
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 28

SENTENCING PROCEDURES IN SPECIAL CASES

Directions for commissioning medical reports for sentencing purposes

- 28.8.**—(1) This rule applies where for sentencing purposes the court requires—
- (a) a medical examination of the defendant and a report; or
 - (b) 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.
- (2) The court must—
- (a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;
 - (b) specify the nature of the expertise likely to be required for giving such opinion;
 - (c) identify each party or participant by whom a commission for such opinion must be prepared, who may be—
 - (i) a party (or party’s representative) acting on that party’s own behalf,
 - (ii) a party (or party’s representative) acting on behalf of the court, or
 - (iii) the court officer acting on behalf of the court;
 - (d) where there are available to the court arrangements with the National Health Service under which an assessment of a defendant’s mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;
 - (e) where no such arrangements are available to the court, or they will not be used, give directions for the preparation of a commission or commissions for an expert report or expert reports, including—
 - (i) such directions as can be made about supplying the expert or experts with the defendant’s medical records,
 - (ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert, and
 - (iii) directions about the arrangements that will apply for the payment of each expert;
 - (f) set a timetable providing for—
 - (i) the date by which a commission is to be delivered to each expert,
 - (ii) the date by which any failure to accept a commission is to be reported to the court,

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- (iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer, and
 - (iv) the date by which each report commissioned is to be received by the court; and
 - (g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.
- (3) A commission addressed to an expert must—
- (a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;
 - (b) include—
 - (i) the information required by the court to be supplied to the expert,
 - (ii) details of the timetable set by the court, and
 - (iii) details of the arrangements that will apply for the payment of the expert;
 - (c) identify the person (each person, if more than one) to whom a copy of the expert's report is to be supplied; and
 - (d) request confirmation that the expert from whom the opinion is sought—
 - (i) accepts the commission, and
 - (ii) will adhere to the timetable.

[Note. See also rule 3.10 (directions for commissioning medical reports in connection with fitness to participate in the trial, etc.).

For sentencing purposes the court may request a medical examination of the defendant and a report under—

- (a) *section 35 of the Mental Health Act 1983(1), under which the court may order the defendant's detention in hospital to obtain a medical report;*
- (b) *section 36 of the 1983 Act(2), under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial or sentence;*
- (c) *section 37 of the 1983 Act(3), 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 (section 37(3) allows a magistrates' court to make such an order without convicting the defendant if satisfied that the defendant did the act or made the omission charged);*

(1) 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).

(2) 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) and section 208(1) of, and paragraphs 53 and 55 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(3) 1983 c. 20; section 37 was amended by sections 55 and 56 of, and paragraph 12 of Schedule 4 and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43), section 67 of, and 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), section 304 of, and 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), sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), sections 122 and 142 of, and paragraph 1 of Schedule 19 and paragraph 2 of Schedule 26 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 28 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Courts Act 2015 (c. 2). 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.

- (d) *section 38 of the 1983 Act(4), under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;*
- (e) *section 157 of the Criminal Justice Act 2003(5), under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;*
- (f) *section 207 of the 2003 Act(6) (in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(7) (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 (b), (c) and (d) 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 (a), (e) and (f), the court requires the evidence of one medical practitioner so approved.

Under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(8), a magistrates' court may adjourn a trial to obtain medical reports.

Part 19 (Expert evidence) 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(9).

The Practice Direction includes a timetable for the commissioning and preparation of a report or reports which the court may adopt with such adjustments as the court directs.

Payments to medical practitioners for reports and for giving evidence are governed by section 19(3) of the Prosecution of Offences Act 1985(10) and by the Costs in Criminal Cases (General) Regulations 1986(11), regulation 17 (Determination of rates or scales of allowances payable out of central funds), regulation 20 (Expert witnesses, etc.) and regulation 25 (Written medical reports). The rates and scales of allowances payable under those Regulations are determined by the Lord Chancellor.]

Commencement Information

- II** Rule 28.8 in force at 5.10.2020, see Preamble

- (4) 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).
- (5) 2003 c. 44; section 157 was amended by section 38 of the Health and Social Care Act 2012 (c. 7).
- (6) 2003 c. 44; section 207 was amended by article 4(2) of, and paragraph 7 of Schedule 5 to, S.I. 2009/1182, article 14(a) and (b) of, and Part 1 of Schedule 5 to, S.I. 2010/813, section 72 of the Health and Social Care Act 2012 (c. 7), section 73 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 62 of, and paragraph 48 of Schedule 5 to, the Children and Social Work Act 2017 (c. 16).
- (7) 2008 c. 4.
- (8) 2000 c. 6.
- (9) 1983 c. 20; section 39 was amended by sections 2(1) and 5(1) of, and paragraph 107 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), article 3 of, and paragraph 13 of Schedule 7 to, S.I. 2007/961 and section 55 of, and paragraphs 24 and 28 of Schedule 5 to, the Health and Social Care Act 2012 (c. 7). Section 39A was inserted by section 27(1) of the Criminal Justice Act 1991 (c. 53).
- (10) 1985 c. 23; section 19(3) was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), sections 40 and 67 of, and paragraph 4 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 99 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).
- (11) S.I. 1986/1335; regulation 17 was amended by regulations 2 and 13 of S.I. 2008/2448, regulation 20 was amended by regulations 2 and 14 of S.I. 2008/2448 and by regulations 4 and 7 of S.I. 2012/1804, and regulation 25 was amended by regulations 2 and 10 of S.I. 2009/2720.

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