STATUTORY INSTRUMENTS

2009 No. 2087 (L.23)

SUPREME COURT OF ENGLAND AND WALES
MAGISTRATES' COURTS, ENGLAND AND WALES

The Criminal Procedure (Amendment) Rules 2009

Made - - - -	*19th July 2009*
Laid before Parliament	*29th July 2009*
Coming into force - -	*5th October 2009*

The Criminal Procedure Rule Committee makes the following Rules under section 69 of the Courts Act 2003(**a**) after consulting in accordance with section 72(1)(a) of the Courts Act 2003.

Citation, commencement and interpretation

1. These Rules may be cited as The Criminal Procedure (Amendment) Rules 2009 and shall come into force on 5th October 2009.

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in The Criminal Procedure Rules 2005(**b**).

Amendments to the Criminal Procedure Rules 2005

3. After rule 2.1(15) (When the Rules apply), insert—

"(16) The rules in Part 6 apply in cases in which an application to which that Part applies is made on or after 5th October, 2009, and in other cases if the court so orders. Otherwise, the rules in Part 62 (Proceeds of Crime Act 2002 - rules applicable to investigations) apply as if The Criminal Procedure (Amendment) Rules 2009 had not been made.

(17) The rules in Part 22 apply in cases in which a step or an application to which that Part applies is taken or made on or after 5th October, 2009, and in other cases if the court so orders. Otherwise, the rules in Parts 25 (Applications for public interest immunity and specific disclosure) and 26 (Confidential material) apply as if The Criminal Procedure (Amendment) Rules 2009 had not been made.

(18) The rules in Part 62 apply in cases in which an application to which that Part applies is made on or after 5th October, 2009, and in other cases if the court so orders. Otherwise, the rules replaced by those rules apply as if The Criminal Procedure (Amendment) Rules 2009 had not been made.

(19) The rules in Part 76 apply in cases in which the court makes an order about costs on or after 5th October, 2009, and in other cases if the court so orders. Otherwise, the rules in

(**a**) 2003 c. 39; section 69 was amended by sections 15(1) and 146 of, and paragraphs 308 and 332 of Schedule 4 and Part 2 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4).
(**b**) S.I. 2005/384; amended by S.I. 2006/353, 2006/2636, 2007/699, 2007/2317, 2007/3662, 2008/2076 and 2008/3269.

Part 78 (Costs orders against the parties) apply as if The Criminal Procedure (Amendment) Rules 2009 had not been made.".

4. After rule 3.8 (3) (Case preparation and progression), insert—

"(4) In order to prepare for the trial, the court must take every reasonable step to encourage and to facilitate the attendance of witnesses when they are needed.".

5. In rule 4.7 (Documents that must be served only by handing them over, leaving or posting them)—

(a) for paragraph (1), substitute—

"(1) The documents listed in paragraph (2) may be served—

(a) on an individual, only under rule 4.3(1)(a) (handing over) or rule 4.4(1) and (2)(a) (leaving or posting); and

(b) on a corporation, only under rule 4.3(1)(b) (handing over) or rule 4.4(1) and (2)(b) (leaving or posting).."; and

(b) after paragraph (2), insert—

"(3) An application under rule 62.3 for the court to punish for contempt of court may be served—

(a) on an individual, only under rule 4.3(1)(a) (by handing it to him or her);

(b) on a corporation, only under rule 4.3(1)(b) (by handing it to a person holding a senior position in that corporation).".

6. For Part 5 (Forms), substitute the Part as set out in Schedule 1 to these Rules.

7. For Part 6 (Court records), substitute the Part as set out in Schedule 2 to these Rules.

8. In Part 14 (The indictment), in the Table of Contents, in the first column, for "Signature and service of indictment", substitute "Service and signature of indictment".

9. In rule 14.1 (Signature and service of indictment)—

(a) in the heading, for "Signature and service of indictment", substitute "Service and signature of indictment"; and

(b) in paragraph (3)(a), for "sign and date the draft, which then becomes an indictment;", substitute "sign, and add the date of receipt on, the indictment;".

10. In rule 16.11(2)(d) (Crown Court hearings in chambers), for "63.2(5)", substitute "63.9(a)".

11. In rule 17.2(4) (Notice of waiver), for "Under Secretary of State, Home Office, London SW1H 9AT", substitute "Secretary of State for the Home Department, c/o Extradition Section, Home Office, 5th Floor, Fry Building, 2 Marsham Street, London SW1P 4DF".

12. In Part 19 (Bail in magistrates' courts and the Crown Court), in the Table of Contents—

(a) at the end of the first column, insert—

(i) "Grant of bail subject to electronic monitoring requirements", and

(ii) "Grant of bail subject to accommodation or support requirements"; and

(b) at the end of the second column, insert—

(i) "rule 19.26", and

(ii) "rule 19.27".

13. In Part 19 (Bail in magistrates' courts and the Crown Court)—

(a) in rule 19.2(6) (Application to a magistrates' court to reconsider grant of police bail), for "rule 4.2(1)", substitute "rule 4.11"; and

(b) after rule 19.25, insert—

"Grant of bail subject to electronic monitoring requirements

19.26.—(1) This rule applies where the court imposes electronic monitoring requirements (where available) as a condition of bail.

(2) The court officer must—

(a) inform the person responsible for the monitoring ('the monitor') of—

(i) the defendant's name, and telephone number (if available),

(ii) the offence or offences with which the defendant is charged,

(iii) details of the place at which the defendant's presence must be monitored,

(iv) the period or periods during which the defendant's presence at that place must be monitored, and

(v) if fixed, the date on which the defendant must surrender to custody;

(b) inform 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

(c) notify the monitor of any subsequent—

(i) variation or termination of the electronic monitoring requirements, or

(ii) fixing or variation of the date on which the defendant must surrender to custody.

*[Note. Under section 3(6ZAA) of the Bail Act 1976***(a)***, the conditions of bail that the court may impose include requirements for the electronic monitoring of a defendant's compliance with other bail conditions, for example a curfew. Sections 3AA***(b)** *and 3AB***(c)** *of the Act set out conditions for imposing such requirements. Under section 3AC***(d)** *of the Act, where the court imposes electronic monitoring requirements they must provide for the appointment of a monitor.]*

Grant of bail subject to accommodation or support requirements

19.27.—(1) This rule applies where the court imposes as a condition of bail a requirement (where available) that the defendant must—

(a) reside in accommodation provided for that purpose by, or on behalf of, a public authority;

(b) receive bail support provided by, or on behalf of, a public authority.

(2) The court officer must—

(a) inform the person responsible for the provision of any such accommodation or support ('the service provider') of—

(i) the defendant's name, and telephone number (if available),

(ii) the offence or offences with which the defendant is charged,

(iii) details of the requirement,

(iv) any other bail condition, and

(v) if fixed, the date on which the defendant must surrender to custody;

(b) inform the defendant and, where the defendant is under 16, an appropriate adult, of—

(**a**) 1976 c. 63; section 3(6ZAA) was inserted by section 131 of the Criminal Justice and Police Act 2001 (c. 16) and amended by section 51 of, and paragraphs 1 and 2 of Schedule 11 to, the Criminal Justice and Immigration Act 1998 (c. 4).

(**b**) 1976 c. 63; section 3AA was inserted by section 131 of the Criminal Justice and Police Act 2001 (c. 16) and amended by sections 51 and 149 of, and paragraphs 1 and 3 of Schedule 11 to, and Part 4 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**c**) 1976 c. 63; section 3AB was inserted by section 51 of, and paragraphs 1 and 4 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**d**) 1976 c. 63; section 3AC was inserted by section 51 of, and paragraphs 1 and 4 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(i) the service provider's name, and the means by which the service provider may be contacted, and

(ii) the address of any accommodation in which the defendant must reside; and

(c) notify the service provider of any subsequent—

(i) variation or termination of the requirement,

(ii) variation or termination of any other bail condition, and

(iii) fixing or variation of the date on which the defendant must surrender to custody.".

14. For Part 22 (Disclosure by the prosecution), substitute the Part as set out in Schedule 3 to these Rules.

15. Omit Parts 23 to 26 (Disclosure by the defence; Disclosure of expert evidence; Applications for Public Interest Immunity and specific disclosure; and Confidential material).

16. For Part 27 (Witness statements), substitute the Part as set out in Schedule 4 to these Rules.

17. In Part 32 (International co-operation)—

(a) in the Table of Contents—

(i) at the end of the first column, insert "Overseas freezing orders"; and

(ii) at the end of the second column, insert "rule 32.10";

(b) in rule 32.9(1) (Overseas record), omit "and shall be kept in a separate book"; and

(c) after the note after rule 32.9 (Overseas record), insert—

"Overseas freezing orders

32.10.—(1) This rule applies where a court is nominated under section 21(1) of the Crime (International Co-operation) Act 2003(**a**) to give effect to an overseas freezing order.

(2) Where the Secretary of State serves a copy of such an order on the court officer—

(a) the general rule is that the court will consider the order no later than the next business day;

(b) exceptionally, the court may consider the order later than that, but not more than 5 business days after service.

(3) The court must not consider the order unless—

(a) it is satisfied that the chief officer of police for the area in which the evidence is situated has had notice of the order; and

(b) that chief officer of police has had an opportunity to make representations, at a hearing if that officer wants.

(4) The court may consider the order—

(a) without a hearing; or

(b) at a hearing, in public or in private.".

18. For Part 33 (Expert evidence), substitute the Part as set out in Schedule 5 to these Rules.

19. In rule 39(1) (Time limits for beginning of trials), for "Supreme Court", substitute "Senior Courts".

20. In Part 59 (Proceeds of Crime Act 2002 – rules applicable only to restraint proceedings), in the Table of Contents—

(a) at the end of the first column, insert "Application to punish for contempt of court"; and

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(**a**) 2003 c. 32; section 21 will take effect from a date to be appointed.

(b) at the end of the second column, insert "rule 59.6".

21. After rule 59.5 (Application for discharge of a restraint order by the person who applied for the order), insert—

"**Application to punish for contempt of court**

59.6—(1) This rule applies where a person is accused of disobeying a restraint order.

(2) An applicant who wants the Crown Court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

[Note. The Crown Court has inherent power to punish for contempt of court a person who disobeys its order: see section 45 of the Senior Courts Act 1981(**a**)*.]*".

22. In Part 61 (Proceeds of Crime Act 2002 – rules applicable to restraint and receivership proceedings)—

(a) in rule 61.19 (Order for costs)—

(i) in paragraph (1), omit "under rule 78.1",

(ii) in paragraph (5), omit "under rule 78.1";

(b) at the end of the note after rule 61.19, insert "See section 52 of the Senior Courts Act 1981(**b**).";

(c) in rules 61.20 and 61.21, for 'taxing' wherever it occurs, substitute 'assessing';

(d) in rule 61.20(1)(b), for "rule 78.3", substitute "rule 76.11"; and

(e) in rule 61.21(1)(b), for "rule 78.3", substitute "rule 76.11".

23. For Part 62 (Proceeds of Crime Act 2002 – rules applicable to investigations), substitute the Part as set out in Schedule 6 to these Rules.

24. In Part 63 (Appeal to the Crown Court)—

(a) in rule 63.1(1)(a)(iii) (When this Part applies), after "2000", insert ", or paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003(**c**)";

(b) in the note after rule 63.1 (When this Part applies)—

(i) for "Supreme Court", substitute "Senior Courts",

(ii) in sub-paragraph (c) of the second paragraph, after "2000", insert ", or under paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003";

(c) in the note after rule 63.8 (Abandoning an appeal), for "Supreme Court", substitute "Senior Courts"; and

(d) in the note after 63.10 (Constitution of the Crown Court), for "Supreme Court", substitute "Senior Courts".

25. In rule 64.7(1) (Application to the Crown Court to state a case), for "Supreme Court", substitute "Senior Courts".

26. In Part 65 (Appeal to the Court of Appeal: general rules)—

(a) in the note after rule 65.1(1) (When this Part applies), for "Supreme Court", substitute "Senior Courts";

(b) in the last paragraph of the note after rule 65.3 (Power to vary requirements), for "House of Lords", substitute "Supreme Court"; and

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(**a**) 1981 c. 54; the words "Senior Courts" are to be substituted for "Supreme Court" in the title of this Act by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from 1 October 2009.

(**b**) 1981 c. 54; section 52 was amended by section 31 of, and Part II of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23), article 3 and paragraphs 11 and 12(a) of the Schedule to The Courts Act (Consequential Amendments) Order 2004 (S.I. 2004/2035), and it is to be amended by section 59 of, and paragraph 26 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) from 1 October 2009.

(**c**) 2003 c. 44.

(c) in rule 65.6 (Hearings)—

(i) for paragraph (3), substitute—

"(3) Where the appellant wants to appeal against an order restricting public access to a trial, the court—

(a) may decide without a hearing—

(i) an application, including an application for permission to appeal,

and

(ii) an appeal; but

(b) must announce its decision on such an appeal at a hearing in public.";

(ii) in paragraph (4), for "House of Lords", substitute "Supreme Court".

27. In the note after rule 68.3 (Form of appeal notice), for "Supreme Court", substitute "Senior Courts".

28. In the note after rule 68.4 (Crown Court judge's certificate that case is fit for appeal), for "Supreme Court", substitute "Senior Courts".

29. In the note after rule 68.8 (Application for bail pending appeal or retrial), for "Supreme Court", substitute "Senior Courts".

30. In Part 71 (Appeal to the Court of Appeal under the Proceeds of Crime Act 2002 – general rules)—

(a) in the Table of Contents, at the end of the first column, for "House of Lords", substitute "Supreme Court"; and

(b) in rule 71.10 (Appeal to House of Lords), for "House of Lords", in each place it occurs, substitute "Supreme Court".

31. In Part 74—

(a) for "House of Lords", in each place it occurs, substitute "Supreme Court"; and

(b) in the note after rule 74.1, omit the eighth paragraph, which provides—

"When section 40 of the Constitutional Reform Act 2005 and Schedule 9, paragraphs 16, 23 and 48 of that Act come into force the Supreme Court will take over the jurisdiction of the House of Lords under the provisions listed above. When that happens, references in this Part to the House of Lords must be read as references to the Supreme Court.".

