

2007 No. 699 (L. 3)

**SUPREME COURT OF ENGLAND AND WALES
MAGISTRATES' COURTS, ENGLAND AND WALES**

The Criminal Procedure (Amendment) Rules 2007

Made - - - - - *5th March 2007*

Laid before Parliament *7th March 2007*

Coming into force - - *2nd April 2007*

The Criminal Procedure Rule Committee makes the following Rules under section 69 of the Courts Act 2003(a), after consulting in accordance with section 72(1)(a) of that Act, and under section 2 of the Indictments Act 1915(b):

Citation, commencement and interpretation

1. These Rules may be cited as the Criminal Procedure (Amendment) Rules 2007 and shall come into force on 2nd April 2007.
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 2005(c).

Revocation of Indictment Rules 1971

3. The Indictment Rules 1971(d) are revoked.

Amendments to the Criminal Procedure Rules 2005

4. After rule 2.1(4) (When the rules apply), insert—

“(5) The rules in Part 14 apply in cases in which one of the events listed in subparagraphs (a) to (d) of rule 14.1(1) takes place on or after 2nd April 2007. In other cases the rules of court replaced by those rules apply.

(6) The rules in Part 28 apply in cases in which an application under rule 28.3 is made on or after 2nd April 2007. In other cases the rules replaced by those rules apply.”
5. For Part 4 (Service of documents), substitute the Part as set out in Schedule 1 to these Rules.
6. In the note after rule 7.5, for “Formerly”, substitute “This rule derives in part from”.
7. In rule 8.2 (Form of notice), omit from “; and, without prejudice” to the end.
8. In the note after rule 8.2, for “Formerly”, substitute “This rule derives in part from”.
9. For Part 14 (The indictment), substitute the Part as set out in Schedule 2 to these Rules.

(a) 2003 c. 39.

(b) 1915 c. 90; section 2(2) was amended by section 19 of the Criminal Justice Administration Act 1956 (c. 34) and section 109 of, and paragraph 67 of Schedule 8 to, the Courts Act 2003 (c. 39).

(c) S.I. 2005/384; amended by S.I. 2006/353, 2006/2636.

(d) S.I. 1971/1253.

10. In rule 19.1 (Application to a magistrates' court to vary conditions of police bail)—

- (a) in paragraph (1)—
 - (i) in the opening words, after “Magistrates’ Courts Act of 1980(a)”, insert “or section 47(1E) of the Police and Criminal Evidence Act 1984(b)”, and
 - (ii) for sub-paragraph (c), substitute—

“(c) where the applicant has been bailed following charge, specify the offence with which he was charged and, in any other case, specify the offence under investigation;”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a), omit “(if any)”, and
 - (ii) in sub-paragraph (b), omit the words from “and, in either case” to the end;
- (c) for paragraph (3), substitute—

“(3) The court officer to whom an application is sent under paragraph (2) above shall serve notice in writing of the date, time and place fixed for the hearing of the application on—

 - (a) the applicant;
 - (b) the prosecutor or, if the applicant has not been charged, the chief officer of police or other investigator, together with a copy of the application; and
 - (c) any surety in connection with bail in criminal proceedings granted to, or the conditions of which were varied by a custody officer in relation to, the applicant.”;
- (d) in paragraph (4), after “Christmas Day,”, insert “Boxing Day,”; and
- (e) in paragraphs (6) and (7), after “the 1980 Act”, insert “or section 47(1E) of the 1984 Act”.

11. For the note after rule 19.1, substitute—

“[Note. This rule derives in part from rule 84A of the Magistrates’ Courts Rules 1981(c). See also section 43B of the Magistrates’ Courts Act 1980(d) and section 47 of the Police and Criminal Evidence Act 1984](e).”.

12. In rule 19.2 (Application to a magistrates' court to reconsider grant of police bail)—

- (a) in paragraph (1), omit “(if any)”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (d), omit the second “and”, and
 - (ii) at the end of sub-paragraph (e), insert
“; and
(f) contain notice of the powers available to the court under section 5B of the 1976 Act.(f)”;
- (c) for paragraph (3), substitute—

“(3) The court officer to whom an application is sent under paragraph (2) above shall serve notice in writing of the date, time and place fixed for the hearing of the application on—

 - (a) the prosecutor who made the application;
 - (b) the person to whom bail was granted, together with a copy of the application; and

(a) 1980 c. 43.

