

2008 No. 2076 (L.9)

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

The Criminal Procedure (Amendment) Rules 2008

Made - - - - - *21st July 2008*

Laid before Parliament *31st July 2008*

Coming into force - - *6th October 2008*

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:

Citation, commencement and interpretation

1. These rules may be cited as The Criminal Procedure (Amendment) Rules 2008 and shall come into force on 6th October 2008.
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(b).

Amendments to the Criminal Procedure Rules 2005

3. In Part 2 (Understanding and applying the Rules), in the table of contents—
 - (a) at the end of the first column, insert “Representatives”; and
 - (b) at the end of the second column, insert “rule 2.5”.
4. After rule 2.1(10) (When the Rules apply), insert—

“(11) The rules in Part 7 apply in cases in which on or after 6th October 2008—

 - (a) a prosecutor serves an information on the court officer or presents it to a magistrates’ court;
 - (b) a public prosecutor issues a written charge; or
 - (c) a person who is in custody is charged with an offence.

In other cases the rules replaced by those rules apply.

(12) The rules in Part 63 apply in cases in which the decision that is the subject of the appeal, or reference, to which that Part applies is made on or after 6th October 2008. In other cases the rules replaced by those rules apply.”.
5. After rule 2.4 (The glossary), insert—

“Representatives

2.5.—(1) Under these Rules, unless the context makes it clear that something different is meant, anything that a party may or must do may be done—

 - (a) by a legal representative on that party’s behalf;

(a) 2003 c. 39; section 69 was amended by sections 15(1) and 146 of, and paragraphs 308 and 332 of Schedule 4 and Part 2 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4).
(b) S.I. 2005/384; amended by S.I. 2006/353, 2006/2636, 2007/699, 2007/2317 and 2007/3662.

- (b) by a person with the corporation’s written authority, where that party is a corporation;
 - (c) with the help of a parent, guardian or other suitable supporting adult where that party is a defendant—
 - (i) who is under 18, or
 - (ii) whose understanding of what the case involves is limited.
- (2) Anyone with a prosecutor’s authority to do so may, on that prosecutor’s behalf—
- (a) serve on the magistrates’ court officer, or present to a magistrates’ court, an information under section 1 of the Magistrates’ Courts Act 1980(a); or
 - (b) issue a written charge and requisition under section 29 of the Criminal Justice Act 2003(b).

[Note. See also section 122 of the Magistrates’ Courts Act 1980(c). A party’s legal representative must be entitled to act as such under section 27 or 28 of the Courts and Legal Services Act 1990(d).

Section 33(6) of the Criminal Justice Act 1925(e), section 46 of the Magistrates’ Courts Act 1980(f) and Schedule 3 to that Act(g) provide for the representation of a corporation.

Part 7 contains rules about starting a prosecution.]”.

6. In rule 4.4(2)(b) (Service by leaving or posting a document), omit “in England and Wales” in both places it occurs.

7. After rule 4.4 (Service by leaving or posting a document), insert—

“[Note. In addition to service in England and Wales for which these rules provide, service outside England and Wales may be allowed under other legislation. See—

- (a) section 39 of the Criminal Law Act 1977(h) (service of summons, etc. in Scotland and Northern Ireland);*
- (b) section 725(3) of the Companies Act 1985(i) and section 1139(4) of the Companies Act 2006(j) (service of copy summons, etc. on company’s registered office in Scotland and Northern Ireland);*
- (c) sections 3, 4, 4A and 4B of the Crime (International Co-operation) Act 2003(k) (service of summons, etc. outside the United Kingdom) and rules 32.1 and 32.2; and*

- (a) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and sections 31 and 332 of, and Schedule 7 to, the Criminal Justice Act 2003 (c. 44). It is to be amended by section 331 of, and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).
- (b) 2003 c. 44; section 29 was amended by section 50(6) of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15).
- (c) 1980 c. 43; section 122 was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41).
- (d) 1990 c. 41; section 27 was amended by sections 42, 43 and 106 of, and paragraphs 4 and 6 of Schedule 6 and Part II of Schedule 15 to, the Access to Justice Act 1999 (c. 22) and article 9 of, and paragraph 8(1) of Schedule 2 to, the Secretary of State for Constitutional Affairs Order 2003 (SI 2003/1887). Section 28 was amended by sections 40, 42, 43 and 106 of, and paragraphs 4 and 7 of Schedule 6 and Part II of Schedule 15 to, the Access to Justice Act 1999 (c. 22). Sections 27 and 28 are to be repealed by sections 208 and 210 of, and paragraphs 83 and 84 of Schedule 21 and Schedule 23 to, the Legal Services Act 2007 (c. 29), from a date to be appointed.
- (e) 1925 c. 86.
- (f) 1980 c. 43.
- (g) 1980 c. 43; Schedule 3 was amended, in relation to proceedings begun on or after 1 April 1997, by section 47 of, and paragraph 13 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and, generally, by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53). It is to be amended by section 41 of, and paragraph 51 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).
- (h) 1977 c. 45; sub-section (1) was substituted by section 331 of, and paragraph 6 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Sub-section (3) was amended by section 83 of, and paragraph 79 of Schedule 7 to, the Criminal Justice (Scotland) Act 1980 (c. 62).
- (i) 1985 c. 6; section 725 is to be repealed by section 1295 of, and Schedule 16 to, the Companies Act 2006 (c. 46) from a date to be appointed.
- (j) 2006 (c. 46). Section 1139 is to take effect from a date to be appointed. For certain purposes that date was 6th April 2007 and for certain other purposes it was 6th April 2008.
- (k) 2003 (c. 32). Sections 4A and 4B were inserted by section 331 of, and paragraph 16 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(d) section 695(1) and (2) of the Companies Act 1985(a) and section 1139(2) of the Companies Act 2006 (service on overseas company).]”.