32. For Part 76 (Representation Orders), substitute the Part as set out in Schedule 7 to these Rules.

33. Omit Part 77 (Recovery of defence costs orders) and Part 78 (Costs orders against the parties).

34. In the Arrangement of Rules contained in the Criminal Procedure Rules 2005—

(a) in the entry for Part 5, for "Forms", substitute "Forms and court records";

(b) before the entry for Part 6 "Court records", insert a new division heading "Preliminary proceedings";

(c) in the entry for Part 6, for "Court records", substitute "Investigation orders";

(d) before the entry for Part 7 "Starting a prosecution in a magistrates' court", omit the division heading "Preliminary proceedings";

(e) in the entry for Part 22, for "Disclosure by the prosecution", substitute "Disclosure";

(f) omit the entries for Parts 23 to 26 (Disclosure by the defence; Disclosure of expert evidence; Applications for public interest immunity and specific disclosure; and Confidential material).

(g) before the entry for Part 62 (Proceeds of Crime Act 2002 – rules applicable to investigations), insert a new division heading "Contempt of court";

(h) in the entry for Part 62, for "Proceeds of Crime Act 2003 – rules applicable to investigations", substitute "Contempt of court";

(i) in the entry for Part 74, for "House of Lords", substitute "Supreme Court";

(j) in the entry for Part 76, for "Representation Orders", substitute "Costs"; and

(k) omit the entries for Part 77 (Recovery of Defence Costs Orders) and Part 78 (Costs orders against the parties).

Judge, C.J.

Hooper, L.J.

Thomas, L.J.

Openshaw, J.

Charles Wide

Roderick Denyer

Stephen Dawson

Nicholas Moss

Tessa Szagun

Keir Starmer

Patrick Gibbs

Tom Little

Michael Caplan

Derek French

Martin Baker

James Riches

Jeremy Corbett

I allow these Rules which shall come into force on 5th October 2009.

Jack Straw
Lord Chancellor

19th July 2009

SCHEDULE 1

Rule 6

"Part 5

Forms and court records

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Section 1: forms

Forms

5.1. The forms set out in the Practice Direction shall be used as appropriate in connection with the rules to which they apply.

Magistrates' courts forms in Welsh

5.2.—(1) Subject to the provisions of this rule, the Welsh language forms set out in the Practice Direction or forms to the like effect may be used in connection with proceedings in magistrates' courts in Wales.

(2) Both a Welsh form and an English form may be used in the same document.

(3) When only a Welsh form set out in the Practice Direction accompanying this rule, or only the corresponding English form, is used in connection with proceedings in magistrates' courts in Wales, there shall be added the following words in Welsh and English:

> "Darperir y ddogfen hon yn Gymraeg / Saesneg os bydd arnoch ei heisiau. Dylech wneud cais yn ddi-oed i (Glerc Llys yr Ynadon) (rhodder yma'r cyfeiriad) .. ..
>
> This document will be provided in Welsh / English if you require it. You should apply immediately to (the Justices' Clerk to the Magistrates' Court) (address) .. .."

(If a person other than a justices' clerk is responsible for sending or giving the document, insert that person's name instead.)

(4) The justices' clerk or other person responsible for the service of a form bearing the additional words set out in paragraph (3) above shall, if any person upon whom the form is served so requests, provide him with the corresponding English or Welsh form.

(5) In this rule any reference to serving a document shall include the sending, giving or other delivery of it.

(6) In the case of a discrepancy between an English and Welsh text the English text shall prevail.

[Formerly rules 2 to 6 of, and Schedule 2 to, The Magistrates' Courts (Welsh Forms) Rules 1986(**a**)*.]*

Signature of magistrates' courts forms by justices' clerk

5.3.—(1) Subject to paragraph (2) below, where any form prescribed by these Rules contains provision for signature by a justice of the peace only, the form shall have effect as if it contained provision in the alternative for signature by the justices' clerk.

(2) This rule shall not apply to any form of information, complaint, statutory declaration or warrant, other than a warrant of commitment or of distress.

(3) In this rule where a signature is required on a form or warrant other than an arrest, remand or commitment warrant, an electronic signature incorporated into the document will satisfy this requirement.

[Formerly rule 109 of The Magistrates' Court Rules 1981(**b**)*.]*

Section 2: court records

Magistrates' court register

5.4.—(1) A magistrates' court officer shall keep a register in which there shall be entered—

(a) a minute or memorandum of every adjudication of the court; and

(b) a minute or memorandum of every other proceeding or thing required by these Rules or any other enactment to be so entered.

(2) The register may be stored in electronic form on the court computer system and entries in the register shall include, where relevant, the following particulars—

(a) the name of the informant, complainant or applicant;

(b) the name and date of birth (if known) of the defendant or respondent;

(c) the nature of offence, matter of complaint or details of the application;

(d) the date of offence or matter of complaint;

(e) the plea or consent to order; and

(f) the minute of adjudication.

(3) Particulars of any entry relating to a decision about bail, or the reasons for any such decision, or the particulars of any certificate granted under section 5(6A) of the Bail Act 1976(**c**), may be made in a record separate from that in which the entry recording the decision itself is made; but any such separate record shall be regarded as forming part of the register.

(**a**) S.I. 1986/1079, modified by sections 43 and 44 of the Criminal Justice and Court Services Act 2000 (c. 43).

(**b**) S.I. 1981/552, amended by S.I. 2003/1236.

(**c**) 1976 c. 63; section 5(6A) was inserted by section 60 of the Criminal Justice Act 1982 (c. 48) and amended by section 165 of, and paragraph 53 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6); and, in relation to certain cases, by section 41 of, and paragraph 48 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). It is further amended by sections 41 and 331 of, and paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(4) Where, by virtue of section 128(3A) of the Magistrates' Courts Act 1980(**a**), an accused gives his consent to the hearing and determination in his absence of any application for his remand on an adjournment of the case under sections 5, 10(1) or 18(4)(**b**) of that Act, the court shall cause the consent of the accused, and the date on which it was notified to the court, to be entered in the register.

(5) Where any consent mentioned in paragraph (4) is withdrawn, the court shall cause the withdrawal of the consent and the date on which it was notified to the court to be entered in the register.

(6) On the summary trial of an information, the accused's plea shall be entered in the register.

(7) Where a court tries any person summarily in any case in which he may be tried summarily only with his consent, the court shall cause his consent to be entered in the register and, if the consent is signified by a person representing him in his absence, the court shall cause that fact also to be entered in the register.

(8) Where a person is charged before a magistrates' court with an offence triable either way, the court shall cause the entry in the register to show whether he was present when the proceedings for determining the mode of trial were conducted; and, if they were conducted in his absence, whether they were so conducted by virtue of section 18(3) of the 1980 Act (disorderly conduct on his part) or by virtue of section 23(1) of that Act(**c**) (consent signified by person representing him).

(9) In any case to which section 22 of the 1980 Act(**d**) (certain offences triable either way to be tried summarily if value involved is small) applies, the court shall cause its decision as to the value involved or, as the case may be, the fact that it is unable to reach such a decision to be entered in the register.

(10) Where a court has power under section 53(3) of the 1980 Act to make an order with the consent of the defendant without hearing evidence, the court shall cause any consent of the defendant to the making of the order to be entered in the register.

(11) In the case of conviction or dismissal, the register shall clearly show the nature of the offence of which the accused is convicted or, as the case may be, the nature of the offence charged in the information that is dismissed.

(12) An entry of a conviction in the register shall state the date of the offence.

(13) Where a court is required under section 130(3) of the Powers of Criminal Courts (Sentencing) Act 2000(**e**) to give reasons for not making a compensation order the court shall cause the reasons given to be entered in the register.

(14) Where a court passes a custodial sentence, the court shall cause a statement of whether it obtained and considered a pre-sentence report before passing sentence to be entered in the register.

(15) Every register shall be open to inspection during reasonable hours by any justice of the peace, or any person authorised in that behalf by a justice of the peace or the Lord Chancellor.

(**a**) 1980 c. 43; section 128(3A) was inserted by section 59 of, and paragraph 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and amended by section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 and sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25); and is further amended by section 41 of, and paragraph 51 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.

(**b**) 1980 c. 43; section 5 was amended by section 59 of, and paragraph 1(a) of Schedule 9 to, the Criminal Justice Act 1982 (c. 48) and is repealed by paragraph 51 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; section 18(4) was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48).

(**c**) 1980 c. 43; section 23(1) was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 2000 (c. 41).

(**d**) 1980 c. 43; section 22 was amended by sections 38 and 170(2) of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 2(2) of the Aggravated Vehicle Taking Act 1992 (c. 11) and sections 46 and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(**e**) 2000 c. 6.

(16) A record of summary conviction or order made on complaint required for an appeal or other legal purpose may be in the form of certified extract from the court register.

(17) Such part of the register as relates to proceedings in a youth court may be recorded separately and stored in electronic form on the court computer system.

*[Formerly rules 16 and 66 of The Magistrates' Court Rules 1981(**a**), and rule 25 of The Magistrates' Courts (Children and Young Persons) Rules 1992(**b**).]*

Registration of endorsement of licence under section 57 of the Road Traffic Offenders Act 1988

5.5 A magistrates' court officer or justices' clerk who, as a fixed penalty clerk within the meaning of section 69(4) of the Road Traffic Offenders Act 1988(**c**), endorses a driving licence under section 57(3) or (4) of that Act(**d**) (endorsement of licences without hearing) shall register the particulars of the endorsement in a record separate from the register kept under rule 5.4; but any such record shall be regarded as forming part of the register.

[Formerly rule 66A of The Magistrates' Courts Rules 1981.]

Registration of certificate issued under section 70 of the Road Traffic Offenders Act 1988

5.6 A magistrates' court officer shall register receipt of a registration certificate issued under section 70 of the Road Traffic Offenders Act 1988(**e**) (sum payable in default of fixed penalty to be enforced as a fine) in a record separate from the register kept under rule 5.4; but any such record shall be regarded as forming part of the register.

[Formerly rule 66B of The Magistrates' Courts Rules 1981.]

Proof of proceedings in magistrates' courts

5.7 The register of a magistrates' court, or an extract from the register certified by the magistrates' court officer as a true extract, shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register.

[Formerly rule 68 of The Magistrates' Courts Rules 1981. As to the requirement to keep a register, see rule 5.4.]

(**a**) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1986/1332, 1988/2132, 1992/709, 1992/2072, 1993/1183, 2001/610 and 2003/1236.

(**b**) S.I. 1992/2071, amended by S.I. 2003/1236.

(**c**) 1988 c. 53; section 69(4) was amended by section 48 of, and paragraph 105 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), section 109 of, and paragraph 315 of Schedule 8 to, the Courts Act 2003 (c. 39), and section 9 of, and paragraphs 2 and 20 of Schedule 2 to, the Road Safety Act 2006 (c. 49).

(**d**) 1988 c. 53; section 57(3) and (4) was amended by regulations 2(2) and (3) of, and paragraph 17 of Schedule 2 to, S.I. 1990/144 and section 5 of, and paragraphs (1) and (5) of Schedule 1 to, the Road Safety Act 2006 (c. 49).

(**e**) 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 section 5 of, and paragraphs 1 and 12 of Schedule 1 to, the Road Safety Act 2006 (c. 49).

SCHEDULE 2

Rule 7

Part 6

Investigation orders

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Application to punish for contempt of court	rule 6.13

Section 4: orders under the Proceeds of Crime Act 2002

Application for an order under the Proceeds of Crime Act 2002	rule 6.14
Content of application for a production order	rule 6.15
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Section 1: understanding and applying this Part

When this Part applies

6.1.—(1) Sections 2 and 3 of this Part apply where, for the purposes of a terrorist investigation—

(a) a Circuit judge can make, vary or discharge—

(i) an order for the production of, or for giving access to, material, or for a statement of its location, under paragraphs 5 and 10 of Schedule 5 to the Terrorism Act 2000(**a**),

(ii) an explanation order, under paragraphs 10 and 13 of Schedule 5 to the 2000 Act(**b**),

(iii) a customer information order, under paragraphs 1 and 4 of Schedule 6 to the 2000 Act(**c**);

(b) a Circuit judge can make, and the Crown Court can vary or discharge, an account monitoring order, under paragraphs 2 and 4 of Schedule 6A to the 2000 Act(**d**).

(2) Sections 2 and 4 of this Part apply where, for the purposes of a confiscation investigation or a money laundering investigation, a Crown Court judge can make, and the Crown Court can vary or discharge—

(a) a production order, under sections 345 and 351 of the Proceeds of Crime Act 2002(**e**);

(b) an order to grant entry, under sections 347 and 351 of the 2002 Act(**f**);

(c) a disclosure order, under sections 357 and 362 of the 2002 Act(**g**);

(d) a customer information order, under sections 363 and 369 of the 2002 Act(**h**);

(e) an account monitoring order, under sections 370 and 375 of the 2002 Act(**i**).

[Note. In outline, the orders to which these rules apply are—

(a) under the Terrorism Act 2000—

(i) an order requiring a person to produce, give access to, or state the location of material sought in a terrorist investigation,

(ii) an explanation order, requiring a person to explain material obtained under a production, etc. order,

(iii) a customer information order, requiring a financial institution to provide information about an account holder,

(iv) an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution;

(b) under the Proceeds of Crime Act 2002—

(**a**) 2000 c. 11; paragraph 5 of Schedule 5 is to be amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39) from a date to be appointed; paragraph 10 of Schedule 5 was amended by sections 65 and 109 of, and paragraph 9 of Schedule 4 and paragraph 389 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) 2000 c. 11; paragraph 13 is to be amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), from a date to be appointed.

(**c**) 2000 c. 11; paragraph 1 of Schedule 6 was amended by section 3 of, and paragraph 6 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24).

(**d**) 2000 c. 11.

(**e**) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27) and section 351 was amended by sections 74 and 77 of, and paragraphs 103 and 104 of Schedule 8 and paragraphs 1 and 6 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

(**f**) 2002 c. 29.

(**g**) 2002 c. 29; section 357 was amended by sections 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27) and section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**h**) 2002 c. 29; section 363 was amended by section 77 of, and paragraphs 1 and 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27) and section 369 was amended by section 74 of, and paragraphs 103 and 111 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**i**) 2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27) and section 375 was amended by section 74 of, and paragraphs 103 and 112 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(i) a production order, requiring a person to produce or give access to material sought in a confiscation or money laundering investigation,

(ii) an order to grant entry, requiring a person to allow entry to premises so that a production order can be enforced,

(iii) a disclosure order, requiring a person to provide information or documents, or to answer questions,

(iv) a customer information order, requiring a financial institution to provide information about an account holder,

(v) an account monitoring order, requiring a financial institution to provide specified information, for a specified period, about an account held at that institution.