(b) 1984 (c. 60); section 47(1E) was inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44).

(c) S.I. 1981/552; relevant amending instruments are S.I. 1995/585, 2001/610, 2005/617.

(d) 1980 c. 43; section 43B was inserted by section 27 of, and paragraph 3 of Schedule 3 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(e) 1984 c. 60; section 47 was amended by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44) and section 12 of, and paragraphs 1 and 10 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

(f) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129 of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

(c) any surety specified in the application.”.

13. In the note after rule 19.2, for “Formerly”, substitute “This rule derives in part from”.
14. For rule 19.17(11) (Crown Court procedure on appeal against grant of bail by a magistrates’ court), substitute—

“(11) The notices required by paragraphs (3), (5), (7) and (9) of this rule may be served under rule 4.6 (service by fax, e-mail or other electronic means) and the notice required by paragraph (3) may be given by telephone.”.
15. In the note after rule 19.17, for “Formerly”, substitute “This rule derives in part from”.
16. For Part 28 (Witness summonses and orders), substitute the Part as set out in Schedule 3 to these Rules.
17. In the heading to Part 31 (Restriction on cross-examination by a defendant acting in person in the Crown Court), omit “in the Crown Court”.
18. In the heading to rule 31.1 (Restrictions on cross-examination of witness in the Crown Court), omit “in the Crown Court”.
19. In the note after rule 31.1, for “Formerly”, substitute “This rule derives in part from”.
20. In the heading to rule 31.2 (Appointment of legal representative by the Crown Court), omit “by the Crown Court”.
21. In the note after rule 31.2, for “Formerly”, substitute “This rule derives in part from”.
22. In the heading to rule 31.3 (Appointment arranged by the accused in the Crown Court), omit “in the Crown Court”.
23. In rule 31.3(7)—
 - (a) in sub-paragraph (b), for “were”, substitute “where”; and
 - (b) in sub-paragraph (c), for “Crown Court”, substitute “court”.
24. In the note after rule 31.3, for “Formerly”, substitute “This rule derives in part from”.
25. In the heading to rule 31.4 (Prohibition on cross-examination of particular witness in the Crown Court), for “particular witness in the Crown Court”, substitute “witness”.
26. In rule 31.4(3)—
 - (a) in sub-paragraph (a), for “trial judge”, substitute “court of trial”; and
 - (b) in sub-paragraph (b)—
 - (i) in sub-paragraph (i), for “who has been”, substitute “or court”, and
 - (ii) for sub-paragraph (ii), substitute—
 - (ii) if no judge or court has been designated for that purpose, to such judge or court designated for the purposes of hearing that application.”.
27. In rule 31.4(6)(b), for “trial judge”, substitute “court”.
28. In rule 31.4(8)(b)—
 - (a) for “trial judge”, substitute “court”; and
 - (b) for “he”, substitute “it”.
29. In the notes after rules 31.4, 37.3 and 40.3, for “Formerly”, substitute “This rule derives in part from”.
30. In Part 52 (Enforcement of fines)—
 - (a) in the note after rule 52.1, for “Formerly”, substitute “This rule derives in part from”; and
 - (b) in rule 52.6, omit from “and where under that section” to the end; and

- (c) in the notes after rules 52.6 and 52.7, for “Formerly”, substitute “This rule derives in part from”.
31. In rule 53.1(2) (Review of compensation order made by a magistrates’ court), omit “by post”.
32. In the note after rule 53.1, for “Formerly”, substitute “This rule derives in part from”.
33. In rule 57.11(1), for “Rules 4.3 (Service of documents in Crown Court proceedings) and”, substitute “Part 4 and rule”.
34. In the note after rule 57.11, for “Formerly”, substitute “This rule derives in part from”.
35. After rule 68.3(1B) (Notice of appeal and application for extension of time), insert—
“(1C) A document to be served on a Crown Court officer under this Part must be served on a court officer at the Crown Court centre at which the conviction, verdict, finding, decision or sentence appealed against was given or passed.”.
36. In the note after rule 68.3, for “Formerly”, substitute “This rule derives in part from”.
37. In the Glossary—
(a) in the first column—
(i) after “representation order”, insert “requisition”, and
(ii) after “writ of venire de novo”, insert “written charge”; and
(b) in the second column—
(i) after “an order authorising payment of legal aid for a defendant;”, insert “a document issued under section 29 of the Criminal Justice Act 2003 requiring a person to appear before a magistrates’ court to answer a written charge;”, and
(ii) after “an order directing a new trial after a mistrial involving a fundamental irregularity;”, insert “a document issued by a public prosecutor under section 29 of the Criminal Justice Act 2003 which institutes criminal proceedings by charging a person with an offence;”.
38. Schedule 4 has effect.

