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STATUTORY INSTRUMENTS

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**2015 No. 1490**

**The Criminal Procedure Rules 2015**

**PART 24**

**TRIAL AND SENTENCE IN A MAGISTRATES' COURT**

**Setting aside a conviction or varying a costs etc. order**

**24.18.**—(1) This rule applies where under section 142 of the Magistrates' Courts Act 1980(1), the court can—

- (a) set aside a conviction, or
- (b) vary or rescind—
  - (i) a costs order, or
  - (ii) an order to which Part 31 applies (Behaviour orders).
- (2) The court may exercise its power—
  - (a) on application by a party, or on its own initiative;
  - (b) at a hearing, in public or in private, or without a hearing.
- (3) The court must not exercise its power in a party's absence unless—
  - (a) the court makes a decision proposed by that party;
  - (b) the court makes a decision to which that party has agreed in writing; or
  - (c) that party has had an opportunity to make representations at a hearing (whether or not that party in fact attends).
- (4) A party who wants the court to exercise its power must—
  - (a) apply in writing as soon as reasonably practicable after the conviction or order that that party wants the court to set aside, vary or rescind;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (c) in the application—
    - (i) explain why, as appropriate, the conviction should be set aside, or the order varied or rescinded,
    - (ii) specify any variation of the order that the applicant proposes,
    - (iii) identify any witness that the defendant wants to call, and any other proposed evidence,
    - (iv) say whether the defendant waives legal professional privilege, giving any relevant name and date, and

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(1) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

(v) if the application is late, explain why.

(5) The court may—

- (a) extend (even after it has expired) the time limit under paragraph (4), unless the court's power to set aside the conviction, or vary the order, can no longer be exercised;
- (b) allow an application to be made orally.

*[Note. Under section 142 of the Magistrates' Courts Act 1980—*

- (a) where a defendant is convicted by a magistrates' court, the court may order that the case should be heard again by different justices; and*
- (b) the court may vary or rescind an order which it has made when dealing with a convicted defendant,*

*if in either case it appears to the court to be in the interests of justice to do so.*

*The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that conviction or order.*

*See also rule 28.4 (Variation of sentence), which applies to an application under section 142 of the 1980 Act to vary or rescind a sentence.]*