For all the relevant terms under which these orders can be made, see the provisions listed in rule 6.1.

When the relevant provisions of the Courts Act 2003 come into force, a District Judge (Magistrates' Courts) will have the same powers as a Circuit judge under the Terrorism Act 2000.

Under section 8 of the Senior Courts Act 1981(**a**)*, a High Court judge, a Circuit judge, a Recorder and a District Judge (Magistrates' Courts) each may act as a Crown Court judge.*

As well as governing procedure on an application to the Crown Court, under the following provisions rules may govern the procedure on an application to an individual judge—

(a) paragraph 10 of Schedule 5, paragraph 4 of Schedule 6 and paragraph 5 of Schedule 6A to the Terrorism Act 2000; and

(b) sections 351, 362, 369 and 375 of the Proceeds of Crime Act 2002.

Under the Terrorism Act 2000 and under the Proceeds of Crime Act 2002, in some circumstances an individual judge can issue a warrant to search for and seize material. Applications for such warrants are not subject to these rules.]

Meaning of 'court', 'applicant' and 'respondent'

6.2. In this Part—

(a) a reference to the 'court' includes a reference to any judge who can exercise a power to which this Part applies;

(b) 'applicant' means any person who can apply for an order to which this Part applies; and

(c) 'respondent' means a person against whom such an order is sought or made.

Section 2: general rules

Exercise of court's powers

6.3.—(1) The court must determine an application for an order—

(a) at a hearing (which will be in private unless the court otherwise directs); and

(b) in the applicant's presence.

(**a**) 1981 c. 54; section 8 was amended by sections 65 and 109 of, and paragraph 259 of Schedule 8 to, the Courts Act 2003 (c. 39) and, the words "Senior Courts" are to be substituted for "Supreme Court" in the title of this Act by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from 1 October 2009.

(2) The court must not determine such an application in the absence of the respondent or any other person affected, unless—

(a) the absentee has had at least 2 business days in which to make representations; or

(b) the court is satisfied that—

(i) the applicant cannot identify or contact the absentee,

(ii) it would prejudice the investigation if the absentee were present, or

(iii) it would prejudice the investigation to adjourn or postpone the application so as to allow the absentee to attend.

(3) The court may determine an application to vary or discharge an order—

(a) at a hearing (which will be in private unless the court otherwise directs), or without a hearing; and

(b) in the absence of—

(i) the applicant,

(ii) the respondent,

(iii) any other person affected by the order.

Court's power to vary requirements under this Part

6.4.—(1) The court may—

(a) shorten or extend (even after it has expired) a time limit under this Part;

(b) dispense with a requirement for service under this Part (even after service was required); and

(c) consider an application made orally instead of in writing.

(2) A person who wants an extension of time must—

(a) apply when serving the application for which it is needed; and

(b) explain the delay.

Custody of documents

6.5. Unless the court otherwise directs, the court officer may—

(a) keep a written application; or

(b) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

Section 3: orders under the Terrorism Act 2000

[Note. The rules in Section 2 (general rules) also apply.]

Application for an order under the Terrorism Act 2000

6.6.—(1) This rule applies where an applicant wants the court to make one of the orders listed in rule 6.1(1).

(2) The applicant must—

(a) apply in writing;

(b) serve the application on—

(i) the court officer, and

(ii) the respondent (unless the court otherwise directs);

(c) identify the respondent;

(d) give the information required by whichever of rules 6.7 to 6.10 applies; and

(e) serve any order made on the respondent.

[Note. Under rules 6.3 and 6.4, the court may—

(a) exercise its powers in a respondent's absence; and

(b) dispense with a requirement for service.

Under rule 6.12, an applicant may withhold information from material that is served on a respondent.]

Content of application for a production etc. order

6.7. As well as complying with rule 6.6, an applicant who wants the court to make an order for the production of, or access to, material, or for a statement of its location, must—

(a) describe that material;

(b) explain why the applicant thinks the material is—

(i) in the respondent's possession, custody or power, or

(ii) likely to be so within 28 days of the order;

(c) explain how the material constitutes or contains excluded material or special procedure material;

(d) confirm that none of the material is expected to be subject to legal privilege;

(e) explain why the material is likely to be of substantial value to the investigation;

(f) explain why it is in the public interest for the material to be produced, or for the applicant to be given access to it, having regard to—

(i) the benefit likely to accrue to the investigation if it is obtained, and

(ii) the circumstances in which the respondent has the material, or is expected to have it; and

(g) propose—

(i) the terms of the order, and

(ii) the period within which it should take effect.

[Note. See paragraphs 5 to 9 of Schedule 5 to the Terrorism Act 2000. The applicant for a production, etc. order must be a constable.

Under paragraph 4 of Schedule 5 to the 2000 Act, 'legal privilege', 'excluded material' and 'special procedure material' mean the same as under sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984.

The period within which an order takes effect must be specified in the order and, unless the court otherwise directs, must be –

(a) where the respondent already has the material, 7 days from the date of the order; or

(b) where the respondent is likely to have the material within 28 days, 7 days from the date the respondent notifies the applicant of its receipt.]

Content of application for an explanation order

6.8. As well as complying with rule 6.6, an applicant who wants the court to make an explanation order must—

(a) identify the material that the applicant wants the respondent to explain;

(b) confirm that the explanation is not expected to infringe legal privilege; and

(c) propose—

(i) the terms of the order, and

(ii) the period within which it should take effect, if 7 days from the date of the order would not be appropriate.

[Note. See paragraph 13 of Schedule 5 to the Terrorism Act 2000. The applicant for an explanation order must be a constable.

An explanation order can require a lawyer to provide a client's name and address.]

Content of application for a customer information order

6.9. As well as complying with rule 6.6, an applicant who wants the court to make a customer information order must—

(a) explain why it is desirable for the purposes of the investigation to trace property said to be terrorist property within the meaning of the Terrorism Act 2000;

(b) explain why the order will enhance the effectiveness of the investigation; and

(c) propose the terms of the order.

[Note. See Schedule 6 to the Terrorism Act 2000. The applicant for a customer information order must be a police officer of at least the rank of superintendent.

'Customer information' is defined by paragraph 7 of Schedule 6 to the 2000 Act. 'Terrorist property' is defined by section 14 of the Act(**a**)*.]*

Content of application for an account monitoring order

6.10. As well as complying with rule 6.6, an applicant who wants the court to make an account monitoring order must—

(a) specify—

(**a**) 2000 c. 11.

(i) the information sought,

(ii) the period during which the applicant wants the respondent to provide that information (to a maximum of 90 days), and

(iii) where, when and in what manner the applicant wants the respondent to provide that information;

(b) explain why it is desirable for the purposes of the investigation to trace property said to be terrorist property within the meaning of the Terrorism Act 2000;

(c) explain why the order will enhance the effectiveness of the investigation; and

(d) propose the terms of the order.

[Note. See Schedule 6A to the Terrorism Act 2000. The applicant for an account monitoring order must be a police officer.

'Terrorist property' is defined by section 14 of the Act.]

Application to vary or discharge an order

6.11.—(1) This rule applies where one of the following wants the court to vary or discharge an order listed in rule 6.1(1)—

(a) an applicant;

(b) the respondent; or

(c) a person affected by the order.

(2) That applicant, respondent or person affected must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on—

(i) the court officer, and

(ii) the respondent, applicant, or any person known to be affected, as applicable;

(c) explain why it is appropriate for the order to be varied or discharged;

(d) propose the terms of any variation; and

(e) ask for a hearing, if one is wanted, and explain why it is needed.

Application containing information withheld from a respondent or other person

6.12.—(1) This rule applies where—

(a) an applicant serves on a respondent or other person an application for one of the orders listed in rule 6.1(1), or for the variation or discharge of such an order; and

(b) the application includes information that the applicant thinks ought not be revealed to that recipient.

(2) The applicant must—

(a) omit that information from the part of the application that is served on the respondent or other person;

(b) mark the other part, to show that it is only for the court; and

(c) in that other part, explain why the applicant has withheld it.

(3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of the respondent and any other person.

(4) At a hearing of an application to which this rule applies—

(a) the general rule is that the court will receive, in the following sequence—

(i) representations first by the applicant and then by the respondent and any other person, in the presence of them all, and then

(ii) further representations by the applicant, in the others' absence; but

(b) the court may direct other arrangements for the hearing.

Application to punish for contempt of court

6.13.—(1) This rule applies where a person is accused of disobeying—

(a) a production etc. order made under paragraph 5 of Schedule 5 to the Terrorism Act 2000;

(b) an explanation order made under paragraph 13 of that Schedule; or

(c) an account monitoring order made under paragraph 2 of Schedule 6A to that Act.

(2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See paragraphs 10(1) and 13(5) of Schedule 5, and paragraph 6(1) of Schedule 6A, to the Terrorism Act 2000, and section 45 of the Senior Courts Act 1981(**a**)*.*

Disobedience to an explanation order or to a customer information order is an offence: see paragraph 14 of Schedule 5, and paragraph 1(3) of Schedule 6, to the 2000 Act.]

Section 4: orders under the Proceeds of Crime Act 2002

[Note. The rules in Section 2 (general rules) also apply.]

Application for an order under the Proceeds of Crime Act 2002

6.14.—(1) This rule applies where an applicant wants the court to make one of the orders listed in rule 6.1(2).

(2) The applicant must—

(**a**) 1981 c. 54; the words "Senior Courts" are to be substituted for "Supreme Court" in the title of this Act by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from 1 October 2009.

(a) apply in writing;

(b) serve the application on—

(i) the court officer, and

(ii) the respondent (unless the court otherwise directs);

(c) identify—

(i) the respondent, and

(ii) the person the subject of the confiscation or money laundering investigation;

(d) explain why the applicant thinks the person under investigation has—

(i) benefited from criminal conduct, in the case of a confiscation investigation, or

(ii) committed a money laundering offence, in the case of a money laundering investigation;

(e) give the additional information required by whichever of rules 6.15 to 6.19 applies; and

(f) serve any order made on each respondent.

[Note. Under rules 6.3 and 6.4, the court may—

(a) exercise its powers in a respondent's absence; and

(b) dispense with a requirement for service.

Under rule 6.21, an applicant may withhold information from material that is served on a respondent.

See also the code of practice for those exercising functions as officers and investigators issued under section 377 of the 2002 Act(**a**)*, and the code of practice for prosecutors and others issued under section 377A of that Act*(**b**)*.]*

Content of application for a production order

6.15. As well as complying with rule 6.14, an applicant who wants the court to make an order for the production of, or access to, material, must—

(a) describe that material;

(b) explain why the applicant thinks the material is in the respondent's possession or control;

(c) confirm that none of the material is—

(i) expected to be subject to legal privilege, or

(ii) excluded material;

(d) explain why the material is likely to be of substantial value to the investigation;

(e) explain why it is in the public interest for the material to be produced, or for the applicant to be given access to it, having regard to—

(i) the benefit likely to accrue to the investigation if it is obtained, and

(ii) the circumstances in which the respondent has the material; and

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(**a**) 2002 c. 29; section 377 was amended by section 74 of, and paragraphs 103 and 114 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**b**) 2002 c. 29; section 377A was inserted by section 74 of, and paragraphs 103 and 115 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(f) propose—

(i) the terms of the order, and

(ii) the period within which it should take effect, if 7 days from the date of the order would not be appropriate.

[Note. See sections 345 to 350 of the Proceeds of Crime Act 2002(**a**)*. Under those provisions—*

(a) 'excluded material' means the same as under section 11 of the Police and Criminal Evidence Act 1984; and

(b) 'legal privilege' is defined by section 348 of the 2002 Act.

The applicant for a production order must be an 'appropriate officer' as defined by section 378(1), (4) and (5) of the 2002 Act(**b**)*.]*

Content of application for an order to grant entry

6.16. An applicant who wants the court to make an order to grant entry must—

(a) specify the premises to which entry is sought;

(b) explain why the order is needed; and

(c) propose the terms of the order.

[Note. See section 347 of the Proceeds of Crime Act 2002. The applicant for an order to grant entry must be an 'appropriate officer' as defined by section 378(1), (4) and (5) of the Act.

An order to grant entry may be made only in aid of a production order.]

Content of application for a disclosure order

6.17. As well as complying with rule 6.14, an applicant who wants the court to make a disclosure order must—

(a) describe in general terms the information that the applicant wants the respondent to provide;

(b) confirm that none of the information is—

(i) expected to be subject to legal privilege, or

(ii) excluded material;

(c) explain why the information is likely to be of substantial value to the investigation;

(d) explain why it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if it is obtained; and

(e) propose the terms of the order.

[Note. See sections 357, 358 and 361 of the Proceeds of Crime Act 2002(**c**)*. The applicant for a disclosure order must be a 'relevant authority' as defined by section 357(7). In relation to a*

(**a**) 2002 c. 29; sections 345 and 346 were amended by section 75 of the Serious Crime Act 2007 (c. 27), and section 350 was amended by section 77 of, and paragraphs 1 and 5 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

(**b**) 2002 c. 29; section 378 was amended by section 59 of, and paragraphs 168 and 175 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15) and sections 74, 77 and 80 of, and paragraphs 103 and 116 of Schedule 8, and paragraphs 1 and 13 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

(**c**) 2002 c. 29; section 357 was amended by section 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27) and section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

confiscation investigation, under section 357(2A) the applicant must have been asked to apply by an 'appropriate officer' as defined by section 378(1), (4) and (5) of the 2002 Act.

Under section 357(2) of the 2002 Act, a disclosure order may not be made in relation to a money laundering investigation.

A disclosure order can require a lawyer to provide a client's name and address.]

Content of application for a customer information order

6.18. As well as complying with rule 6.14, an applicant who wants the court to make a customer information order must—

(a) explain why customer information about the person under investigation is likely to be of substantial value to that investigation;

(b) explain why it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if it is obtained; and

(c) propose the terms of the order.

[Note. See sections 363, 364, 365 and 368 of the Proceeds of Crime Act 2002(**a**)*. The applicant for a customer information order must be an 'appropriate officer' as defined by section 378(1), (4) and (5) of the Act.*

'Customer information' is defined by section 364 of the 2002 Act.]