Phillips of Worth Matravers, C.J.

Sir Igor Judge, P.

Hooper, L.J.

Openshaw, J.

Charles Wide

Roderick Denyer

Anthony Evans

Kenneth Macdonald

Andrew Mimmack

David Fisher

Tom Little

Graham White

Martin Baker

Mark Harris

James Riches

I allow these Rules, which shall come into force on 2nd April, 2007.

19th January 2007

Falconer of Thoroton, C.

I concur

5th March 2007

John Reid
One of Her Majesty's Principal Secretaries of State

“Part 4

Service of documents

Contents of this Part

When this Part applies	rule 4.1
Methods of service	rule 4.2
Service by handing over a document	rule 4.3
Service by leaving or posting a document	rule 4.4
Service through a document exchange	rule 4.5
Service by fax, e-mail or other electronic means	rule 4.6
Documents that must be served only by handing them over, leaving or posting them	rule 4.7
Service by person in custody	rule 4.8
Service by another method	rule 4.9
Date of service	rule 4.10
Proof of service	rule 4.11
Court’s power to give directions about service	rule 4.12

When this Part applies

4.1 The rules in this Part apply to the service of every document in a case to which these Rules apply, subject to any special rules in other legislation (including other Parts of these Rules) or in the Practice Direction.

Methods of service

4.2 A document may be served by any of the methods described in rules 4.3 to 4.6 (subject to rule 4.7), or in rule 4.8.

Service by handing over a document

4.3—(1) A document may be served on—

- (a) an individual by handing it to him or her;
- (b) a corporation by handing it to a person holding a senior position in that corporation;
- (c) an individual or corporation who is legally represented in the case by handing it to that representative;
- (d) the prosecution by handing it to the prosecutor or to the prosecution representative;
- (e) the court officer by handing it to a court officer with authority to accept it at the relevant court office; and
- (f) the Registrar of Criminal Appeals by handing it to a court officer with authority to accept it at the Criminal Appeal Office.

(2) If an individual is 17 or under, a copy of a document served under paragraph (1)(a) must be handed to his or her parent, or another appropriate adult, unless no such person is readily available.

[Note. Certain legislation treats a body that is not a corporation as if it were one for the purposes of rules about service of documents. See for example section 143 of the Adoption and Children Act 2002.(a)]

Service by leaving or posting a document

4.4—(1) A document may be served by leaving it at the appropriate address for service under this rule or by sending it to that address by first class post or by the equivalent of first class post.

(2) The address for service under this rule on—

- (a) an individual is an address where it is reasonably believed that he or she will receive it;
- (b) a corporation is its principal office in England and Wales, and if there is no readily identifiable principal office then any place in England and Wales where it carries on its activities or business;
- (c) an individual or corporation who is legally represented in the case is that representative’s office;
- (d) the prosecution is the prosecutor’s office;
- (e) the court officer is the relevant court office; and
- (f) the Registrar of Criminal Appeals is the Criminal Appeal Office, Royal Courts of Justice, Strand, London WC2A 2LL.

(a) 2002 c. 38.

Service through a document exchange

- 4.5** A document may be served by document exchange (DX) where—
- (a) the writing paper of the person to be served gives a DX box number; and
 - (b) that person has not refused to accept service by DX.

Service by fax, e-mail or other electronic means

- 4.6—(1)** A document may be served by fax, e-mail or other electronic means where—
- (a) the person to be served has given a fax, e-mail or other electronic address; and
 - (b) that person has not refused to accept service by that means.

(2) Where a document is served under this rule the person serving it need not provide a paper copy as well.

