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STATUTORY INSTRUMENTS

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**2014 No. 1610**

**The Criminal Procedure Rules 2014**

**PART 38**

**TRIAL AND SENTENCE IN THE CROWN COURT**

**Procedure on plea of not guilty**

**38.9.**—(1) This rule applies where—

- (a) the defendant pleads not guilty; or
- (b) the defendant declines to enter a plea and the court treats that as a not guilty plea.

(2) In the following sequence—

- (a) where there is a jury, the court must—
  - (i) inform the jurors of each offence charged in the indictment to which the defendant pleads not guilty, and
  - (ii) explain to the jurors that it is their duty, after hearing the evidence, to decide whether the defendant is guilty or not guilty of each offence;
- (b) the prosecutor may summarise the prosecution case;
- (c) the prosecutor must introduce the evidence on which the prosecution case relies;
- (d) subject to paragraph (3), at the end of the prosecution evidence, on the defendant's application or on its own initiative, the court—
  - (i) may direct the jury (if there is one) to acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but
  - (ii) must not do so unless the prosecutor has had an opportunity to make representations;
- (e) subject to paragraph (4), at the end of the prosecution evidence, the court must ask whether the defendant intends to give evidence in person and, if the answer is 'no', then the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—
  - (i) the right to give evidence in person, and
  - (ii) that if the defendant does not give evidence in person, or refuses to answer a question while giving evidence, the court may draw such inferences as seem proper;
- (f) the defendant may summarise the defence case, if he or she intends to call at least one witness other than him or herself to give evidence in person about the facts of the case;
- (g) in this order (or in a different order, if the court so directs) the defendant may—
  - (i) give evidence in person,
  - (ii) call another witness, or witnesses, to give evidence in person, and
  - (iii) introduce any other evidence;

- (h) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);
  - (i) the prosecutor may make final representations, where—
    - (i) the defendant has a legal representative,
    - (ii) the defendant has called at least one witness, other than the defendant him or herself, to give evidence in person about the facts of the case, or
    - (iii) the court so permits; and
  - (j) the defendant may make final representations.
- (3) Paragraph (2)(d) does not apply in relation to a charge of murder, manslaughter, attempted murder, or causing harm contrary to section 18 or 20 of the Offences against the Person Act 1861(1) until the court has heard all the evidence (including any defence evidence), where the defendant is charged with—
- (a) any of those offences; and
  - (b) an offence of causing or allowing a child or vulnerable adult to die or to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004(2).
- (4) Paragraph (2)(e) does not apply where it appears to the court that, taking account of all the circumstances, the defendant’s physical or mental condition makes it undesirable for the defendant to give evidence in person.
- (5) Where there is more than one defendant, this rule applies to each in the order their names appear in the indictment, or in an order directed by the court.
- (6) Unless the jury (if there is one) has retired to consider its verdict, the court may allow a party to introduce evidence, or make representations, after that party’s opportunity to do so under paragraph (2).
- (7) Unless the jury has already reached a verdict on a count, the court may exercise its power to—
- (a) discharge the jury from reaching a verdict on that count;
  - (b) direct the jury to acquit the defendant on that count; or
  - (c) invite the jury to convict the defendant, if the defendant pleads guilty to the offence charged by that count.

*[Note. See also rule 3.24 (Arraigning the defendant on the indictment).*

*The admissibility of evidence that a party introduces is governed by rules of evidence.*

*Under section 35 of the Criminal Justice and Public Order Act 1994(3), the court may draw such inferences as appear proper from a defendant’s failure to give evidence, or refusal without good cause to answer a question while doing so. The procedure set out in rule 38.9(2)(e) and (4) is prescribed by that section.*

*Section 2 of the Criminal Evidence Act 1898(4) restricts the circumstances in which the defendant may summarise the defence case before introducing evidence.*

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(1) 1861 c. 100; section 18 was amended by the Statute Law Revision Act 1892 (c. 19), the Statute Law Revision (No 2) Act 1893 (c. 54) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 20 was amended by the Statute Law Revision Act 1892 (c. 19).

(2) 2004 c. 28; section 5 was amended by section 1 of the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4).

(3) 1994 c. 33; section 35 was amended by sections 35 and 120 of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37) and paragraphs 62 and 63 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(4) 1898 c. 36.

Section 79 of the Police and Criminal Evidence Act 1984<sup>(5)</sup> requires a defendant who wishes to give evidence in person to do so before calling any other witness, unless the court otherwise permits.

Section 2 of the Criminal Procedure Act 1865<sup>(6)</sup> and section 3 of the Criminal Evidence Act 1898<sup>(7)</sup> restrict the circumstances in which the prosecutor may make final representations without the court's permission. See also section 1 of the Criminal Procedure (Right of Reply) Act 1964<sup>(8)</sup>.

The procedure set out in rule 38.9(3) is prescribed by sections 6 and 6A of the Domestic Violence, Crime and Victims Act 2004<sup>(9)</sup>.

Under section 17 of the Criminal Justice Act 1967<sup>(10)</sup>, the court may direct the jury to acquit where the prosecutor offers no evidence.

See rule 38.14 for the procedure on taking the verdict and rule 38.16 for the procedure if the court convicts the defendant.]

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(5) 1984 c. 60.

(6) 1865 c. 18; section 2 was amended by section 10(2) of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58).

(7) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).

(8) 1964 c. 34; section 1 was amended by section 1 of, and the Schedule to, the Statute Law (Repeals) Act 1974 (c. 22).

(9) 2004 c. 28; section 6 was amended by section 3 of, and paragraphs 7 and 8 of the Schedule to, the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4) and section 6A was inserted by section 2 of that Act.

(10) 1967 c. 80; section 17 was amended by paragraph 42 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).