8. For Part 7 (Commencing proceedings in magistrates’ courts), substitute the Part as set out in Schedule 1 to these Rules.

9. In Part 37 (Summary trial), in the table of contents—

(a) in the first column—

- (i) after “Order of evidence and speeches: complaint”, insert “Magistrates’ court officer to have copies of documents sent to accused under section 12(1) of the Magistrates’ Courts Act 1980”,
- (ii) after “Magistrates’ court officer to have copies of documents sent to accused under section 12(1) of the Magistrates’ Courts Act 1980”, insert “Notice of order under section 25 of the Road Traffic Offenders Act 1988”, and
- (iii) after “Notice of order under section 25 of the Road Traffic Offenders Act 1988”, insert “Duty of court officer receiving statutory declaration under section 14(1) of the Magistrates’ Courts Act 1980”;

(b) in the second column—

- (i) after “rule 37.8”, insert “rule 37.9”,
- (ii) after “rule 37.9”, insert “rule 37.10”, and
- (iii) after “rule 37.10”, insert “rule 37.11”.

10. In Part 37 (Summary trial), after rule 37.8, insert—

“Magistrates’ court officer to have copies of documents sent to accused under section 12(1) of the Magistrates’ Courts Act 1980

37.9. Where the prosecutor notifies a magistrates’ court officer that the documents mentioned in section 12(1)(a) and 12(1)(b) of the Magistrates’ Courts Act 1980(b) have been served upon the accused, the prosecutor shall send to the court officer a copy of the documents mentioned in section 12(1)(b).

[Note. Formerly rule 7.9 of these Rules, which derived from rule 73 of The Magistrates’ Courts Rules 1981. Section 12 of the Magistrates’ Courts Act 1980 applies where a summons has been issued requiring a person to appear before a magistrates’ court, other than a youth court, to answer an information for a summary offence punishable with not more than 3 months’ imprisonment. The documents mentioned in section 12(1)(b) are: a notice stating the effect of section 12, and either a statement of the facts to be placed before the court if the accused pleads guilty by post, or copies of the statements of the prosecution witnesses.]

Notice of order under section 25 of the Road Traffic Offenders Act 1988

37.10. Where a magistrates’ court makes an order under section 25 of the Road Traffic Offenders Act 1988(c) that an offender shall inform the court of his date of birth or sex or both and the offender is not present in court, the court officer shall serve notice in writing of the order on the offender.

[Note: Formerly rule 7.5 of these Rules, which derived from rule 108 of The Magistrates’ Courts Rules 1981.]

(a) 1985 c. 6; section 695(1) was amended by regulation 3(1) of, and paragraph 9 of Schedule 2 to, the Overseas Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992 (SI 1992/3179). It is to be repealed by section 1295 of, and Schedule 16 to, the Companies Act 2006 (c. 46) from a date to be appointed.

(b) 1980 c. 43; section 12(1) was substituted by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 109 of, and paragraph 203 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 308 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(c) 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), section 7 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

Duty of court officer receiving statutory declaration under section 14(1) of the Magistrates' Courts Act 1980

37.11. Where a magistrates' court officer receives a statutory declaration which complies with section 14(1) of the Magistrates' Courts Act 1980(a) (accused did not know of proceedings), he shall—

- (a) note the receipt of the declaration in the register; and
- (b) inform the prosecutor and, if the prosecutor is not a constable, the chief officer of police, of the receipt of the declaration.

[Note: Formerly rule 7.4 of these Rules, which derived from rule 20 of The Magistrates' Courts Rules 1981. As to the requirement to keep a register, see rule 6.1.]

11. In rule 44.1(2)(d) (Procedure after finding against minor in a magistrates' court), omit "local education authority,".

12. Part 55 (Road traffic penalties), in the table of contents—

- (a) at the end of the first column, insert "Statutory declaration under section 72 or 73 of the Road Traffic Offenders Act 1988"; and
- (b) at the end of the second column, insert "rule 55.4".