Documents that must be served only by handing them over, leaving or posting them

- 4.7—(1)** The documents listed in this rule may be served—
- (a) on an individual only under rule 4.3(1)(a) or rule 4.4(1) and (2)(a); and
 - (b) on a corporation only under rule 4.3(1)(b) or rule 4.4(1) and (2)(b).
- (2) Those documents are—
- (a) a summons, requisition or witness summons;
 - (b) notice of an order under section 25 of the Road Traffic Offenders Act 1988(a);
 - (c) a notice of registration under section 71(6) of that Act(b);
 - (d) a notice of discontinuance under section 23(4) of the Prosecution of Offences Act 1985(c);
 - (e) notice under rule 37.3(1) of the date, time and place to which the trial of an information has been adjourned, where it was adjourned in the defendant's absence;
 - (f) a notice of fine or forfeited recognizance required by rule 52.1(1);
 - (g) notice under section 86 of the Magistrates' Courts Act 1980(d) of a revised date to attend a means inquiry;
 - (h) notice of a hearing to review the postponement of the issue of a warrant of commitment under section 77(6) of the Magistrates' Courts Act 1980(e);
 - (i) a copy of the minute of a magistrates' court order required by rule 52.7(1);
 - (j) an invitation to make observations or attend a hearing under rule 53.1(2) on the review of a compensation order under section 133 of the Powers of Criminal Courts (Sentencing) Act 2000(f);
 - (k) any notice or document served under Part 19.

Service by person in custody

4.8—(1) A person in custody may serve a document by handing it to the custodian addressed to the person to be served.

- (2) The custodian must—
- (a) endorse it with the time and date of receipt;
 - (b) record its receipt; and
 - (c) forward it promptly to the addressee.

Service by another method

4.9—(1) The court may allow service of a document by a method other than those described in rules 4.3 to 4.6 and in rule 4.8.

- (2) An order allowing service by another method must specify—
- (a) the method to be used; and
 - (b) the date on which the document will be served.

(a) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1988 c. 53. Section 71(6) was amended by section 109 of, and paragraph 317 of Schedule 8 to, the Courts Act 2003 (c. 39).

(c) 1985 c. 23.

(d) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48).

(e) 1980 c. 43; section 77(6) was substituted by section 109 of, and paragraph 218 of Schedule 8 to, the Courts Act 2003 (c. 39).

(f) 2000 c. 6. Section 133 was amended by section 456 of, and paragraphs 1 and 37 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

Date of service

4.10—(1) A document served under rule 4.3 or rule 4.8 is served on the day it is handed over.

(2) Unless something different is shown, a document served on a person by any other method is served—

- (a) in the case of a document left at an address, on the next business day after the day on which it was left;
- (b) in the case of a document sent by first class post or by the equivalent of first class post, on the second business day after the day on which it was posted or despatched;
- (c) in the case of a document served by document exchange, on the second business day after the day on which it was left at the addressee’s DX or at a correspondent DX;
- (d) in the case of a document transmitted by fax, e-mail or other electronic means, on the next business day after it was transmitted; and
- (e) in any case, on the day on which the addressee responds to it if that is earlier.

(3) Unless something different is shown, a document produced by a court computer system is to be taken as having been sent by first class post or by the equivalent of first class post to the addressee on the business day after the day on which it was produced.

(4) In this Part “business day” means any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday.

(5) Where a document is served on or by the court officer, “business day” does not include a day on which the court office is closed.

Proof of service

4.11 The person who serves a document may prove that by signing a certificate explaining how and when it was served.

Court’s power to give directions about service

4.12—(1) The court may specify the time as well as the date by which a document must be—

- (a) served under rule 4.3 or rule 4.8; or
- (b) transmitted by fax, e-mail or other electronic means if it is served under rule 4.6.

(2) The court may treat a document as served if the addressee responds to it even if it was not served in accordance with the rules in this Part.”

“Part 14

The indictment

Contents of this Part	
Signature and service of indictment	rule 14.1
Form and content of indictment	rule 14.2

[*Note. The rules in this Part derive from rules formerly in the Indictment Rules 1971(a) and the Indictments (Procedure) Rules 1971(b). See also sections 3, 4 and 5 of the Indictments Act 1915(c) and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(d).*]

Signature and service of indictment

14.1—(1) The prosecutor must serve a draft indictment on the Crown Court officer not more than 28 days after—

- (a) service on the defendant and on the Crown Court officer of copies of the documents containing the evidence on which the charge or charges are based, in a case where the defendant is sent for trial;
- (b) a High Court judge gives permission to serve a draft indictment;
- (c) the Court of Appeal orders a retrial; or
- (d) the committal or transfer of the defendant for trial.

