

SCHEDULE 1

Rule 7

“PART 18

WARRANTS FOR ARREST, DETENTION OR IMPRISONMENT

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[Note. Part 52 contains rules about warrants to take goods to pay fines, etc.]

When this Part applies

18.1.—(1) This Part applies where the court can issue a warrant for arrest, detention or imprisonment.

(2) In this Part, ‘defendant’ means anyone against whom such a warrant is issued.

Terms of a warrant for arrest

18.2. A warrant for arrest must require the person(s) to whom it is directed to arrest the defendant and—

- (a) bring the defendant to a court—
 - (i) specified in the warrant, or
 - (ii) required or allowed by law; or
- (b) release the defendant on bail (with conditions or without) to attend court at a date, time and place—
 - (i) specified in the warrant, or
 - (ii) to be notified by the court.

[Note. The principal provisions under which the court can issue a warrant for arrest are—

- (a) *section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(1);*
- (b) *section 7 of the Bail Act 1976(2);*
- (c) *sections 1 and 97 of the Magistrates’ Courts Act 1980(3); and*

(1) 1965 c. 69; 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).

(2) 1976 c. 63; section 7(1A) and (1B) were inserted section 198 of the Extradition Act 2003 (c. 41).

(3) 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

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(d) sections 79, 80 and 81(4), (5) of the Senior Courts Act 1981(4).

See also section 27A of the Magistrates' Courts Act 1980(5) (power to transfer criminal proceedings) and section 78(2) of the Senior Courts Act 1981(6) (adjournment of Crown Court case to another place).]

Terms of a warrant for detention or imprisonment

18.3.—(1) A warrant for detention or imprisonment must—

- (a) require the person(s) to whom it is directed to—
 - (i) arrest the defendant,
 - (ii) take the defendant to any place specified in the warrant, and
 - (iii) deliver the defendant to the custodian of that place; and
- (b) require that custodian to keep the defendant in custody, as ordered by the court, until in accordance with the law—
 - (i) the defendant is delivered to the appropriate court or place, or
 - (ii) the defendant is released.

(2) Where a magistrates' court remands a defendant to police detention under section 128(7)(7) or section 136 of the Magistrates' Courts Act 1980(8), or to customs detention under section 152 of the Criminal Justice Act 1988(9), the warrant it issues must—

- (a) be directed, as appropriate, to—
 - (i) a constable, or
 - (ii) an officer of Her Majesty's Revenue and Customs; and
- (b) require that constable or officer to keep the defendant in custody—
 - (i) for a period (not exceeding the maximum permissible) specified in the warrant, or
 - (ii) until in accordance with the law the defendant is delivered to the appropriate court or place.

[Note. Under section 128(7) of the Magistrates' Courts Act 1980, a magistrates' court can remand a defendant to police detention for not more than 3 clear days.

Under section 136 of the 1980 Act, a magistrates' court can order a defendant's detention in police custody until the following 8 am for non-payment of a fine, etc.

and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 331 of, and paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 97 was amended by sections 13 and 14 of, and paragraph 7 of Schedule 2 to, the Contempt of Court Act 1981 (c. 49), section 31 of, and paragraph 2 of Schedule 4 to, the Criminal Justice (International Co-operation) Act 1990 (c. 5), sections 17 and 65 of, and paragraph 6 of Schedule 3 and Part 1 of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), 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).

- (4) 1981 c. 54; section 80 is amended by section 41 of, and paragraph 54 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), for certain purposes. It is further amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44), for remaining purposes, with effect from a date to be appointed. Section 81(5) was amended by section 177(1) of, and paragraph 76(b) of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).
- (5) 1980 c. 43; section 27A was inserted by section 46 of the Courts Act 2003 (c. 39).
- (6) 1981 c. 54.
- (7) 1980 c. 43; section 128(7) was amended by section 48 of the Police and Criminal Evidence Act 1984 (c. 60).
- (8) 1980 c. 43; section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 95(2) of the Access to Justice Act 1999 (c. 22) and section 165(1) of, and paragraph 78 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by sections 74, and 75 of, and paragraphs 58, 68 of Schedule 7 and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.
- (9) 1988 c. 33; section 152 was amended by paragraphs 1 and 17 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29) and section 8 of the Drugs Act 2005 (c. 17).

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Under section 152 of the Criminal Justice Act 1988, a magistrates' court can remand a defendant to customs detention for not more than 192 hours if the defendant is charged with a drug trafficking offence.]

Information to be included in a warrant

18.4.—(1) A warrant must identify—

- (a) the person(s) to whom it is directed;
- (b) the defendant against whom it was issued;
- (c) the reason for its issue;
- (d) the court that issued it, unless that is otherwise recorded by the court officer; and
- (e) the court office for the court that issued it.

(2) A warrant for detention or imprisonment must contain a record of any decision by the court under—

- (a) section 23 of the Children and Young Persons Act 1969⁽¹⁰⁾ (remand to local authority accommodation);
- (b) section 80 of the Magistrates' Courts Act 1980⁽¹¹⁾ (application of money found on defaulter to satisfy sum adjudged); or
- (c) section 82(1) or (4) of the 1980 Act⁽¹²⁾ (conditions for issue of a warrant).

(3) A warrant that contains an error is not invalid, as long as—

- (a) it was issued in respect of a lawful decision by the court; and
- (b) it contains enough information to identify that decision.

[Note. See section 23(8) of the Children and Young Persons Act 1969. Under section 23 of that Act, the court can remand a person aged between 12 and 18 years to secure accommodation, if it decides that the prescribed conditions are met.

Under section 80 of the Magistrates' Courts Act 1980, the court may decide that any money found on the defendant must not be applied towards payment of the sum for which a warrant is issued under section 76 of that Act (enforcement of sums adjudged to be paid).

See section 82(6) of the 1980 Act. Under section 82(1) and (4), the court may only issue a warrant for the defendant's imprisonment for non-payment of a sum due where it finds that the prescribed conditions are met.

Under section 123 of the 1980 Act⁽¹³⁾, "no objection shall be allowed to any ... warrant to procure the presence of the defendant, for any defect in it in substance or in form ...".]

⁽¹⁰⁾ 1969 c. 54; section 23 was substituted by section 60 of the Criminal Justice Act 1991 (c. 53) and amended by section 19 of the Criminal Justice and Public Order Act 1994 (c. 33), sections 97, 119 and 120(2) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 24 of, and paragraphs 4 and 6 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 116 of, and paragraph 3 of Schedule 4 to, the Care Standards Act 2000 (c. 14), sections 130, 132 and 133 of the Criminal Justice and Police Act 2001 (c. 16), section 201 of the Extradition Act 2003 (c. 41), section 304 of, and paragraph 15 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 4 of the Criminal Defence Service Act 2006 (c. 9).

⁽¹¹⁾ 1980 c. 43; section 80 was amended by section 33(1) of, and paragraph 83 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42) and is further amended by section 62(3) of, and paragraphs 45 and 49 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

⁽¹²⁾ 1980 c. 43; section 82(1) was amended by section 77 of, and paragraph 52(b) of Schedule 14 to, the Criminal Justice Act 1982 (c. 48) and paragraphs (1) and (2) of Schedule 8 to, the Criminal Justice Act 1988 (c. 33). It is further amended by paragraphs 58 and 63 of Part II of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

⁽¹³⁾ 1980 c. 43.

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Execution of a warrant

- 18.5.**—(1) A warrant may be executed—
- (a) by any person to whom it is directed; or
 - (b) if the warrant was issued by a magistrates' court, by anyone authorised to do so by section 125(14) (warrants), 125A(15) (civilian enforcement officers) or 125B (execution by approved enforcement agency) of the Magistrates' Courts Act 1980(16).
- (2) The person who executes a warrant must—
- (a) explain, in terms the defendant can understand, what the warrant requires, and why;
 - (b) show the defendant the warrant, if that person has it; and
 - (c) if the defendant asks—
 - (i) arrange for the defendant to see the warrant, if that person does not have it, and
 - (ii) show the defendant any written statement of that person's authority required by section 125A or 125B of the 1980 Act.
- (3) The person who executes a warrant of arrest that requires the defendant to be released on bail must—
- (a) make a record of—
 - (i) the defendant's name,
 - (ii) the reason for the arrest,
 - (iii) the defendant's release on bail, and
 - (iv) when and where the warrant requires the defendant to attend court; and
 - (b) serve the record on—
 - (i) the defendant, and
 - (ii) the court officer.
- (4) The person who executes a warrant of detention or imprisonment must—
- (a) take the defendant—
 - (i) to any place specified in the warrant, or
 - (ii) if that is not immediately practicable, to any other place at which the defendant may be lawfully detained (and the warrant then has effect as if it specified that place);
 - (b) obtain a receipt from the custodian; and
 - (c) notify the court officer that the defendant has been taken to that place.

(14) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39). It is further amended by sections 62(3), 86 and 146 of and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

(15) 1980 c. 43; section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22) and amended by articles 46 and 52 of S.I. 2006/1737 and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128. It is further amended by section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

(16) 1980 c. 43; section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22) and amended by paragraph 239 of Schedule 8 to the Courts Act 2003 (c. 39). It is further amended by section 62 of, and paragraphs 45, 59 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

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[Note. Under section 125 of the Magistrates' Courts Act 1980, a warrant issued by a magistrates' court may be executed by any person to whom it is directed or by any constable acting within that constable's police area.

