

1978 No. 758 (L. 19)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Amendment) (No. 2) Rules 1978

Made - - - -	22nd May 1978
Laid before Parliament	2nd June 1978
Coming into Operation	17th July 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), 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) (No. 2) Rules 1978 and shall come into operation on 17th July 1978.

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

Provided that the amendments specified in paragraphs 4, 5, 6, 7 and 10 of the said Schedule shall not apply in relation to proceedings commenced before the coming into operation of these Rules and, accordingly, the said Rules of 1968 shall have effect in relation to such proceedings as if those amendments had not been made.

Dated 22nd May 1978.

Elwyn-Jones, C.

SCHEDULE

Rule 2

AMENDMENTS TO MAGISTRATES' COURTS RULES 1968

1. In Rule 5(6) for the words "registered letter or by recorded delivery service" there shall be substituted the word "letter".

2. In Rule 16(1) after sub-paragraph (f) there shall be inserted the following sub-paragraph:—

"(g) if the court makes an order under section 28 of the Theft Act 1968(e) (orders for restitution), a copy signed by the clerk of the convicting court of the minute or memorandum of the order entered in the register."

(a) 1949 c. 101.

(b) 1952 c. 55.

(c) S.I. 1968/1920.

(d) The relevant amending instruments are S.I. 1969/1711, 1973/790, 1978/147.

(e) 1968 c. 60.

3. After Rule 17 there shall be inserted the following Rule:—

“Remittals to another magistrates’ court for sentence, etc.

17A.—(1) Where a magistrates’ court remits an offender to some other magistrates’ court under section 45 of the Criminal Law Act 1977(a) after convicting him of an offence, the clerk of the convicting court shall send to the clerk of the other court—

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

(2) Where a magistrates’ court remits an offender to some other magistrates’ court as aforesaid and the other court remits him back to the convicting court under subsection (5) of the said section 45, the clerk of the other court shall send to the clerk of the convicting court—

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

(3) In this Rule “the offender”, “the convicting court” and “the other court” have the same meanings as in section 45 of the Criminal Law Act 1977.”.

4. For the heading “SUMMARY TRIAL OF INDICTABLE OFFENCE” which appears before Rule 19 there shall be substituted the heading “SUMMARY TRIAL OF OFFENCE TRIABLE EITHER WAY”.

5. In Rule 19 for the words “any provision of the Act” there shall be substituted the words “section 25(3) or (7) of the Criminal Law Act 1977”.

6. In Rule 20 and in the heading to that Rule for the words “indictable offence” there shall be substituted the words “offence triable either way”.

7. Rule 21 shall be omitted.

8. After Rule 23 there shall be inserted the following Rule:—

“Transfer of remand hearings

23A.—(1) Where a magistrates’ court, under section 41(1) of the Criminal Law Act 1977, orders that an accused who has been remanded in custody be brought up for any subsequent remands before an alternate magistrates’ court, the clerk of

(a) 1977 c. 45.

(b) 1976 c. 63.

the first-mentioned court shall, as soon as practicable after making the order and in any case within two days thereafter (not counting Sundays, Good Friday, Christmas Day or bank holidays), send to the clerk of the alternate court—

- (a) a statement indicating the offence or offences charged;
- (b) a copy of the record made by the first-mentioned court in pursuance of section 5 of the Bail Act 1976 relating to the withholding of bail in respect of the accused when he was last remanded in custody;
- (c) a copy of any legal aid order previously made in the same case;
- (d) a copy of any legal aid application;
- (e) any statement of means already submitted; and
- (f) if the first-mentioned court has made an order under section 3(2) of the Criminal Justice Act 1967(a) (removal of restrictions on reports of committal proceedings), a statement to that effect.

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

- (a) the documents referred to in sub-paragraphs (c), (d) and (e) of paragraph (1) of this Rule;
- (b) a copy of the record made by the alternate court in pursuance of section 5 of the Bail Act 1976 relating to the grant or withholding of bail in respect of the accused when he was last remanded in custody or on bail;
- (c) a copy of any legal aid order made by the alternate court;
- (d) a copy of any legal aid application made to the alternate court;
- (e) any statement of means submitted to the alternate court; and
- (f) if the alternate court has made an order under section 3(2) of the Criminal Justice Act 1967 (removal of restrictions on reports of committal proceedings), a statement to that effect."

9. After Rule 42 there shall be inserted the following Rule:—

"Notice of date of hearing of means inquiry etc.

42A. Where a magistrates' court, under subsection (1) of section 44A of the Criminal Justice Act 1967(a) (power of magistrates' court to fix day for appearance of offender at means inquiry etc.), has fixed a day on which an offender must appear in person before the court and, under subsection (3) of that section, fixes a later day in substitution for the day previously fixed, service of the notice of the substituted day may be effected in any manner in which service of a summons may be effected under Rule 82(1) of these Rules."

10. In Rule 54—

- (a) in paragraph (4) at the end there shall be inserted the words "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";
- (b) for paragraph (5) there shall be substituted the following paragraphs:—
 - "(5) 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 19(3) of the Criminal Law Act 1977 (disorderly conduct on his part) or by virtue of section 24(1) of that Act (consent signified by person representing him).

(a) 1967 c. 80 (Section 44A was inserted by 1977 c. 45, Schedule 12).

(5A) In any case to which section 23 of the Criminal Law Act 1977 (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.”.

11. In Rule 82—

- (a) in paragraph (1)(c) for the words “registered letter or by recorded delivery service” there shall be substituted the word “letter”;
- (b) in paragraph (2) for the words “which is not also an indictable offence” there shall be substituted the words “served in manner authorised by the said subparagraph (c) in a registered letter or by recorded delivery service”.

12. In Rule 94 after paragraph (1A) there shall be inserted the following paragraphs:—

“(1B) In these Rules “indictable offence”, “summary offence” and “offence triable either way” have the meanings assigned to them by section 64 of the Criminal Law Act 1977.

(1C) In these Rules “legal aid order” and “statement of means” have the meanings assigned to them by Regulation 31(1) of the Legal Aid in Criminal Proceedings (General) Regulations 1968(a) as amended (b).”.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Magistrates' Courts Rules 1968 in consequence of certain provisions contained in Part III of the Criminal Law Act 1977 which come into force on 17th July 1978 (S.I. 1978/712). The principal amendments in this respect are the provision of a procedure in connection with section 45 (remittal of offenders to another magistrates' court for sentence) and section 41 (transfer of remand hearings) (new Rules 17A and 23A inserted by paragraphs 3 and 8 of the Schedule).

The Rules of 1968 are amended otherwise than in connection with the Criminal Law Act 1977 as follows:—

- (a) Rule 5 (order for attendance of witness at court of trial) and Rule 82 (service of summons etc.) are amended so as to permit service by post to be effected by ordinary letter instead of only by registered letter or recorded delivery service (paragraphs 1 and 11 of the Schedule);
- (b) Rule 16 (committals for sentence etc.) is amended so as to include a copy of the register entry relating to a restitution order among the documents to be sent to the Crown Court on committal for sentence etc. (paragraph 2 of the Schedule).

(a) S.I. 1968/1231.

(b) The relevant amending instrument is S.I. 1970/1980.

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