(2) The Crown Court may extend the time limit, even after it has expired.

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

- (a) sign and date the draft, which then becomes an indictment; and
- (b) serve a copy of the indictment on all parties.

[*Note. Serving a draft indictment was described as “preferring a bill of indictment” in the rules from which these rules derive.*]

See Part 3 for 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.

A magistrates’ court may send a defendant for trial in the Crown Court under section 51 or 51A of the Crime and Disorder Act 1998(e). Under section 51D of that Act(f) the magistrates’ court must notify the Crown Court of the offence or offences for which the defendant is sent for trial. Paragraph 1 of Schedule 3 to that Act(g), and the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(h), deal with the service of prosecution evidence in a case sent for trial.

The procedure for applying for the permission of a High Court judge to serve a draft indictment is in rules 6 to 10 of the Indictments (Procedure) Rules 1971. See also direction IV.35 of the Practice Direction.

- (a) S.I. 1971/1253.
- (b) S.I. 1971/2084; relevant amending instruments are S.I. 1983/284, 1988/1738, 1992/2197, 1997/711 and 2000/3360.
- (c) 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 31 of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23), section 331 of, and paragraph 40 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 12 of, and paragraph 8 of Schedule 2 to, the Bail Act 1976 (c. 63).
- (d) 1933 c. 36; section 2 was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 152 of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54), section 31 of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23), section 15 of, and paragraph 1 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 170 of, and paragraph 10 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 53 of, and paragraph 8 of Schedule 6 to, the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50), section 47 of, and paragraph 17 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), section 119 of, and paragraph 5 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), sections 41 and 332 of, and paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and article 3 of, and paragraph 1 of the Schedule to, S.I. 2004/2035.
- (e) 1998 c. 37; section 51 is substituted by section 41 of, and paragraphs 15 and 18 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed and section 51A was inserted by section 41 of, and paragraphs 15 and 18 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). It was commenced in part on 4th April 2005 by article 2 of, and paragraph 29 of Schedule 1 to, S.I. 2005/950.
- (f) 1998 c. 37; section 51D was inserted by section 41 of, and paragraphs 15 and 18 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). It was commenced in part on 4th April 2005 by article 2 of, and paragraph 29 of Schedule 1 to, S.I. 2005/950.
- (g) 1998 c. 37; paragraph 1 was amended by section 67 of, and paragraph 106 of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and is further amended by section 41 of, and paragraphs 15 and 20 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
- (h) S.I. 2005/902.

The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968(a) (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003(b) (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act, and rules 41.14 and 41.15, require the arraignment of a defendant within 2 months.

When it comes into force, Schedule 3 to the Criminal Justice Act 2003 will abolish committal for trial under section 6 of the Magistrates' Courts Act 1980(c), and transfer for trial under section 4 of the Criminal Justice Act 1987(d) (serious fraud cases) or under section 53 of the Criminal Justice Act 1991(e) (certain cases involving children).]

Form and content of indictment

14.2—(1) An indictment must be in one of the forms set out in the Practice Direction 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) An indictment may contain more than one count if all the offences charged—
 - (a) are founded on the same facts; or
 - (b) form or are a part of a series of offences of the same or a similar character.

(4) The counts must be numbered consecutively.

(5) An indictment may contain—

- (a) any count charging substantially the same offence as one—
 - (i) specified in the notice of the offence or offences for which the defendant was sent for trial,
 - (ii) on which the defendant was committed for trial, or
 - (iii) specified in the notice of transfer given by the prosecutor; and
- (b) any other count based on the prosecution evidence already served which the Crown Court may try.