Certain warrants issued by a magistrates' court may be executed anywhere in England and Wales by a civilian enforcement officer, under section 125A of the 1980 Act; or by an approved enforcement agency, under section 125B of the Act. In either case, the person executing the warrant must, if the defendant asks, show a written statement indicating: that person's name; the authority or agency by which that person is employed, or in which that person is a director or partner; that that person is authorised to execute warrants; and, where section 125B applies, that the agency is registered as one approved by the Lord Chancellor.

See also section 125D of the 1980 Act(17), under which—

- (a) *a warrant to which section 125A applies may be executed by any person entitled to execute it even though it is not in that person's possession at the time; and*
- (b) *certain other warrants, including any warrant to arrest a person in connection with an offence, may be executed by a constable even though it is not in that constable's possession at the time.]*

Warrants that cease to have effect on payment

18.6.—(1) This rule applies to a warrant issued by a magistrates' court under any of the following provisions of the Magistrates' Courts Act 1980—

- (a) section 76(18) (enforcement of sums adjudged to be paid);
 - (b) section 83(19) (process for securing attendance of offender);
 - (c) section 86(20) (power of magistrates' court to fix day for appearance of offender at means inquiry, etc.);
 - (d) section 136(21) (committal to custody overnight at police station for non-payment of sum adjudged by conviction).
- (2) The warrant no longer has effect if—
- (a) the sum in respect of which the warrant was issued is paid to the person executing it;
 - (b) that sum is offered to, but refused by, that person; or
 - (c) that person is shown a receipt for that sum given by—
 - (i) the court officer, or
 - (ii) the authority to which that sum is due.

(17) 1980 c. 43; section 125D was inserted by section 96 of the Access to Justice Act 1999 (c. 22). It is further amended by sections 62 and 146 of, and paragraphs 45 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

(18) 1980 c. 43: section 76 was amended by section 7 of the Maintenance Enforcement Act 1991 (c. 17); section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), and section 62(3) of, and paragraphs 45 and 46 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(19) 1980 c. 43; section 83 was amended by articles 46 and 47 of S.I. 2006/1737 and sections 97(2) and 106 of, and Part V (table 8) of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

(20) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

(21) 1980 c. 43; section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 95(2) of the Access to Justice Act 1999 (c. 22) and section 165(1) of, and paragraph 78 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by sections 74, and 75 of, and paragraphs 58, 68 of Schedule 7 and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

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[Note. See sections 79(22) and 125(1) of the Magistrates’ Courts Act 1980.]

Warrant issued when the court office is closed

18.7.—(1) This rule applies where the court issues a warrant when the court office is closed.

(2) The applicant for the warrant must, not more than 72 hours later, serve on the court officer—

- (a) a copy of the warrant; and
- (b) any written material that was submitted to the court.”

SCHEDULE 2

Rule 14

“PART 42

SENTENCING PROCEDURES IN SPECIAL CASES

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[Note. See also—

- (a) *Part 37, which contains rules about the general procedure on sentencing in a magistrates’ court;*
- (b) *Part 44 (Breach, revocation and amendment of community and other orders);*
- (c) *Part 52 (Enforcement of fines and other orders for payment on conviction); and*
- (d) *Part 55 (Road traffic penalties).]*

Reasons for deciding not to follow a guideline or make an order

42.1.—(1) This rule applies where the court decides—

(22) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and is amended by section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

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- (a) not to follow a relevant sentencing guideline;
- (b) not to make, where it could—
 - (i) a reparation order (unless it passes a custodial or community sentence),
 - (ii) a compensation order, or
 - (iii) a travel restriction order;
- (c) not to order, where it could—
 - (i) that a suspended sentence of imprisonment is to take effect,
 - (ii) the endorsement of the defendant's driving record, or
 - (iii) the defendant's disqualification from driving, for the usual minimum period or at all.

(2) The court must explain why it has not done so, when it explains the sentence that it has passed.

[Note. See section 174(2) of the Criminal Justice Act 2003(23); section 73(8) of the Powers of Criminal Courts (Sentencing) Act 2000(24); section 130(3) of the 2000 Act(25); section 33(2) of the Criminal Justice and Police Act 2001(26); paragraph 8(3) of Schedule 12 to the 2003 Act(27); and section 47(1) of the Road Traffic Offenders Act 1988(28).

For the duty to explain the sentence the court has passed, see section 174(1) of the 2003 Act(29) and, in a magistrates' court, rule 37.10(9) (Procedure if the court convicts).

Under section 125 of the Coroners and Justice Act 2009(30), the court when sentencing must follow any relevant sentencing guideline unless satisfied that to do so would be contrary to the interests of justice.

For the circumstances in which the court may make—

- (a) *a reparation or compensation order; see sections 73(31) and 130(32) of the 2000 Act;*
- (b) *a travel restriction order against a defendant convicted of drug trafficking, see sections 33 and 34 of the 2001 Act(33).]*

Requirements of community sentence, etc.

42.2.—(1) This rule applies where the court—

- (a) imposes a requirement in connection with—

(23) 2003 c. 44; section 174(2) was amended by section 6(2) of, and paragraphs 71 and 80(1) and (2) of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4) and is further amended by section 177(1) of, and paragraphs 83 and 84 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(24) 2000 c. 6.

(25) 2000 c. 6.

(26) 2001 c. 16.

(27) 2003 c. 44.

(28) 1988 c. 53.

(29) 2003 c. 44.

(30) 2009 c. 25.

(31) 2000 c. 6; section 73 was amended by section 74 of, and paragraph 4(1)(a) and (2) of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), sections 304 and 332 of, and paragraphs 90 and 106 of Schedule 32 and Part 37 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), section 64 of, and Part 4 of Schedule 5 to, the Children Act 2004 (c. 31), article 3 and paragraph 14 (1) and (14) of Schedule 1 to S.I. 2008/912 and section 6(2) of, and paragraphs 51 and 53 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(32) 2000 c. 6; section 130 was amended by section 304 of, and paragraphs 90 and 117 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), section 14(1) of, and paragraph 29 of Schedule 1 to, the Fraud Act 2006 (c. 35), section 49 of, and paragraph 6(b) of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and section 148(1) of, and paragraphs 40 and 46 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(33) 2001 c. 16; section 33 was amended by sections 39(3) and 39(4) of the Identity Cards Act 2006 (c. 15).

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- (i) a community sentence,
- (ii) a youth rehabilitation order, or
- (iii) a suspended sentence of imprisonment; or
- (b) orders the defendant to attend meetings with a supervisor.
- (2) The court officer must—
 - (a) notify the defendant and, where the defendant is under 14, an appropriate adult, of—
 - (i) the requirement or requirements imposed, and
 - (ii) the name of the responsible officer or supervisor, and the means by which that person may be contacted; and
 - (b) notify the responsible officer or supervisor, and, where the defendant is under 14, the appropriate qualifying officer (if that is not the responsible officer), of—
 - (i) the defendant’s name, address and telephone number (if available),
 - (ii) the offence or offences of which the defendant was convicted, and
 - (iii) the requirement or requirements imposed.
- (3) If the court imposes an electronic monitoring requirement, the monitor of which is not the responsible officer, the court officer must—
 - (a) notify the defendant and, where the defendant is under 16, an appropriate adult, of the monitor’s name, and the means by which the monitor may be contacted; and
 - (b) notify the monitor of—
 - (i) the defendant’s name, address and telephone number (if available),
 - (ii) the offence or offences of which the defendant was convicted,
 - (iii) the place or places at which the defendant’s presence must be monitored,
 - (iv) the period or periods during which the defendant’s presence there must be monitored, and
 - (v) the responsible officer’s name, and the means by which that officer may be contacted.

[Note. See section 219(1) of the Criminal Justice Act 2003(34); paragraph 34(1) of Schedule 1 to the Criminal Justice and Immigration Act 2008(35); and section 1A(7) of the Street Offences Act 1959(36).

For the circumstances in which the court—

- (a) *may pass a community sentence (defined by section 147 of the Criminal Justice Act 2003(37)), or a youth rehabilitation order (defined by section 7 of the Criminal Justice and Immigration Act 2008(38)), and for the identity and duties of responsible officers and qualifying officers, see generally—*
 - (i) *Part 12 of the 2003 Act, and*
 - (ii) *Part 1 of the 2008 Act;*

(34) 2003 c. 44; section 219(1) was amended by article 3 of, and paragraphs 19(1) and (12) of Schedule 1 to, S.I. 2008/912.

(35) 2008 c. 4.

(36) 1959 c. 57; section 1A is inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26), from a date to be appointed.

(37) 2003 c. 44; section 147 is amended by sections 6(2) and 149 of, and paragraphs 71 and 72 of Schedule 4, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(38) 2008 c. 4.

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- (b) *may pass a suspended sentence of imprisonment, see section 189 of the 2003 Act(39);*
- (c) *may order the defendant to attend meetings with a supervisor, see section 1(2A) of the Street Offences Act 1959(40).*

Under sections 190 or 215 of the 2003 Act(41), or section 1(2) of the 2008 Act(42), the court may impose an electronic monitoring requirement to secure the monitoring of the defendant's compliance with certain other requirements (for example, a curfew or an exclusion).]

Defendant's duty to notify information to police

42.3.—(1) This rule applies where, on a conviction, sentence or order, legislation requires the defendant to notify information to the police.

