
STATUTORY INSTRUMENTS

1992 No. 2070 (L.16)

MAGISTRATES' COURTS

PROCEDURE

**The Magistrates' Courts (Notice of
Transfer) (Children's Evidence) Rules 1992**

Made - - - - - *27th August 1992*
Laid before Parliament *10th September 1992*
Coming into force - - - *1st October 1992*

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

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Notice of Transfer) (Children's Evidence) Rules 1992 and shall come into force on 1st October 1992.

Interpretation

2. In these Rules—

“the Act” means the Criminal Justice Act 1991(2);

“notice of transfer” means a notice referred to in section 53(1) of the Act.

Transfer on bail

3. Where a person in respect of whom notice of transfer has been given is granted bail under paragraph 2(1) or (7) of Schedule 6 to the Act by the magistrates' court to which notice of transfer was given, the clerk of the court 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.

(1) 1980 c. 43.
(2) 1991 c. 53.

Notice where person removed to hospital

4. Where a transfer direction has been given by the Secretary of State under section 47 or 48 of the Mental Health Act 1983(3) 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 clerk of the court to which notice of transfer was given shall give notice thereof in writing—

- (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.

Making of witness orders where person charged is not required to appear

5. Where by virtue of paragraph 2(5) of Schedule 6 to the Act, a person charged is no longer required to appear before a magistrates' court to which notice of transfer in respect of him has been given, that court shall fix a date on which it will exercise its functions under paragraph 3 of Schedule 6 to the Act and shall cause notice thereof to be given to the said person and to the Director of Public Prosecutions.

Documents etc. to be sent to Crown Court

6. 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 53(3) of the Act, the clerk of the magistrates' court shall send to the appropriate officer of the Crown Court—

- (a) a list of the names, addresses and occupations of the witnesses in respect of whom witness orders have been made;
- (b) a copy of the record made in pursuance of section 5 of the Bail Act 1976(4) relating to the grant or 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 legal aid order previously made in the case;
- (e) a copy of any contribution order previously made in the case under section 23 of the Legal Aid Act 1988(5);
- (f) a copy of any legal aid application previously made in the case which has been refused;
- (g) any statement of means already submitted.

Forms

7. The forms set out in the Schedule to these Rules or forms to the like effect may be used in connection with proceedings in a magistrates' court to which a notice of transfer has been given.

27th August 1992

Mackay of Clashfern, C.

(3) 1983 c. 20.
(4) 1976 c. 63.
(5) 1988 c. 34.

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

SCHEDULE

Rule 7

FORM 1 *Warrant of commitment: transfer to Crown Court for trial (Bail Act 1976, ss. 3, 4; Criminal Justice Act 1991, s.53; M. C. Rules 1981 rr.94, 95, 97; M.C. (Notice of Transfer) (Children's Evidence) Rules 1992, r.7).*

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..... Magistrates' Court (Code)

Date:

Accused: Age: years

Address:

.....

Alleged offence: (particulars and statute)

The proceedings against the accused in respect of the above offence have been transferred to the Crown Court at

Direction: [You, [the constables of Police Force] [AB], are hereby required to convey the accused to [prison] [remand centre] and there deliver the accused to the Governor thereof, together with this warrant; and you the Governor, to receive into your custody and, unless the accused is released on bail in the meantime, to keep the accused until the accused is delivered in due course of law.]

[You, the Governor of [prison] [remand centre], are hereby required to keep the accused in your custody and, unless the accused is released on bail in the meantime, to keep the accused until the accused is delivered in due course of law.]

(a) Bail: After complying with the condition(s) specified in Schedule I hereto, the accused shall be released on bail subject to the condition(s) specified in Schedule II hereto, and with a duty to surrender to the custody of the Crown Court at the time and place for the time being appointed by the court.

Justice of the Peace
[or By order of the Court
Clerk of the Court]

(a) Delete if bail is not granted.

SCHEDULE I

Conditions to be complied with before release on bail

To provide suret[y][ies] in the sum of £..... [each] to secure the accused's surrender to custody at the time and place appointed.