[Note. In certain circumstances the Crown Court may try a defendant for an offence other than one sent, committed or transferred for trial: see section 2(2) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (indictable offences founded on the prosecution evidence on which the sending, committal or transfer was based) and section 40 of the Criminal Justice Act 1988 (specified summary offences founded on that evidence).(f)]”

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- (a) 1968 c. 19; section 8 was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and section 43(3) and (4) of the Criminal Justice Act 1988 (c. 33).
 - (b) 2003 c. 44.
 - (c) 1980 c. 43; section 6 was amended by section 170 of, and paragraphs 65 and 66 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), paragraph 4 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25) and section 109 of, and paragraph 202 of Schedule 8 to, the Courts Act 2003 (c. 39). It is repealed by sections 41 and 332 of, and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.
 - (d) 1987 c. 38; section 4 was amended by section 144 of the Criminal Justice Act 1988 (c. 33), section 45 of, and paragraph 22 of Schedule 5 to, the Legal Aid Act 1988 (c. 34), section 168 of, and paragraph 29 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 65 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and section 24 of, and paragraphs 38 and 39 of Schedule 4 to, the Access to Justice Act 1999 (c. 22). It is repealed by sections 41 and 332 of, and paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.
 - (e) 1991 c. 53; section 53 was amended by section 168 of, and paragraph 49 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 93 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 24 of, and paragraph 47 of Schedule 4 to, the Access to Justice Act 1999 (c. 22). It is repealed by sections 41 and 332 of, and paragraph 62 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.
 - (f) 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 sections 41 and 332 of, and paragraph 60 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

“Part 28

Witness summonses, warrants and orders

Contents of this Part	
When this Part applies	rule 28.1
Issue etc. of summons, warrant or order with or without a hearing	rule 28.2
Application for summons, warrant or order: general rules	rule 28.3
Written application: form and service	rule 28.4
Application for summons to produce a document etc.: special rules	rule 28.5
Application for summons to produce a document etc.: court’s assessment of relevance and confidentiality	rule 28.6
Application to withdraw a summons, warrant or order	rule 28.7
Court’s power to vary requirements under this Part	rule 28.8

[*Note. The rules in this Part derive in part from those formerly contained in rule 107 of the Magistrates’ Courts Rules 1981(a) and rules 23, 23ZA, 23ZB and 23ZC of the Crown Court Rules 1982(b).*]

A magistrates’ court may require the attendance of a witness to give evidence or to produce in evidence a document or thing by a summons, or in some circumstances a warrant for the witness’ arrest, under section 97 of the Magistrates’ Courts Act 1980(c). The Crown Court may do so under sections 2, 2D, 3 and 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(d). Either court may order the production in evidence of a copy of an entry in a banker’s book without the attendance of an officer of the bank, under sections 6 and 7 of the Bankers’ Books Evidence Act 1879(e).

See Part 3 for the court’s general powers to consider an application and to give directions.]

When this Part applies

28.1—(1) This Part applies in magistrates’ courts and in the Crown Court where—

- (a) a party wants the court to issue a witness summons, warrant or order under—
 - (i) section 97 of the Magistrates’ Courts Act 1980,
 - (ii) section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965, or
 - (iii) section 7 of the Bankers’ Books Evidence Act 1879;
- (b) the court considers the issue of such a summons, warrant or order on its own initiative as if a party had applied; or
- (c) one of those listed in rule 28.7 wants the court to withdraw such a summons, warrant or order.

(2) A reference to a ‘witness’ in this Part is a reference to a person to whom such a summons, warrant or order is directed.

[*Note. See section 2D of the Criminal Procedure (Attendance of Witnesses) Act 1965 for the Crown Court’s power to issue a witness summons on the court’s own initiative.*]

Issue etc. of summons, warrant or order with or without a hearing

28.2—(1) The court may issue or withdraw a witness summons, warrant or order with or without a hearing.

- (2) A hearing under this Part must be in private unless the court otherwise directs.

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- (a) S.I. 1981/552; relevant amending instruments are S.I. 1997/706, 2000/3361, 2001/610, 2005/617, 1983/523.
 (b) S. I. 1982/1109. Rules 23, 23ZA, 23ZB and 23ZC were substituted for rule 23 as originally enacted by S.I. 1999/598.
 (c) 1980 c. 43; section 97 was amended by section 31 of, and paragraph 2 of Schedule 4 to, the Criminal Justice (International Co-operation) Act 1990 (c. 5), section 51 of the Criminal Procedure and Investigations Act 1996 (c. 25) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15).
 (d) 1965 c. 69; sections 2 and 2D were substituted by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25). Section 2 was further amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39). It is further amended by sections 41 and 332 of, and paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 3 was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and sections 65 and 66 of the Criminal Procedure and Investigations Act 1996 (c. 25). Section 4 was amended by section 56 of, and paragraph 45 of Schedule 8 to, the Courts Act 1971 (c. 23) and sections 65, 66, 67 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).
 (e) 1879 c. 11.