(2) The court must tell the defendant that notification requirements apply, and under what legislation.

[Note. For the circumstances in which a defendant is required to notify information to the police, see—

- (a) *Part 2 of, and Schedule 3 to, the Sexual Offences Act 2003(43) (notification after conviction of a specified sexual offence for which a specified sentence is imposed);*
- (b) *Part 4 of the Counter Terrorism Act 2008 (notification after conviction of a specified offence of, or connected with, terrorism, for which a specified sentence is imposed).*

These notification requirements are not part of the court's sentence.]

Variation of sentence

42.4.—(1) This rule—

- (a) applies where a magistrates' court or the Crown Court can vary or rescind a sentence or order; and
- (b) authorises the Crown Court, in addition to its other powers, to do so within the period of 56 days beginning with another defendant's acquittal or sentencing where—
 - (i) defendants are tried separately in the Crown Court on the same or related facts alleged in one or more indictments, and
 - (ii) one is sentenced before another is acquitted or sentenced.

(2) The court may exercise its power—

- (a) on application by a party; or
- (b) on its own initiative.

(3) A party who wants the court to exercise that power must—

- (a) apply in writing as soon as reasonably practicable after—
 - (i) the sentence or order that that party wants the court to vary or rescind, or
 - (ii) where paragraph (1)(b) applies, the other defendant's acquittal or sentencing;

(39) 2003 c. 44; section 189 was amended by articles 2(1) and (2), and 3(1) and (2), of S.I. 2005/643.

(40) 1959 c. 57; section 1(2A) is inserted by section 17(1) and (2) of the Policing and Crime Act 2009 (c. 26), from a date to be appointed.

(41) 2003 c. 44.

(42) 2008 c. 4.

(43) 2003 c. 42.

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- (b) serve the application on—
 - (i) the court officer, and
 - (ii) each other party; and
- (c) in the application—
 - (i) explain why the sentence should be varied or rescinded,
 - (ii) specify the variation that the applicant proposes, and
 - (iii) if the application is late, explain why.
- (4) The court must not exercise its power in the defendant’s absence unless—
 - (a) the court makes a variation proposed by the defendant; or
 - (b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).
- (5) The court may—
 - (a) extend (even after it has expired) the time limit under paragraph (3), unless the court’s power to vary or rescind the sentence cannot be exercised; and
 - (b) allow an application to be made orally.

[Note. Under section 142 of the Magistrates’ Courts Act 1980(44), in some cases a magistrates’ court can vary or rescind a sentence or other order that it has imposed or made, if that appears to be in the interests of justice. The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that sentence or order.

Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000(45), the Crown Court can vary or rescind a sentence or other order that it has imposed or made. The power cannot be exercised—

- (a) *after the period of 56 days beginning with the sentence or order (but see the note below); or*
- (b) *if an appeal or application for permission to appeal against that sentence or order has been determined.*

Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.]

Application to vary or discharge a compensation order

42.5.—(1) This rule applies where a magistrates’ court can vary or discharge a compensation order on application by the defendant.

- (2) A defendant who wants the court to exercise that power must—
 - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on the magistrates’ court officer;
 - (c) where the compensation order was made in the Crown Court, serve a copy of the application on the Crown Court officer; and

(44) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

(45) 2000 c. 6; section 155 was amended by article 3 of, and paragraphs 39 and 43 of the Schedule to, S.I. 2004/2035 and sections 47 and 149 of, and paragraph 28 (1), (2), (3) and (4) of Schedule 8 and Part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

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- (d) in the application, specify the compensation order that the defendant wants the court to vary or discharge and explain (as applicable)—
 - (i) what civil court finding shows that the injury, loss or damage was less than it had appeared to be when the order was made,
 - (ii) in what circumstances the person for whose benefit the order was made has recovered the property for the loss of which it was made,
 - (iii) why a confiscation order makes the defendant now unable to pay compensation in full, or
 - (iv) in what circumstances the defendant's means have been reduced substantially and unexpectedly, and why they seem unlikely to increase for a considerable period.
- (3) The court officer must serve a copy of the application on the person for whose benefit the compensation order was made.
- (4) The court must not vary or discharge the compensation order unless—
 - (a) the defendant, and the person for whose benefit it was made, each has had an opportunity to make representations at a hearing (whether or not either in fact attends); and
 - (b) where the order was made in the Crown Court, the Crown Court has notified its consent.

[Note. For the circumstances in which—

- (a) *the court may make a compensation order, see section 130 of the Powers of Criminal Courts (Sentencing) Act 2000(46);*
- (b) *a magistrates' court with power to enforce such an order may vary or discharge it under the 2000 Act, see section 133(47). (Under section 133(4), where the order was made in the Crown Court, the magistrates' court must first obtain the Crown Court's consent.)]*

Application to remove, revoke or suspend a disqualification or restriction

42.6.—(1) This rule applies where, on application by the defendant, the court can remove, revoke or suspend a disqualification or restriction included in a sentence (except a disqualification from driving).

- (2) A defendant who wants the court to exercise such a power must—
 - (a) apply in writing, no earlier than the date on which the court can exercise the power;
 - (b) serve the application on the court officer; and
 - (c) in the application—
 - (i) specify the disqualification or restriction, and
 - (ii) explain why the defendant wants the court to remove, revoke or suspend it.
- (3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

[Note. Part 55 contains rules about disqualification from driving. See in particular rule 55.1.

(46) 2000 c. 6; section 130 was amended by section 304 of, and paragraphs 90 and 117 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), section 14(1) of, and paragraph 29 of Schedule 1 to, the Fraud Act 2006 (c. 35), section 49 of, and paragraph 6(b) of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38), and section 148(1) of, and paragraphs 40 and 46 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(47) 2000 c. 6; section 133 was amended by section 456 of, and paragraphs 1 and 37(1) and (3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

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For the circumstances in which the court may—

- (a) *remove a disqualification from keeping a dog, see section 4(6) of the Dangerous Dogs Act 1991(48). The court may not consider an application made within 1 year of the disqualification; or, after that, within 1 year of any previous application that was refused.*
- (b) *revoke or suspend a travel restriction order against a defendant convicted of drug trafficking, see section 35 of the Criminal Justice and Police Act 2001(49). The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.]*

Application for a restitution order by the victim of a theft

42.7.—(1) This rule applies where, on application by the victim of a theft, the court can order a defendant to give that person goods obtained with the proceeds of goods stolen in that theft.

- (2) A person who wants the court to exercise that power if the defendant is convicted must—
 - (a) apply in writing as soon as practicable (without waiting for the verdict);
 - (b) serve the application on the court officer; and
 - (c) in the application—
 - (i) identify the goods, and
 - (ii) explain why the applicant is entitled to them.
- (3) The court officer must serve a copy of the application on each party.
- (4) The court must not determine the application unless the applicant and each party has had an opportunity to make representations at a hearing (whether or not each in fact attends).
- (5) The court may—
 - (a) extend (even after it has expired) the time limit under paragraph (2); and
 - (b) allow an application to be made orally.

[Note. For the circumstances in which the court may order—

- (a) *the return of stolen goods, see section 148 of the Powers of Criminal Courts (Sentencing) Act 2000(50);*
- (a) *the defendant to give the victim of the theft goods that are not themselves the stolen goods but which represent their proceeds, see section 148(2)(b) of the 2000 Act.]*

Requests for medical reports, etc.

- 42.8.**—(1) This rule applies where the court—
 - (a) requests a medical examination of the defendant and a report; or
 - (b) requires information about the arrangements that could be made for the defendant where the court is considering—
 - (i) a hospital order, or
 - (ii) a guardianship order.

(48) 1991 c. 65; section 4(6) was amended by section 109(1) of, and paragraph 353 of Schedule 8 to, the Courts Act 2003 (c. 39).

(49) 2001 c. 16; section 35 was amended by sections 39(3) of the Identity Cards Act 2006 (c. 15).

(50) 2000 c. 6; section 148 was amended by paragraph 74(1) and (5) of Part 2 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). The provision is in force for certain purposes, and will take effect for remaining purposes from a date to be appointed.

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(2) Unless the court otherwise directs, the court officer must, as soon as practicable, serve on each person from whom a report or information is sought a note that—

- (a) specifies the power exercised by the court;
- (b) explains why the court seeks a report or information from that person; and
- (c) sets out or summarises any relevant information available to the court.

[Note. The court may request a medical examination of the defendant and a report in connection with—

- (a) section 4 of the Criminal Procedure (Insanity) Act 1964(51), under which the Crown Court may determine a defendant's fitness to plead;
- (b) section 35 of the Mental Health Act 1983(52), under which the court may order the defendant's detention in hospital to obtain a further medical report;
- (c) section 36 of the 1983 Act(53), under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial;
- (d) section 37 of the 1983 Act(54), under which the court may order the defendant's detention and treatment in hospital, or make a guardianship order, instead of disposing of the case in another way;
- (e) section 38 of the 1983 Act(55), under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;
- (f) section 207 of the Criminal Justice Act 2003(56) (in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(57) (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.

For the purposes of the legislation listed in (a), (d) and (e) above, the court requires the written or oral evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. For the purposes of (b), the court requires one medical practitioner's evidence. For the purposes of (c), the court requires two medical practitioners' evidence. For the purposes of (f), the court requires the evidence of a registered medical practitioner with special experience in the diagnosis or treatment of mental disorder.