13. In Part 55 (Road traffic penalties), after rule 55.3, insert—

"Statutory declaration under section 72 or 73 of the Road Traffic Offenders Act 1988

55.4. Where a magistrates' court officer receives a statutory declaration under section 72(b) or 73(c) of the Road Traffic Offenders Act 1988 (fixed penalty notice or notice fixed to vehicle invalid) he shall send a copy of it to the appropriate chief officer of police.

[Note. Formerly rule 7.6 of these Rules, which derived from rule 112 of The Magistrates' Courts Rules 1981.]

14. For Part 63 (Appeal to the Crown Court), substitute the Part as set out in Schedule 2 to these Rules.

15. In the note after rule 65.1 (When this Part applies), after "2006;", insert "The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(d);".

16. In rule 65.5(1) (Renewing an application refused by a judge or the Registrar), after "party", insert "with the right to do so".

17. In the note after rule 65.5 (Renewing an application refused by a judge or the Registrar), after "1968", in the first place it occurs, insert—

" , The Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(e), The Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006(f) and The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

A party has no right under section 31C of the 1968 Act(g) to renew to the Court of Appeal an application for procedural directions refused by a judge, but in some circumstances a case management direction may be varied: see rule 3.6".

(a) 1980 c. 43; section 14(1) was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1988 c. 53; section 72 was amended by regulations 2(2) and 3 of, and paragraph 20 of Schedule 2 to, the Driving Licences (Community Driving Licence) Regulations 1990 (SI 1990/144) and section 90 of, and paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22). It is to be amended by sections 5, 9 10 and 59 of, and paragraphs 1 and 13 of Schedule 1, paragraphs 2 and 23 of Schedule 2, paragraphs 30 and 50 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49) from a date to be appointed.

(c) 1988 c. 53; section 73 was amended by section 90 of, and paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22). It is to be amended by sections 5 and 59 of, and paragraphs 1 and 14 of Schedule 1 and Schedule 7 to, the Road Safety Act 2006 (c. 49) from a date to be appointed.

(d) S.I. 2008/1863.

(e) S.I. 2005/2798.

(f) S.I. 2006/2135.

(g) 1968 c. 19; section 31C was inserted by section 87 of the Courts Act 2003 (c. 39) and it is to be amended by sections 47 and 149 of, and paragraph 12 of Schedule 8 and paragraphs 1 and 12 of Schedule 23 to, the Criminal Justice and Immigration Act 2008 (c. 4), from a date to be appointed.

18. For rule 65.11 (Registrar’s duty to provide copy documents for appeal or reference), substitute—

“Unless the court otherwise directs, for the purposes of an appeal or reference—

(a) the Registrar must—

(i) provide a party with a copy of any document or transcript held by the Registrar for such purposes, or

(ii) allow a party to inspect such a document or transcript,

on payment by that party of any charge fixed by the Treasury; but

(b) the Registrar must not provide a copy or allow the inspection of—

(i) a document provided only for the court and the Registrar, or

(ii) a transcript of a public interest ruling or of an application for such a ruling.”.

19. In the note after rule 66.6 (Powers of Court of Appeal judge), for “53(4) of the Supreme Court Act 1981(a)” substitute “31 of the Criminal Appeal Act 1968(b)”.

20. In rule 68.1(1)(f) (When this Part applies), for “a person wants to appeal to the Court of Appeal under section 24 of the Serious Crime Act 2007(c)” substitute—

“a person wants to appeal to the Court of Appeal under—

(i) section 24 of the Serious Crime Act 2007, or

(ii) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986(d)”.

21. In the note after rule 68.1 (When this Part applies), after “serious crime prevention order”, in the second place it occurs, insert—

“Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom the Crown Court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985(e) and regulation 3B may appeal against that order to the Court of Appeal.

Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom the Crown Court makes a costs order under section 19B of the Prosecution of Offences Act 1985(f) and regulation 3F may appeal against that order to the Court of Appeal.”.

22. In rule 68.2(1) (Service of appeal notice), for paragraph (b) substitute—

“(b) not more than—

(i) 28 days after that occurred, or

(ii) 21 days after the order, in a case in which the appellant appeals against a wasted or third party costs order.”.

(a) 1981 c. 54.

(b) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), section 331 of, and paragraphs 86 and 87 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 48 of the Police and Justice Act 2006 (c. 48). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from dates to be appointed.

(c) 2007 c. 27.

(d) SI 1986/1335; regulation 3C was inserted by regulation 2 of the Costs in Criminal Cases (General) (Amendment) Regulations 1991 (SI 1991/789) and amended by regulation 5 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408). Regulation 3H was inserted by regulation 7 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408).