[Note. If rule 28.5 applies, a person served with an application for a witness summons will have an opportunity to make representations about whether there should be a hearing of that application before the witness summons is issued.]

Application for summons, warrant or order: general rules

28.3—(1) A party who wants the court to issue a witness summons, warrant or order must apply as soon as practicable after becoming aware of the grounds for doing so.

- (2) The party applying must—
 - (a) identify the proposed witness;
 - (b) explain—
 - (i) what evidence the proposed witness can give or produce,
 - (ii) why it is likely to be material evidence, and
 - (iii) why it would be in the interests of justice to issue a summons, order or warrant as appropriate.
- (3) The application may be made orally unless—
 - (a) rule 28.5 applies; or
 - (b) the court otherwise directs.

[Note. The court may issue a warrant for a witness' arrest if that witness fails to obey a witness summons directed to him: see section 97(3) of the Magistrates' Courts Act 1980 and section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965. Before a magistrates' court may issue a warrant under section 97(3) of the 1980 Act the witness must first be paid or offered a reasonable amount for costs and expenses.]

Written application: form and service

28.4—(1) An application in writing under rule 28.3 must be in the form set out in the Practice Direction, containing the same declaration of truth as a witness statement.

- (2) The party applying must serve the application—
 - (a) in every case, on the court officer and as directed by the court; and
 - (b) as required by rule 28.5, if that rule applies.

[Note. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(a) and section 5B of the Magistrates' Courts Act 1980(b). Section 89 of the 1967 Act(c) makes it an offence to make a written statement under section 9 of that Act which the person making it knows to be false or does not believe to be true.]

Application for summons to produce a document, etc.: special rules

28.5—(1) This rule applies to an application under rule 28.3 for a witness summons requiring the proposed witness—

- (a) to produce in evidence a document or thing; or
 - (b) to give evidence about information apparently held in confidence, that relates to another person.
- (2) The application must be in writing in the form required by rule 28.4.
- (3) The party applying must serve the application—
 - (a) on the proposed witness, unless the court otherwise directs; and
 - (b) on one or more of the following, if the court so directs—
 - (i) a person to whom the proposed evidence relates,
 - (ii) another party.
- (4) The court must not issue a witness summons where this rule applies unless—
 - (a) everyone served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing of the application before the summons is issued; and

(a) 1967 c. 80; section 9 is amended by section 72(3) of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and sections 41 and 332 of, and paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(b) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

(c) 1967 c. 80; section 89 was amended by section 154 of, and Schedule 9 to, the Magistrates' Courts Act 1980 (c. 43).

- (b) the court is satisfied that it has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the proposed evidence relates.

(5) This rule does not apply to an application for an order to produce in evidence a copy of an entry in a banker's book.

[Note. Under section 2A of the Criminal Procedure (Attendance of Witnesses) Act 1965(a) a witness summons to produce a document or thing issued by the Crown Court may require the witness to produce it for inspection by the applicant before producing it in evidence.]

Application for summons to produce a document, etc.: court's assessment of relevance and confidentiality

28.6—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the ground that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a summons.

(2) The court may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The court may invite—

- (a) the proposed witness or any representative of the proposed witness; or
- (b) a person to whom the document or thing relates or any representative of such a person,

to help the court assess the objection.

Application to withdraw a summons, warrant or order

28.7—(1) The court may withdraw a witness summons, warrant or order if one of the following applies for it to be withdrawn—

- (a) the party who applied for it, on the ground that it no longer is needed;
- (b) the witness, on the grounds that—
 - (i) he was not aware of any application for it, and
 - (ii) he cannot give or produce evidence likely to be material evidence, or
 - (iii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates outweigh the reasons for the issue of the summons, warrant or order; or
- (c) any person to whom the proposed evidence relates, on the grounds that—
 - (i) he was not aware of any application for it, and
 - (ii) that evidence is not likely to be material evidence, or
 - (iii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness outweigh the reasons for the issue of the summons, warrant or order.