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- (51) 1964 c. 84; section 4 was substituted, together with section 4A, for section 4 as originally enacted, by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and amended by section 22 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).
 - (52) 1983 c. 20; section 35 was amended by sections 1(4) and 10(1) and (2) of, and paragraphs 1 and 5 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 54 of Schedule 21 to, the Legal Services Act 2007 (c. 29).
 - (53) 1983 c. 20; section 36 was amended by sections 1(4), 5(1) and (2) and 10(1) and (3) of, and paragraphs 1 and 6 of Schedule 1 to, the Mental Health Act 2007 (c. 12).
 - (54) 1983 c. 20; section 37 was amended by Schedule 6 to, and paragraph 12 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), paragraph 11 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 37 and 38 of Schedule 32 to the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 2 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), sections 1, 4, 10, 55 and paragraphs 1 and 7 of Schedule 1, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12), and sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further amended by section 148 of, and paragraph 8 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.
 - (55) 1983 c. 20; section 38 was amended by section 49(1) of the Crime (Sentences) Act 1997 (c. 43), sections 1(4) and 10(1) and (5) of, and paragraphs 1 and 8 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 56 of Schedule 21 to, the Legal Services Act 2007 (c. 29).
 - (56) 2003 c. 44; section 207 was amended by article 4(2) of, and paragraph 7 of Schedule 5 to, S.I. 2009/1182 and is further amended by article 14(a) and (b) of S.I. 2010/813, with effect from 1st October 2010.
 - (57) 2008 c. 4.

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Under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(58), a magistrates' court may adjourn a trial to obtain medical reports.

Part 33 contains rules about the content of expert medical reports.

For the authorities from whom the court may require information about hospital treatment or guardianship, see sections 39 and 39A of the 1983 Act(59).]

Information to be supplied on admission to hospital or guardianship

42.9.—(1) This rule applies where the court—

- (a) orders the defendant's detention and treatment in hospital; or
- (b) makes a guardianship order.

(2) Unless the court otherwise directs, the court officer must, as soon as practicable, serve on (as applicable) the hospital or the guardian—

- (a) a record of the court's order;
- (b) such information as the court has received that appears likely to assist in treating or otherwise dealing with the defendant, including information about—
 - (i) the defendant's mental condition,
 - (ii) the defendant's other circumstances, and
 - (iii) the circumstances of the offence.

[Note. For the circumstances in which the court may order the defendant's detention and treatment in hospital, see sections 35(60), 36(61), 37(62), 38(63) and 44(64) of the Mental Health Act 1983. For the circumstances in which the court may make a guardianship order, see the same section 37.]

Information to be supplied on committal for sentence, etc.

42.10.—(1) This rule applies where a magistrates' court or the Crown Court convicts the defendant and—

- (a) commits or adjourns the case to another court—
 - (i) for sentence, or

(58) 2000 c. 6.

(59) 1983 c. 20; section 39 was amended by sections 2(1) and 5(1) of, and paragraph 107(5) of Schedule 1, and Schedule 3 to, the Health Authorities Act 1995 (c. 17), section 2(5) of, and paragraphs 42 and 46 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 31(1) and (2) of the Mental Health Act 2007 (c. 12) and paragraph 13(1) and (8) of article 3 of, S.I. 2007/961. Section 39A was inserted by section 27(1) of the Criminal Justice Act 1991 (c. 53).

(60) 1983 c. 20; section 35 was amended by sections 1(4) and 10(1) and (2) of, and paragraphs 1 and 5 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 54 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(61) 1983 c. 20; section 36 was amended by sections 1(4), 5(1) and (2) and 10(1) and (3) of, and paragraphs 1 and 6 of Schedule 1 to, the Mental Health Act 2007 (c. 12).

(62) 1983 c. 20; section 37 was amended by Schedule 6 and paragraph 12 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 11 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 2 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), sections 1, 4, 10, 55 and paragraphs 1 and 7 of Schedule 1, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12), and sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further amended by section 148 of, and paragraph 8 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

(63) 1983 c. 20; section 38 was amended by section 49(1) of the Crime (Sentences) Act 1997 (c. 43), sections 1(4) and 10(1) and (5) of, and paragraphs 1 and 8 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 56 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(64) 1983 c. 20; section 44 was amended by sections 10(1) and (7) and 40(3) and 55 of, and part 8 of Schedule 11 to, the Mental Health Act 2007 (c. 12).

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- (ii) for the defendant to be dealt with for breach of a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by that other court;
 - (b) deals with a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court; or
 - (c) makes an order that another court is, or may be, required to enforce.
- (2) Unless the convicting court otherwise directs, the court officer must, as soon as practicable—
- (a) where paragraph (1)(a) applies, arrange the transmission from the convicting to the other court of relevant copy court records and other relevant documents, including any—
 - (i) certificate of conviction,
 - (ii) magistrates' court register entry,
 - (iii) record relating to bail,
 - (iv) note of evidence,
 - (v) statement or other document introduced in evidence,
 - (vi) medical or other report,
 - (vii) representation order or application for such order, and
 - (viii) interim driving disqualification;
 - (b) where paragraph (1)(b) or (c) applies, arrange—
 - (i) the transmission from the convicting to the other court of notice of the convicting court's order, and
 - (ii) the recording of that order at the other court;
 - (c) in every case, notify the defendant and, where the defendant is under 14, an appropriate adult, of the location of the other court.

[Note. For the circumstances in which—

- (a) *a magistrates' court may (and in some cases must) commit the defendant to the Crown Court for sentence, see sections 3(65), 3A(66), 3B, 3C(67), 4(68), 4A(69) and 6(70) of the Powers of Criminal Courts (Sentencing) Act 2000 and section 43 of the Mental Health Act 1983(71);*

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- (65) 2000 c. 6; section 3 is amended by section 41 of, and paragraphs 21 and 22 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
 - (66) 2000 c. 6; section 3A is inserted by section 41 of, and paragraphs 21 and 23 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed and has been amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4).
 - (67) 2000 c. 6; sections 3B and 3C are to be inserted by section 41 of, and paragraphs 21 and 23 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
 - (68) 2000 c. 6; section 4 is amended by section 41 of, and paragraphs 21 and 24 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
 - (69) 2000 c. 6; section 4A is inserted by section 41 of, and paragraphs 21 and 25 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
 - (70) 2000 c. 6; section 6 was amended by sections 41, 304 and 332 of, and paragraphs 21 and 28 of Schedule 3, paragraphs 90 and 91 of Schedule 32, and Part 7 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and it is further amended by section 332 of, and Part 9 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
 - (71) 1983 c. 20; section 43 was amended by paragraph 91 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraph 55 of Schedule 3 and Part 9 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

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- (b) a magistrates' court may adjourn the case to another magistrates' court for sentence, see section 10 of the Magistrates' Courts Act 1980(72) and section 10 of the 2000 Act(73);
- (c) a magistrates' court or the Crown Court may (and in some cases must) adjourn the case to a youth court for sentence, see section 8 of the 2000 Act(74);
- (d) a youth court may adjourn the case to a magistrates' court for sentence, see section 9 of the 2000 Act(75);
- (e) a magistrates' court may transfer a fine to be enforced to another court, see sections 89 and 90 of the 1980 Act(76).

For the court's powers where it convicts a defendant who is subject to a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court, see sections 1C and 13 of the 2000 Act(77) and section 189 of, and Schedule 12 to, the Criminal Justice Act 2003(78).

Under section 140 of the 2000 Act(79), a fine imposed or other sum ordered to be paid in the Crown Court is enforceable by a magistrates' court specified in the order; or from which the case was committed or sent to the Crown Court.

See also section 219(3) of the 2003 Act(80); paragraph 34(3) of Schedule 1 to the Criminal Justice and Immigration Act 2008(81); and section 1A(9) of the Street Offences Act 1959(82).J”

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- (72) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37).
 - (73) 2000 c. 6.
 - (74) 2000 c. 6; section 8 was amended by section 41 of, and paragraph 74 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 62 of the Schedule to S.I. 2005/886.
 - (75) 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to, S.I. 2005/886.
 - (76) 1980 c. 43; section 89 was amended by section 47 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraphs 95 and 107 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 225 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 49 of S.I. 2006/1737. Section 90 was amended by section 47(2) of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 226 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 50 of S.I. 2006/1737.
 - (77) 2000 c. 6; section 1C was substituted, together with sections 1, 1A, 1B and 1D, for sections 1 and 2 as originally enacted, by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44). Section 13 was amended by article 2 of, and paragraph 64 of the Schedule to, S.I. 2005/886.
 - (78) 2003 c. 44; section 189 was amended by articles 2(1) and (2), and 3(1) and (2), of S.I. 2005/643.
 - (79) 2000 c. 6; section 140 was amended by section 41 of, and paragraph 74(1) and (4) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 69 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4). It is amended by sections 74 and 75 of, and paragraphs 160 and 194 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43) and sections 41 and 332 of, and paragraphs 74(1) and (4) 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.
 - (80) 2003 c. 44; section 219(3) was amended by article 2 of, and paragraph 105(b) of the Schedule to, S.I. 2005/886.
 - (81) 2008 c. 4.
 - (82) 1959 c. 57; section 1A is inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26), from a date to be appointed.