♦♦

SCHEDULE II

Conditions to be complied with after release on bail

♦♦

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FORM 2 Notice to governor of prison of persons bailed to appear before Crown Court after notice of transfer (Criminal Justice Act 1991, paras. 2(1), (7) of Schedule 6, M.C. (Notice of Transfer) (Children's Evidence) Rules 1992, r.3).

..... Magistrates' Court (Code)

Notice of transfer given on

Persons bailed on to appear before the Crown Court at

Name and Age	Brief description of offence
.....
.....
.....
.....

To the Governor HM Prison/
Remand Centre.

Justices' Clerk

FORM 3 Notice of transfer of proceedings in respect of a person subject to transfer direction under section 47 or 48 of the Mental Health Act 1983 (M.C. (Notice of Transfer) (Children's Evidence) Rules 1992, r.4).

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

.....Magistrates' Court (Code)

Date:

To the Governor: [prison]

Address:

.....

To the Managers: [hospital]

Address:

.....

Notice: The proceedings in respect of the accused named below, who is subject to a transfer direction under section 47 or 48 of the Mental Health Act 1983 and is detained at the above hospital, have been transferred to the Crown Court at and it was today ordered that he be safely kept in custody until delivered in due course of law.

Accused: Age:years

Address:

.....

Alleged offence: (short particulars and statute)

Clerk of the Court

FORM 4 *Witness order (C.P. (A. of W.) Act 1965, s 1(1) (M.C. Rules 1981, r.8; M. C. (Notice of Transfer) (Children's Evidence) Rules 1992, r.7).*

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..... Magistrates' Court (Code)

Date:

To:
(Witness)

Address:
.....

Order: That(a) [if notice is later given to you to that effect] you attend and give evidence at the trial of at the Crown Court at].

(b) [You are no longer required to attend at Magistrates' Court on in accordance with the summons dated].

Justice of the Peace
[By order of the Court
Justices (Clerk)]

NOTE: Failure to comply with this order may render you liable to imprisonment for 3 months or a fine. You will be notified of the date and time at which you are to attend by the appropriate officer of the Crown Court, to whom any enquiry should be addressed.

- (a) Delete unless the order is a conditional order.
- (b) Delete unless a summons has been issued under s.97 MC Act 1980.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for the procedure to be followed in magistrates' courts where a notice of transfer is given under section 53 of the Criminal Justice Act 1991, which comes into force on 1st October 1992. Under section 53 of that Act, the Director of Public Prosecutions may give to a magistrates' court a notice of transfer in respect of a case proceeding in that court if the offence charged is a sexual offence or involves violence or cruelty and was allegedly either witnessed by, or committed against, a child. The effect of a notice of transfer is to avoid committal proceedings in such cases, but the magistrates' court to which a notice of transfer is given under section 53 retains certain functions, set out in that section and in Schedule 6 to the Act, in respect of the grant or withholding of bail, legal aid and the making of witness orders pending the Crown Court trial.

Rule 3 of these Rules makes provision for notice to be given to the governor of the appropriate prison or remand centre where a person in respect of whom a notice of transfer has been given is granted bail.

Rule 4 makes provision for notice to be given to the governor of the appropriate prison and to the managers of the relevant hospital where notice of transfer is given in respect of a person subject to a transfer direction under section 47 or 48 of the Mental Health Act 1983.

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Rule 5 requires the magistrates' court to fix a date for the making of witness orders in a case where, by virtue of paragraph 2(5) of Schedule 6 of the Criminal Justice Act 1991, the person charged is no longer required to appear before the court, and to notify the prosecutor and the person charged of the date so fixed.

Rule 6 provides for certain documents to be sent to the Crown Court by the magistrates' court to which a notice of transfer has been given, for the purposes of the Crown Court proceedings.

Rule 7 and the Schedule to the Rules provide forms which may be used in proceedings in a magistrates' court to which a notice of transfer has been given.