Content of application for an account monitoring order

6.19. As well as complying with rule 6.14, an applicant who wants the court to make an account monitoring order for the provision of account information must—

(a) specify—

(i) the information sought,

(ii) the period during which the applicant wants the respondent to provide that information (to a maximum of 90 days), and

(iii) when and in what manner the applicant wants the respondent to provide that information;

(b) explain why the information is likely to be of substantial value to the investigation;

(c) explain why it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if it is obtained; and

(d) propose the terms of the order.

[Note. See sections 370, 371 and 374 of the Proceeds of Crime Act 2002(**b**)*. The applicant for an account monitoring order must be an 'appropriate officer' as defined by section 378(1), (4) and (5) of the Act.*

'Account information' is defined by section 370 of the 2002 Act.]

(**a**) 2002 c. 29; section 363 was amended by section 77 of, and paragraphs 1 and 11 of Schedule 10 to, the Serious Crime Act 2007 (c. 27); section 364 was amended by section 107 of the Serious Crime Act 2007 (c. 27). There are other amendments to section 364 that are not relevant to these Rules.

(**b**) 2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).

Application to vary or discharge an order

6.20.—(1) This rule applies where one of the following wants the court to vary or discharge an order listed in rule 6.1(2)—

(a) an applicant;

(b) the respondent; or

(c) a person affected by the order.

(2) That applicant, respondent or person affected must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on—

(i) the court officer, and

(ii) the respondent, applicant, or any person known to be affected, as applicable;

(c) explain why it is appropriate for the order to be varied or discharged;

(d) propose the terms of any variation; and

(e) ask for a hearing, if one is wanted, and explain why it is needed.

Application containing information withheld from a respondent or other person

6.21.—(1) This rule applies where—

(a) an applicant serves on a respondent or other person an application for one of the orders listed in rule 6.1(2), or for the variation or discharge of such an order; and

(b) the application includes information that the applicant thinks ought not be revealed to that recipient.

(2) The applicant must—

(a) omit that information from the part of the application that is served on the respondent or other person;

(b) mark the other part, to show that it is only for the court; and

(c) in that other part, explain why the applicant has withheld it.

(3) A hearing of an application to which this rule applies may take place, wholly or in part, in the absence of the respondent and any other person.

(4) At a hearing of an application to which this rule applies—

(a) the general rule is that the court will receive, in the following sequence—

(i) representations first by the applicant and then by the respondent and any other person, in the presence of them all, and then

(ii) further representations by the applicant, in the others' absence; but

(b) the court may direct other arrangements for the hearing.

Application to punish for contempt of court

6.22.—(1) This rule applies where a person is accused of disobeying—

(a) a production order made under section 345 of the Proceeds of Crime Act 2002(**a**); or

(b) an account monitoring order made under section 370 of that Act(**b**).

(2) An applicant who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 62 (Contempt of court).

[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order. See sections 351(7) and 375(6) of the Proceeds of Crime Act 2002, and section 45 of the Senior Courts Act 1981(**c**)*.*

Disobedience to a disclosure order or to a customer information order is an offence: see sections 359 and 366 of the 2002 Act.

Under section 342 of the 2002 Act, subject to the exceptions for which that section provides it is an offence to make a disclosure likely to prejudice an investigation or to interfere with documents relevant to it.]

(**a**) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27).
(**b**) 2002 c. 29; section 370 was amended by section 77 of, and paragraphs 1 and 12 of Schedule 10 to, the Serious Crime Act 2007 (c. 27).
(**c**) 1981 c. 54; the words "Senior Courts" are to be substituted for "Supreme Court" in the title of this Act by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from 1 October 2009.

SCHEDULE 3

Rule 14

Part 22

Disclosure

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When this Part applies

22.1. This Part applies—

(a) in a magistrates' court and in the Crown Court;

(b) where Parts I and II of the Criminal Procedure and Investigations Act 1996(**a**) apply.

[Note. A summary of the disclosure requirements of the Criminal Procedure and Investigations Act 1996 is at the end of this Part.]

Prosecution disclosure

22.2.—(1) This rule applies in the Crown Court where, under section 3 of the Criminal Procedure and Investigations Act 1996(**b**), the prosecutor—

(a) discloses prosecution material to the defendant; or

(b) serves on the defendant a written statement that there is no such material to disclose.

(2) The prosecutor must at the same time so inform the court officer.

Prosecutor's application for public interest ruling

22.3.—(1) This rule applies where—

(a) without a court order, the prosecutor would have to disclose material; and

(b) the prosecutor wants the court to decide whether it would be in the public interest to disclose it.

(**a**) 1996 c. 25.

(**b**) 1996 c. 25; section 3 has been amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(2) The prosecutor must—

(a) apply in writing for such a decision; and

(b) serve the application on—

(i) the court officer,

(ii) any person who the prosecutor thinks would be directly affected by disclosure of the material, and

(iii) the defendant, but only to the extent that serving it on the defendant would not disclose what the prosecutor thinks ought not be disclosed.

(3) The application must—

(a) describe the material, and explain why the prosecutor thinks that—

(i) it is material that the prosecutor would have to disclose,

(ii) it would not be in the public interest to disclose that material, and

(iii) no measure such as the prosecutor's admission of any fact, or disclosure by summary, extract or edited copy, adequately would protect both the public interest and the defendant's right to a fair trial;

(b) omit from any part of the application that is served on the defendant anything that would disclose what the prosecutor thinks ought not be disclosed (in which case, paragraph (4) of this rule applies); and

(c) explain why, if no part of the application is served on the defendant.

(4) Where the prosecutor serves only part of the application on the defendant, the prosecutor must—

(a) mark the other part, to show that it is only for the court; and

(b) in that other part, explain why the prosecutor has withheld it from the defendant.

(5) Unless already done, the court may direct the prosecutor to serve an application on—

(a) the defendant;

(b) any other person who the court considers would be directly affected by the disclosure of the material.

(6) The court must determine the application at a hearing which—

(a) will be in private, unless the court otherwise directs; and

(b) if the court so directs, may take place, wholly or in part, in the defendant's absence.

(7) At a hearing at which the defendant is present—

(a) the general rule is that the court will receive, in the following sequence—

(i) representations first by the prosecutor and any other person served with the application, and then by the defendant, in the presence of them all, and then

(ii) further representations by the prosecutor and any such other person in the defendant's absence; but

(b) the court may direct other arrangements for the hearing.

(8) The court may only determine the application if satisfied that it has been able to take adequate account of—

(a) such rights of confidentiality as apply to the material; and

(b) the defendant's right to a fair trial.

(9) Unless the court otherwise directs, the court officer—

(a) must not give notice to anyone other than the prosecutor—

(i) of the hearing of an application under this rule, unless the prosecutor served the application on that person, or

(ii) of the court's decision on the application;

(b) may—

(i) keep a written application or representations, or

(ii) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

[Note. The court's power to order that it is not in the public interest to disclose material is provided for by sections 3(6), 7(6)(**a**) *(where the investigation began between 1st April, 1997 and 3rd April, 2005) and 7A(8)*(**b**) *(where the investigation began on or after 4th April, 2005) of the Criminal Procedure and Investigations Act 1996.*

See also sections 16(**c**) *and 19*(**d**) *of the 1996 Act.]*

Defence disclosure

22.4. The defendant must serve any defence statement given under the Criminal Procedure and Investigations Act 1996 on—

(a) the court officer; and

(b) the prosecutor.

[Note. The Practice Direction sets out a form of defence statement. The defendant is not obliged to give a defence statement in a magistrates' court case.]

Defendant's application for prosecution disclosure

22.5.—(1) This rule applies where the defendant—

(a) has served a defence statement given under the Criminal Procedure and Investigations Act 1996; and

(b) wants the court to require the prosecutor to disclose material.

(2) The defendant must serve an application on—

(a) the court officer; and

(b) the prosecutor.

(3) The application must—

(**a**) 1996 c. 25; section 7 was repealed by sections 331 and 332 of, and paragraphs 20 and 25 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) with transitional provisions for certain offences in article 2 of S.I. 2005/1817.

(**b**) 1996 c. 25; section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

(**c**) 1996 c. 25; section 16 was amended by section 331 of, and paragraphs 20 and 32 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(**d**) 1996 c. 25; section 19 was amended by section 109 of, and paragraph 377 of Schedule 8 to, the Courts Act 2003 (c. 39), section 331 of, and paragraphs 20 and 34 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 of, and paragraph 251 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(a) describe the material that the defendant wants the prosecutor to disclose;

(b) explain why the defendant thinks there is reasonable cause to believe that—

(i) the prosecutor has that material, and

(ii) it is material that the Criminal Procedure and Investigations Act 1996 requires the prosecutor to disclose; and

(c) ask for a hearing, if the defendant wants one, and explain why it is needed.

(4) The court may determine an application under this rule—

(a) at a hearing, in public or in private; or

(b) without a hearing.

(5) The court must not require the prosecutor to disclose material unless the prosecutor—

(a) is present; or

(b) has had at least 14 days in which to make representations.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.

Under section 8 of the Criminal Procedure and Investigations Act 1996(**a**)*, a defendant may apply for prosecution disclosure only if the defendant has given a defence statement.]*

Review of public interest ruling

22.6.—(1) This rule applies where the court has ordered that it is not in the public interest to disclose material that the prosecutor otherwise would have to disclose, and—

(a) the defendant wants the court to review that decision; or

(b) the Crown Court reviews that decision on its own initiative.

(2) Where the defendant wants the court to review that decision, the defendant must—

(a) serve an application on—

(i) the court officer, and

(ii) the prosecutor; and

(b) in the application—

(i) describe the material that the defendant wants the prosecutor to disclose, and

(ii) explain why the defendant thinks it is no longer in the public interest for the prosecutor not to disclose it.

(3) The prosecutor must serve any such application on any person who the prosecutor thinks would be directly affected if that material were disclosed.

(4) The prosecutor, and any such person, must serve any representations on—

(a) the court officer; and

(b) the defendant, unless to do so would in effect reveal something that either thinks ought not be disclosed.

(**a**) 1996 c. 25; section 8 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 38 of the Criminal Justice Act 2003 (c. 44).

(5) The court may direct—

(a) the prosecutor to serve any such application on any person who the court considers would be directly affected if that material were disclosed;

(b) the prosecutor and any such person to serve any representations on the defendant.

(6) The court must review a decision to which this rule applies at a hearing which—

(a) will be in private, unless the court otherwise directs; and

(b) if the court so directs, may take place, wholly or in part, in the defendant's absence.

(7) At a hearing at which the defendant is present—

(a) the general rule is that the court will receive, in the following sequence—

(i) representations first by the defendant, and then by the prosecutor and any other person served with the application, in the presence of them all, and then

(ii) further representations by the prosecutor and any such other person in the defendant's absence; but

(b) the court may direct other arrangements for the hearing.

(8) The court may only conclude a review if satisfied that it has been able to take adequate account of—

(a) such rights of confidentiality as apply to the material; and

(b) the defendant's right to a fair trial.

[Note. The court's power to review a public interest ruling is provided for by sections 14 and 15 of the Criminal Procedure and Investigations Act 1996(**a**)*. Under section 14 of the Act, a magistrates' court may reconsider an order for non-disclosure only if a defendant applies. Under section 15, the Crown Court may do so on an application, or on its own initiative.*

See also sections 16 and 19 of the 1996 Act.]

Defendant's application to use disclosed material

22.7.—(1) This rule applies where a defendant wants the court's permission to use disclosed prosecution material—

(a) otherwise than in connection with the case in which it was disclosed; or

(b) beyond the extent to which it was displayed or communicated publicly at a hearing.

(2) The defendant must serve an application on—

(a) the court officer; and

(b) the prosecutor.

(3) The application must—

(a) specify what the defendant wants to use or disclose; and

(b) explain why.

(4) The court may determine an application under this rule—

(**a**) 1996 c. 25; section 14 was amended by section 331 of, and paragraphs 20 and 30 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 was amended by section 331 of, and paragraphs 20 and 31 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(a) at a hearing, in public or in private; or

(b) without a hearing.

(5) The court must not permit the use of such material unless—

(a) the prosecutor has had at least 28 days in which to make representations; and

(b) the court is satisfied that it has been able to take adequate account of any rights of confidentiality that may apply to the material.

[Note. The court's power to allow a defendant to use disclosed material is provided for by section 17 of the Criminal Procedure and Investigations Act 1996(**a**)*.*

See also section 19 of the 1996 Act.]

Unauthorised use of disclosed material

22.8.—(1) This rule applies where a person uses disclosed prosecution material in contravention of section 17 of the Criminal Procedure and Investigations Act 1996.

(2) The court may exercise its power to punish such a person for contempt of court—

(a) on an application by—

(i) the prosecutor, or

(ii) any person directly affected by the disclosure of the material; or

(b) on its own initiative.

(3) An applicant who wants the court to exercise that power must comply with the rules in Part 62 (Contempt of court).

(4) The court must not exercise its power to forfeit material used in contempt of court unless—

(a) the prosecutor; and

(b) any other person directly affected by the disclosure of the material,

is present, or has had at least 14 days in which to make representations.

(5) The provisions of Schedule 3 to the Contempt of Court Act 1981(**b**) apply to a magistrates' court's exercise of the power to which this rule applies.

[Note. Under section 17 of the Criminal Procedure and Investigations Act 1996, a defendant may use disclosed prosecution material—

(a) in connection with the case in which it was disclosed, including on an appeal;

(b) to the extent to which it was displayed or communicated publicly at a hearing in public; or

(c) with the court's permission.

Under section 18 of the 1996 Act, the court can punish for contempt of court any other use of disclosed prosecution material. See also section 19 of the 1996 Act.

(**a**) 1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(**b**) 1981 c. 49; Schedule 3 has been amended, but the amendment is not relevant to these rules.

Where Schedule 3 to the Contempt of Court Act 1981 applies, it modifies the provisions of the Magistrates' Courts Act 1980 to which it refers, so that the court can act on its own initiative against a person accused of contempt.]

Court's power to vary requirements under this Part

22.9. The court may—

(a) shorten or extend (even after it has expired) a time limit under this Part;

(b) allow a defence statement to be in a different written form to one set out in the Practice Direction, as long as it contains what the Criminal Procedure and Investigations Act 1996 requires;

(c) allow an application under this Part to be in a different form to one set out in the Practice Direction, or to be presented orally; and

(d) specify the period within which—

(i) any application under this Part must be made, or

(ii) any material must be disclosed, on an application to which rule 22.5 applies (defendant's application for prosecution disclosure).