SCHEDULE 3

Rule 15

“PART 44

BREACH, REVOCATION AND AMENDMENT
OF COMMUNITY AND OTHER ORDERS

Contents of this Part

When this Part applies	rule 44.1
Application by responsible officer or supervisor	rule 44.2
Application by defendant or person affected	rule 44.3
Procedure on application by responsible officer or supervisor	rule 44.4

When this Part applies**44.1.** This Part applies where—

- (a) the person responsible for a defendant’s compliance with an order to which applies—
 - (i) Schedule 3, 5, 7 or 8 to the Powers of Criminal Courts (Sentencing) Act 2000**(83)**,
 - (ii) Schedule 8 or 12 to the Criminal Justice Act 2003**(84)**,
 - (iii) Schedule 2 to the Criminal Justice and Immigration Act 2008**(85)**, or
 - (iv) the Schedule to the Street Offences Act 1959**(86)**
 wants the court to deal with that defendant for failure to comply;
- (b) one of the following wants the court to exercise any power it has to revoke or amend such an order—
 - (i) the responsible officer or supervisor,
 - (ii) the defendant, or
 - (iii) where the legislation allows, a person affected by the order; or
- (c) the court considers exercising on its own initiative any power it has to revoke or amend such an order.

[Note. In the Powers of Criminal Courts (Sentencing) Act 2000—

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- (83)** 2000 c. 6; Schedule 3 was substituted by section 304 of, and paragraphs 90 and 125 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44). It is repealed by section 149 of, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed. Schedules 5 and 7 were repealed by section 149 of, and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). For transitional provisions and savings, see section 148(2) of, and paragraphs 1(1) and 5 of Schedule 27 to, the Criminal Justice and Immigration Act 2008 (c. 4). Paragraph 3(3) of Schedule 7 was amended by section 304 of, and paragraphs 90 and 128 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44); paragraph 6A was inserted into Schedule 8 by section 6 of, and paragraphs 106 and 108 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4). Other amendments to these Schedules do not affect the procedure prescribed by these rules.
 - (84)** 2003 c. 44; paragraph 25A is inserted in Schedule 8 by section 6 of, and paragraph 109 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4) from a date to be appointed. Other amendments to Schedule 8 do not affect the procedure prescribed by these rules.
 - (85)** 2008 c. 4; Schedule 2 was amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
 - (86)** 1959 c. 57; the ‘Schedule: Orders under section 1(2A)’ is inserted by section 17(1) and (4) of the Policing and Crime Act 2009 (c. 26), with effect from a date to be appointed.

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- (a) *Schedule 3 deals with the breach, revocation and amendment of curfew orders and exclusion orders;*
- (b) *Schedule 5 deals with the breach, revocation and amendment of attendance centre orders;*
- (c) *Schedule 7 deals with the breach, revocation and amendment of supervision orders;*
- (d) *Schedule 8 deals with the breach, revocation and amendment of action plan orders and reparation orders; and*
- (e) *Schedules 3, 5 and 7 are repealed, with savings for existing orders, by the relevant provisions of the Criminal Justice and Immigration Act 2008; and, with savings for existing orders, Schedule 8 no longer refers to action plan orders.*

In the Criminal Justice Act 2003—

- (a) *Schedule 8 deals with the breach, revocation and amendment of community orders; and*
- (b) *Schedule 12 deals with the breach and amendment of suspended sentence orders.*

Schedule 2 to the Criminal Justice and Immigration Act 2008 deals with the breach, revocation and amendment of youth rehabilitation orders.

Under Schedule 8 to the 2000 Act, Schedule 8 to the 2003 Act and Schedule 2 to the 2008 Act, a single member of the court can adjourn a hearing to which this Part applies.]

Application by responsible officer or supervisor

44.2.—(1) This rule applies where—

- (a) the responsible officer or supervisor wants the court to—
 - (i) deal with a defendant for failure to comply with an order to which this Part applies, or
 - (ii) revoke or amend such an order; or
- (b) the court considers exercising on its own initiative any power it has to—
 - (i) revoke or amend such an order, and
 - (ii) summon the defendant to attend for that purpose.

(2) Rules 7.2 to 7.4, which deal, among other things, with starting a prosecution in a magistrates' court by information and summons, apply—

- (a) as if—
 - (i) a reference in those rules to an allegation of an offence included a reference to an allegation of failure to comply with an order to which this Part applies, and
 - (ii) a reference to the prosecutor included a reference to the responsible officer or supervisor; and
- (b) with the necessary consequential modifications.

Application by defendant or person affected

44.3.—(1) This rule applies where—

- (a) the defendant wants the court to exercise any power it has to revoke or amend an order to which this Part applies; or
- (b) where the legislation allows, a person affected by such an order wants the court to exercise any such power.

- (2) That defendant, or person affected, must—
 - (a) apply in writing, explaining why the order should be revoked or amended; and
 - (b) serve the application on—
 - (i) the court officer,
 - (ii) the responsible officer or supervisor, and
 - (iii) as appropriate, the defendant or the person affected.

Procedure on application by responsible officer or supervisor

44.4.—(1) Except for rule 37.8, the rules in Part 37, which deal with the procedure at a trial in a magistrates’ court, apply—

- (a) as if—
 - (i) a reference in those rules to an allegation of an offence included a reference to an allegation of failure to comply with an order to which this Part applies,
 - (ii) a reference to the court’s verdict included a reference to the court’s decision to revoke or amend such an order, or to exercise any other power it has to deal with the defendant, and
 - (iii) a reference to the court’s sentence included a reference to the exercise of any such power; and
- (b) with the necessary consequential modifications.

(2) The court officer must serve on each party any order revoking or amending an order to which this Part applies.”

SCHEDULE 4

Rule 17

“PART 52

ENFORCEMENT OF FINES AND OTHER ORDERS FOR PAYMENT

Contents of this Part

When this Part applies	rule 52.1
Exercise of court’s powers	rule 52.2
Duty to give receipt	rule 52.3
Appeal against decision of fines officer	rule 52.4
Application to reduce a fine or vary payment terms	rule 52.5
Claim to avoid fine after penalty notice	rule 52.6
Information to be included in a warrant to take goods, etc.	rule 52.7
Execution of a warrant to take goods, etc.	rule 52.8
Sale of goods taken under a warrant	rule 52.9

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[Note. Part 18 contains rules about warrants for arrest, detention or imprisonment, including such warrants issued for failure to pay fines, etc.

Part 37 contains rules about the procedure on sentencing in a magistrates' court.

Part 42 contains rules about the exercise of a magistrates' court's powers to enforce an order made by another court.]

When this Part applies

52.1.—(1) This Part applies where a magistrates' court can enforce payment of—

- (a) a fine, or a penalty that legislation requires the court to treat as a fine; or
- (b) any other sum that a court has ordered to be paid—
 - (i) on a conviction, or
 - (ii) on the forfeiture of a surety.

(2) Rules 52.7 to 52.9 apply where the court, or a fines officer, issues a warrant that requires someone to—

- (a) take control of goods or money belonging to the defendant;
- (b) remove and sell any such goods; and
- (c) pay any such money, and any proceeds of such a sale, to the court officer towards payment of a sum to which this Part applies.

(3) In this Part—

- (a) 'defendant' means anyone liable to pay a sum to which this Part applies;
- (b) 'payment terms' means by when, and by what (if any) instalments, such a sum must be paid.

[Note. For the means by which a magistrates' court may enforce payment, see—

- (a) *Part 3 of the Magistrates' Courts Act 1980*(87); and
- (b) *Schedule 5 to the Courts Act 2003*(88) and *The Fines Collection Regulations 2006*(89).

Under that Schedule and those Regulations, some enforcement powers may be exercised by a fines officer.

In some legislation, including the 1980 and 2003 Acts, a warrant to which this Part applies is described as 'a warrant of distress'. On the coming into force of the Tribunals, Courts and Enforcement Act 2007(90), *such a warrant will be described as 'a warrant of control'.]*

Exercise of court's powers

52.2. The court must not exercise its enforcement powers unless—

- (a) the court officer has served on the defendant any collection order or other notice of—
 - (i) the obligation to pay,
 - (ii) the payment terms, and
 - (iii) how and where the defendant must pay; and

(87) 1980 c. 43.

(88) 2003 c. 39.

(89) S.I. 2006/501.

(90) 2007 c. 15.

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- (b) the defendant has failed to comply with the payment terms.

[Note. See section 76 of the Magistrates' Courts Act 1980(91); and paragraphs 12 and 13 of Schedule 5 to the Courts Act 2003(92).]

Duty to give receipt

- 52.3.**—(1) This rule applies where the defendant makes a payment to—
- (a) the court officer specified in an order or notice served under rule 52.2;
 - (b) another court officer;
 - (c) any—
 - (i) custodian of the defendant,
 - (ii) supervisor appointed to encourage the defendant to pay, or
 - (iii) responsible officer appointed under a community sentence or a suspended sentence of imprisonment; or
 - (d) a person executing a warrant to which rule 18.6 (warrants for arrest, detention or imprisonment that cease to have effect on payment) or this Part applies.
- (2) The person receiving the payment must—
- (a) give the defendant a receipt; and
 - (b) as soon as practicable transmit the payment to the court officer specified in an order or notice served under rule 52.2, if the recipient is not that court officer.