(e) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(f) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

23. In the note after rule 68.3 (Form of appeal notice), for—
*“the appellant appeals against a finding of contempt of court
the Crown Court Judge certifies under section 1(2)(a), 11(1A), 12(b), 15(2)(b) or
16A(2)(b) of the Criminal Appeal Act 1968(a), under section 81(1B) of the Supreme
Court Act 1981(b), or under section 14A(5B) of the Football Spectators Act 1989(c)
that a case is fit for appeal.”*

substitute—

*“the appellant appeals against—
a finding of contempt of court
a wasted or third party costs order
the Crown Court judge certifies under sections 1(2)(a), 11(1A), 12(b), 15(2)(b) or
16A(2)(b) of the Criminal Appeal Act 1968, under section 81(1B) of the Supreme
Court Act 1981, under section 14A(5B) of the Football Spectators Act 1989 or under
section 24(4) of the Serious Crime Act 2007(d), that a case is fit for appeal.”.*

24. In the note after rule 68.4 (Crown Court judge’s certificate that case is fit for appeal)—

(a) after “1981”, for “or” substitute “,”; and

(b) after “1989”, insert “or under section 24(4) of the Serious Crime Act 2007”.

25. In rule 78.1 (Crown Court’s jurisdiction to award costs in appeal from magistrates’ court)—

(a) omit paragraph (3); and

(b) in paragraph (4), omit “not being an appeal to which paragraph (3) applies”.

*Phillips of Worth Matravers, C.J.
Sir Igor Judge, P.
Hooper, L.J.
Openshaw, J.
Charles Wide
Roderick Denyer
Stephen Dawson
Nicholas Moss
Andrew Mimmack
Sir Kenneth Macdonald
David Fisher
Tom Little
Graham White
Derek French
Martin Baker
James Riches*

I allow these Rules which shall come into force on 6th October 2008.

21st July 2008

Jack Straw
Lord Chancellor

(a) 1968 c. 19; section 11(1A) was inserted by section 29 of the Criminal Justice Act 1982 (c. 48).

(b) 1981 c. 54; section 81(1B) was inserted by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48).

(c) 1989 c. 37; section 14A(5B) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(d) 2007 c. 27.

Starting a prosecution in a magistrates’ court

Contents of this Part

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When this Part applies

7.1.—(1) This Part applies in a magistrates’ court where—

- (a) a prosecutor wants the court to issue a summons or warrant under section 1 of the Magistrates’ Courts Act 1980(a);
- (b) a public prosecutor—
 - (i) wants the court to issue a warrant under section 1 of the Magistrates’ Courts Act 1980, or
 - (ii) issues a written charge and requisition under section 29 of the Criminal Justice Act 2003(b); or
- (c) a person who is in custody is charged with an offence.

(2) In this Part, ‘public prosecutor’ means one of those public prosecutors listed in section 29 of the Criminal Justice Act 2003.

[Note. Under section 1 of the Magistrates’ Courts Act 1980, on receiving a formal statement (described in that section as an ‘information’) alleging that someone has committed an offence, the court may issue—

- (a) a summons requiring that person to attend court; or
- (b) a warrant for that person’s arrest, if—
 - (i) the alleged offence must or may be tried in the Crown Court,
 - (ii) the alleged offence is punishable with imprisonment, or
 - (iii) the person’s address cannot be established sufficiently clearly to serve a summons or requisition.

The powers of the court to which this Part applies may be exercised by a single justice of the peace.

Under section 29 of the Criminal Justice Act 2003, a public prosecutor listed in that section may issue a written charge alleging that someone has committed an offence, and a requisition requiring that person to attend court. Section 30 of that Act(c) contains other provisions about written charges and requisitions.

A person detained under a power of arrest may be charged if the custody officer decides that there is sufficient evidence to do so. See sections 37(d) and 38(e) of the Police and Criminal Evidence Act 1984.]

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- (a) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and sections 31, 331 and 332 of, and Schedule 7 and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).
 - (b) 2003 c. 44; section 29 was amended by section 50(6) of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15).
 - (c) 2003 c. 44; section 30 was amended by article 3 of, and paragraphs 45 and 46 of the Schedule to, the Courts Act 2003 (Consequential Amendments) Order 2004 (SI 2004/2035).
 - (d) 1984 c. 60; section 37 was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41), sections 72 and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 29(4) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 28 of, and paragraphs 1 and 2 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), section 23(1) of, and paragraphs 1 and 2 of Schedule 1 to, the Drugs Act 2005 (c. 17) and sections 11 and 52 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48).
 - (e) 1984 c. 60; section 38 was amended by section 108(5) of, and paragraph 53 of Schedule 13 to, the Children Act 1989 (c. 41); section 59 of the Criminal Justice Act 1991 (c. 53), sections 24, 28 and 168(2) of, and paragraph 54 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 57(1) and (3) of the Criminal Justice and Court Services Act 2000 (c. 43), sections 5, 304 and 331 of, and paragraph 44 of Schedule 32, and paragraph 5 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 23(1) of, and paragraphs 1 and 3(a) of Schedule 1 to, the Drugs Act 2005 (c. 17).