[Note. Summary of the disclosure requirements of the Criminal Procedure and Investigations Act 1996.

The Act came into force on 1st April, 1997. It does not apply where the investigation began before that date. With effect from 4th April, 2005, the Criminal Justice Act 2003 made changes to the 1996 Act that do not apply where the investigation began before that date.

In some circumstances, the prosecutor may be required to disclose material to which the 1996 Act does not apply: see sections 1(**a**) *and 21*(**b**) *of the Act.*

Part I of the 1996 Act contains sections 1 to 21A. Part II, which contains sections 22 to 27, requires an investigator to record information relevant to an investigation that is obtained during its course. See also The Criminal Procedure and Investigations Act 1996 (Code of Practice) (No. 2) Order 1997(**c**) *and The Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2005*(**d**)*.*

Prosecution disclosure

Where the investigation began between 1st April, 1997, and 3rd April, 2005, sections 3 and 7 of the 1996 Act require the prosecutor—

(a) to disclose material not previously disclosed that in the prosecutor's opinion might undermine the case for the prosecution against the defendant—

(i) in a magistrates' court, as soon as practicable after the defendant pleads not guilty, and

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(**a**) 1996 c. 25; section 1 was amended by section 119 of, and paragraph 125(b) of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and sections 41 and 332 of, and paragraph 66(1) and (2)(b) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It is to be amended by section 9 of the Sexual Offences (Protected Material) Act 1997 (c. 39) and sections 41 and 332 of, and paragraph 66(1) and (2)(a) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), from a date to be appointed. It has been further amended in respect of certain proceedings only, by section 119 of, and paragraph 125(a) of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37).

(**b**) 1996 c. 25; section 21 was amended by section 41 of, and paragraph 66 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).

(**c**) S.I. 1997/1033; this Order was revoked by S.I. 2005/985.

(**d**) S.I. 2005/985.

(ii) in the Crown Court, as soon as practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial; and

(b) as soon as practicable after service of the defence statement, to disclose material not previously disclosed that might be reasonably expected to assist the defendant's case as disclosed by that defence statement; or in either event

(c) if there is no such material, then to give the defendant a written statement to that effect.

*Where the investigation began on or after 4th April, 2005, sections 3(**a**) and 7A(**b**) of the 1996 Act require the prosecutor—*

(a) to disclose prosecution material not previously disclosed that might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant—

(i) in a magistrates' court, as soon as practicable after the defendant pleads not guilty, or

(ii) in the Crown Court, as soon as practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial, or after a count is added to the indictment; and in either case

(b) if there is no such material, then to give the defendant a written statement to that effect; and after that

(c) in either court, to disclose any such material—

(i) whenever there is any, until the court reaches its verdict or the prosecutor decides not to proceed with the case, and

(ii) in particular, after the service of the defence statement.

Sections 2 and 3 of the 1996 Act define material, and prescribe how it must be disclosed.

In some circumstances, disclosure is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.

The prosecutor must not disclose material that the court orders it would not be in the public interest to disclose: see sections 3(6), 7(6) and 7A(8) of the 1996 Act.

Sections 12 and 13 of the 1996 Act prescribe the time for prosecution disclosure.

See also sections 1, 4 and 10 of the 1996 Act.

Defence disclosure

*The defendant's duty to serve a defence statement in a case in the Crown Court is imposed by section 5 of the 1996 Act(**c**). The defendant's opportunity to do so in a case in a magistrates' court, and the duty to serve any such statement within the time prescribed, is provided for by section 6 of the Act.*

(**a**) 1996 c. 25; section 3 has been amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(**b**) 1996 c. 25; section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

(**c**) 1996 c. 25; section 5 was amended by sections 331 and 332 of, and paragraphs 20 and 23 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It was further amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and sections 33 and 41 of, and paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) in respect of certain proceedings only. It is to be further amended by sections 33, 41, 331 and 332 of, and paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), from a date to be appointed.

The time for service of a defence statement is prescribed by section 12 of the 1996 Act and by The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(**a**)*. It is—*

(a) in a magistrates' court, not more than 14 days after the prosecutor discloses material under section 3 of the 1996 Act, or serves notice that there is no such material to disclose;

(b) in the Crown Court, not more than 14 days after—

(i) service of copies of the documents containing the evidence, in a case in which the defendant is sent for trial,

(ii) service of the draft indictment, in any other case, or

(iii) the prosecutor discloses material under section 3 of the 1996 Act, or serves notice that there is no such material to disclose

whichever of those three events happens last.

The requirements for the content of a defence statement are set out in—

(a) section 5 of the 1996 Act, where the investigation began between 1st April, 1997 and 3rd April, 2005;

(b) section 6A of the 1996 Act(**b**)*, where the investigation began on or after 4th April, 2005. See also section 6E of the Act*(**c**)*.*

Where the investigation began between 1st April, 1997 and 3rd April, 2005, the defence statement must—

(a) set out in general terms the nature of the defence;

(b) indicate the matters on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;

(c) if the defence statement discloses an alibi, give particulars, including—

(i) the name and address of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),

(ii) where the defendant does not know the name or address, any information that might help identify or find that witness.

Where the investigation began on or after 4th April, 2005, the defence statement must—

(a) set out the nature of the defence, including any particular defences on which the defendant intends to rely;

(b) indicate the matters of fact on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;

(c) set out particulars of the matters of fact on which the defendant intends to rely for the purposes of the defence;

(d) indicate any point of law that the defendant wants to raise, including any point about the admissibility of evidence or about abuse of process, and any authority relied on; and

(e) if the defence statement discloses an alibi, give particulars, including—

(**a**) S.I. 1997/2680.
(**b**) 1996 c. 25; section 6A was inserted by section 33 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).
(**c**) 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).

(i) the name, address and date of birth of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),

(ii) where the defendant does not know any of those details, any information that might help identify or find that witness.

Under section 11 of the 1996 Act, if a defendant—

(a) fails to disclose what the Act requires;

(b) fails to do so within the time prescribed;

(c) at trial, relies on a defence, or facts, not mentioned in the defence statement; or

(d) at trial, introduces alibi evidence without having given in the defence statement—

(i) particulars of the alibi, or

(ii) the details of the alibi witness, or witnesses, required by the Act,

then the court or another party at trial may comment on that, and the court may draw such inferences as appear proper in deciding whether the defendant is guilty.

Under section 6E(2) of the 1996 Act, if before trial in the Crown Court it seems to the court that section 11 may apply, then the court must warn the defendant.]

SCHEDULE 4

Rule 16

Part 27

Witness statements

Contents of this Part

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Content of written statement	rule 27.2
Reference to exhibit	rule 27.3
Written statement in evidence	rule 27.3

When this Part applies

27.1.—(1) This Part applies where a party wants to introduce a written statement in evidence under section 9 of the Criminal Justice Act 1967(**a**).

[Note. Under section 9 of the Criminal Justice Act 1967, if the conditions specified in that section are met, the written statement of a witness is admissible in evidence to the same extent as if that witness gave evidence in person.]

Content of written statement

27.2. The statement must contain—

(a) at the beginning—

(i) the witness' name, and

(ii) the witness' age, if under 18;

(b) a declaration by the witness that—

(i) it is true to the best of the witness' knowledge and belief, and

(ii) the witness knows that if it is introduced in evidence, then it would be an offence wilfully to have stated in it anything that the witness knew to be false or did not believe to be true;

(c) if the witness cannot read the statement, a signed declaration by someone else that that person read it to the witness; and

(d) the witness' signature.

[Note. The Practice Direction sets out a form of written statement for use in connection with this rule.]

Reference to exhibit

27.3. Where the statement refers to a document or object as an exhibit—

(a) the statement must contain such a description of that exhibit as to identify it clearly; and

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(**a**) 1967 c. 80; section 9 was amended by section 56 of, and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), and regulation 9 of, and paragraph 4 of Schedule 5 to, The Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090). It is to be amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 41) and sections 41, 65 and 332 of, and paragraph 43 of Schedule 3, paragraph 1 of Schedule 4 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), from a date to be appointed.

(b) the exhibit must be labelled or marked correspondingly, and the label or mark signed by the maker of the statement.

Written statement in evidence

27.4.—(1) A party who wants to introduce in evidence a written statement must—

(a) before the hearing at which that party wants to do so, serve a copy of the statement on—

(i) the court officer, and

(ii) each other party; and

(b) at or before that hearing, serve the statement itself on the court officer.

(2) If that party relies on only part of the statement, that party must mark the copy in such a way as to make that clear.

(3) A prosecutor must serve on a defendant, with the copy of the statement, a notice—

(a) of the right within 7 days of service to object to the introduction of the statement in evidence instead of the witness giving evidence in person; and

(b) that if the defendant does not object in time, the court—

(i) can nonetheless require the witness to give evidence in person, but

(ii) may decide not to do so.

(4) The court may exercise its power to require the witness to give evidence in person—

(a) on application by any party; or

(b) on its own initiative.

(5) A party entitled to receive a copy of a statement may waive that entitlement by so informing—

(a) the party who would have served it; and

(b) the court.

[Note. The Practice Direction sets out a form of notice for use in connection with this rule.]

SCHEDULE 5

Rule 18

Part 33

Expert Evidence

Contents of this Part

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Instructions to a single joint expert	rule 33.8
Court's power to vary requirements under this Part	rule 33.9

[Note. For the use of an expert report as evidence, see section 30 of the Criminal Justice Act 1988(**a**)*.]*

Reference to expert

33.1. A reference to an 'expert' in this Part is a reference to a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

[Note. Expert medical evidence may be required to determine fitness to plead under section 4 of the Criminal Procedure (Insanity) Act 1964(**b**)*. It may be required also under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000*(**c**)*, under Part III of the Mental Health Act 1983*(**d**) *or under Part 12 of the Criminal Justice Act 2003*(**e**)*. Those Acts contain requirements about the qualification of medical experts.]*

Expert's duty to the court

33.2.—(1) An expert must help the court to achieve the overriding objective by giving objective, unbiased opinion on matters within his expertise.

(2) This duty overrides any obligation to the person from whom he receives instructions or by whom he is paid.

(3) This duty includes an obligation to inform all parties and the court if the expert's opinion changes from that contained in a report served as evidence or given in a statement.

(**a**) 1988 c. 33; section 30(4A) was inserted by section 47 of, and paragraph 32 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and is to be repealed by section 41 to, and paragraph 60(1) and (6) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c.44), with effect from a date to be appointed.

(**b**) 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).

(**c**) 2000 c. 6.

(**d**) 1983 c. 20.

(**e**) 2003 c. 44.

Content of expert's report

33.3.—(1) An expert's report must—

(a) give details of the expert's qualifications, relevant experience and accreditation;

(b) give details of any literature or other information which the expert has relied on in making the report;

(c) contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based;

(d) make clear which of the facts stated in the report are within the expert's own knowledge;

(e) say who carried out any examination, measurement, test or experiment which the expert has used for the report and—

(i) give the qualifications, relevant experience and accreditation of that person,

(ii) say whether or not the examination, measurement, test or experiment was carried out under the expert's supervision, and

(iii) summarise the findings on which the expert relies;

(f) where there is a range of opinion on the matters dealt with in the report—

(i) summarise the range of opinion, and

(ii) give reasons for his own opinion;

(g) if the expert is not able to give his opinion without qualification, state the qualification;

(h) contain a summary of the conclusions reached;

(i) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty; and

(j) contain the same declaration of truth as a witness statement.

(2) Only sub-paragraphs (i) and (j) of rule 33.3(1) apply to a summary by an expert of his conclusions served in advance of that expert's report.

[Note. Part 27 contains rules about witness statements. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(**a**) *and section 5B of the Magistrates' Courts Act 1980*(**b**). *A party who accepts another party's expert's conclusions may admit them as facts under section 10 of the Criminal Justice Act 1967*(**c**). *Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the Criminal Justice Act 2003(***d**)*.]*

(**a**) 1967 c. 80; section 9 was amended by section 56 of, and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), and regulation 9 of, and paragraph 4 of Schedule 5 to, The Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090). It is to be amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 41) and sections 41, 65 and 332 of, and paragraph 43 of Schedule 3, paragraph 1 of Schedule 4 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), from a date to be appointed.

(**b**) 1980 c. 43; section 5B was inserted by section 47 of, and paragraph 3 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is amended by section 72(3) of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), with effect from a date to be appointed. It is repealed by sections 41 and 332 of, and paragraph 51(1) and (3) of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**c**) 1967 c. 80.

(**d**) 2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.

Service of expert evidence

33.4.—(1) A party who wants to introduce expert evidence must —

(a) serve it on—

(i) the court officer, and

(ii) each other party;

(b) serve it—

(i) as soon as practicable, and in any event

(ii) with any application in support of which that party relies on that evidence; and

(c) if another party so requires, give that party a copy of, or a reasonable opportunity to inspect—

(i) a record of any examination, measurement, test or experiment on which the expert's findings and opinion are based, or that were carried out in the course of reaching those findings and opinion, and

(ii) anything on which any such examination, measurement, test or experiment was carried out.

(2) A party may not introduce expert evidence if that party has not complied with this rule, unless–

(a) every other party agrees; or

(b) the court gives permission.

[Note. Under section 81 of the Police and Criminal Evidence Act 1984(**a**)*, and under section 20(3) of the Criminal Procedure and Investigations Act 1996*(**b**)*, rules may—*

(a) require the disclosure of expert evidence before it is introduced as part of a party's case; and

(b) prohibit its introduction without the court's permission, if it was not disclosed as required.]

Expert to be informed of service of report

33.5. A party who serves on another party or on the court a report by an expert must, at once, inform that expert of that fact.

Pre-hearing discussion of expert evidence

33.6.—(1) This rule applies where more than one party wants to introduce expert evidence.

(2) The court may direct the experts to—

(a) discuss the expert issues in the proceedings; and

(**a**) 1984 c. 60; section 81 was amended by section 109 of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c. 39).
(**b**) 1996 c. 25; section 20(3) was amended by section 109 of, and paragraph 378 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.

(3) Except for that statement, the content of that discussion must not be referred to without the court's permission.

(4) A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under this rule.

