and thereafter in that Rule there shall be inserted the following paragraph:—

“(2) If a magistrates’ court, under section 106(4) of the Act, enlarges the recognizance of a surety for a person committed for trial on bail, it shall give the surety notice thereof.”.
7. After Rule 71 there shall be inserted the following Rule:—

“*Directions as to security, etc.*

71A. Where a magistrates’ court, under section 3(5) or (6) of the Bail Act 1976, imposes any requirement to be complied with before a person’s release on bail,

the court may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.”.

8. For Rule 72 there shall be substituted the following Rule:—

*“Requirements to be complied with before release*

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

(a) in the case of a surety in connection with bail in criminal proceedings where the accused is in a prison or other place of detention, before the governor or keeper of the prison or place as well as before the persons mentioned in section 8(4)(a) of the Bail Act 1976;

(b) in any other case, before a justice of the peace, a justices’ clerk, a police officer who either is of the rank of inspector or above or is in charge of a police station or, if the person to be bound is in a prison or other place of detention, before the governor or keeper of the prison or place.

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

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

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

Provided that, in the case of a surety, if the person committed has been committed to the Crown Court for trial or under any of the enactments mentioned in Rule 16(1) of these Rules, the person taking the recognizance shall send it to the appropriate officer of the Crown Court.”.

9. For Rule 73 there shall be substituted the following Rule:—

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

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

(a) the clerk of the court shall give notice thereof to the governor or keeper of the prison or place where that person is detained by sending him such a certificate as is mentioned in paragraph (2) of the last preceding Rule;

(b) any person authorised to take the recognizance of a surety or do anything in relation to the compliance with such requirement shall, on taking or doing it, send notice thereof by post to the said governor or keeper in the prescribed form and, in the case of a recognizance of a surety, shall give a copy of the notice to the surety.”.

10. For Rule 74 there shall be substituted the following Rule:—

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

74. Where a magistrates’ court has, with a view to the release on bail of a person in custody, fixed the amount in which he or any surety of such a person shall be bound or, under section 3(5) or (6) of the Bail Act 1976, imposed any requirement to be complied with before his release and given notice thereof in accordance with these Rules to the governor or keeper of the prison or place where that person is detained, the governor or keeper shall, when satisfied that the recognizances of all sureties required have been taken and that all such requirements have been complied with—

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

11. For Rule 75 there shall be substituted the following Rule:—

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

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

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

12. After Rule 75 there shall be inserted the following Rules:—

*“Bail records to be entered in register*

75A. Any record required by section 5 of the Bail Act 1976 to be made by a magistrates’ court (together with any note of reasons required by subsection (4) of that section to be included) shall be made by way of an entry in the register and shall contain the particulars set out in the appropriate form prescribed for the purpose.

*Notice of change of time for appearance*

75B. Where—

- (a) a person has been granted bail under section 38(1) of the Act and the magistrates’ court before which he is to appear appoints, under section 38(1A), a later time as the time at which he is to appear; or
- (b) a magistrates’ court further remands a person on bail under section 106 of the Act in his absence,

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

*Notification of bail decision after arrest while on bail*

75C. 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 before a justice of the peace, the justice shall cause a copy of the record made in pursuance of section 5 of that Act relating to his decision under section 7(5) of that Act in respect of that person to be sent—

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

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

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

75D. Where a magistrates' court has committed a person on bail to the Crown Court for trial or under any of the enactments mentioned in Rule 16(1) of these Rules and subsequently varies any conditions of the bail or imposes any conditions in respect of the bail, the clerk of the court shall send to the appropriate officer of the Crown Court a copy of the record made in pursuance of section 5 of the Bail Act 1976 relating to such variation or imposition of conditions."

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## EXPLANATORY NOTE

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

These Rules amend the Magistrates' Courts Rules 1968 in consequence of the Bail Act 1976, which comes into force on 17th April 1978. In particular, they prescribe the manner in which records of bail decisions are to be made under section 5 of that Act, that is to say by inclusion in the court register (Rule 75A as inserted by Rule 12).

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