Information and written charge

- 7.2.**—(1) A prosecutor who wants the court to issue a summons must—
- (a) serve an information in writing on the court officer; or
 - (b) unless other legislation prohibits this, present an information orally to the court, with a written record of the allegation that it contains.
- (2) A prosecutor who wants the court to issue a warrant must—
- (a) serve on the court officer—
 - (i) an information in writing, or
 - (ii) a copy of a written charge that has been issued; or
 - (b) present to the court either of those documents.
- (3) A public prosecutor who issues a written charge must notify the court officer immediately.
- (4) A single document may contain—
- (a) more than one information; or
 - (b) more than one written charge.
- (5) Where an offence can be tried only in a magistrates' court, then unless other legislation otherwise provides—
- (a) a prosecutor must serve an information on the court officer or present it to the court; or
 - (b) a public prosecutor must issue a written charge, not more than 6 months after the offence alleged.
- (6) Where an offence can be tried in the Crown Court then—
- (a) a prosecutor must serve an information on the court officer or present it to the court; or
 - (b) a public prosecutor must issue a written charge, within any time limit that applies to that offence.

[Note. In some legislation, including the Magistrates' Courts Act 1980, serving an information on the court officer or presenting it to the court is described as 'laying' that information.

The time limits for serving or presenting an information and for issuing a written charge are prescribed by section 127 of the Magistrates' Courts Act 1980(a) and section 30(5) of the Criminal Justice Act 2003(b).

Part 2 contains rules allowing someone with a prosecutor's authority, on that prosecutor's behalf, to—

- (a) *serve on the court officer or present to the court an information; or*
- (b) *issue a written charge and requisition.*

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 information or charge and for separate trials.

The Practice Direction sets out forms of information for use in connection with this rule.]

Allegation of offence in information or charge

- 7.3.**—(1) An allegation of an offence in an information or charge must contain—
- (a) a statement of the offence 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.

(a) 1980 c. 43.
(b) 2003 c. 44.

(2) More than one incident of the commission of the offence may be included in the allegation if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

Summons, warrant and requisition

7.4.—(1) The court may issue or withdraw a summons or warrant—

- (a) without giving the parties an opportunity to make representations; and
- (b) at a hearing in public or in private; or
- (c) without a hearing.

(2) A summons, warrant or requisition may be issued in respect of more than one offence.

(3) A summons or requisition must—

- (a) contain notice of when and where the defendant is required to attend the court;
- (b) specify each offence in respect of which it is issued; and
- (c) identify the person under whose authority it is issued.

(4) A summons may be contained in the same document as an information.

(5) A requisition may be contained in the same document as a written charge.

(6) Where the court issues a summons—

- (a) the prosecutor must—
 - (i) serve it on the defendant, and
 - (ii) notify the court officer; or
- (b) the court officer must—
 - (i) serve it on the defendant, and
 - (ii) notify the prosecutor.

(7) Where a public prosecutor issues a requisition that prosecutor must—

- (a) serve on the defendant—
 - (i) the requisition, and
 - (ii) the written charge; and
- (b) serve a copy of each on the court officer.

(8) Unless it would be inconsistent with other legislation, a replacement summons or requisition may be issued without a fresh information or written charge where the one replaced—

- (a) was served by leaving or posting it under rule 4.7 (documents that must be served only by handing them over, leaving or posting them); but
- (b) is shown not to have been received by the addressee.

(9) A summons or requisition issued to a defendant under 18 may require that defendant's parent or guardian to attend the court with the defendant, or a separate summons or requisition may be issued for that purpose.

[Note. Part 18 contains other rules about warrants.

Section 47 of the Magistrates' Courts Act 1980(a) and section 30(5) of the Criminal Justice Act 2003 make special provision about time limits under other legislation for the issue and service of a summons or requisition, where service by post is not successful.

Section 34A of the Children and Young Persons Act 1933(b) allows, and in some cases requires, the court to summon the parent or guardian of a defendant under 18.]”

(a) 1980 c. 43; section 47 was amended by section 109(1) of, and paragraph 207 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22).

Appeal to the Crown Court

Contents of this Part

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When this Part applies

63.1.—(1) This Part applies where—

- (a) a defendant wants to appeal under—
 - (i) section 108 of the Magistrates’ Courts Act 1980(a),
 - (ii) section 45 of the Mental Health Act 1983(b),
 - (iii) paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000(c);
- (b) the Criminal Cases Review Commission refers a defendant’s case to the Crown Court under section 11 of the Criminal Appeal Act 1995(d);
- (c) a prosecutor wants to appeal under—
 - (i) section 14A(5A) of the Football Spectators Act 1989(e), or
 - (ii) section 147(3) of the Customs and Excise Management Act 1979(f); or
- (d) a person wants to appeal under—
 - (i) section 1 of the Magistrates’ Courts (Appeals from Binding Over Orders) Act 1956(g),
 - (ii) section 12(5) of the Contempt of Court Act 1981(h),
 - (iii) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986(i), or
 - (iv) section 22 of the Football Spectators Act 1989(j).