[Note. At a pre-trial hearing, a court may make binding rulings about the admissibility of evidence and about questions of law under section 7 of the Criminal Justice Act 1987(**a**)*; sections 31 and 40 of the Criminal Procedure and Investigations Act 1996*(**b**)*; and section 45 of the Courts Act 2003*(**c**)*.]*

Court's power to direct that evidence is to be given by a single joint expert

33.7.—(1) Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the co-defendants cannot agree who should be the expert, the court may—

(a) select the expert from a list prepared or identified by them; or

(b) direct that the expert be selected in another way.

Instructions to a single joint expert

33.8.—(1) Where the court gives a direction under rule 33.7 for a single joint expert to be used, each of the co-defendants may give instructions to the expert.

(2) When a co-defendant gives instructions to the expert he must, at the same time, send a copy of the instructions to the other co-defendant(s).

(3) The court may give directions about—

(a) the payment of the expert's fees and expenses; and

(b) any examination, measurement, test or experiment which the expert wishes to carry out.

(4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

(5) Unless the court otherwise directs, the instructing co-defendants are jointly and severally liable for the payment of the expert's fees and expenses.

Court's power to vary requirements under this Part

33.9.—(1) The court may—

(**a**) 1987 c. 38; section 7 was amended by section 168(1) of, and paragraph 30 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), and sections 310(1) and 331 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and is further amended by section 45 of the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed. Section 7(3), (4) and (5) was repealed by sections 72 and 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).

(**b**) 1996 c. 25; section 31 is amended by sections 310(5), 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(**c**) 2003 c. 39.

(a) extend (even after it has expired) a time limit under this Part;

(b) allow the introduction of expert evidence which omits a detail required by this Part.

(2) A party who wants an extension of time must—

(a) apply when serving the expert evidence for which it is required; and

(b) explain the delay.

SCHEDULE 6

Rule 23

Part 62

Contempt of court

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When this Part applies

62.1.—(1) This Part applies—

(a) in the Crown Court, where a person is accused of disobeying—

(i) an order of the Crown Court, or

(ii) any other order, where legislation allows that person to be punished as if that were an order of the Crown Court;

(b) in magistrates' courts and in the Crown Court, where a person is accused of contempt of court under section 18 of the Criminal Procedure and Investigations Act 1996(**a**).

(2) In this Part, 'respondent' means any such accused person.

[Note. The Crown Court has power to punish for contempt of court a person who disobeys its order: see section 45 of the Senior Courts Act 1981(**b**)*.*

Under section 18 of the Criminal Procedure and Investigations Act 1996, a magistrates' court and the Crown Court can punish for contempt of court the use of disclosed prosecution material in contravention of section 17 of that Act(**c**)*.*

See also –

(a) rule 6.13 and rule 6.22 (disobedience to certain investigation orders);

(b) rule 22.8 (unauthorised disclosure of prosecution material);

(**a**) 1996 c. 25.

(**b**) 1981 c. 54; the words "Senior Courts" are to be substituted for "Supreme Court" in the title of this Act by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from 1 October 2009.

(**c**) 1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(c) rule 59.6 (disobedience to a restraint order).]

Exercise of court's power to punish for contempt of court

62.2. The court must not exercise its power to punish the respondent for contempt of court in the respondent's absence, unless the respondent has had at least 14 days in which to—

(a) make any representations; and

(b) introduce any evidence.

Application to punish for contempt of court

62.3.—(1) A person who wants the court to exercise its power to punish the respondent for contempt of court must—

(a) apply in writing and serve the application on the court officer; and

(b) serve on the respondent—

(i) the application, and

(ii) notice of where and when the court will hear the application (not less than 14 days after service).

(2) The application must—

(a) identify the respondent;

(b) explain that it is an application for the respondent to be punished for contempt of court;

(c) contain such particulars of the conduct constituting contempt of court as to make clear what the applicant alleges against the respondent; and

(d) include a notice warning the respondent that the court—

(i) can impose imprisonment, or a fine, or both, for contempt of court, and

(ii) may deal with the application in the respondent's absence, if the respondent does not attend the hearing of the application.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.

The rules in Part 4 require that an application under this rule must be served by handing it to the person accused of contempt of court.]

Notice of suspension of punishment

62.4.—(1) This rule applies where—

(a) the court exercises its power to suspend a punishment it imposes for contempt of court—

(i) for a period, or

(ii) conditionally; and

(b) the respondent is absent when the court does so.

(2) The applicant must serve on the respondent notice of the terms of the court's order.

Application to discharge an order for imprisonment

62.5.—(1) This rule applies where—

(a) the court has ordered the respondent's imprisonment for contempt of court; and

(b) the respondent wants the court to discharge that order.

(2) The respondent must—

(a) apply in writing;

(b) serve the application on—

(i) the court officer, and

(ii) the applicant who applied for the respondent's punishment;

(c) explain why it is appropriate for the order to be discharged; and

(d) ask for a hearing, if the respondent wants one.

Introduction of written witness statement or other hearsay

62.6.—(1) A party who wants to introduce in evidence the written statement of a witness, or other hearsay, must—

(a) serve a copy of the statement, or notice of other hearsay, on—

(i) the court officer, and

(ii) the other party; and

(b) serve the copy or notice—

(i) when serving the application under rule 62.3, in the case of the applicant, or

(ii) not more than 7 days after service of that application, in the case of the respondent.

(2) Such service is notice of that party's intention to introduce in evidence that written witness statement, or other hearsay, unless that party otherwise indicates when serving it.

(3) A party entitled to receive such notice may waive that entitlement by so informing the court officer and the party who would have given it.

*[Note. On an application under rule 62.3, hearsay evidence is admissible under the Civil Evidence Act 1995(**a**). Section 1(2) of the 1995 Act defines hearsay as meaning 'a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated'. Section 13 of the Act defines a statement as meaning 'any representation of fact or opinion, however made'.*

Under section 2 of the 1995 Act, a party who wants to introduce hearsay in evidence must give reasonable and practicable notice, in accordance with procedure rules, unless the recipient waives that requirement.]

Content of written witness statement

62.7.—(1) This rule applies to a written witness statement served under rule 62.6.

(**a**) 1995 c.38.

(2) Such a written witness statement must contain a declaration by the person making it that it is true to the best of that person's knowledge and belief.

False statements

62.8.—(1) In the Crown Court, the court can punish for contempt of court a person who makes, or causes to be made, a false statement in such a written witness statement without an honest belief in its truth.

(2) The Crown Court may exercise its power to punish that person for contempt of court—

(a) on an application by a party, with the court's permission; or

(b) on its own initiative.

(3) A person who wants the court to exercise that power must comply with the rules in this Part.

Content of notice of other hearsay

62.9.—(1) This rule applies to a notice of hearsay, other than a written witness statement, served under rule 62.6.

(2) Such a notice must—

(a) set out the evidence, or attach the document that contains it; and

(b) identify the person who made the statement that is hearsay.

Cross-examination of maker of written witness statement or other hearsay

62.10.—(1) This rule applies where a party wants the court's permission to cross-examine the maker of a written witness statement, or other hearsay statement, served under rule 62.6.

(2) The party who wants to cross-examine that person must—

(a) apply in writing, with reasons; and

(b) serve the application on—

(i) the court officer, and

(ii) the party who served the hearsay.

(3) A respondent who wants to cross-examine such a person must apply to do so not more than 7 days after service of the hearsay by the applicant.

(4) An applicant who wants to cross-examine such a person must apply to do so not more than 3 days after service of the hearsay by the respondent.

(5) The court—

(a) may decide an application under this rule without a hearing; but

(b) must not dismiss such an application unless the person making it has had an opportunity to make representations at a hearing.

[Note. See also section 3 of the Civil Evidence Act 1995(**a**)*.]*

Credibility and consistency of maker of written witness statement or other hearsay

62.11.—(1) This rule applies where a party wants to challenge the credibility or consistency of the maker of a written witness statement, or other hearsay statement, served under rule 62.6.

(2) The party who wants to challenge the credibility or consistency of that person must—

(a) serve a written notice of intention to do so on—

(i) the court officer, and

(ii) the party who served the hearsay; and

(b) in it, identify any statement or other material on which that party relies.

(3) A respondent who wants to challenge such a person's credibility or consistency must serve such a notice not more than 7 days after service of the hearsay by the applicant.

(4) An applicant who wants to challenge such a person's credibility or consistency must serve such a notice not more than 3 days after service of the hearsay by the respondent.

(5) The party who served the hearsay—

(a) may call that person to give oral evidence instead; and

(b) if so, must serve a notice of intention to do so on—

(i) the court officer, and

(ii) the other party

as soon as practicable after service of the notice under paragraph (2).

[Note. Section 5(2) of the Civil Evidence Act 1995(**b**) *describes the procedure for challenging the credibility of the maker of a statement of which hearsay evidence is introduced. See also section 6 of that Act. The 1995 Act does not allow the introduction of evidence of a previous inconsistent statement otherwise than in accordance with sections 5, 6 and 7 of the Criminal Procedure Act 1865*(**c**)*.]*

Court's power to vary requirements under this Part

62.12.—(1) The court may shorten or extend (even after it has expired) a time limit under this Part.

(2) A person who wants an extension of time must—

(a) apply when serving the statement, notice or application for which it is needed; and

(b) explain the delay.

(**a**) 1995 c. 38.
(**b**) 1995 c. 38.
(**c**) 1865 c. 18; section 6 was amended by section 10 of the Decimal Currency Act 1969 (c. 19), section 119 of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), section 90 of, and paragraph 3 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 109 of, and paragraph 47 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 331 and 332 of, and paragraph 79 of Schedule 36 to, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

SCHEDULE 7

Rule 32

Part 76

Costs

Contents of this Part

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Section 1: general

When this Part applies

76.1.—(1) This Part applies where the court can make an order about costs under—

(a) Part II of the Prosecution of Offences Act 1985 and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986;

(b) section 109 of the Magistrates' Courts Act 1980(**a**);

(c) section 52 of the Senior Courts Act 1981(**b**) and rule 76.6;

(d) section 8 of the Bankers Books Evidence Act 1879(**c**);

(**a**) 1980 c. 43; section 109 was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).
(**b**) 1981 c. 54; the words "Senior Courts" are to be substituted for "Supreme Court" in the title of this Act by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from 1 October 2009.
(**c**) 1879 c. 11.

(e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**);

(f) section 36(5) of the Criminal Justice Act 1972(**b**);

(g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988(**c**);

(h) section 14H(5) of the Football Spectators Act 1989(**d**); or

(i) Part 3 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**e**).

(2) In this Part, "costs" means—

(a) the fees payable to a legal representative;

(b) the disbursements paid by a legal representative; and

(c) any other expenses incurred in connection with the case.

[Note. A costs order can be made—

(a) under section 16 of the Prosecution of Offences Act 1985(**f**) *(defence costs), for the payment out of central funds of a defendant's costs (see rule 76.4);*

(b) under section 17 of the Prosecution of Offences Act 1985(**g**) *(prosecution costs), for the payment out of central funds of a private prosecutor's costs (see rule 76.4);*

(c) under section 18 of the Prosecution of Offences Act 1985(**h**) *(award of costs against accused), for the payment by a defendant of another person's costs (see rules 76.5 and 76.6);*

(d) under section 19(1) of the Prosecution of Offences Act 1985(**i**) *and regulation 3 of The Costs in Criminal Cases (General) Regulations 1986, for the payment by a party of another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party (see rule 76.8);*

(e) under section 19A of the Prosecution of Offences Act 1985(**j**) *(costs against legal representatives, etc.)—*

(i) for the payment by a legal representative of a party's costs incurred as a result of an improper, unreasonable or negligent act or omission by or on behalf of the representative, or

(ii) disallowing the payment to that representative of such costs

(see rule 76.9);

(**a**) 1965 c. 69.
(**b**) 1972 c. 71; section 36(5) is to be amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) from 1 October 2009.
(**c**) 1988 c. 33.
(**d**) 1989 c. 37; section 14H was substituted, together with sections 14, 14A-14G and 14J, for existing sections 14-17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).
(**e**) S.I. 2008/1863.
(**f**) 1985 c. 23; section 16 was amended by section 15 of, and paragraphs 14 and 15 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 150 of, and paragraph 103 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 7 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 312 of the Criminal Justice Act 2003 (c. 44), and section 58 of, and Schedule 11 to the Domestic Violence, Crime and Victims Act 2004 (c. 28). It is to be amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) from 1 October 2009 and to be further amended by sections 41 and 332 of, and paragraph 57 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), from a date to be appointed; the amendment under section 41 and paragraph 57(1)(3)(b)(i) of Schedule 3 having come into force on 9 May 2005 in relation to certain cases only.
(**g**) 1985 c. 23; section 17 is to be amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from 1 October 2009.
(**h**) 1985 c. 23; section 18 was amended by section 15 of, and paragraph 16 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 26 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), and sections 69 and 312 of the Criminal Justice Act 2003 (c. 44). It is to be amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), from 1 October 2009.
(**i**) 1985 c. 23.
(**j**) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(f) under section 19B of the Prosecution of Offences Act 1985(**a**) *(provision for award of costs against third parties) and regulation 3F of The Costs in Criminal Cases (General) Regulations 1986, for the payment by a person who is not a party of a party's costs where there has been serious misconduct by the non-party (see rule 76.10);*

(g) under section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 76.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 76.6);

(h) under section 52 of the Senior Courts Act 1981 and rule 76.6, for the payment by a party of another party's costs on an appeal to the Crown Court in any case not covered by (c) or (g) (see rule 76.6);

(i) under section 8 of the Bankers Books Evidence Act 1879, for the payment of costs by a party or by the bank against which an application for an order is made (see rule 76.7);

(j) under section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965, for the payment by the applicant for a witness summons of the costs of a party who applies successfully under rule 28.7 to have it withdrawn (see rule 76.7);

(k) under section 36(5) of the Criminal Justice Act 1972 or Schedule 3, paragraph 11, of the Criminal Justice Act 1988, for the payment out of central funds of a defendant's costs on a reference by the Attorney General of—

(i) a point of law, or

(ii) an unduly lenient sentence

(see rule 76.4);

(l) under section 159(5) of the Criminal Justice Act 1988, for the payment by a person of another person's costs on an appeal about a reporting or public access restriction (see rule 76.6);

(m) under section 14H(5) of the Football Spectators Act 1989, for the payment by a defendant of another person's costs on an application to terminate a football banning order (see rule 76.7);

(n) under article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**b**)*, corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 76.4);*

(o) under article 15 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**c**)*, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 76.6);*

(p) under article 16 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**d**)*, corresponding with an order under section 19(1) of the 1985 Act (see rule 76.8)*;

(q) under article 17 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**e**)*, corresponding with an order under section 19A of the 1985 Act (see rule 76.9); or*

(r) under article 18 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**f**)*, corresponding with an order under section 19B of the 1985 Act (see rule 76.10).*

See also the Criminal Costs Practice Direction.