[Note. For the effect of payment to a person executing a warrant to which—

- (a) *rule 18.6 applies, see that rule and sections 79(93) and 125(1)(94) of the Magistrates' Courts Act 1980;*
- (b) *this Part applies, see rule 52.8(5).*

For the circumstances in which the court may appoint a person to supervise payment, see section 88 of the 1980 Act(95).]

Appeal against decision of fines officer

- 52.4.**—(1) This rule applies where—
- (a) a collection order is in force;
 - (b) a fines officer makes a decision under one of these paragraphs of Schedule 5 to the Courts Act 2003(96)—
 - (i) paragraph 22 (Application to fines officer for variation of order or attachment of earnings order, etc.),

(91) 1980 c. 43.

(92) 2000 c. 39; paragraph 13 was amended by articles 2, 4 and 15 of S.I. 2006/1737.

(93) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and is amended by section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

(94) 1980 c. 43; section 125(1) was amended by section 97(4) of the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39).

(95) 1980 c. 43; section 88 was amended by paragraph 53 of Schedule 14 to the Criminal Justice Act 1982 (c. 48) and by paragraph 68 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraphs 58 and 64 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and section 62 of, and paragraphs 45 and 54 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

(96) 2003 c. 39.

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- (ii) paragraph 31⁽⁹⁷⁾ (Application to fines officer for variation of reserve terms),
or
- (iii) paragraph 37⁽⁹⁸⁾ (Functions of fines officer in relation to defaulters: referral or further steps notice); and
- (c) the defendant wants to appeal against that decision.
- (2) Unless the court otherwise directs, the defendant must—
 - (a) appeal in writing not more than 10 business days after the decision;
 - (b) serve the appeal on the court officer; and
 - (c) in the appeal—
 - (i) explain why a different decision should be made, and
 - (ii) specify the decision that the defendant proposes.
- (3) Where the court determines an appeal—
 - (a) the general rule is that it will do so at a hearing; but
 - (b) it may do so without a hearing.

[Note. Under paragraph 12 of Schedule 5 to the Courts Act 2003, where a collection order is in force the court's powers to deal with the defendant's liability to pay the sum for which that order was made are subject to the provisions of that Schedule and to fines collection regulations.]

For the circumstances in which a defendant may appeal against a decision to which this rule applies, see paragraphs 23, 32 and 37(9) of Schedule 5 to the 2003 Act⁽⁹⁹⁾. The time limit for appeal is prescribed by those paragraphs. It may be neither extended nor shortened.]

Application to reduce a fine or vary payment terms

- 52.5.**—(1) This rule applies where—
- (a) no collection order is in force; and
 - (b) the defendant wants the court to—
 - (i) reduce the amount of a fine, or
 - (ii) vary payment terms.
- (2) Unless the court otherwise directs, the defendant must—
- (a) apply in writing;
 - (b) serve the application on the court officer; and
 - (c) in the application, explain—
 - (i) what relevant circumstances have not yet been considered by the court, and
 - (ii) why the fine should be reduced, or the payment terms varied.

[Note. See sections 75⁽¹⁰⁰⁾, 85⁽¹⁰¹⁾ and 85A⁽¹⁰²⁾ of the Magistrates' Courts Act 1980.]

⁽⁹⁷⁾ 2003 c. 39; paragraph 31 was amended by articles 2, 4 and 20 of S.I. 2006/1737.

⁽⁹⁸⁾ 2003 c. 39; paragraph 37 was amended by articles 2, 4 and 25(a) and (b) of S.I. 2006/1737.

⁽⁹⁹⁾ 2003 c. 39; paragraph 32 was amended by articles 2, 4 and 24(b) of S.I. 2006/1737.

⁽¹⁰⁰⁾ 1980 c. 43; section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17).

⁽¹⁰¹⁾ 1980 c. 43; section 85 was amended by section 61 (1) and (5) of the Criminal Justice Act 1988 (c. 33), section 55 of, and paragraph 10(2) of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43) and section 109(1) of, and paragraph 222 of Schedule 8 to, the Courts Act 2003 (c. 39). It is amended by section 304 of, and paragraphs 25 and 28 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

⁽¹⁰²⁾ 1980 c. 43; section 85A was inserted by section 51(1) of the Criminal Justice Act 1982 (c. 48).

Claim to avoid fine after penalty notice

52.6.—(1) This rule applies where—

- (a) a chief officer of police serves on the magistrates' court officer a certificate registering, for enforcement as a fine, a sum payable by a defendant after failure to comply with a penalty notice; and
- (b) the court or a fines officer enforces the fine.

(2) A defendant who claims not to be the person to whom the penalty notice was issued must, unless the court otherwise directs—

- (a) make that claim in writing; and
- (b) serve it on the court officer.

(3) The court officer must—

- (a) notify the chief officer of police by whom the certificate was registered; and
- (b) refer the case to the court.

(4) Where such a claim is made—

- (a) the general rule is that the court will adjourn the enforcement for 28 days and fix a hearing; but
- (b) the court may make a different order.

(5) At any such hearing, the chief officer of police must introduce any evidence to contradict the defendant's claim.

[Note. See section 10 of the Criminal Justice and Police Act 2001(103).

For the circumstances in which a sum may be registered for enforcement as a fine after failure to comply with a penalty notice, see sections 8 and 9 of the 2001 Act(104).]

Information to be included in a warrant to take goods, etc.

52.7.—(1) A warrant must identify—

- (a) the person(s) to whom it is directed;
- (b) the defendant against whom it was issued;
- (c) the sum for which it was issued and the reason that sum is owed;
- (d) the court or fines officer who issued it, unless that is otherwise recorded by the court officer; and
- (e) the court office for the court or fines officer who issued it.

(2) A person to whom a warrant is directed must record on it the date and time at which it is received.

(3) A warrant that contains an error is not invalid, as long as—

- (a) it was issued in respect of a lawful decision by the court or fines officer; and
- (b) it contains enough information to identify that decision.

[Note. See sections 78(105) and 125ZA(106) of the Magistrates' Courts Act 1980.]

(103) 2001 c. 16.

(104) 2001 c. 16; section 8 was amended by section 109(1) of, and paragraph 399 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 9 was amended by section 109(1) of, and paragraph 400(1) (2) (3) and (4) of Schedule 8 to, the Courts Act 2003 (c. 39).

(105) 1980 c. 43; section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48) and paragraph 219 of Schedule 8 to, the Courts Act 2003 (c. 39).

(106) 1980 c. 43; section 125ZA is inserted by section 68 of the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

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Execution of a warrant to take goods, etc.

- 52.8.**—(1) A warrant may be executed by—
- (a) any person to whom it is directed; or
 - (b) anyone authorised to do so by section 125(107) (warrants), 125A(108) (civilian enforcement officers) or 125B(109) (execution by approved enforcement agency) of the Magistrates' Courts Act 1980.
- (2) The person who executes a warrant must—
- (a) explain, in terms the defendant can understand—
 - (i) the order or decision that the warrant was issued to enforce,
 - (ii) the sum for which the warrant was issued, and
 - (iii) any extra sum payable in connection with the execution of the warrant;
 - (b) show the defendant the warrant, if that person has it;
 - (c) if the defendant asks—
 - (i) arrange for the defendant to see the warrant, if that person does not have it, and
 - (ii) show the defendant any written statement of that person's authority required by section 125A or 125B of the 1980 Act; and
 - (d) clearly mark any goods that are taken under the warrant, unless that person removes those goods at once.
- (3) These goods must not be taken under the warrant—
- (a) clothes or bedding used by the defendant or by anyone living with the defendant;
 - (b) tools, books, vehicles or other equipment that the defendant needs to use in the defendant's employment, business or vocation, unless the defendant is a corporation.
- (4) Unless the court otherwise directs, or the defendant otherwise agrees, if the person who executes the warrant takes household goods they must not be removed until the day of sale.
- (5) The warrant no longer has effect if—
- (a) there is paid to the person executing it the sum for which it was issued and any extra sum payable in connection with its execution;
 - (b) those sums are offered to, but refused by, that person; or
 - (c) that person—
 - (i) is shown a receipt given under rule 52.3 for the sum for which the warrant was issued, and
 - (ii) is paid any extra sum payable in connection with its execution.

(107) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22) and section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39). It is further amended by sections 62(3), 86 and 146 of and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), with effect from a date to be appointed.

(108) 1980 c. 43; section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22) and amended by articles 46 and 52 of S.I. 2006/1737 and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128. It is further amended by section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

(109) 1980 c. 43; section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22) and amended by paragraph 239 of Schedule 8 to the Courts Act 2003 (c. 39). It is further amended by section 62 of, and paragraphs 45, 59 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

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[Note. Under section 125 of the Magistrates' Courts Act 1980, a warrant issued by a magistrates' court may be executed by any person to whom it is directed or by any constable acting within that constable's police area.

Certain warrants issued by a magistrates' court may be executed anywhere in England and Wales by a civilian enforcement officer, under section 125A of the 1980 Act; or by an approved enforcement agency, under section 125B of the Act. In either case, the person executing the warrant must, if the defendant asks, show a written statement indicating: that person's name; the authority or agency by which that person is employed, or in which that person is a director or partner; that that person is authorised to execute warrants; and, where section 125B applies, that the agency is registered as one approved by the Lord Chancellor.