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- (a) 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45).
 - (b) 1983 c. 20.
 - (c) 2000 c. 6.
 - (d) 1995 c. 35.
 - (e) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).
 - (f) 1979 c. 2.
 - (g) 1956 c. 44; section 1 was amended by section 103(2) of, and Part 1 of Schedule 7 to, the Criminal Justice Act 1967 (c. 80), section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and section 154 of, and Schedule 9 to, the Magistrates’ Courts Act 1980 (c. 43).
 - (h) 1981 c. 49; section 12(5) was amended by section 165(1) of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
 - (i) SI 1986/1335; regulation 3C was inserted by regulation 2 of the Costs in Criminal Cases (General) (Amendment) Regulations 1991 (SI 1991/789) and amended by regulation 5 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408). Regulation 3H was inserted by regulation 7 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (SI 2004/2408).
 - (j) 1989 c. 37; section 22 was amended by section 5 of the Football (Offences and Disorder) Act 1999 (c. 21), section 1 of, and paragraphs 9—11 and 17 of Schedule 2 to, the Football (Disorder) Act 2000 (c. 25) and section 109(1) and (3) of, and paragraph 335 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).

(2) A reference to an ‘appellant’ in this Part is a reference to such a party or person.
[Note. An appeal to the Crown Court is by way of re-hearing: see section 79(3) of the Supreme Court Act 1981(a). For the powers of the Crown Court on an appeal, see section 48 of that Act.]

A defendant may appeal from a magistrates’ court to the Crown Court—

- (a) *under section 108 of the Magistrates’ Courts Act 1980, against sentence after a guilty plea and after a not guilty plea against conviction, against a finding of guilt or against sentence;*
- (b) *under section 45 of the Mental Health Act 1983, where the magistrates’ court makes a hospital order or guardianship order without convicting the defendant;*
- (c) *under paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000, where the magistrates’ court revokes a community order and deals with the defendant in another way.*

See section 13 of the Criminal Appeal Act 1995(b) for the circumstances in which the Criminal Cases Review Commission may refer a conviction or sentence to the Crown Court.

Under section 14A(5A) of the Football Spectators Act 1989, a prosecutor may appeal to the Crown Court against a failure by a magistrates’ court to make a football banning order.

Under section 147(3) of the Customs and Excise Management Act 1979, a prosecutor may appeal to the Crown Court against any decision of a magistrates’ court in proceedings for an offence under any Act relating to customs or excise.

Under section 1 of the Magistrates’ Courts (Appeals from Binding Over Orders) Act 1956, a person bound over to keep the peace or be of good behaviour by a magistrates’ court may appeal to the Crown Court.

Under section 12(5) of the Contempt of Court Act 1981, a person detained, committed to custody or fined by a magistrates’ court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court.

Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom a magistrates’ court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court.

Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom a magistrates’ court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court.

Under section 22 of the Football Spectators Act 1989, any person aggrieved by the decision of a magistrates’ court making a football banning order may appeal to the Crown Court.]

Service of appeal notice

63.2.—(1) An appellant must serve an appeal notice on—

- (a) the magistrates’ court officer; and
- (b) every other party.

(2) The appellant must serve the appeal notice—

- (a) as soon after the decision appealed against as the appellant wants; but
- (b) not more than 21 days after—
 - (i) sentence or the date sentence is deferred, whichever is earlier, if the appeal is against conviction or against a finding of guilt,
 - (ii) sentence, if the appeal is against sentence, or
 - (iii) the order or failure to make an order about which the appellant wants to appeal, in any other case.

(a) 1981 c. 54.

(b) 1995 c. 35; section 13 was amended by section 321 of, and paragraph 3 of Schedule 11 to, the Armed Forces Act 2006 (c. 52).

- (3) The appellant must—
- (a) serve with the appeal notice any application for an extension of the time limit under this rule; and
 - (b) in that application, explain why the appeal notice is late.

[Note. Under section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000(a), a magistrates' court may defer passing sentence for up to 6 months.]

Form of appeal notice

63.3. The appeal notice must be in writing and must—

- (a) specify—
 - (i) the conviction or finding of guilt,
 - (ii) the sentence, or
 - (iii) the order, or the failure to make an order about which the appellant wants to appeal;
- (b) summarise the issues;
- (c) in an appeal against conviction—
 - (i) identify the prosecution witnesses whom the appellant will want to question if they are called to give oral evidence, and
 - (ii) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court;
- (d) in an appeal against a finding that the appellant insulted someone or interrupted proceedings in the magistrates' court, attach—
 - (i) the magistrates' court's written findings of fact, and
 - (ii) the appellant's response to those findings;
- (e) say whether the appellant has asked the magistrates' court to reconsider the case; and
- (f) include a list of those on whom the appellant has served the appeal notice.

[Note. The Practice Direction sets out a form of appeal notice for use in connection with this rule.

