
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

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(1).

(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(2) and rule 2 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997(3).]

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) [S.I. 1997/704](#); amended by [S.I. 2001/615](#).

(3) [S.I. 1997/699](#); amended by [S.I. 1999/598](#).

(2) In such proceedings before a magistrates' court the Magistrates' Courts Act 1980(4) 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(5) 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—

- (a) section 51 (issue of summons)(6);
- (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)(7);
- (f) section 101 (onus of proving exceptions etc);
- (g) section 121(1) and (3)(a) (constitution and place of sitting of court)(8); 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(9); 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).

(4) 1980 c. 43.

(5) 1981 c. 49.

(6) Section 51 is substituted by the Courts Act 2003 (c. 39), section 47(1), with effect from a date to be appointed.

(7) 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.

(8) 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.

(9) 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.

(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.

(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⁽¹⁰⁾, 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.

⁽¹⁰⁾ Section 7A is inserted by the Criminal Justice Act 2003 (c. 44), section 37, with effect from a date to be appointed.

[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 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.]