(2) A person applying under the rule must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why he wants the summons, warrant or order to be withdrawn; and
- (b) serve the application on the court officer and as appropriate on—
 - (i) the witness,
 - (ii) the party who applied for the summons, warrant or order, and
 - (iii) any other person who he knows was served with the application for the summons, warrant or order.

(3) Rule 28.6 applies to an application under this rule that concerns a document or thing to be produced in evidence.

[Note. See sections 2B, 2C and 2E of the Criminal Procedure (Attendance of Witnesses) Act 1965(b) for the Crown Court's powers to withdraw a witness summons, including the power to order costs.]

(a) 1965 c. 69; section 2A was inserted by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(b) 1965 c. 69; sections 2B, 2C and 2E were substituted by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

Court's power to vary requirements under this Part

- 28.8**—(1) The court may—
- (a) shorten or extend (even after it has expired) a time limit under this Part; and
 - (b) where a rule or direction requires an application under this Part to be in writing, allow that application to be made orally instead.
- (2) Someone who wants the court to allow an application to be made orally under paragraph (1)(b) of this rule must—
- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
 - (b) in doing so explain the reasons for the application and for wanting the court to consider it orally.”

SCHEDULE 4

Rule 38

Revocations

The following provisions are revoked:

- (a) Rule 7.5(2);
- (b) Rule 13.6 and the note after that rule;
- (c) Rule 15.6;
- (d) Rule 19.1(5);
- (e) Rule 19.2(5);
- (f) Rule 19.2(8);
- (g) Rule 34.6;
- (h) Rule 35.7 and the note after that rule;
- (i) Rule 37.3(2);
- (j) Rule 40.3(2);
- (k) Rule 40.3(3);
- (l) Rule 40.3(4);
- (m) Rule 41.17;
- (n) Rule 52.1(2);
- (o) Rule 52.5 and the note after that rule;
- (p) Rule 52.7(2);
- (q) Rule 55.4 and the note after that rule;
- (r) Rule 64.5 and the note after that rule;
- (s) Rule 65.9 and the note after that rule;
- (t) Rule 66.17;
- (u) Rule 68.1 and the note after that rule;
- (v) Rule 69.6 and the note after that rule;
- (w) Rule 70.8 and the note after that rule; and
- (x) Rule 71.11 and the note after that rule.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules add the following new provisions to the Criminal Procedure Rules 2005 (“the Rules”):

- A new Part 4 (service of documents), in substitution for the existing Part 4, which consolidates, revises and simplifies the rules about the service of documents in criminal cases.
- A new Part 14 (indictments), in substitution for the existing Part 14, which revises and simplifies the rules about the service, form and content of indictments. In some circumstances the new rules allow more than one incident of the same offence to be charged in a single paragraph of an indictment, which was not explicitly permitted by the rules these replace.
- A new Part 28 (witness summonses, warrants and orders), in substitution for the existing Part 28, which revises and simplifies the rules about applications for witnesses to give evidence or produce documents for use in evidence. The new rules require the court to consider the rights of those to whom confidential information or documents relate before a witness can be required to give evidence about them. They allow for applications to set aside orders that have been made.
- New rules in Part 2 (when the Rules apply) explain when the new rules in Parts 14 and 28 will apply.

In addition, the following amendments and revocations are made:

- The rules contained in the Indictment Rules 1971 are revoked (they are superseded by the new rules in Part 14).
- Part 19 (custody and bail) is amended to allow for applications under section 47(1E) of the Police and Criminal Evidence Act 1984 to vary bail conditions before charge, and to remove some inconsistencies in the rules in that Part.
- Part 31 (restriction on cross-examination by a defendant acting in person) is amended so that the rules in that Part apply in magistrates’ courts as well as in the Crown Court.
- Most of the existing rules about service of documents are revoked (they are superseded by the new consolidated rules in Part 4) and other existing rules are amended to make them consistent with the new Part 4 rules.
- The Glossary is extended to include explanations of the expressions “requisition” and “written charge”.

The changes made by these Rules come into force on 2nd April 2007.

2007 No. 699 (L. 3)

**SUPREME COURT OF ENGLAND AND WALES
MAGISTRATES' COURTS, ENGLAND AND WALES**

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