In some cases, a magistrates' court can reconsider a conviction, sentence or other order and make a fresh decision. See section 142 of the Magistrates' Courts Act 1980(b).

See also rule 3.10 (conduct of a trial or an appeal).]

Duty of magistrates' court officer

63.4. The magistrates' court officer must—

- (a) as soon as practicable serve on the Crown Court officer—
 - (i) the appeal notice and any accompanying application served by the appellant,
 - (ii) details of the parties including their addresses,
 - (iii) a copy of each magistrates' court register entry relating to the decision under appeal and to any application for bail pending appeal, and
 - (iv) any report received for the purposes of sentencing;
- (b) keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until—
 - (i) 6 weeks after the conclusion of those proceedings, or
 - (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks; and
- (c) provide the Crown Court with any document, object or information for which the Crown Court officer asks, within such period as the Crown Court officer may require.

(a) 2000 c. 6.

(b) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

Duty of person keeping exhibit

63.5. A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—

- (a) keep that exhibit until—
 - (i) 6 weeks after the conclusion of those proceedings, or
 - (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks,unless the magistrates' court or the Crown Court otherwise directs; and
- (b) provide the Crown Court with any such document or object for which the Crown Court officer asks, within such period as the Crown Court officer may require.

Reference by the Criminal Cases Review Commission

63.6.—(1) The Crown Court officer must, as soon as practicable, serve a reference by the Criminal Cases Review Commission on—

- (a) the appellant;
- (b) every other party; and
- (c) the magistrates' court officer.

(2) The appellant may serve an appeal notice on—

- (a) the Crown Court officer; and
- (b) every other party,

not more than 21 days later.

(3) The Crown Court must treat the reference as the appeal notice if the appellant does not serve an appeal notice.

Hearings and decisions

63.7.—(1) The Crown Court as a general rule must hear in public an appeal or reference to which this Part applies, but—

- (a) may order any hearing to be in private; and
- (b) where a hearing is about a public interest ruling, must hold that hearing in private.

(2) The Crown Court officer must give as much notice as reasonably practicable of every hearing to—

- (a) the parties;
- (b) any party's custodian; and
- (c) any other person whom the Crown Court requires to be notified.

(3) The Crown Court officer must serve every decision on—

- (a) the parties;
- (b) any other person whom the Crown Court requires to be served; and
- (c) the magistrates' court officer and any party's custodian, where the decision determines an appeal.

(4) But where a hearing or decision is about a public interest ruling, the Crown Court officer must not—

- (a) give notice of that hearing to; or
- (b) serve that decision on,

anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

[Note. See also Part 25 (Applications for Public Interest Immunity and specific disclosure).]

Abandoning an appeal

63.8.—(1) The appellant—

- (a) may abandon an appeal without the Crown Court's permission, by serving a notice of abandonment on—

- (i) the magistrates' court officer,
 - (ii) the Crown Court officer, and
 - (iii) every other party
- before the hearing of the appeal begins; but
- (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.

(2) A notice of abandonment must be signed by or on behalf of the appellant.

(3) Where an appellant who is on bail pending appeal abandons an appeal—

- (a) the appellant must surrender to custody as directed by the magistrates' court officer; and
- (b) any conditions of bail apply until then.

[Note. The Practice Direction sets out a form of notice of abandonment for use in connection with this rule.]

Where an appellant abandons an appeal to the Crown Court, both the Crown Court and the magistrates' court have power to make a costs order against that appellant in favour of the respondent: see section 52 of the Supreme Court Act 1981 (a) and section 109 of the Magistrates' Courts Act 1980 (b). Part 78 contains rules about costs on abandoning an appeal.]

Court's power to vary requirements under this Part

63.9. The Crown Court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow an appellant to vary an appeal notice that that appellant has served;
- (c) direct that an appeal notice be served on any person;
- (d) allow an appeal notice or a notice of abandonment to be in a different form to one set out in the Practice Direction, or to be presented orally.

Constitution of the Crown Court

63.10. On the hearing of an appeal—

- (a) the general rule is that the Crown Court must comprise—
 - (i) a judge of the High Court, a Circuit judge or a Recorder, and
 - (ii) no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal; and
- (b) if the appeal is from a youth court—
 - (i) each justice of the peace must be qualified to sit as a member of a youth court, and
 - (ii) the Crown Court must include a man and a woman; but
- (c) the Crown Court may include only one justice of the peace and need not include both a man and a woman if—
 - (i) the presiding judge decides that otherwise the start of the appeal hearing will be delayed unreasonably, or

(a) 1981 c. 54; section 52 was amended by section 31(5) of, and Part II of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23), section 4 of the Courts and Legal Services Act 1990 (c. 41), article 3 of, and paragraphs 11 and 12 of the Schedule to, the Courts Act 2003 (Consequential Amendments) Order 2004 (SI 2004/2035), and it is to be amended by section 59(5) of, and paragraph 26(1) and (2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), from a date to be appointed.

