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STATUTORY INSTRUMENTS

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**2015 No. 1490**

**The Criminal Procedure Rules 2015**

**PART 11**

**DEFERRED PROSECUTION AGREEMENTS**

**Exercise of court's powers**

**11.2.**—(1) The court must determine an application to which this Part applies at a hearing, which—

- (a) must be in private, under rule 11.3 (Application to approve a proposal to enter an agreement);
- (b) may be in public or private, under rule 11.4 (Application to approve the terms of an agreement), rule 11.6 (Application to approve a variation of the terms of an agreement) or rule 11.9 (Application to postpone the publication of information by the prosecutor);
- (c) must be in public, under rule 11.5 (Application on breach of agreement) or rule 11.7 (Application to lift suspension of prosecution), unless the court otherwise directs.

(2) If at a hearing in private to which rule 11.4 or rule 11.6 applies the court approves the agreement or the variation proposed, the court must announce its decision and reasons at a hearing in public.

(3) The court must not determine an application under rule 11.3, rule 11.4 or rule 11.6 unless—

- (a) both parties are present;
- (b) the prosecutor provides the court with a written declaration that, for the purposes of the application—
  - (i) the investigator enquiring into the alleged offence or offences has certified that no information has been supplied which the investigator knows to be inaccurate, misleading or incomplete, and
  - (ii) the prosecutor has complied with the prosecution obligation to disclose material to the defendant; and
- (c) the defendant provides the court with a written declaration that, for the purposes of the application—
  - (i) the defendant has not supplied any information which the defendant knows to be inaccurate, misleading or incomplete, and
  - (ii) the individual through whom the defendant makes the declaration has made reasonable enquiries and believes the defendant's declaration to be true.

(4) The court must not determine an application under rule 11.5 or rule 11.7—

- (a) in the prosecutor's absence; or
- (b) in the absence of the defendant, unless the defendant has had at least 28 days in which to make representations.

- (5) If the court approves a proposal to enter an agreement—
  - (a) the general rule is that any further application to which this Part applies must be made to the same judge; but
  - (b) the court may direct other arrangements.
- (6) The court may adjourn a hearing—
  - (a) if either party asks, or on its own initiative;
  - (b) in particular, if the court requires more information about—
    - (i) the facts of an alleged offence,
    - (ii) the terms of a proposal to enter an agreement, or of a proposed agreement or variation of an agreement, or
    - (iii) the circumstances in which the prosecutor wants the court to decide whether the defendant has failed to comply with the terms of an agreement.
- (7) The court may—
  - (a) hear an application under rule 11.4 immediately after an application under rule 11.3, if the court approves a proposal to enter an agreement;
  - (b) hear an application under rule 11.7 immediately after an application under rule 11.5, if the court terminates an agreement.

*[Note. See paragraphs 7(4), 8(5), (6) and 10(5), (6) of Schedule 17 to the Crime and Courts Act 2013.*

*The Code for prosecutors issued under paragraph 6 of that Schedule contains guidance on fulfilling the prosecution duty of disclosure.]*