See also section 125D of the 1980 Act(110), under which—

- (a) *a warrant to which section 125A applies may be executed by any person entitled to execute it, even though it is not in that person's possession at the time; and*
- (b) *certain other warrants, including any warrant to which this Part applies, may be executed by a constable, even though it is not in that constable's possession at the time.]*

Sale of goods taken under a warrant

52.9.—(1) Unless the court otherwise directs or the defendant otherwise agrees, goods taken under a warrant must be sold—

- (a) at public auction; and
- (b) as soon as reasonably practicable after the expiry of 5 business days from the date of execution of the warrant.

(2) After a sale, the person who executed the warrant must, as soon as reasonably practicable—

- (a) collect the proceeds of sale;
- (b) deduct any sum payable in connection with the execution of the warrant;
- (c) pay the court officer specified in an order or notice served under rule 52.2 the sum for which the warrant was issued;
- (d) pay any balance remaining to the defendant; and
- (e) deliver an account of those deductions and payments to the court officer.”

SCHEDULE 5

Rule 18

“PART 55

ROAD TRAFFIC PENALTIES

Contents of this Part

(110) 1980 c. 43; section 125D was inserted by section 96 of the Access to Justice Act 1999 (c. 22). It is further amended by sections 62 and 146 of, and paragraphs 45 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 29), with effect from a date to be appointed.

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Application to remove a disqualification from driving	rule 55.1
Information to be supplied on order for endorsement of driving record, etc.	rule 55.2
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Application for declaration about a course or programme certificate decision	rule 55.4
Appeal against recognition of foreign driving disqualification	rule 55.5

[Note. Part 37 contains rules about the general procedure on sentencing in a magistrates' court.]

Application to remove a disqualification from driving

55.1.—(1) This rule applies where, on application by the defendant, the court can remove a disqualification from driving.

- (2) A defendant who wants the court to exercise that power must—
- (a) apply in writing, no earlier than the date on which the court can exercise the power;
 - (b) serve the application on the court officer; and
 - (c) in the application—
 - (i) specify the disqualification that the defendant wants the court to remove, and
 - (ii) explain why.

(3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

[Note. For the circumstances in which the court may remove a disqualification from driving imposed under section 34 or 35 of the Road Traffic Offenders Act 1988(111), see section 42 of the Act(112). The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.]

Information to be supplied on order for endorsement of driving record, etc.

55.2.—(1) This rule applies where the court—

- (a) convicts the defendant of an offence involving obligatory endorsement, and orders there to be endorsed on the defendant's driving record and on any counterpart licence—
 - (i) particulars of the conviction,
 - (ii) particulars of any disqualification from driving that the court imposes, and
 - (iii) the penalty points to be attributed to the offence;
- (b) disqualifies the defendant from driving for any other offence; or

(111) 1988 c. 53; section 34 was amended by section 29(1), (2) and (3) of the Road Traffic Act 1991 (c. 40), section 3(2) of, the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165(1) of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 25(2) of the Road Safety Act 2006 (c. 49) and article 2(1)(b) of S.I. 2007/3480. It is further amended by section 177(1) of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed. Section 35 was amended by section 48 of, and paragraph 95(1), (3), (4), (5), (6) and (7) of Schedule 4 to, the Road Traffic Act 1991 (c. 40), and section 165(1) of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by section 177(1) of, and 90(1) and (6) of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(112) 1988 c. 53; section 42 was amended by regulations 2(2) and 3 and paragraph 9 of Schedule 2 to, S.I. 1990/144, section 48 of, and paragraph 98 of Schedule 4 to, the Road Traffic Act 1991 (c. 40) and section 9(6) of, and paragraphs 2 and 8 of Schedule 2 to, the Road Safety Act 2006 (c. 49). It is further amended by sections 10(12) and 59 of, and paragraphs 30 and 40 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

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- (c) suspends or removes a disqualification from driving.
- (2) The court officer must, as soon as practicable, serve on the Secretary of State notice that includes details of—
 - (a) where paragraph (1)(a) applies—
 - (i) the local justice area in which the court is acting,
 - (ii) the dates of conviction and sentence,
 - (iii) the offence, and the date on which it was committed,
 - (iv) the sentence, and
 - (v) the date of birth, and sex, of the defendant, where those details are available;
 - (b) where paragraph (1)(b) applies—
 - (i) the date and period of the disqualification,
 - (ii) the power exercised by the court;
 - (c) where paragraph (1)(c) applies—
 - (i) the date and period of the disqualification,
 - (ii) the date and terms of the order for its suspension or removal,
 - (iii) the power exercised by the court, and
 - (iv) where the court suspends the disqualification pending appeal, the court to which the defendant has appealed.

[Note. See sections 39(3), 42(5) and 44A of the Road Traffic Offenders Act 1988(113).

Under section 25 of the 1988 Act(114), the court may order a defendant to disclose his or her date of birth, and sex, where that is not apparent (for example, where the defendant is convicted in his or her absence). Under section 27 of the 1988 Act(115), and under sections 146(4) and 147(5) of the Powers of Criminal Courts (Sentencing) Act 2000(116), the court may order a defendant to produce his or her driving licence, if not already produced.

For the circumstances in which the court—

- (a) *must usually order endorsement, see sections 9, 44 and 96 of, and Schedule 2 to, the 1988 Act(117);*

(113) 1988 c. 53; section 42(5) was amended by section 9(6) of, and paragraphs 2 and 8 of Schedule 2 to, the Road Safety Act 2006 (c. 49). Section 44A was inserted by section 9(1) and (3) of the Road Safety Act 2006 (c. 49).

(114) 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 165 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).

(115) 1988 c. 53; section 27 was amended by regulations 2(2) and 3 and paragraph 3 of Schedule 2 to S.I. 1990/144, section 48 of, and paragraph 91 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), paragraphs 140 and 144 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 120 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 16(5) of the Child Support, Pensions and Social Security Act 2000 (c. 19), and paragraph 313 of Schedule 8 to the Courts Act 2003 (c. 39). Section 27 is further amended by section 304 of, and paragraphs 52 and 53 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), section 10 of, and paragraphs 30 and 33 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49) and section 58(1) of, and Part 4 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24), with effect from a date to be appointed.

(116) 2000 c. 6; section 146(4) was amended by section 91(1) of, and paragraphs 72 and 73 of Schedule 5, and Schedule 6 to, the Crime (International Co-operation) Act 2003 (c. 32). Section 147(5) was amended by section 91 of, and paragraphs 72 and 74 of Schedule 5, and Schedule 6 to, the Crime (International Co-operation) Act 2003 (c. 32). It is further amended by section 10(12) and 59 of, and paragraphs 71 and 73(1) and (2) of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(117) 1988 c. 53; section 44 was amended by regulations 2(2) and 3 and paragraph 10 of Schedule 2 to, S.I. 1990/144 and section 9(1) and (2)(a) of the Road Safety Act 2006 (c. 49). It is further amended by sections 10 and 59 of, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

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- (b) *may (and in some cases must) order disqualification from driving, see sections 26(118), 34(119), 35(120) and 36 of the 1988 Act; and sections 146 and 147 of the 2000 Act(121);*
- (c) *may suspend a disqualification from driving pending appeal, see section 39 of the 1988 Act(122);*
- (d) *may remove a disqualification from driving imposed under section 34 or 35 of the 1988 Act, see section 42 of the Act.]*

Statutory declaration to avoid fine after fixed penalty notice

55.3.—(1) This rule applies where—

- (a) a chief officer of police, or the Secretary of State, serves on the magistrates' court officer a certificate registering, for enforcement as a fine, a sum payable by a defendant after failure to comply with a fixed penalty notice;
- (b) the court officer notifies the defendant of the registration; and
- (c) the defendant makes a statutory declaration with the effect that—
 - (i) the fixed penalty notice, or any associated notice sent to the defendant as owner of the vehicle concerned, and
 - (ii) the registration and any enforcement proceedings
 become void.

(2) The defendant must serve that statutory declaration not more than 21 days after service of notice of the registration, unless the court extends that time limit.

(3) The court officer must—

- (a) serve a copy of the statutory declaration on the person by whom the certificate was registered,
- (b) cancel any endorsement on the defendant's driving record and on any counterpart licence, and
- (c) notify the Secretary of State of any such cancellation.

(118) 1988 c. 53; section 26 was substituted by section 25 of the Road Traffic Act 1991 (c. 40) and amended by paragraph 119 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 140 and 143 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 2 of Schedule 2 to S.I. 1996/1974, paragraph 312(b) of Schedule 8 to the Courts Act 2003 (c. 39) and paragraphs 32 and 34 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32). Section 26 is further amended by sections 10 and 59 of, and paragraphs 30 and 32 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(119) 1988 c. 53; section 34 was amended by section 29(1), (2) and (3) of the Road Traffic Act 1991 (c. 40), section 3(2) of, the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165(1) of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 25(2) of the Road Safety Act 2006 (c. 49) and article 2(1)(b) of S.I. 2007/3480. It is further amended by section 177(1) of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(120) 1988 c. 53; section 35 was amended by section 48 of, and paragraph 95(1), (3), (4), (5), (6) and (7) of Schedule 4 to, the Road Traffic Act 1991 (c. 40), and section 165(1) of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by section 177(1) of, and 90(1) and (6) of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(121) 2000 c. 6; section 146 was amended by section 91(1) of, and paragraphs 72 and 73 of Schedule 5, and Schedule 6 to, the Crime (International Co-operation) Act 2003 (c. 32), section 304 of, and paragraphs 90 and 120 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), and section 148(1) of, and paragraphs 40 and 47 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4). Section 147 was amended by section 91 of, and paragraphs 72 and 74 of Schedule 5, and Schedule 6 to, the Crime (International Co-operation) Act 2003 (c. 32). It is further amended by sections 10(12) and 59 of, and paragraphs 71 and 73(1), (2) and (3) of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(122) 1988 c. 53.