Part 68 (appeal to the Court of Appeal about conviction or sentence) contains rules about appeals against costs orders made in the Crown Court under the legislation listed in (c) above.

(**a**) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).
(**b**) S.I. 2008/1863.
(**c**) S.I. 2008/1863.
(**d**) S.I. 2008/1863.
(**e**) S.I. 2008/1863.
(**f**) S.I. 2008/1863.

Part 63 (appeal to the Crown Court) and Part 68 (appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against costs orders made under the legislation listed in (e) and (f) above.

As to costs in restraint or receivership proceedings under Part 2 of the Proceeds of Crime Act 2002(**a**)*, see rules 61.19 to 61.22.*

A costs order can be enforced—

(a) against a defendant, under section 41(1) or (3) of the Administration of Justice Act 1970(**b**)*;*

(b) against a prosecutor, under section 41(2) or (3) of the Administration of Justice Act 1970;

(c) against a representative, under regulation 3D of The Costs in Criminal Cases (General) Regulations 1986(**c**) *or article 18 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008; or*

(d) against a non-party, under regulation 3I of The Costs in Criminal Cases (General) Regulations 1986(**d**) *or article 31 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008*(**e**)*.*

See also section 58, section 150(1) and Part III of the Magistrates' Courts Act 1980(**f**) *and Schedule 5 to the Courts Act 2003*(**g**)*.]*

Costs orders: general rules

76.2.—(1) The court must not make an order about costs unless each party and any other person directly affected—

(a) is present; or

(b) has had an opportunity—

(i) to attend, or

(ii) to make representations.

(2) The court may make an order about costs—

(a) at a hearing in public or in private; or

(b) without a hearing.

(3) In deciding what order, if any, to make about costs, the court must have regard to all the circumstances, including—

(a) the conduct of all the parties; and

(b) any costs order already made.

(4) If the court makes an order about costs, it must—

(a) specify who must, or must not, pay what, to whom; and

(**a**) 2002 c. 29.
(**b**) 1970 c. 31; section 40(3) is to be amended by section 62 of, and paragraph 35 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), from a date to be appointed.
(**c**) S.I. 1986/1335; regulation 3D was inserted by article 2 of S.I. 1991/789 and amended by regulation 6 of S.I. 2004/2408.
(**d**) S.I. 1986/1335; regulation 3I was inserted by regulation 7 of S.I. 2004/2408.
(**e**) S.I. 2008/1863.
(**f**) 1980 c. 43; section 58 was amended by section 33 of, and paragraph 80 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42).
(**g**) 2003 c. 39.

(b) identify the legislation under which the order is made, where there is a choice of powers.

(5) The court must give reasons if it—

(a) refuses an application for a costs order; or

(b) rejects representations opposing a costs order.

(6) If the court makes an order for the payment of costs—

(a) the general rule is that it will be for an amount that is sufficient reasonably to compensate the recipient for costs—

(i) actually, reasonably and properly incurred, and

(ii) reasonable in amount; but

(b) the court may order the payment of—

(i) a proportion of that amount,

(ii) a stated amount less than that amount,

(iii) costs from or until a certain date only,

(iv) costs relating only to particular steps taken, or

(v) costs relating only to a distinct part of the case.

(7) On an assessment of the amount of costs, relevant factors include—

(a) the conduct of all the parties;

(b) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(c) the skill, effort, specialised knowledge and responsibility involved;

(d) the time spent on the case;

(e) the place where and the circumstances in which work or any part of it was done; and

(f) any direction or observations by the court that made the costs order.

(8) If the court orders a party to pay costs to be assessed under rule 76.11, it may order that party to pay an amount on account.

(9) An order for the payment of costs takes effect when the amount is assessed, unless the court exercises any power it has to order otherwise.

[Note. Under the powers to which apply rule 76.8 (costs resulting from unnecessary or improper act, etc.) and rule 76.9 (costs against a legal representative), specified conduct must be established for such orders to be made.

The amount recoverable under a costs order may be affected by the legislation under which the order is made.

Under section 141 of the Powers of Criminal Courts (Sentencing) Act 2000(**a**) *and section 75 of the Magistrates' Courts Act 1980*(**b**)*, the Crown Court and magistrates' court respectively can allow time for payment, or payment by instalments.]*

(**a**) 2000 c. 6.
(**b**) 1980 c. 43.

Court's power to vary requirements under Sections 2, 3 and 4

76.3.—(1) The court may—

(a) extend a time limit for serving an application or representations under section 2, 3 or 4 of this Part, even after it has expired; and

(b) consider an application or representations—

(i) made in a different form to one set out in the Practice Direction, or

(ii) made orally instead of in writing.

(2) A person who wants an extension of time must—

(a) apply when serving the application or representations for which it is needed; and

(b) explain the delay.

Section 2: costs out of central funds

Costs out of central funds

76.4.—(1) This rule applies where the court can order the payment of costs out of central funds.

(2) In this rule, costs—

(a) include—

(i) on an appeal, costs incurred in the court that made the decision under appeal, and

(ii) at a retrial, costs incurred at the initial trial and on any appeal; but

(b) do not include costs funded by the Legal Services Commission.

(3) The court may make an order –

(a) on application by the person who incurred the costs; or

(b) on its own initiative.

(4) Where a person wants the court to make an order that person must—

(a) apply as soon as practicable; and

(b) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or

(c) specify the amount claimed, if that person wants the court to assess the amount itself.

(5) The general rule is that the court will make an order, but –

(a) the court may decline to make a defendant's costs order if, for example—

(i) the defendant is convicted of at least one offence, or

(ii) the defendant's conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and

(b) the court may decline to make a prosecutor's costs order if, for example, the prosecution was started or continued unreasonably.

(6) If the court makes an order—

(a) it may direct an assessment under, as applicable—

(i) regulations 4 to 12 of The Costs in Criminal Cases (General) Regulations 1986(**a**), or

(ii) articles 21 to 28 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**b**);

(b) it may assess the amount itself, if the recipient agrees;

(c) it must assess the amount itself, in a case in which it decides not to allow an amount that is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings.

[Note. See also rule 76.2.

An order for the payment of costs out of central funds can be made—

(a) for a defendant—

(i) on acquittal,

(ii) where a prosecution does not proceed,

(iii) where the Crown Court allows any part of a defendant's appeal from a magistrates' court,

(iv) where the Court of Appeal allows any part of a defendant's appeal from the Crown Court,

(v) where the Court of Appeal decides a prosecutor's appeal under Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing) or Part 67 (appeal to the Court of Appeal against ruling adverse to prosecution),

(vi) where the Court of Appeal decides a reference by the Attorney General under Part 70 (reference to the Court of Appeal of point of law or unduly lenient sentence), or

(vii) where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order;

(See section 16 of the Prosecution of Offences Act 1985 and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986(**c**)*; section 36(5) of the Criminal Justice Act 1972 and paragraph 11of Schedule 3 to the Criminal Justice Act 1988; and article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)*

(b) for a private prosecutor, in proceedings in respect of an offence that must or may be tried in the Crown Court;

(See section 17 of the Prosecution of Offences Act 1985 and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986.)

(c) for a person adversely affected by a serious crime prevention order, where the Court of Appeal—

(i) allows an appeal by that person about that order, or

(ii) decides an appeal about that order by someone else.

(See article 14 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)]

(**a**) S.I. 1986/1335; relevant amending instruments are S.I. 1999/2096 and S.I. 2008/2448.
(**b**) S.I. 2008/1863.
(**c**) S.I. 1986/1335; regulation 14 was amended by regulations 2 and 11 of S.I. 2008/2448.

Section 3: payment of costs by one party to another

Costs on conviction and sentence

76.5.—(1) This rule applies where the court can order a defendant to pay the prosecutor's costs if the defendant is—

(a) convicted or found guilty;

(b) dealt with in the Crown Court after committal for sentence there; or

(c) dealt with for breach of a sentence.

(2) The court may make an order—

(a) on application by the prosecutor; or

(b) on its own initiative.

(3) Where the prosecutor wants the court to make an order—

(a) the prosecutor must—

(i) apply as soon as practicable, and

(ii) specify the amount claimed; and

(b) the general rule is that the court will make an order if it is satisfied that the defendant can pay; but

(c) the court may decline to do so.

(4) A defendant who wants to oppose an order must make representations as soon as practicable.

(5) If the court makes an order, it must assess the amount itself.

[Note. See—

(a) rule 76.2; and

(b) section 18 of the Prosecution of Offences Act 1985 and regulation 14 of The Costs in Criminal Cases (General) Regulations 1986.

Under section 18(4) and (5) of the 1985 Act, if a magistrates' court—

(a) imposes a fine, a penalty, forfeiture or compensation that does not exceed £5—

(i) the general rule is that the court will not make a costs order against the defendant, but

(ii) the court may do so;

(b) fines a defendant under 18, no costs order against the defendant may be for more than the fine.

Part 68 (appeal to the Court of Appeal about conviction and sentence) contains rules about appeal against a Crown Court costs order to which this rule applies.]

Costs on appeal

76.6.—(1) This rule—

(a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal;

(b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal under—

(i) section 108 of the Magistrates' Courts Act 1980(**a**), or

(ii) section 45 of the Mental Health Act 1983(**b**).

(2) In this rule, costs include—

(a) costs incurred in the court that made the decision under appeal; and

(b) costs funded by the Legal Services Commission.

(3) The court may make an order—

(a) on application by the person who incurred the costs; or

(b) on its own initiative.

(4) A person who wants the court to make an order must—

(a) apply as soon as practicable;

(b) notify each other party;

(c) specify—

(i) the amount claimed, and

(ii) against whom; and

(d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—

(i) apply in writing not more than 14 days later, and

(ii) serve the application on the appellant and on the Crown Court officer.

(5) A party who wants to oppose an order must—

(a) make representations as soon as practicable; and

(b) where the application was under paragraph (4)(d), serve written representations on the applicant, and on the Crown Court officer, not more than 7 days after it was served.

(6) Where the application was under paragraph (4)(d), the Crown Court officer may—

(a) submit it to the Crown Court; or

(b) serve it on the magistrates' court officer, for submission to the magistrates' court.

(7) If the court makes an order, it may direct an assessment under rule 76.11, or assess the amount itself where—

(a) the appellant abandons an appeal to the Crown Court;

(**a**) 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45).

(**b**) 1983 c. 20.

(b) the Crown Court decides an appeal, except an appeal under—

(i) section 108 of the Magistrates' Courts Act 1980, or

(ii) section 45 of the Mental Health Act 1983; or

(c) the Court of Appeal decides an appeal to which Part 69 applies (appeal to the Court of Appeal regarding reporting or public access restriction).

(8) If the court makes an order in any other case, it must assess the amount itself.

[Note. See also rule 76.2.

A magistrates' court can order an appellant to pay a respondent's costs on abandoning an appeal to the Crown Court.

The Crown Court can order—

(a) the defendant to pay the prosecutor's costs on dismissing a defendant's appeal—

(i) against conviction or sentence, under section 108 of the Magistrates' Courts Act 1980, or

(ii) where the magistrates' court makes a hospital order or guardianship order without convicting the defendant, under section 45 of the Mental Health Act 1983; and

(b) one party to pay another party's costs on deciding any other appeal to which Part 63 applies.

The Court of Appeal can order—

(a) the defendant to pay another person's costs on dismissing a defendant's appeal or application to which Part 66 (appeal to the Court of Appeal against ruling at preparatory hearing), Part 68 (appeal to the Court of Appeal about conviction or sentence) or Part 74 (appeal or reference to the Supreme Court) applies;

(b) the defendant to pay another person's costs on allowing a prosecutor's appeal to which Part 67 (appeal to the Court of Appeal against ruling adverse to the prosecution) applies;

(c) the appellant to pay another person's costs on dismissing an appeal or application by a person affected by a serious crime prevention order;

(d) one party to pay another party's costs on deciding an appeal to which Part 69 (appeal to the Court of Appeal regarding reporting or public access restriction) applies.

See section 109 of the Magistrates' Courts Act 1980; section 52 of the Senior Courts Act 1981 (which allows rules of court to authorise the Crown Court to order costs); section 18 of the Prosecution of Offences Act 1985; section 159(5) of the Criminal Justice Act 1988; and article 15 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.]

Costs on an application

76.7.—(1) This rule applies where the court can order a party to pay another person's costs in a case in which—

(a) the court decides an application for the production in evidence of a copy of a bank record;

(b) a magistrates' court or the Crown Court decides an application to terminate a football banning order; or

(c) the Crown Court allows an application to withdraw a witness summons.

(2) The court may make an order—

(a) on application by the person who incurred the costs; or

(b) on its own initiative.

(3) A person who wants the court to make an order must—

(a) apply as soon as practicable;

(b) notify each other party; and

(c) specify—

(i) the amount claimed, and

(ii) against whom.

(4) A party who wants to oppose an order must make representations as soon as practicable.

(5) If the court makes an order, it may direct an assessment under rule 76.11, or assess the amount itself.

[Note. See—

(a) rule 76.2;

(b) section 8 of the Bankers Books Evidence Act 1879;

(c) section 14H(5) of the Football Spectators Act 1989; and

(d) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**)*.]*

Costs resulting from unnecessary or improper act, etc.

76.8.—(1) This rule applies where the court can order a party to pay another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party.

(2) In this rule, costs include costs funded by the Legal Services Commission.

(3) The court may make an order—

(a) on application by the party who incurred such costs; or

(b) on its own initiative.

(4) A party who wants the court to make an order must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on—

(i) the court officer (or, in the Court of Appeal, the Registrar), and

(ii) each other party;

(c) in that application specify—

(**a**) 1965 c. 69.

(i) the party by whom costs should be paid,

(ii) the relevant act or omission,

(iii) the reasons why that act or omission meets the criteria for making an order,

(iv) the amount claimed, and

(v) those on whom the application has been served.