(b) 1980 c. 43; section 109(2) was amended by section 109(1) of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

- (ii) one or more of the justices of the peace who started hearing the appeal is absent.

[Note. See sections 73(a) and 74(b) of the Supreme Court Act 1981, section 45 of the Children and Young Persons Act 1933(c) and section 9 of the Courts Act 2003(d).]”

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- (a) 1981 c. 54; section 73(2) was amended by article 3 of, and paragraphs 11 and 12(b) of the Schedule to, the Courts Act 2003 (Consequential Amendments) Order 2004 (SI 2004/2035).
- (b) 1981 c. 54; section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12(c) of the Schedule to, the Courts Act 2003 (Consequential Amendments) Order 2004 (SI 2004/2035) and section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
- (c) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
- (d) 2003 c. 39.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules add the following new provisions to the Criminal Procedure Rules 2005:

- a new Part 7 (Starting a prosecution in a magistrates' court), in substitution for the existing Part 7 (Commencing proceedings in a magistrates' court). The new Part 7 rules revise and simplify the present rules. They apply as described in rule 3, to criminal cases in magistrates' courts started by one of three specified actions, on or after 6th October 2008. In other cases the rules replaced by those rules apply.
- a new Part 63 (Appeal to the Crown Court) in substitution for existing Part 63 (Appeal to the Crown Court). The new Part 63 rules revise and simplify the present rules so that they correspond broadly with the other appeal rules which have recently been revised and simplified. Omissions and modifications ensure that the new Part 63 rules are appropriate to the particular rights of appeal and the jurisdiction involved.
- new rules in Part 2 (Understanding and applying the Rules) make transitional provision and explain when the new rules in Part 7 and Part 63 will apply.

In addition the following amendments are made:

- Part 2 (Understanding and applying the Rules) is amended to include a new rule about representatives and 'supporting adults' to clarify, in one place, which representatives can act in criminal proceedings.
- Part 4 (Service of documents) is amended to clarify the operation of Criminal Procedure Rule 4.4 (Service by leaving or posting a document) and to avoid confusion in respect of service on a company registered in Scotland or in Northern Ireland.
- Part 37 (Summary trial) is amended to include three rules transferred from the existing Part 7 (Commencing proceedings in magistrates' courts), on its revision and simplification. First, existing rule 7.4 (Duty of court officer receiving statutory declaration under section 14(1) of the Magistrates' Courts Act 1980) becomes new rule 37.11; second, existing rule 7.5 (Notice of order under section 25 of the Road Traffic Offenders Act 1988) becomes new rule 37.10, and finally, existing rule 7.9 (Magistrates' court officer to have copies of documents sent to accused under section 12(1) of the Magistrates' Courts Act 1980) becomes new rule 37.9.
- Part 44 (Sentencing children and young persons) is amended to omit reference to "local education authority" which is now redundant as there is also a reference to "local authority" in the rule (44.1(2)(d)). That reference is sufficient to include local education authorities.
- Part 55 (Road traffic penalties) is amended to include existing rule 7.6 (Statutory declaration under section 72 and 73 of the Road Traffic Offenders Act 1988), which has been transferred, with minor revision, on the revision and simplification of existing Part 7.
- Part 65 (Appeal to the Court of Appeal: general rules) is amended to reflect recent legislation and to enhance the notes. First, rule 65.5(1) (Renewing an application refused by a judge or the Registrar) is amended to take account of the amendment to section 31C of the Criminal Appeal Act 1968 by the Criminal Justice and Immigration Act 2008 (removing the right of appeal to the Court of Appeal from a procedural direction given by a single judge). Second, the notes to rules are amended: (i) to include reference in the note to rule 65.1, to the powers of a single judge under The Serious Crime Act 2007 (Appeals under section 24) Order 2008; and (ii) to cite comprehensively in the note to rule 65.5, primary and secondary legislation relating to the right to renew an application to a judge or to the Court of Appeal. Rule 65.11 is amended to correct a typographical error.
- Part 66 (Appeal to the Court of Appeal against ruling at preparatory hearing) is amended to reflect the amendment to section 31 of the Criminal Appeal Act 1968 effected by section 47 of, and paragraph 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008.
- Part 68 (Appeal to the Court of Appeal about conviction or sentence) is amended to make provision for rights of appeal to the Court of Appeal (i) against wasted costs orders and third party costs orders, and (ii) against a serious crime prevention order where a case is certified fit for appeal.

- Part 78 (Costs orders against the parties) is amended because the new Part 63 rules remove the 3 day time limit for giving notice to abandon an appeal to the Crown Court. The associated costs rule in Part 78 is amended to remove reference to that time limit and to allow the exercise of judicial discretion as to costs where such an appeal is abandoned.

The changes to these Rules come into force on 6th October, 2008.

2008 No. 2076 (L.9)

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

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