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[Note. See sections 72(1), (6), (6A), 73(1) and 74(2) of the Road Traffic Offenders Act 1988(123).

For the circumstances in which—

- (a) a sum may be registered for enforcement as a fine after failure to comply with a fixed penalty notice, see sections 54(124), 55, 62(125), 63(126), 64, 70(127) and 71(128) of the 1988 Act;
- (b) the registration may become void on the making of a statutory declaration by the defendant, see sections 72(129) and 73(130) of the 1988 Act.]

Application for declaration about a course or programme certificate decision

55.4.—(1) This rule applies where the court can declare unjustified—

- (a) a course provider's failure or refusal to give a certificate of the defendant's satisfactory completion of an approved course; or
 - (b) a programme provider's giving of a certificate of the defendant's failure fully to participate in an approved programme.
- (2) A defendant who wants the court to exercise that power must—
- (a) apply in writing, not more than 28 days after—
 - (i) the date by which the defendant was required to complete the course, or
 - (ii) the giving of the certificate of failure fully to participate in the programme;
 - (b) serve the application on the court officer; and
 - (c) in the application, specify the course or programme and explain (as applicable)—
 - (i) that the course provider has failed to give a certificate,
 - (ii) where the course provider has refused to give a certificate, why the defendant disagrees with the reasons for that decision, or
 - (iii) where the programme provider has given a certificate, why the defendant disagrees with the reasons for that decision.

(123) 1988 c. 53; section 72(1) was amended by paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22).

(124) 1988 c. 53; section 54 was amended by regulations 2(2) and 3 of, and paragraph 15 of Schedule 2 to, S.I. 1990/144, sections 48 and 83 of, and paragraph 103 of Schedule 4 and Schedule 8 to, the Road Traffic Act 1991 (c. 40), sections 76 and 108 of the Police Reform Act 2002 (c. 30) and sections 5, 9(6) and 59 of, and paragraphs 1, 3 and 9 of Schedule 1 to, and paragraphs 2 and 14 of Schedule 2 to, the Road Safety Act 2006 (c. 49). It is further amended by sections 10(1) and (3), the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(125) 1988 c. 53; section 62 was amended by section 5 of, and paragraphs 1 and 7 of Schedule 1 to, the Road Safety Act 2006 (c. 49).

(126) 1988 c. 53; section 63 was amended by section 5 of, and paragraphs 1 and 8 of Schedule 1 to, the Road Safety Act 2006 (c. 49).

(127) 1988 c. 53; section 70 was amended by section 109 of, and paragraph 316 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 5, 9(6) and 59 of, and paragraphs 1 and 12 of Schedule 1, paragraphs 2 and 21 of Schedule 2 and paragraph 7 to, the Road Safety Act 2006 (c. 49).

(128) 1988 c. 53; section 71 was amended by section 63 of, and paragraph 25(1) of Schedule 3 to, the Vehicle Excise and Registration Act 1994 (c. 22), sections 90(1) and 106 of, and paragraphs 140 and 150(1) and (2) of Schedule 13, and table 7 of Schedule 15 to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 317(1) and (2) of Schedule 8 to, the Courts Act 2003 (c. 39) and section 9(6) of, and paragraphs 2 and 22 of Schedule 2 to, the Road Safety Act 2006 (c. 49). It is further amended by section 9(6) of, and paragraphs 2 and 22 of Schedule 2 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(129) 1988 c. 53; section 72 was amended by regulations 2(2) and 3 of, and paragraph 20 of Schedule 2 to S.I. 1990/144, section 90 of, and paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and sections 5 and 9 of, and paragraphs 1 and 13 of Schedule 1 and paragraphs 2 and 23 of Schedule 2 to, the Road Safety Act 2006 (c. 49). It is further amended by sections 10 and 59 of, and paragraphs 30 and 50 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(130) 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) and sections 5 and 59 of, and paragraphs 1 and 14 of Schedule 1 and Schedule 7 to, the Road Safety Act 2006 (c. 49).

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(3) The court officer must serve a copy of the application on the course or programme provider.

(4) The court must not determine the application unless the defendant, and the course or programme provider, each has had an opportunity to make representations at a hearing (whether or not either in fact attends).

[Note. For the circumstances in which the court may reduce a road traffic penalty on condition that the defendant attend an approved course, or take part in an approved programme, see sections 30A(131), 34A(132) and 34D(133) of the Road Traffic Offenders Act 1988.

Under sections 30B(134), 34B(135) and 34E(136) of the 1988 Act, the court that made the order; or the defendant's local magistrates' court, on application by the defendant may review a course or programme provider's decision that the defendant has not completed the course satisfactorily, or has not participated fully in the programme.]

Appeal against recognition of foreign driving disqualification

55.5.—(1) This rule applies where—

- (a) a minister gives a disqualification notice under section 57 of the Crime (International Co-operation) Act 2003(137); and
- (b) the person to whom it is given wants to appeal under section 59 of the Act(138) to a magistrates' court.

(2) That person ('the appellant') must serve an appeal notice on—

- (a) the court officer, at a magistrates' court in the local justice area in which the appellant lives; and
- (b) the minister, at the address given in the disqualification notice.

(3) The appellant must serve the appeal notice within the period for which section 59 of the 2003 Act provides.

(4) The appeal notice must—

- (a) attach a copy of the disqualification notice;
- (b) explain which of the conditions in section 56 of the 2003 Act(139) is not met, and why section 57 of the Act therefore does not apply; and

(131) 1988 c. 53; section 30A is inserted by section 34(1) and (3) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(132) 1988 c. 53; section 34A was inserted by section 30 of the Road Traffic Act 1991 (c. 40). It is amended by section 177(1) and (2) of, and paragraphs 30 and 90(1) and (3) of Schedule 21 and paragraphs 30 and 31 of Schedule 22 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(133) 1988 c. 53; section 34D is inserted by section 15(1) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. It is amended by section 177(1) of, and paragraph 90(1) and (5) of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(134) 1988 c. 53; section 30B is inserted by section 34(1) and (3) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(135) 1988 c. 53; section 34B was inserted by section 30 of the Road Traffic Act 1991 (c. 40) and amended by paragraphs 140, 145 and 146 of Schedule 13 and Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22). Section 34B is substituted by section 35 of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(136) 1988 c. 53; section 34E is inserted by section 15(1) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

(137) 2003 c. 32; section 57 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed.

(138) 2003 c. 32; section 59 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 59 was amended by article 2 of, and paragraph 97 of the Schedule to, S.I. 2005/886.

(139) 2003 c. 32; section 56 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed.

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- (c) include any application to suspend the disqualification, under section 60 of the Act(140).
- (5) The minister may serve a respondent's notice, and must do so if—
 - (a) the minister wants to make representations to the court; or
 - (b) the court so directs.
- (6) The minister must—
 - (a) unless the court otherwise directs, serve any such respondent's notice not more than 14 days after—
 - (i) the appellant serves the appeal notice, or
 - (ii) a direction to do so;
 - (b) in any such respondent's notice—
 - (i) identify the grounds of opposition on which the minister relies,
 - (ii) summarise any relevant facts not already included in the disqualification and appeal notices, and
 - (iii) identify any other document that the minister thinks the court will need to decide the appeal (and serve any such document with the notice).
- (7) Where the court determines an appeal—
 - (a) the general rule is that it will do so at a hearing (which will be in public, unless the court otherwise directs); but
 - (b) it may do so without a hearing.
- (8) The court officer must serve on the minister—
 - (a) notice of the outcome of the appeal; and
 - (b) notice of any suspension of the disqualification; and
 - (c) the appellant's driving licence, if surrendered to the court officer.

[Note. Section 56 of the Crime (International Co-operation) Act 2003 sets out the conditions for recognition in the United Kingdom of a foreign driving disqualification, and provides that section 57 of the Act applies where they are met. Under section 57, the appropriate minister may, and in some cases must, give the person concerned notice that he or she is disqualified in the UK, too, and for what period.

Under section 59 of the 2003 Act, that person may appeal to a magistrates' court. If the court is satisfied that section 57 of the Act does not apply in that person's case, the court must allow the appeal and notify the minister. Otherwise, it must dismiss the appeal.

The time limit for appeal under section 59 of the 2003 Act is the end of the period of 21 days beginning with the day on which the minister gives the notice under section 57. That period may be neither extended nor shortened.

Under section 60 of the 2003 Act, the court may suspend the disqualification, on such terms as it thinks fit.

Under section 63 of the 2003 Act(141), it is an offence for a person to whom the minister gives a notice under section 57 not to surrender any licence that he or she holds, within the same period as for an appeal.]”

(140) 2003 c. 32; section 60 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 60 was amended by section 40(4) of, and paragraph 79 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(141) 2003 c. 32; section 63 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 63 is amended by sections 10(12) and 59 of,

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and paragraphs 74 and 75 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.