(5) Where the court considers making an order on its own initiative, it must—

(a) identify the party against whom it proposes making the order; and

(b) specify—

(i) the relevant act or omission,

(ii) the reasons why that act or omission meets the criteria for making an order, and

(iii) with the assistance of the party who incurred the costs, the amount involved.

(6) A party who wants to oppose an order must—

(a) make representations as soon as practicable; and

(b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.

(7) If the court makes an order, it must assess the amount itself.

[Note. See—

(a) rule 76.2;

(b) section 19(1) of the Prosecution of Offences Act 1985 and regulation 3 of The Costs in Criminal Cases (General) Regulations 1986(**a**)*; and*

(c) article 16 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

Under regulation 3(5) of the 1986 Regulations, if a magistrates' court fines a defendant under 17, no costs order to which this rule applies may be for more than the fine.

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.]

Section 4: other costs orders

Costs against a legal representative

76.9.—(1) This rule applies where—

(a) a party has incurred costs—

(i) as a result of an improper, unreasonable or negligent act or omission by a legal or other representative or representative's employee, or

(ii) which it has become unreasonable for that party to have to pay because of such an act or omission occurring after those costs were incurred; and

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(**a**) 1986/1335; regulation 3 was amended by regulations 2 and 3 of S.I. 2008/2448.

(b) the court can—

(i) order the representative responsible to pay such costs, or

(ii) prohibit the payment of costs to that representative.

(2) In this rule, costs include costs funded by the Legal Services Commission.

(3) The court may make an order—

(a) on application by the party who incurred such costs; or

(b) on its own initiative.

(4) A party who wants the court to make an order must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on—

(i) the court officer (or, in the Court of Appeal, the Registrar),

(ii) the representative responsible,

(iii) each other party, and

(iv) any other person directly affected;

(c) in that application specify—

(i) the representative responsible,

(ii) the relevant act or omission,

(iii) the reasons why that act or omission meets the criteria for making an order,

(iv) the amount claimed, and

(v) those on whom the application has been served.

(5) Where the court considers making an order on its own initiative, it must—

(a) identify the representative against whom it proposes making that order; and

(b) specify—

(i) the relevant act or omission,

(ii) the reasons why that act or omission meets the criteria for making an order, and

(iii) with the assistance of the party who incurred the costs, the amount involved.

(6) A representative who wants to oppose an order must—

(a) make representations as soon as practicable; and

(b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.

(7) If the court makes an order—

(a) the general rule is that it will do so without waiting until the end of the case, but it may postpone making the order; and

(b) it must assess the amount itself.

(8) Instead of making an order, the court may make adverse observations about the representative's conduct for use in an assessment where—

(a) a party's costs are—

(i) funded by the Legal Services Commission, or

(ii) to be paid out of central funds; or

(b) there is to be an assessment under rule 76.11.

[Note. See—

(a) rule 76.2;

(b) section 19A of the Prosecution of Offences Act 1985;

(c) article 17 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008; and

(d) article 27 of The Criminal Defence Service (Funding) Order 2007(**a**)*.*

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.

Part 63 (appeal to the Crown Court) and Part 68 (appeal to the Court of Appeal about conviction and sentence) contain rules about appeals against a costs order to which this rule applies.]

Costs against a third party

76.10.—(1) This rule applies where—

(a) there has been serious misconduct by a person who is not a party; and

(b) the court can order that person to pay a party's costs.

(2) In this rule, costs include costs funded by the Legal Services Commission.

(3) The court may make an order—

(a) on application by the party who incurred the costs; or

(b) on its own initiative.

(4) A party who wants the court to make an order must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on—

(i) the court officer (or, in the Court of Appeal, the Registrar),

(ii) the person responsible,

(iii) each other party, and

(iv) any other person directly affected;

(**a**) S.I. 2007/1174; article 27 was amended by articles 6 and 22 of The Criminal Defence Service (Funding) (Amendment) Order S.I. 2007/3552 except in relation to proceedings classified as "Very High Cost" cases.

(c) in that application specify—

(i) the person responsible,

(ii) the relevant misconduct,

(iii) the reasons why the criteria for making an order are met,

(iv) the amount claimed, and

(v) those on whom the application has been served.

(5) Where the court considers making an order on its own initiative, it must—

(a) identify the person against whom it proposes making that order; and

(b) specify—

(i) the relevant misconduct,

(ii) the reasons why the criteria for making an order are met, and

(iii) with the assistance of the party who incurred the costs, the amount involved.

(6) A person who wants to oppose an order must—

(a) make representations as soon as practicable; and

(b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.

(7) If the court makes an order—

(a) the general rule is that it will do so at the end of the case, but it may do so earlier; and

(b) it must assess the amount itself.

[Note. See—

(a) rule 76.2;

(b) section 19B of the Prosecution of Offences Act 1985 and regulation 3F of The Costs in Criminal Cases (General) Regulations 1986(**a**)*; and*

(c) article 18 of The Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.

Part 63 (appeal to the Crown Court) and Part 68 (appeal to the Court of Appeal about conviction and sentence) contain rules about appeals against a costs order to which this rule applies.]

Section 5: assessment of costs

Assessment and re-assessment

76.11.—(1) This rule applies where the court directs an assessment under—

(a) rule 61.20 (Proceeds of Crime Act 2002 – rules applicable to restraint and receivership proceedings, assessment of costs);

(**a**) S.I. 1986/1335; regulation 3F was inserted by regulation 7 of S.I. 2004/2408 and amended by regulations 2 and 5 of S.I. 2008/2448.

(b) rule 76.6 (costs on appeal); or

(c) rule 76.7 (costs on an application).

(2) The assessment must be carried out by the relevant assessing authority, namely—

(a) the court officer, where the direction was given by a magistrates' court or by the Crown Court; or

(b) the Registrar of Criminal Appeals, where the direction was given by the Court of Appeal.

(3) The party in whose favour the court made the costs order ('the applicant') must—

(a) apply for an assessment—

(i) in writing, in any form required by the assessing authority, and

(ii) not more than 3 months after the costs order; and

(b) serve the application on—

(i) the assessing authority, and

(ii) the party against whom the court made the costs order ('the respondent').

(4) The applicant must—

(a) summarise the work done;

(b) specify—

(i) each item of work done, giving the date, time taken and amount claimed,

(ii) any disbursements or expenses, including the fees of any advocate, and

(iii) any circumstances of which the applicant wants the assessing authority to take particular account; and

(c) supply—

(i) receipts or other evidence of the amount claimed, and

(ii) any other information or document for which the assessing authority asks, within such period as that authority may require.

(5) A respondent who wants to make representations about the amount claimed must—

(a) do so in writing; and

(b) serve the representations on the assessing authority, and on the applicant, not more than 21 days after service of the application.

(6) The assessing authority must—

(a) if it seems likely to help with the assessment, obtain any other information or document;

(b) resolve in favour of the respondent any doubt about what should be allowed; and

(c) serve the assessment on the parties.

(7) Where either party wants the amount allowed re-assessed—

(a) that party must—

(i) apply to the assessing authority, in writing and in any form required by that authority,

(ii) serve the application on the assessing authority, and on the other party, not more than 21 days after service of the assessment,

(iii) explain the objections to the assessment,

(iv) supply any additional supporting information or document, and

(v) ask for a hearing, if that party wants one; and

(b) a party who wants to make representations about an application for re-assessment must—

(i) do so in writing,

(ii) serve the representations on the assessing authority, and on the other party, not more than 21 days after service of the application, and

(iii) ask for a hearing, if that party wants one;

(c) the assessing authority—

(i) must arrange a hearing, in public or in private, if either party asks for one,

(ii) subject to that, may re-assess the amount allowed with or without a hearing,

(iii) must re-assess the amount allowed on the initial assessment, taking into account the reasons for disagreement with that amount and any other representations,

(iv) may maintain, increase or decrease the amount allowed on the assessment,

(v) must serve the re-assessment on the parties, and

(vi) must serve written reasons on the parties, if not more than 21 days later either party asks for such reasons.

(8) A time limit under this rule may be extended even after it has expired—

(a) by the assessing authority, or

(b) by the Senior Costs Judge, if the assessing authority declines to do so.

Appeal to a costs judge

76.12.—(1) This rule applies where—

(a) the assessing authority has re-assessed the amount allowed under rule 76.11; and

(b) either party wants to appeal against that amount.

(2) That party must—

(a) serve an appeal notice on—

(i) the Senior Costs Judge,

(ii) the other party, and

(iii) the assessing authority

not more than 21 days after service of the written reasons for the re-assessment;

(b) explain the objections to the re-assessment;

(c) serve on the Senior Costs Judge with the appeal notice—

(i) the applications for assessment and re-assessment,

(ii) any other information or document considered by the assessing authority,

(iii) the assessing authority's written reasons for the re-assessment, and

(iv) any other information or document for which a costs judge asks, within such period as the judge may require; and

(d) ask for a hearing, if that party wants one.

(3) A party who wants to make representations about an appeal must—

(a) serve representations in writing on—

(i) the Senior Costs Judge, and

(ii) the applicant

not more than 21 days after service of the appeal notice; and

(b) ask for a hearing, if that party wants one.

(4) Unless a costs judge otherwise directs, the parties may rely only on—

(a) the objections to the amount allowed on the initial assessment; and

(b) any other representations and material considered by the assessing authority.

(5) A costs judge—

(a) must arrange a hearing, in public or in private, if either party asks for one;

(b) subject to that, may determine an appeal with or without a hearing;

(c) may—

(i) consult the assessing authority,

(ii) consult the court which made the costs order, and

(iii) obtain any other information or document;

(d) must reconsider the amount allowed by the assessing authority, taking into account the objections to the re-assessment and any other representations;

(e) may maintain, increase or decrease the amount allowed on the re-assessment;

(f) may provide for the costs incurred by either party to the appeal; and

(g) must serve reasons for the decision on—

(i) the parties, and

(ii) the assessing authority.

(6) A costs judge may extend a time limit under this rule, even after it has expired.

[Note. The Criminal Costs Practice Direction sets out a form for use in connection with this rule.]

Appeal to a High Court judge

76.13.—(1) This rule applies where—

(a) a costs judge has determined an appeal under rule 76.12; and

(b) either party wants to appeal against the amount allowed.

(2) A party who wants to appeal—

(a) may do so only if a costs judge certifies that a point of principle of general importance was involved in the decision on the review; and

(b) must apply in writing for such a certificate and serve the application on—

(i) the costs judge,

(ii) the other party

not more than 21 days after service of the decision on the review.

(3) That party must—

(a) appeal to a judge of the High Court attached to the Queen's Bench Division as if it were an appeal from the decision of a master under Part 52 of the Civil Procedure Rules 1998(**a**); and

(b) serve the appeal not more than 21 days after service of the costs judge's certificate under paragraph (2).

(4) A High Court judge—

(a) may extend a time limit under this rule even after it has expired;

(b) has the same powers and duties as a costs judge under rule 76.12; and

(c) may hear the appeal with one or more assessors.

[Note. See also section 70 of the Senior Courts Act 1981(**b**)*.]*

Application for an extension of time under Section 5

76.14.—(1) A party who wants an extension of time under rule 76.11, 76.12 or 76.13 must—

(a) apply in writing;

(b) explain the delay; and

(c) attach the application, representations or appeal for which the extension of time is needed."

(**a**) S.I. 1998/3132.

(**b**) 1981 c. 54; the words "Senior Courts" are to be substituted for "Supreme Court" in the title of this Act by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), with effect from 1 October 2009.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules add the following new provisions to The Criminal Procedure Rules 2005:

— a new Part 6 (Investigation orders) that deals with applications for production and other orders under the Terrorism Act 2000 and the Proceeds of Crime Act 2002. These new rules supersede the existing rules in Part 62, which apply only to some applications under the 2002 Act.

— a new Part 22 (Disclosure) that consolidates, revises and simplifies the content of existing Parts 22, 23, 25 and 26.

— a new Part 27 (Witness statements), in substitution for the existing Part 27, that revises and simplifies the rules about the content and service of written witness statements.

— a new Part 62 (Contempt of court) that deals with applications for the punishment for contempt of court of those who disobey court orders, or who disclose prosecution material without authority.

— a new Part 76 (Costs) that revises and simplifies the rules about applications for costs orders. These new rules supersede the existing rules in Part 78, and deal with applications for all the costs orders that the criminal courts can make.

— new rules in Part 2 (Understanding and applying the Rules) make transitional provision and explain when the new rules in Parts 6, 22, 62 and 76 will apply.

In addition, these Rules make the following amendments to The Criminal Procedure Rules 2005:

— Part 3 (Case management) is amended to require specifically that steps are taken to facilitate the attendance of witnesses.

— Part 4 (Service of documents) is amended to require the personal service of an application to punish for contempt of court.

— Part 5 (Forms) is amended to incorporate the rules about court records contained in the existing Part 6 (Court records), leaving Part 6 available for the new rules about investigation orders.

— Part 14 (The indictment) is amended so as no longer to imply that the signature of a draft indictment is required for it to become an indictment.

— Part 19 (Bail in magistrates' courts and the Crown Court) is amended to require specifically that the providers of electronic monitoring and other bail services are notified of relevant bail conditions, and variations of them.

— Part 32 (International co-operation) is amended to provide for the court's consideration of an 'overseas freezing order' (an order to secure evidence sought in another state), and to remove the current requirement that magistrates' courts' records of overseas orders must be kept in a separate book.

— Part 33 (Expert evidence) is amended to incorporate and revise the rules about serving expert evidence contained in the existing Part 24 (Disclosure of expert evidence).

— Part 59 (Proceeds of Crime Act 2002 – rules for restraint proceedings) is amended to provide for an application to punish for contempt of court a person who disobeys a restraint order.

— Part 65 (Appeal to the Court of Appeal: general rules) is amended to give the Court of Appeal a discretion whether or not to hear oral representations on an appeal against an order restricting public access to proceedings in the Crown Court.

— Parts 23, 24, 25, 26, 77 and 78 are omitted, in consequence of the consolidation of rules made by the other changes.

— other amendments bring up to date references to the new Supreme Court and other cross-references in The Criminal Procedure Rules 2005.

— the Arrangement of Rules is amended to accommodate all these changes.

The changes made by these Rules come into force on 5th October 2009.

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